

(2014) 11 RAJ CK 0108

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) Nos. 1048, 1051, 1141, 1163, 1164, 1285, 1298, 1302, 1305, 1306, 1311, 1312 and 1340/2014

State of Raj.

APPELLANT

Vs

Thakar Ram

RESPONDENT

Date of Decision : 10-11-2014

Acts Referred:

Citation : (2015) 1 CDR 425

Hon'ble Judges : Sunil Ambwani, Acting C.J.;Prakash Gupta, J

Bench : Division Bench

Advocate : P.S. Bhati, AAG A/w Sajjan Singh and Manish Patel, Advocate for the Appellant; R.S. Saluja and V.K. Sharma, Advocate for the Respondent

Judgement

1. We have heard counsel for the parties.
2. All these Special Appeals arise out of common order, based on similar questions of facts and law. All the Special Appeals are heard together and are being disposed of by common judgment.
3. The delay in filing the special appeals has been sufficiently explained. The applications for condonation of delay are accordingly allowed.
4. The respondents herein/writ petitioners approached this Court by filing writ petitions praying for directions to quash the impugned order dated 13.7.2012; to grant regular pay scale on the post of Gram Sewak and in some of the writ petitions, to quash the orders by which the regular pay scale on the post of Gram Sewak paid to them, after their absorption, was sought to be recovered.
5. Learned Single Judge found that all the writ petitioners, working in various Corporations, owned and controlled by the State Government, were proposed to be absorbed under a policy vide order dated 2.10.2010 in the cadre of Gram Sewak in the Panchayati Raj Department of the Government of Rajasthan as the Corporations, in which they were working, were suffering financial losses and

were either on the verge of closure or were already closed. The State Government by Order dated 2.10.2010 issued by the Gramin Vikas and Panchayati Raj Vibhag, Government of Rajasthan, after considering the plight of such employees, formulated a policy, under which all such employees, who were either working in the Departments/Boards/Corporations on secondment/deputation/reverse deputation, were to be absorbed/appointed on the post of Gram Sewak in the Panchayati Raj institutions. For this purpose, the State Government relaxed the qualifications wherever, the relaxation was permissible, and in those cases, where the employees of the Departments/Boards/Corporations were not qualified with secondary qualifications, they were proposed to be absorbed in appropriate posts in the Gram Panchayats. The Government order dated 2.10.2010 also provided for various other conditions including their entitlement to the new pension scheme with an option to continue in the Contributory Provident Fund Scheme.

6. Paragraph 5 of the order dated 2.10.2010 was applicable to those work charge employees who were working in the Forest department, Irrigated Area Development, Jal Sansadhan Mahi Pariyojna, Public Works Department and Public Health Engineering Department, who were not in the category of regular employee, as their employment was charged to the projects in these Departments. A specific provision was made for them that since they are working as work charge employees, they will be absorbed and paid regular pay scale on the post of Gram Sewak after completing 10 years of service.

7. It appears that the officers of the Zila Parishads, in which the writ petitioners were absorbed under the Government order dated 2.10.2010, placed these employees into different categories for payment of wages. For those, who were drawing regular pay scales in the Corporations, the Zila Parishad gave them regular pay scale on the post of Gram Sewak or other equivalent posts; and for those, who were working on fixed pay in the Corporations, paragraph 5 of the order dated 2.10.2010, providing for wages to the erstwhile work charge employees, was made applicable. A clarification was thereafter sought by the Zila Parishads on the representations made by the employees, who were getting lesser pay, and for those, in respect of whom, the difference of regular pay and fixed pay was sought to be recovered.

8. The State Government, in pursuance to the clarifications sought by the Zila Parishads, issued an Order dated 23.5.2011, by which it clarified that those employees who were drawing pay scale equivalent to Gram Sewak, will be paid the pay scale on the post of Gram Sewak, on which they were absorbed in pursuance to the Government order dated 2.10.2010. On query No. 3, regarding such employees who were not getting the regular pay scales while they were working in the Corporations, the State Government clarified that those employees who were not getting pay scales will get the regular pay scales of Gram Sewak after completing 10 years of service in accordance with para 5(gha) of the order dated 2.10.2010.

