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**(2003) 02 RAJ CK 0020**

**In the Rajasthan High Court**

**Case No : Civil Writ Petition No. 811 of 2003**

State of Rajasthan and Others

APPELLANT

Vs

Shyam Sunder Vyas and Another

RESPONDENT

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**Date of Decision :** 27-02-2003

**Acts Referred:**

**Citation :** (2003) 4 RLW 2127 : (2003) 3 WLC 567

**Hon'ble Judges :** P.C. Tatia, J

**Bench :** Single Bench

**Advocate :** Vimal Mathur, for the Appellant;

**Final Decision :** Dismissed

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## **Judgement**

Tatia, J.—Heard learned counsel for the petitioners.

2. The petitioner has challenged in this writ petition the order dated 20th July, 2001 by which the labour Court, Jodhpur in labour case No. 22/2000 held that not giving of the semi permanent status to Shyam Sunder and Alok Vyas by orders dated 1st Jan., 1996 & 28th Oct., 1995 is unjust and illegal. The labour Court directed petitioners-non-applicants to grant the semi permanent status to the workmen on completion of two year's service from the initial date of appointment i.e. from 1st Dec., 1992 for Shyam Sunder and 1 st Oct., 1991 for Alok Vyas and grant regular pay scale after declaring them semi permanent.

3. Learned counsel for the petitioners submits that as per Rajasthan (Public Works Department (B & R) including Garden. Irrigation, Water Works and Ayurved Departments) Work-charge Employees Service Rules, 1964 (for short "the Rules of 1964"), the employee can claim his right of consideration for grant of semi permanent status on completion of two years service, but his eligibility for consideration itself cannot confirm status of semi permanent upon the workmen. The status can be granted only if it is found that the services rendered by the workmen are satisfactory and there is sanctioned post available and he is required to satisfy the other conditions of the recruitment and medical fitness.

Learned counsel for the petitioners relied upon the Division Bench judgment of this Court delivered in the case of Ramu Ram and Ors. v. State of Raj. and Ors. (1), decided on 15th Jan., 2002.

4. It is relevant to mention here that the dispute referred to the labour Court was whether grant of semi permanent status to workmen Shyam Sunder and Alok Vyas w.e.f. 1st Jan., 1995 is legal and valid or not. Therefore, the labour Court was required to answer the dispute referred to it.

5. The petitioner's claim in their claim petition is that they were initially appointed on 1st Dec., 1992 and 1st Oct., 1991. They are governed by the said Rules of 1964. They completed two years' service and their services were found to be satisfactory and therefore, they are entitled for the status of semi permanent employees under the Rules of 1964 and consequentially entitled for regular pay scale from the date when they completed two year's satisfactory service, which according to non-petitioners-claimants is from 1st Dec., 1992 and 1st Oct., 1991 as mentioned above. For this specific issue, notice was served upon the non- applicants-petitioners, but nobody appeared on behalf of the petitioners and the labour Court proceeded ex-parte to decide the labour case.

6. Since, the issue before the labour Court was whether grant of semi permanent status w.e.f. 1st Jan., 1995 was valid or not, therefore, the initial burden of applications-non-petitioners, in uncontested claim as no fact was denied by the employer by filing reply, stands discharged when they submitted affidavits in support of their claims and the burden shifted upon, the non- applicant-petitioners to justify the grant of semipermanent status to the non-petitioners w.e.f. 1st Jan., 1995. Justification of grant of semi permanent status from a subsequent date, then the date on which workmen became eligible itself require proof, that the workmen could not have been given semi permanent status from the date when he became eligible and therefore, he was given status from a future date. It is relevant to mention here that the petitioners-non-applicants have not contended that the services of the non-petitioners were not satisfactory or there were no vacant posts available when the non-petitioners completed two years' service. This was also not the case of the petitioners-non-claimants before the labour Court that they lack in eligibility on any ground including, on medical ground and could not have been granted semi permanent status on the date when they completed their two year's service. It became more necessary for the petitioners to prove that the employees were not possessing the requisite eligibility for grant of semi permanent status because of the reason that they were granted semi permanent status w.e.f. 1st Jan., 1995. If the petitioner-employer had defences: that on earlier date, the workmen were not rendered satisfactory service but subsequently they rendered satisfactory service but subsequently they rendered satisfactory service or earlier the workmen were not eligible for the grant of semi permanent status, but subsequently they acquired or the non- petitioners were medically not fit for grant of semi permanent status and subsequently they acquired, then all the burdens were upon the petitioner-

employer to prove these facts. As said above, the burden of proving the claim of the workmen stands discharged by submitting evidence in the form of affidavits by the workmen before the labour Court and it was for the petitioners to controvert the workmen's claim and rebut the evidence produced by the workmen but the petitioner failed to controvert the claim and allegations of the workmen and also failed in rebutting the evidence produced by the workmen, which has been sought to be proved by affidavits by the workmen.

