

(2018) 03 RAJ CK 0200

In the Rajasthan High Court

Case No : Civil Writ Petition No. 7223 of 2016

Smt. Saroj @APPELLANT@Hash State of Rajasthan

Date of Decision : 15-03-2018

Acts Referred:

Industrial Disputes Act, 1947 — Section 33C(2)
Rajasthan Compassionate Appointment of Dependents of Deceased Government
Servant Rules, 1996 — Rule 2(b)

Citation : (2018) 03 RAJ CK 0200

Hon'ble Judges : ARUN BHANSALI, J

Bench : Single Bench

Advocate : Mukesh Vyas, Sanjay Raj Paliwal

Final Decision : Allowed

Judgement

This writ petition is directed against the orders dated

21.8.2015 (Annex.27) and 28.1.2013 (Annex.21) passed by the respondents, whereby, the case of the petitioner seeking regularization of services of

her husband " Mahendra Kumar Panwar under the Rajasthan Various Services (Amendment) Rules, 2009 (the Rules of 2009) has been

rejected by the respondents and prior to that the prayer made by the petitioner for grant of compassionate appointment was rejected, respectively.

The husband of the petitioner- Mahendra Kumar was initially granted appointment vide order dated 11.4.1988 as a daily wager on the post of Lower

Division Clerk for a period of three months or till duly selected candidates from RPSC were made available, whichever was earlier. The said

Mahendra Kumar continued in the position till February, 1989, whereafter, his services came to be terminated.

The said Mahendra Kumar aggrieved against the termination of his services raised dispute and the appropriate Government by its notification dated

16.11.1993 referred the dispute to the Labour Court, Jodhpur.

The Labour Court, Jodhpur by its award dated 24.4.1998 directed as under:-

â??vf/kfu.kZ; Je foHkkx jkt- ljdkj dh vf/klwpuk laÅ' 518@93 ds vUrxZr izsf""kr fookn bl rjg ls vf/kfuf.kZr fd;k tkrk gS fd lgk;d funsâ??kd] lekt

dY;k.k foHkkx] tks/kiqj@funsâ??kd Å¼izâ??kkluÅ½ lekt dY;k.k foHkkx] t;iqj }kjk Jfed egsUnz dqekj ioa kj iq= Jh enuyky dks Qjojh 1989 esa Isok

ls i`Fkd fd;k tkuk mfpr ,oa fof/kuqlkj ugha gSA vr% izkFkhZ dks nSfud thou Hkksxh Jfed ds :i esa Isok esa iquZLFkkfir fd;k tkrk gS] izkFkhZ jsQjsUI

dh frfFk 16-11-1993 ls vf/kfu.kZ; dh frfFk rd dh vof/k dk ,d o""kZ esa 280 isM dk;Zfnol ekurs gq, nSfud osru Hkksxh Jfed dks ns; gksus okyh jkfâ??k

dk 20 izfrâ??kr osru iwoZ Hkwfr ds :i esa vizkFkhZx.k ls izkIr djsxkA izkFkhZ dh Isok;sa 16-11-1993 ls fuajrj ekuh tkosxhA bl vf/kfu.kZ; dks

izdkâ??ku gsrq Je foHkkx jktldkj t;iqj dks izsf""kr fd;k tkosAâ??

The respondents did not challenge the award dated 24.4.1998, however sought to question its validity when order was passed by the Labour Court

under Section 33-C(2) of the Industrial Disputes Act, 1947 on 1.8.2003 by way of filing S.B. Civil Writ Petition No.919/2004, which was rejected by

this Court on 4.3.2004. Pursuant to the award dated 24.4.1998 passed by the Labour Court, Jodhpur, by order dated 8.10.2004 (Annex.10), said

Mahendra Kumar was granted reappointment as daily wages workman with continuity in service from 16.11.1993. Whereafter, he was transferred, at

his own request, to Pali.

On 16.10.2012, on account of the injuries suffered by said Mahendra Kumar in a road accident, he died. After death of Mahendra Kumar, the

petitioner sought appointment on compassionate basis under the Rajasthan Compassionate Appointment of Dependents of Deceased Government

Servant Rules, 1996 (â??the Rules of 1996â??).

Application of the petitioner was turned down by the respondents by order dated 28.1.2013 (Annex.21), inter alia, indicating that compassionate

appointment cannot be granted under Rule 2(b) of the Rules of 1996.

