

(2014) 09 RAJ CK 0019
In the Rajasthan High Court
Case No : Civil Writ Petition No. 2738/2014

State of Rajasthan and Others	Vs	APPELLANT
Raj Kumar Jain		RESPONDENT

Date of Decision : 03-09-2014

Acts Referred:

Citation : (2014) 09 RAJ CK 0019

Hon'ble Judges : Mohammad Rafiq, J.

Bench : Single Bench

Advocate : Sanjay Bhatia, OIC, for the Appellant

Final Decision : Dismissed

Judgement

Mohammad Rafiq, J. This writ petition has been filed by State of Rajasthan against the judgement of Rajasthan Civil Services Appellate Tribunal dated 4.2.2010 by which the appeal filed by the respondent-Raj Kumar Jain was allowed and the petitioners were directed to step up his salary at par with the junior Shri Kunj Bihari Lal from the date he is getting higher salary and pay arrears along with consequential benefits. Petitioners have also challenged the order of the Tribunal dated 5.9.2013 by which their petition seeking review of the aforesaid judgement has been dismissed by the Tribunal. In between, petitioner filed writ petition No. 12564/2010 challenging the aforesaid judgement of the Tribunal dated 4.2.2010, but withdrew the same on 16.3.2012 with liberty to file the aforesaid review petition on the ground of discovery of new facts.

2. The facts of the case are that respondent-Raj Kumar Jain was appointed as Junior Research Assistant in the Water Resources Department of the petitioners by order dated 22.7.1971. He was confirmed on that post on 1.3.1980 vide order dated 19.7.1990. He was thereafter promoted on the post of Senior Research Assistant vide order dated 20.1.1979. On acquiring the qualification of Diploma (Civil Engineer) in the year 1987, he was posted as Sub Engineer on temporary basis in his own pay scale of Senior Research Assistant by order dated 4.5.1987.

The respondent was granted second selection grade on completion of 18 years of service w.e.f. 29.7.2006 vide order dated 26.10.2006. Aggrieved thereby, respondent requested the petitioners to grant him such selection grade counting his service from the date of initial appointment on 22.7.1971 instead of his appointment by way of posting on the post of Sub Engineer on 4.5.1987. When this was not granted, he approached the Tribunal by filing the appeal. The Tribunal has allowed the appeal taking note of the fact that the respondent was posted as Junior Engineer in terms of Rule 6 (10) of the Rajasthan Engineering Subordinate Services (Irrigation Branch) Rules. The post of Senior Research Assistant and the post of Sub/Junior Engineer carries the same pay scale. It was later that the respondent was posted as Sub Engineer vide order dated 4.5.1987, therefore, it could not be treated as order of promotion. He was posted as Sub Engineer because he has acquired the qualification of Diploma in Civil Engineer. Shri Kunj Bihari Lal was promoted as Senior Research Assistant much later than the respondent. The respondent was more qualified than Shri Kunj Bihari Lal. He was confirmed Junior Research Assistant, therefore, his temporary posting as Sub/Junior Engineer (Civil) would not make any difference to his claim of second selection grade counting the date of initial appointment from 22.7.1971. The Tribunal also relied on the judgement of this Court in Tara chand Jain v. State of Rajasthan-WLC (Raj.) UC 2000 page 1 in which this Court directed the State to step up petitioner's salary with effect from date his juniors were treated as promoted as well as pay arrears along with interest on the amount due with all consequential benefits. The said judgement was based on the earlier judgement of division bench in University of Jodhpur v. Dr. C.M. Joshi, D.B. Civil Special Appeal No. 127/1994, decided on 11.12.1995. The Tribunal has also referred to the seniority list dated 19.10.1989 in which name of Shri Amlendra Choudhary has been indicated whereas he was working as Junior Engineer (Civil) since 1980. He was granted selection grade from the date of his initial appointment as Junior Research Assistant.

3. Shri Sanjay Bhatia, OIC for the petitioners has argued that the Tribunal has not considered the vital aspect that the respondent was given appointment on the post of Sub Engineer in a different cadre on his own request/representation on 4.5.1987, therefore, he is not entitled to receive the selection grade from the date of his initial appointment on the post of Junior Research Assistant i.e. 22.7.1971, whereas Shri Kunj Bihari Lal has remained in the same cadre from the date of his initial appointment. Thus, there is no parity with the case of Kunj Bihari Lal, who is serving in a different cadre because Rule 32 of the Rajasthan Service Rules, 1951 does not permit such stepping up of pay of the employees/officers working in different cadres.

4. It is argued that respondent does not have any lien on the post of Senior Research Assistant because clause 3 of the Circular dated 22.1.1992 provides that service of 9, 18 and 27 years, as the case may be, shall be counted from the date of first appointment in the existing cadre/service in accordance with the provisions contained in the recruitment rules.

5. Having heard the representative of the petitioners and respondent present in person, I have given my anxious consideration to the matter.

6. Reliance placed by the representative of the petitioners" on clause 3 of the Circular dated 25.1.1992 is misplaced because that proviso stipulates that if an employee subsequent to his first appointment to a post in a cadre/service, in accordance with provisions contained in the relevant Service Rules, is promoted to a post in some other cadre, service from the date of such promotion shall be taken into consideration for the purpose of grant of selection grade. In the present case, respondent was not promoted, but it was a later posting in the same pay scale. It is not disputed that both posts carries same pay scale and, therefore, the Tribunal was wholly justified in allowing the appeal and thereafter dismissing the review petition filed by the petitioners. It was not for this reason alone that the service of respondent was liable to be counted from the initial date of appointment for granting him selection grade, but also because his junior Kunj Bihari Lal is getting higher salary than the petitioner, therefore, by virtue of next below rule also, respondent would be entitled to receive salary at par with his junior Kunj Bihari Lal from the date he started receiving higher salary than the respondent.

7. No case is, therefore, made out for interference.

8. The writ petition is dismissed. Stay application also stands disposed of.