7. The Division Bench held as under :-

"It will not be sound exercise of jurisdiction under Article 226 of the Constitution of India to take upon itself the function of the statutory authority by directing to grant to workmen semi permanent status. The only direction which can be given to the concerned authority or the court is to consider the claim of the petitioners in accordance with the Rules."

8. The Division Bench judgment has no application to the facts of this case because of the simple reason that the dispute which was before the labour Court was altogether different than the dispute which was raised in the matter, which was decided by the Division Bench in the above referred judgment of Ramu Ram's case. There is distinction between refusal of consideration of a candidate for particular benefit then the refusal of benefit on merit after consideration or postponement of the benefit after consideration. When the employer refuses to consider a candidate for grant of benefit and the candidate or workmen proves his case to the extent that he is eligible for consideration for the benefit, the Court can issue direction only with respect to the consideration of candidature of that candidate or workmen because of the reason that after finding that the candidate or workmen is eligible for consideration, thereafter, the selector, for employer will look into the other factors on the basis of which the candidate or workmen entitled for the benefit on fulfilment of condition for grant of the benefit. In case where the candidate has been considered for grant of benefit and either benefit is denied on consideration or benefit is deferred after consideration, then in those cases dispute does not survive regarding non-consideration of the candidate for grant of the benefit, in the cases, where the benefit is deferred or granted from future date or refused on merit is challenged by the aggrieved party, then the forum where it is challenged having competence to decide, is required to decide the merit and the reasons on the basis of which the benefit was denied or deferred to the candidate or workmen. Here in this case, there is no dispute with respect to right of workmen of consideration of their candidate for grant of selection grade. The petitioner- employer admittedly considered the cases of the workmen for grant of semi permanent status, but give the benefit of semi permanent status not from the date when the workmen completed two years' services as required under the Rules for consideration for grant of semi permanent status. Once a candidate acquires eligibility for consideration, then the benefit can be denied or deferred only when Rule permits such denial or deferment. In the case of grant of semi permanent status such

benefit can be denied to the workmen on the ground that the non- petitioners services were not satisfactory or there were no vacant post available or the workmen was not medically fit etc. as provided in the Rules. The denial or deferment of the benefit when challenged, then the employer or the selector is required to prove before the appropriate forum or the court that the denial or deferment of the benefit was justified by producing relevant evidence before the forum or court. The Division Bench judgment delivered in Ramu Ram's case has application to the cases of refusal of candidature of the workmen and cannot be applied to the cases where after consideration of the candidature either the relief was deferred or denied and denial or deferment was the subject matter before the forum or court.

9. The State Government referred to the dispute to the labour Court specifically to adjudicate whether grant of semi permanent status to the non-petitioner-workmen from 1st Jan., 1995 & 28th Oct., 1995 by order dated 1st Jan., 1996 is valid or not. If the labour Court merely decides that the workmen were entitled for consideration for grant of semi permanent status leaving for employer to decide from which date the workmen were entitled for declaration of the semi permanent status, will not be answered to the reference. The labour Court was fully justified in finding out from which date the workmen non-petitioners were entitled for declaration of the semi permanent status, which was also required to be answered for the purpose of deciding whether grant of semi permanent status to the workmen from 1st Jan., 1995 & 28th Oct., 1995 was valid or not and validity of grant of semi permanent status from 1st Jan., 1995 & 28th Oct., 1995 cannot be said without deciding whether the workmen were entitled for declaration of semi permanent status from an earlier date. It can be said that determination of the fact, from which date the workmen were entitled to the declaration of semi permanent status is the foundation of which the order of the employer dated 1st Jan., 1996 declaring workmen semi permanent from 1st Jan., 1995 & 28th Oct., 1995 can be examined and can be adjudicated. Therefore, the labour Court has not committed any illegality in passing the impugned order holding that the workmen were entitled for the semi permanent status from the date of completion of two years' services from the date of their initial appointments and in awarding the other relief to the workmen.

10. In view of the above reasons, I do not find any force in the writ petition filed by the petitioners and the same is hereby dismissed.