Feeling aggrieved, the petitioner filed S.B. Civil Writ Petition No.1676/2013, which came to be accepted by this Court by order dated 24.2.2014

(Annex.25), inter alia, directing as under:-

â??Therefore, this writ petition is allowed with the following directions:

A. The respondents are directed to treat the petitioner's husband late Mahendra Kumar Panwar as regular employee after completion of 15 years

of service on the post of Class IV employee and grant regular pay-scale of Class IV employee; and further, the respondents are directed to make

fixation of the salary of late Mahendra Kumar Panwar and release all arrears and retiral benefits in favour of the petitioner who is widow of late

Mahendra Kumar Panwar.

B. The respondents are directed to consider the case of the petitioner for providing appointment to her on compassionate ground as per the Rules of

1996 within a period of one month from the date of receiving certified copy of this order on the post available in the respondent Department.

C. The respondents shall pay cost of Rs.10,000/- to the petitioner.

Feeling aggrieved, the State filed D.B. Civil Special Appeal (Writ) No.706/2014, the said writ petition came to be partly allowed by judgment dated

6.1.2015 (Annex.26), inter alia, with the following directions:-

15. In view of the aforesaid discussion, the Special Appeal is partly allowed to the extent that the directions issued by learned Single Judge that

the petitioner's husband late Shri Mahendra Kumar Panwar shall be treated to have been regularized, are substituted with the directions that the

appellants will now consider the case of the respondent petitioner's husband late Shri Mahendra Kumar Panwar for regularization in accordance with

the Rajasthan Various

Service (Amendment) Rules, 2009 notified on 8.7.2009. If, on the basis of the documents on record in the office of the appellants, he is found to be

entitled for regularization, after screening, the consequential orders of the regularization, arrears of salary and fixation of family pension will be passed

by the appellants. We further direct that in case late Shri Mahendra Kumar Panwar (the workman) is found to be entitled for regularization and the

order of regularization of his services is issued, his widow will be paid the entire arrears of salary payable to him upto his death, the retiral benefits and

thereafter, family pension to her in accordance with relevant Rules. In such case, she will also be considered for compassionate appointment, in

accordance with the prevailing Rules, subject to fulfilling all 11 other conditions. The consequential orders will be passed and benefits will be paid to

her within three months of service of this order on the appellants.

The Division Bench required the respondents to consider the case of the petitioner's husband Lt. Sh. Mahendra Kumar Panwar for regularization

in accordance with Rules of 2009 and if he was found entitled for regularization, to pass consequential orders for regularization, arrears of salary and

fixation of family pension and it was also directed to consider the case for compassionate appointment in accordance with the revision Rules.

Pursuant to the direction of the Division Bench, the impugned order dated 21.8.2015 (Annex.27) has been passed rejecting the case of petitioner for

regularization of her husband under the Rules of 2009. The respondents have considered the case of deceased " Mahendra Kumar for two positions

i.e. as LDC and as class IV employee. For the position of LDC, it was found that he was regularly appointed against the sanctioned vacant post for

three months, but he had not completed ten years' service as LDC till cut off date and on the date of screening, vacant position was not available.

Qua the position of class IV employee, the following consideration was indicated:-

"The petitioner's husband Lt. Sh. Mahendra Kumar Panwar was appointed as LDC on 08-07-2009 against the sanctioned vacant post of LDC in the office of the District Collector, District of Jharkhand. The petitioner's husband was found to be entitled for regularization as he was regularly appointed against the sanctioned vacant post for

three months, but he had not completed ten years' service as LDC till cut off date and on the date of screening, vacant position was not available. Qua the position of class IV employee, the following consideration was indicated:-

"The petitioner's husband Lt. Sh. Mahendra Kumar Panwar was appointed as LDC on 08-07-2009 against the sanctioned vacant post of LDC in the office of the District Collector, District of Jharkhand. The petitioner's husband was found to be entitled for regularization as he was regularly appointed against the sanctioned vacant post for

three months, but he had not completed ten years' service as LDC till cut off date and on the date of screening, vacant position was not available. Qua the position of class IV employee, the following consideration was indicated:-

"The petitioner's husband Lt. Sh. Mahendra Kumar Panwar was appointed as LDC on 08-07-2009 against the sanctioned vacant post of LDC in the office of the District Collector, District of Jharkhand. The petitioner's husband was found to be entitled for regularization as he was regularly appointed against the sanctioned vacant post for

three months, but he had not completed ten years' service as LDC till cut off date and on the date of screening, vacant position was not available. Qua the position of class IV employee, the following consideration was indicated:-

"The petitioner's husband Lt. Sh. Mahendra Kumar Panwar was appointed as LDC on 08-07-2009 against the sanctioned vacant post of LDC in the office of the District Collector, District of Jharkhand. The petitioner's husband was found to be entitled for regularization as he was regularly appointed against the sanctioned vacant post for

three months, but he had not completed ten years' service as LDC till cut off date and on the date of screening, vacant position was not available. Qua the position of class IV employee, the following consideration was indicated:-