9. Learned Single Judge, after hearing the parties and perusing the Government orders, held that the petitioners' absorption shall be governed by para 2 of the Order dated 2.10.2010 and not by para 5(gha), as sought to be clarified by order dated 23.5.2011. Learned Single Judge further held that the clarification issued vide para 3 of the order dated 23.5.2011 and the resolution adopted by the Gram Panchayats reviewing its earlier decision granting pay scale to the petitioners and their likes from the date of joining of their duties on the post of Gram Sewak and deferring the benefit of regular pay scale after completing 10 years of service, was not sustainable in law. Learned Single Judge further found that it was not denied that the petitioners were regular employees of Spinfed/ Cotton Complex and they were declared surplus, on which they were absorbed on the post of Gram Sewak pursuant to the policy of the State Government in conformity with the Rules of 1996 and the Rules of 1969 which are applicable to the Gram Sewaks in the Panchayati Raj Department and, therefore, on their absorption/appointment by transfer on the equated post of Gram Sewak in various Panchayati Raj Institutions, they were treated to be regular employees and since they were discharging the same duties and responsibilities on the post of Gram Sewak, there could be no reason as to why they should be denied payment of salary in regular pay scale. Consequently, the writ petitions were allowed and while directing payment of regular pay scale, which is payable to Gram Sewak, from the date of absorption, it was directed that the order dated 23.5.2011 to recover the excess amount be quashed.

10. After hearing the Addl. Advocate General, we do not find any good ground to interfere with the judgment. Learned Single Judge has discussed in detail the nature and conditions of the employment, in which the writ petitioners were working prior to their absorption. The Government order dated 2.10.2010 does not provide for any such classification for those employees, who were to be absorbed as Gram Sewak, with regard to the various grades. The policy of the State Government, which was issued after obtaining the relaxation of academic qualifications, did not draw any distinction between those, who were working on the fixed pay, and those, who were working in the regular pay scale, in the Corporations, which were owned and controlled by the State Government. The distinction was only drawn in para 5 of the government order dated 2.10.2010 in respect of those employees who were working on work charge basis in certain departments or corporations. An artificial discrimination was sought to be created by way of a clarification putting those petitioners who were working on fixed pay in the Corporation and making them equal to work charge employees.

11. We do not find any error in the conclusion drawn by learned Single Judge that even those petitioners, who were working on fixed pay in the corporations, did not fall and could not be treated at par with those who were working as work charged employees. In Service Law, the work charge employment, which is an employment in which the wages of an employee are charged to a particular project, is fairly well known. Such employment cannot be equated with the employment on fixed pay or regular pay on the posts in the Corporations in

which the petitioners were working.

12. We do not find any substance in the contention of Addl. Advocate General that the clarification was issued in consonance with the conditions laid down in the Government Order dated 2.10.2010, with which the writ petitioners had agreed. We do not find any such stipulation in the policy of the State Government in its order dated 2.10.2010, which can be said to be binding upon the petitioners, for allowing them regular pay scale of Gram Sewak, after serving for ten years.

13. It is not denied that all the respondents, who are petitioners in the writ petitions, have been absorbed as Gram Sewak in the Panchayati Raj Department and are carrying on the same duties and responsibilities as regularly employed Gram Sewak. The nature of their employment, after their absorption, is not different in any manner, nor the conditions of their employment are different than those of regularly employed Gram Sewak. In the circumstances, they cannot be treated differently for payment of salary, and no artificial discrimination can be made between them on the basis of their past employment. Learned Single Judge has not committed any error in finding that para 5(gha) of the order dated 2.10.2010 is not applicable to the petitioners as they were not working in any Department or Corporation, on work charged basis.

14. In view of the aforesaid discussion, there is no error in the judgment of learned Single Judge and all these special appeals are accordingly dismissed.

15. The stay applications also stand dismissed.

16. A copy of this order be placed in all the files.