
(2020) 01 RAJ CK 0128
In the Rajasthan High Court
Case No : Spl. Appl. Writ No. 1866 Of 2018

State Of Rajasthan And Ors

APPELLANT

Vs

Kanta Sharan And Ors

RESPONDENT

Date of Decision : 22-01-2020

Acts Referred:

Citation : (2020) 01 RAJ CK 0128

Hon'ble Judges : Sangeet Lodha, J;Dr. Pushpendra Singh Bhati, J

Bench : Division Bench

Advocate : K.K. Bissa, Yash Pal Khileri

Final Decision : Dismissed

Judgement

1. This intra court appeal is directed against orders dated 15.5.18 and 17.9.16 passed by the learned Single Judge of this Court, dismissing the review petition and writ petition respectively, preferred by the appellants.

2. The facts relevant are that the respondent was appointed on the post of Teacher Gr.III vide order dated 30.11.85, in pursuance whereof, she joined duties on 3.12.85. Vide order dated 7.6.90 issued by the Vikas Adhikari, Panchayat Samiti, Churu, the respondent was confirmed on the post of Teacher Gr.III from the date of her initial appointment i.e. 3.12.85. On completion of 9 years of service, vide order dated 30.8.95, the respondent was accorded first selection grade w.e.f. 3.12.94, obviously, taking into consideration the services rendered by her from the date of her initial appointment. Similarly, on completion of 18 years of service, she was accorded second selection grade w.e.f. 3.12.04. The respondent completed 27 years of service on 3.12.12, however, she was not accorded third selection grade. In these circumstances, the respondent served the appellants with a notice for demand of justice, but to no avail and therefore, she preferred an appeal before Rajasthan Civil Services Appellate Tribunal, Circuit Bench, Jodhpur (for short "the Tribunal"). The appeal preferred by the respondent was allowed by the Tribunal vide order dated 6.1.15.

The appellants were directed to extend benefits of third selection grade to the respondent on completion of 27 years of service to be counted from the date of her initial appointment i.e. 3.12.85. In this regard, the learned Tribunal relied upon a decision of this Court in *Bhura Ram Saharan & Ors. vs. State of Rajasthan & Ors.* : 2013(3) CDR 1561 (Raj.).

3. Aggrieved by order dated 6.1.15 passed by the Tribunal, the appellants preferred a writ petition being S.B.C.Writ Petition No.13546/15 before this Court, which stood dismissed by the learned Single Judge vide order dated 17.9.16. The appellants preferred a review petition being No.44/18, seeking review of order dated 17.9.16 passed by the learned Single Judge, which has been dismissed by the order impugned dated 15.5.18 as barred by limitation as also on merits. Hence, this appeal.

4. Learned counsel appearing for the appellants contended that in view of decision of the Supreme Court in "*State of Rajasthan & Ors. vs. Jagdish Narain Chaturvedi*" (2009) 12 SCC 49 and Larger Bench decision of this Court in "*State of Rajasthan & Anr. vs. Surendra Mohnot & Ors.*", AIR 2014 SC 2925, the adhoc services cannot be counted for the purpose of grant of selection grade and the period of service rendered before regular appointment on the post in accordance with the relevant recruitment rules cannot be counted and therefore, for the purposes of grant of selection grade, the services of the respondent deserves to be counted from her fresh regular appointment by order dated 5.7.89 and not prior to it.

5. On the other hand, the counsel appearing for the respondent submitted that the respondent was confirmed on the post of Teacher Gr.III w.e.f. 3.12.85 vide order dated 7.6.90 and accordingly, she was accorded first and second selection grade on completion of 9 and 18 years of service respectively counted from the date of confirmation i.e. 3.12.85 and thus, the question of respondent's services for the purpose of grant of selection grade from any other date including the date of alleged fresh appointment i.e. 5.7.89 does not arise.

6. We have considered the submissions of the learned counsel and perused the material on record.

7. Indisputably, the respondent was appointed on the post of Teacher Gr.III on temporary basis vide order dated 30.11.85 and pursuant thereto, she joined duties on 3.12.85. It is not in dispute that vide order dated 7.6.90, the respondent was confirmed on the post of Teacher Gr.III from the date of her initial appointment. It is not the case of the respondent that alleged order dated 6.7.89 according fresh appointment to the respondent on probation for a period of two years, was even placed on record before the Tribunal. As a matter of fact, the Tribunal in its order categorically observed that neither the order dated 6.7.89 nor the documents showing respondent joining the duties in pursuance thereof, was placed on record. It is also not the case of the appellants that the order dated 7.6.90, confirming the respondent on the post of Teacher Gr.III

w.e.f. 3.12.85 and the subsequent orders granting first and second selection grade on completion of 9 and 18 years of service respectively counted from the date of confirmation i.e. 3.12.85, were ever withdrawn or modified by the competent authority.

8. In view of the decision of the Supreme Court, undoubtedly, for the purpose of grant of selection grade, the services rendered by an employee on adhoc basis before regular appointment to the post in accordance with the relevant recruitment rules, has to be excluded while reckoning the required length of service. But in the instant case, the fact that the temporary appointment of the respondent vide order dated 3.12.85 was followed by order dated 7.6.90, whereby her services were confirmed from the date of her initial appointment i.e. 3.12.85 is not disputed and thus, for all intent and purposes, the respondent deserves to be treated regular employee from the date of her initial appointment. Moreover, the appellants having accorded the first and second selection grade to the respondent on completion of 9 and 18 years of service, counted from the date of her initial appointment, there is no reason why for the purpose of grant of third selection grade, the services rendered by her before the confirmation on the post of Teacher Gr.II, vide order dated 7.6.90, should be excluded for the purposes of grant of third selection grade on completion of 27 years of service.

9. In view of the discussion above, the Larger Bench decision of this Court in Surendra Mohnot's case (supra) and decision of the Supreme Court in Jagdish Narain Chaturvedi's case (supra) cannot be applied to the facts of the present case.

10. In view of the discussion above, the orders under appeal passed by the learned Single Judge do not warrant any interference by us in exercise of intra court appeal jurisdiction.

11. The special appeal is therefore, dismissed. All pending applications shall also stand disposed of.

No order as to costs.