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three months, but he had not completed ten years' service as LDC till cut off date and on the date of screening, vacant position was not available. Qua the position of class IV employee, the following consideration was indicated:-

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three months, but he had not completed ten years' service as LDC till cut off date and on the date of screening, vacant position was not available. Qua the position of class IV employee, the following consideration was indicated:-

24-04-1998 ds }kjk Jfed ds :i esa fnukad 16-11-1993 ls fujUrj ekuh x;hA

Lo- Jh egsUnz dqekj dh e`R;q 16-10-2012 dks gks x;h FkhA

4- izkjfEHkd vfu;fer fu;qfDr dh ik= Fkk D;ksafd dkfeZd dh 'kS{kf.kd rkjh[k dks fu;eksa ds vuqlkj ;ksX;rk lSd.Mjh gSA fu;qfDr dk ik= gksA

5- LÃ?hfuax ds le; fjfDr;ka fjfDr miyC/k gSA miyC/k gks izdj.k esa mijksDr leLr 'krksaZ ij ckn foeâ??kZ ds ckn LÃ,hfuax desVh us Lo- Jh egsUnz

dqekj iaokj] dks ekÅ' U;k;ky; ds vknsâ??kkuqlkj vf/klwpuk fnukad 27-02-2009 ds vuqÃ?e esa la[;k] 1 dh 'krZ iw.kZ ugha djus ds dkj.k prqFkZ

Js.kh deZpkjh in ij fu;feZdj.k dk ik= ugha ik;kAâ??

The petitioner initially filed contempt petition being S.B. Contempt Petition No.519/2015, which came to be decided by order dated 12.5.2016, leaving it open for the petitioner to question the validity of order dated 21.8.2015.

It is submitted by learned counsel for the petitioner that the action of the respondents in denying the regularization to husband of the petitioner, is ex-

facie contrary to the provisions of law. It is submitted that under the Rules of 2009, the requisite conditions, which have been indicated, were all

fulfilled by said Mahendra Kumar, however, the respondents by noticing that for position of class IV employee out of five conditions, he had fulfilled

four conditions, have rejected regularization on account of alleged nonfulfilment of one condition. It was submitted that the respondents while

considering the case for regularization as LDC though found that the initial entry of the petitionerâ??s husband was against the sanctioned vacant

post, for the purpose of consideration for the position as class IV employee, it has been held that the said entry was not against the sanctioned vacant

post, which fact on face of it, is contradictory and against the record and, therefore, on that count alone, the order impugned deserves to be quashed

and set aside with all consequential benefits as envisaged by the order of the Division Bench.

With reference to certain documents, it was sought to be emphasized that the mere fact that on account of the passing of the award of the Labour

Court, the petitioner was simply granted reinstatement as daily rated workman, it cannot be said that the initial appointment of the petitioner as LDC

would be ignored so as to deny the relief of regularization in terms of the Rules of 2009 and, therefore, also the order deserves to be quashed and set

aside.

Learned counsel for the respondents supported the order impugned. It was submitted that the order has been passed strictly in accordance with the

requirements of the Rules of 2009, while the entry of the petitioner's husband as LDC in the year 1988 may have been against a sanctioned

vacant post, the said aspect could not be taken into consideration while considering the case for position of class IV employee.

It was submitted that the provisions of the Rules of 2009 have to be applied post-wise for which the consideration is taking place and the position as

LDC regarding consideration of entry into service for the purpose of position as class IV employee, cannot be taken into consideration and, therefore,

the order impugned does not call for any interference.

I have considered the submissions made by learned counsel for the parties and have perused the material available on record.

A bare perusal of the material, which has been taken into consideration several times over by the Labour Court, by the Single Judge and by the

Division Bench, it is apparent that in the year 1988, the petitioner's husband was accorded appointment against the sanctioned vacant post of

LDC on daily wages basis, on which he continued till 1989 when his services were terminated.

A dispute having been raised before the Labour Court, the Labour Court ordered for reinstatement of the petitioner as daily wages workman

and directed for treating his services as regular w.e.f. 16.11.1993 (the date of notification by the appropriate Government referring the dispute to the

Labour Court). Though the award was passed in the year 1998, after much struggle, the petitioner's husband was granted relief pursuant to the

award in the year 2004 giving appointment simply indicating as nSfud osru

Hkksxh Jfed (daily wages workman) and it was also indicated that the service would be treated as continuous from 16.11.1993 in terms of the

award passed by the Labour Court. The petitioner's husband continued on the said position for another eight years when unfortunately in a road

accident, he died on 16.10.2012.

