
(2016) 12 RAJ CK 0089
In the Rajasthan High Court
Case No : Civil Writ No. 8768 of 2016

State of Rajasthan

APPELLANT

Vs

Devi Lal Bansal

RESPONDENT

Date of Decision : 15-12-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 1 WLCRajUC 98

Hon'ble Judges : Mr. Sangeet Lodha, J.

Bench : Single Bench

Advocate : Mr. N.K. Mehta, AGC and Mr. N.S. Rajpurohit, AGC, for the Petitioners; Kuldeep Mathur and Mr. Vinod Choudhary, Advocates, for the Respondents

Final Decision : Dismissed

Judgement

Mr. Sangeet Lodha, J.—These writ petitions involving identical questions of facts and law were heard together and are being disposed of by this common judgment.

2. By way of these writ petitions, the State of Rajasthan has questioned legality of various orders passed by the Rajasthan Civil Services Appellate Tribunal, Circuit Bench, Jodhpur, whereby the appeals preferred by the respondents holding the post of Junior Engineer in Department of Public Health and Engineering (PHED) and Department of Water Resources, claiming the benefits of first and second selection grade on completion of 9 & 18 years of services from the date of their initial appointment, in terms of Government orders dated 25.1.92 and 21.10.93, have been allowed and accordingly, the petitioners herein are directed to grant first and second selection grade to the respondents on completion of 9 and 18 years of service respectively with all consequential benefits.

3. For convenient disposal of these writ petitions, the Writ Petition No. 8768/16 is

taken as lead case.

4. The relevant facts are that the respondent was appointed on the post of Junior Engineer in PHED, vide order dated 23.2.88 issued by the Chief Engineer, PHED on adhoc basis. Later after screening vide order dated 31.12.03, his services were regularised on the post of Junior Engineer, Diploma holder w.e.f. 2.7.03 under the Rajasthan Engineering Subordinate Service (Public Health Branch) Rules, 1967.

5. The Government of Rajasthan issued an order dated 25.1.92 with a view to provide the benefits of first, second and third selection grades to the employees in Class IV, Ministerial and Subordinate Services and those holding isolated posts, on completion of 9, 18 & 27 years of service from the date of appointment in the existing cadre/service.

6. The Department of Finance, Government of Rajasthan, issued yet another order dated 21.10.93 whereby an exception was inserted below para 3 of the Government order dated 25.1.92, which reads as under :

"Exception- The admissibility of Selection Grade to Jr. Engineer would be on completion of nine, eighteen or twenty seven years of continuous service on the post of Junior Engineer."

7. The Officer on Special Duty (OSD), Department of Finance, Government of Rajasthan, vide communication dated 19.5.97 clarified to the Chief Engineer, Irrigation Department that under order dated 21.10.93, that the admissibility of selection grade to the Junior Engineer shall be on completion of 9, 18 or 27 years of continuous service on the post of Junior Engineer and for the purpose of grant of selection grade to the Junior Engineers, the service shall be counted from the date of their first appointment on the post of Junior Engineer.

8. The respondent having been appointed on the post of Junior Engineer on 8.3.88 became eligible for grant of first selection grade on completion of 9 years of service on 8.3.97. However, vide order dated 11.3.93, the respondent was extended benefits of first selection grade w.e.f. 2.7.12, counting 9 years of service from the date of regularisation of his services w.e.f. 2.7.03.

9. The respondent submitted the representation claiming grant of first and second selection grade w.e.f. 8.3.97 and 8.3.06 respectively on completion of 9 & 18 years of service from the date of initial appointment i.e. 8.3.88.

10. The Hon"ble Supreme Court in SLP (c) No. 2848/06, held that the services rendered by an employee prior to regularisation of his appointment cannot be counted for the purposes of grant of selection grades on completion 9, 18 & 27 years of service. Accordingly, the Department of Finance, Government of Rajasthan, issued a circular dated 29.6.09 to give effect to the said decision.

11. The Chief Engineer, Water Resources Department, Government of Rajasthan, on the basis of opinion of the Department of Finance, conveyed vide

communication dated 12.11.09, clarified that order dated 29.6.09 is not applicable to those Junior Engineers, who have been granted selection grade on the basis of the provisions contained in order dated 21.10.93 issued by the Department of Finance.

12. Pursuant to the Government decision as aforesaid, the similarly situated Junior Engineers were extended benefit of grant of selection grade counting their services from the date of initial appointment, however, the same was denied to the respondents herein and thus, aggrieved thereby, they preferred the appeals before the Tribunal, which stand allowed by the orders impugned in terms indicated above. Hence, these petitions.

13. Learned Additional Government Counsels Mr. N.K. Mehta and Mr. N.S. Rajpurohit contended that the order dated 25.1.92, 21.10.93 & 19.5.97 all stand superseded vide order dated 17.2.98 issued by the Department of Finance, Government of Rajasthan, where under the first, second and third selection grade is admissible to the employees covered by the said order on completion of 9, 18 & 27 years of service respectively counted from the date of first regular appointment in existing cadre/service in accordance with the provisions contained in relevant Recruitment Rules and therefore, the respondents are not entitled to claim the benefit of selection grade on completion of the requisite years of service from the date of their initial appointment. Learned Additional Government Counsel submits that the Government order dated 29.6.09 is not applicable to those Junior Engineers who have been granted selection grade on the basis of order dated 21.10.93. Learned counsel submitted that the law having been settled by the Hon"ble Supreme Court that the adhoc services prior to regularisation cannot be counted for the purposes of grant of selection grade in terms of Government order issued as aforesaid, the respondents were not entitled for the relief, as prayed for and thus, the Tribunal has seriously erred in allowing the appeals preferred.

