
(2015) 09 RAJ CK 0130

In the Rajasthan High Court

Case No : Civil Writ Petition Nos. 4030, 4032, 3604 and 4442/2015

Subhash Chandra Mali and Others

APPELLANT

Vs

State of Raj. and Others

RESPONDENT

Date of Decision : 03-09-2015

Acts Referred:

Citation : (2015) 09 RAJ CK 0130

Hon'ble Judges : Sandeep Mehta, J.

Bench : Single Bench

Advocate : Nupur Bhati and T.S. Rathore, for the Appellant; S.S. Ladrecha, AAG and Vikas Choudhary, for the Respondent

Final Decision : Disposed Off

Judgement

1. Heard learned counsel for the parties.

2. The petitioners are all such candidates who, pursuant to a recruitment process initiated in the year 2011 by the respondent State for filling vacancies of Teachers Grade-III, were selected and were issued appointment orders in the year 2012. The appointment orders stipulated that the selected candidates were being appointed as probationers for two years and would receive fixed salary @ Rs. 8950/- p.m. It was further provided in the appointment orders that after completion of two years satisfactory probation period, the incumbents shall be entitled to regular pay scale of the posts in the pay band of Rs. 5200-20200/- and grade pay of Rs. 2800/-. The petitioners are satisfactorily serving the respondents as Teachers Grade-III till date on fixed salary without being regularized and without any fixation etc. even though the mandatory two years probation period is over long back. As per Rule 27B of the Rajasthan Service Rules, an employee upon completing two years satisfactory probation period is entitled to be confirmed in service and to receive regular pay scale and other service benefits. These benefits are being withheld by the authorities under the pretext of the pendency of S.L. Ps. Nos. 23508-23513 of 2013 (leading case being State of Rajasthan & Ors. v. Vikas Kumar Agarwal) in the Hon'ble Supreme

Court in relation to the questioned selection process apprehending the ouster of the petitioners from the list of selected candidates on account of possible revision of result with the decision of the above S.L. Ps.

3. The petitioners have approached this Court claiming that irrespective of pendency of the above S.L. Ps., they have a right to be confirmed in service upon completing satisfactory probation period of two years. As a consequence, they are entitled to receive regular pay scale and other service benefits admissible to Teachers Grade-III in the respondent department. As per the petitioners, the respondents are unjustly deferring the decision to confirm the petitioners under the pretext of pendency of aforesaid S.L.P. thereby causing immense financial and other service losses to the petitioners.

4. The respondents have filed a reply wherein the only plea for countenancing the petitioners' claim is that there is a possibility of wholesale revision in the result and reshuffling of the merit pursuant to the decision of the S.L. Ps. pending before the Hon'ble Supreme Court in the case of *Vikas Kumar Agarwal (supra)* as well as the directions given by this Court in the case of *Ramdhani Kumawat v. State of Rajasthan & Ors.* (SBCWP No. 10622/2014).

5. To this objection, learned counsel for the petitioners submit that in view of the ratio of the judgments rendered in (1) *Rajesh Kumar and Others etc. Vs. State of Bihar and Others etc.*, and (2) *Vikas Pratap Singh and Others Vs. State of Chhattisgarh and Others*, , even if the merit list is revised, the respondents cannot shunt the petitioners out of service. At best, the petitioners' merit position may be reshuffled, which also cannot be done without providing them an opportunity of hearing. They thus pray that the respondents be directed to confirm the petitioners in service upon completing two years of satisfactory probation period and to grant them all regular service benefits thereafter. They contend that at the most, a direction can be given to append a note in the confirmation orders that the confirmation shall remain subject to the decision of the S.L. Ps. but in any event, the petitioners' rights cannot be frustrated or, deferred, indefinitely waiting for the outcome of the above litigation.

6. I have heard the arguments advanced at the Bar and have perused the material available on record.

7. The petitioners are such candidates who were holding the requisite qualifications for appointment as Teachers Grade-III in the questioned selection process. They cleared the competitive examination. They stood in merit and were selected. The respondents issued appointment orders assigning postings to the petitioners with a two years stint as probationers as required under the R.S.R. It is undisputed that the petitioners have served the respondents satisfactorily and have completed the mandatory two years probation period. Thus, as per Rule 27B of the Rajasthan Service Rules, they have a right of confirmation and to receive all consequential service benefits. Further, as per the ratio of the judgments rendered by the Hon'ble Supreme Court in the cases of *Rajesh Kumar*

and Vikas Pratap Singh (ibid), even assuming for arguments' sake that the result could possibly be revised pursuant to the judgment in the above mentioned S.L. Ps. pending before the Hon'ble Supreme Court and the revisions conducted by the authorities in light of the directions given by this Court in Ramdhan Kumawat's case (supra), then too, inspite of such revisions, the petitioners cannot be shunted out of service.

8. In view of the above discussion, these instant writ petitions deserve to be and are hereby allowed. The respondents are directed to confirm the petitioners' services in accordance with Rule 27B of the Rajasthan Service Rules and to extend them all consequential service benefits. However, a condition shall be introduced in the confirmation order that such confirmation is being made subject to the final outcome of the above referred S.L. Ps. pending in the Hon'ble Supreme Court as well as the fall out of the judgment rendered by this Court in Ramdhan Kumawat's case (supra).

9. This order shall be complied with within a period of three months from today.

10. Stay petitions are also disposed of.

11. No order as to costs.

12. A copy of this order be placed in each file.