As already noticed hereinbefore, the second phase of dispute arose on account of denial of compassionate appointment to the petitioner, wherein,

initially the writ petition was allowed and in appeal, the Division Bench directed for consideration of the case in terms of Rules of 2009.

The relevant provisions of Rules of 2009 reads as under:-

“the persons, irregularly appointed on duly sanctioned posts and completed ten years service on 10.04.2006, without intervention of any court or

tribunal, and continuously working as such on the date of commencement of these amendment rules, shall be screened by a committee consisting of-

(a) (i)

(i) (i).

(ii) (i)...

(iii) (i)...

(iv) (i)...

(b) (i) (i).

(i) (i) (i)...

(ii) (i) (i) (i).

(iii) (i) (i)...

provided they were eligible for appointment, as per rules on the date of their initial irregular appointment and vacancy is available at the time of

screening. The Appointing Authority shall issue appointment order of the person, who is adjudged suitable by the screening committee and

appointment order.”

A perusal of the consideration by the respondents pertaining to the position of the petitioner’s husband as class IV employee reveals that only on

one count, the relief under Rules of 2009 has been denied by indicating that as the workman was not appointed against a sanctioned vacant post

irregularly, he was not entitled to regularization, rest all the conditions as indicated in the Rules were found as having been fulfilled by the

petitioner’s husband.

The reason for rejection though not apparent from the order but based on the submission of the counsel for the respondents appears to be that the

respondents for regularization on the post of class IV employee have not taken into consideration the fact that at the time of initial appointment in the

year 1988, the petitioner’s husband was appointed against a sanctioned vacant post, which aspect has been clearly indicated while

considering his case for regularization as LDC and it has been assumed as if he

attained the said position as Daily Wages Employee only by way of the award passed by the Labour Court dated 24.4.1998.

The said consideration on part of the respondents is ex-facie incorrect and cannot be sustained.

A bare look at the Rules would indicate that the same apparently does not take into consideration, the fortuitous circumstance, wherein a person might

have entered service on a particular post and in the meanwhile, at the time of consideration i.e. in the year 2009, the position has changed. If the

submission made by the respondents is taken to its logical conclusion, in that circumstance the person irrespective of complying with the other

requirements would not be entitled for regularization only on account of the said fortuitous circumstance i.e. the employee was not holding the same

position on which he entered the service. Admittedly, the petitioner's husband entered the service against the sanctioned vacant post of LDC, his

termination took place as LDC, which was held as illegal by the Labour Court and award was passed directing his reinstatement treating his services

as continuous w.e.f. 16.11.1993 as a daily wages workman.

Merely because on account of the said interjection, whereby, instead of direction to grant reinstatement as LDC and directing to consider the same as

continuous w.e.f. from the date indicated therein, it was simply indicated that he will be treated as daily wage workman, it cannot be said that on

account of the said interjection, the initial order of appointment of the petitioner's husband against a sanctioned vacant post would stand diluted

and for all times to come, it will be treated as if the person was not appointed against a vacant sanctioned post, which plea cannot be accepted. In

view of the above, the action of the respondents in denying regularization of petitioner's husband on the post of class IV employee in terms of

Rules of 2009, cannot be sustained.

So far as the grant of compassionate appointment to the petitioner is concerned, the same would be consequential to the order of regularization as

already directed by the Division Bench.

In view of the above discussion, the writ petition filed by the petitioner is allowed. The order dated 21.8.2015 (Annex.27) to the extent the relief of

regularization under Rules of 2009 has been denied to the petitioner's husband Lt. Mahendra Kumar Panwar by indicating that his initial

appointment not being against the vacant sanctioned post, is quashed and set aside. The order dated 28.1.2013 (Annex.21) denying compassionate appointment to the petitioner is also quashed and set aside.

It is directed that the said Mahendra Kumar Panwar on account of fulfilling all the conditions for the post of class IV employee, would be entitled for

regularization under the Rules of 2009 and the consequence as directed by the Division Bench in its judgment dated 6.1.2015 (Annex.26) would

follow, whereby, as noticed hereinbefore, it was ordered that the consequential orders of regularization, arrears of salary and fixation of family pension

will be passed by the respondents, the petitioner would be paid the entire arrears of salary payable to deceased Mahendra Kumar Panwar upto his

death, retiral benefits and family pension to the petitioner in accordance with relevant Rules and further the application for compassionate appointment

in accordance with Rules of 1996 shall be considered.

All the above consequential benefits to the petitioner including consideration of her application for compassionate appointment shall be made available

within a period of three months from the date of this order.

No costs.