14. Learned Additional Government counsel Mr. N.K. Mehta has advanced an additional argument on behalf of PHED that the Tribunal has erred in relying upon letter dated 3.12.09 issued by the Chief Engineer, Department of Water Resources, whereas the respondents are employees of PHED.

15. On the other hand, the counsel appearing for the respondents submitted that in view of the Government order dated 21.10.93, the Junior Engineers employed in various departments of Government of Rajasthan became entitle for grant of selection grade on completion of 9, 18 or 27 years of continuous service on the post of Junior Engineer. Learned counsel submitted that the respondents had already became entitle for grant of first selection grade on completion of 9 years of service prior to issuance of Government order dated 17.2.98 and thus, nothing turns on the question that the earlier orders issued stand superseded by the said order. Learned counsel would submit that vide order dated 19.5.97, it stood further clarified by the Department of Finance that for the purpose of grant of selection grade to Junior Engineer, the service shall be counted from the date of

their first appointment on the post of Junior Engineer and thus, the respondents cannot be divested of the right already accrued on the basis of subsequent order issued by the State Government. Learned counsel submitted that vide order dated 3.12.09, which is issued by the Chief Engineer, Water Resources, pursuant to the clarification by the Department of Finance, it stand fortified that the right accrued to the Junior Engineers by virtue of order dated 21.10.93 is not affected by order dated 29.6.09, issued by the State Government for implementation of decision of the Hon"ble Supreme Court in SLP No. 2848/06. Learned counsel submitted that admittedly the Junior Engineers in various departments including PHED have been extended benefit of grant of selection grade by counting the services from the date of initial appointment and therefore, the respondents who are similarly situated employees cannot be picked up for a different treatment being given. Accordingly, learned counsel submitted that the Tribunal has committed no error in allowing the appeals preferred by the respondents.

16. I have considered the rival submissions and perused the material on record.

17. Indubitably, by inserting an exception below para 3 of Government order dated 25.1.92, vide order dated 21.10.93, it is provided that the admissibility of selection grade to Junior Engineer would be on completion of nine, eighteen or twenty seven years of continuous service on the post of Junior Engineer. The effect of insertion of exception as aforesaid in the Government order dated 25.1.92 stood further clarified vide order dated 19.5.97 issued by the Department of Finance, Government of Rajasthan.

18. It is not disputed before this Court that the respondents herein became entitled for grant of first selection grade on completion of 9 years of service prior to issuance of the Government order dated 17.2.98 superseding the earlier order issued. Thus, the petitioners were under an obligation to grant the first selection grade to the respondents herein on completion of 9 years of service from their date of initial appointment in terms of Government order dated 25.1.92 as amended vide order dated 21.10.93 qua the Junior Engineers.

19. As discussed by the Tribunal, the contention of the petitioners herein that order dated 17.2.98 superseded all previous orders issued in this regard for grant of selection grade is not tenable for Junior Engineers inasmuch as order dated 16.7.2000, reiterates the exception in favour of the Junior Engineers and permit grants of second selection grade on completion of 18 years of continuous service on the post of Junior Engineer to those Junior Engineers who were granted first selection grade before 1.9.96 on completion of 9 years continuous service on the post of Junior Engineer. It is rightly held by the Tribunal that the order dated 17.2.98, which was not in existence till 16.2.98, cannot take away the right vested in the respondents for grant of first selection grade on completion of 9 years of service from the date of his initial appointment in terms of Government order dated 25.1.92, as modified vide order dated 21.10.93 qua the Junior Engineers and thus, the respondents herein are also entitled for grant of second selection grade on completion of 18 years of continuous service on the

post of Junior Engineer.

20. It is really strange that the PHED has taken the stand that the order dated 3.12.09 having been issued by the Chief Engineer, Water Resources Department, Government of Rajasthan, cannot be applied to those Junior Engineers, who are employed in PHED. It is pertinent to note that the said Government order dated 3.12.09 has been issued by the Chief Engineer, Department of Water Resource pursuant to clarification issued by the Department of Finance in respect of the provisions contained in "Exception" below para 3 of Government order dated 25.1.92 inserted vide order dated 21.10.93 and thus, the contention sought to be raised on behalf of the petitioners herein that said clarification of Department of Finance is applicable to only the Department of Water Resources to say the least is absolutely baseless.

21. That apart, it is not disputed that the benefits extended vide order dated 21.10.93 were applicable to the Junior Engineers working in various departments of Government of Rajasthan and thus, benefits under the said Government order having already been extended to the similarly situated Junior Engineers in various departments of Government of Rajasthan, the action of the petitioners in denying similar benefits to the respondents, is avowedly illegal, arbitrary and discriminatory so as to violative of Article 14 & 16 of the Constitution of India.

22. In view of the discussion above, the orders impugned passed by the Tribunal do not suffer from any infirmity, or illegality so as to warrant interference by this Court in exercise of its writ jurisdiction.

23. In the result, the writ petitions fail, the same are hereby dismissed. No order as to costs.