(1988) 09 RAJ CK 0035

In the Rajasthan High Court

Case No : Civil Writ Petition No''s. 2309 and 2308 of 1986

Sumer Singh and Khyali Lal — APPELLANT

Vs

State of Rajasthan and Others — RESPONDENT

Date of Decision : 20-09-1988

Acts Referred:

Constitution of India, 1950 — Article 12, 276, 277, 311, 40

Citation : (1988) 2 RLW 331 : (1988) 2 WLN 450

Hon'ble Judges : R.S. Verma, J;A.K. Mathur, J

Bench : Division Bench

Judgement

R.S. Verma, J.—These two writ petitions bearing numbers 2308/86 by Sumer Singh and 2309/86 by Khyali Lal involve similar questions of law and fact. Hence by consent of all the parties, they have been heard together and are being disposed of by a common judgment.

2. First, the facts in Sumer Singh''s case. He entered service on 22-4-1954 as a Teacher under the Development Department of the State of Rajasthan. On 15th February, 1958, he was transferred as L.D.C. in the Pindwara block. On constitution of Panchayat Samiti, Pindwara, his services were taken over by the said Panchayat Samiti on 2-10-1959. He was promoted as U.D.C. w.e.f. 29-8-1961 vide order dated 31-8-1961. He was confirmed as UD.C. on 11-6-1965 vide Annex. 1. He passed the Accounts Clerk Examination in the year 1964. The Chief Accounts Officer, Rajasthan, Jaipur vide order dated 27-8-1965 appointed the petitioner as a temporary Accounts Clerk in Panchayat Samiti, Shivganj. The case of Sumer Singh is that while he was working as Accounts Clerk, he was placed under suspension vide order dated 5-5-1976 since an enquiry was contemplated to be held against him. A departmental enquiry duly took place. In the mean-while, his suspension was revoked on 2-11-1977 and he was posted as U.D.C. After a proper departmental enquiry, the petitioner was exonerated of all the charges. Be was ordered to be treated on duty for the period of suspension. How ever, he was paid the salary of U.D.C. even though he

was entitled to receive the salary of an Accounts Clerk. The petitioner did not challenge his posting as U.D.C. because of the enquiry pending against him.

3. The case of the petitioner is that in the year 1975, applications were invited for filling up vacancies in the cadre of Junior Accountants vide Circular dated 25-2-1975. The petitioner applied for the same but nothing transpired. Again applications were invited to fill up posts of Junior Accountants but he could not apply as he was under suspension. He, how ever submitted an application on 7-11-1977 followed by a number of reminders but nothing came out of such applications. The petitioner, in the meanwhile, continued to serve as Accounts Clerk & Vikas Adhikari, Shivganj recommended his case for promotion to the post of Junior Accountant vide Annex. 5 dated 3-1-1978. But again, nothing came out of this application inspite of repeated reminders.

4. The case of the petitioner further is that recently he came to know of the order Annex. 8 dated 26-3-1977 whereby certain employees of different Panchayat Samitis had been promoted as Junior Accountants. His case is that in the matter of Khyalilal, petitioner in the other petition, the Chief Accounts officer informed Khyali Lal that it was not possible to appoint him as Junior Accountant as Khyalilal was an employee of a Panchayat Samiti and question or appointing employees of Panchayat Samiti as Junior Accountants was under consideration of the Govt. The grievance of the petitioner is that even though he was eligible to be promoted as Junior Accountant, he has been unjustly by passed in the matter of such promotion. He claimed the following reliefs:

[1] The Respondent No. 2 be directed to appoint the petitioner as Junior Accountant on and from the date persons junior to him in the cadre of Accounts clerks were so appointed and to give to the petitioner such consequential benefits as may be due including consideration for the next higher post.

[2] Respondents be further directed to consider the case of the petitioner for appointment as Accountant on and from the date persons junior to him, consequent to their appointment as Junior Accountant, were considered therefore and to give him appointment on the said post on being found suitable on and from the date persons junior to him were so appointed and to give him all benefits consequential thereto.

[3] Any other appropriate writ, order or direction which this Hon''ble Court may deem just and proper in the facts and circumstances of the case may kindly be passed.

[4] Cost of the writ petition be awarded.

5. Shorn of unnecessary details, the case of the petitioner Khyali Lal is that he was appointed as L.D.C. on 8-101960 under a Panchayat Samiti under which Panchayat Samiti, he was appointed, Is not clear from the record HIS say is that he was promoted as U.D C on 19 3-1966 and he was confirmed in that capacity on 18-8-1969 vide Annex. 16. In the meanwhile, he passed the Accounts Clerk

Examination held in 1965. On 14-11-1969, he was appointed as Account Clerk by the Chief Accounts Officer, Rajasthan vide Annex. 1 By this order, he was placed on deputation with Panchayat Samiti, Shivganj. On applications being invited for appointment to the post of Junior Accountant, he moved an application but the same was rejected on 21-7-1975. Fresh applications were invited vide Annex. 2 dated 25-6-1976. He again applied for promotion to the post of Junior Accountants but nothing came out of such application. Eventually, a reply Annex. 7 was received by the petitioner saying that matter of appointment of employees of Panchayat Samitis was under the consideration of the Govt. and hence it was not possible to appoint him as Junior Accountant. Undeterred, the petitioner went on representing for his promotion and eventually Annex. 11 dated 21-6-1986 was issued informing him that since he had not been selected as Junior Accountant, no action was required on the application submitted by him. Presumably this application was submitted for transfer as the title of Annex. ll shows.

6. The case of the Petitioner is that recently he came to know of the order of the Chief Accounts Officer, Rajasthan. Jaipur, dated 26-3-77 (Annx. 15) whereby a number of employees of different Panchayat Samitis had been promoted as Junior Accountants. His grievance is that he has been unjustly deprived of that promotion, even though he was perfectly eligible for such promotion. His case is that in fact, he has been made to work as Junior Accountant since 1975 still he is not being paid the salary and emoluments of a Junior Accountant. He, on such averments claimed the following reliefs:

[i] The Respondent No. 2 be directed to appoint the petitioner as Junior Accountant on and from the date persons junior to him, in the cadre of Accounts Clerks were so appointed and to pay to the petitioner such consequential benefits as may be allowed including consideration for the next higher posts;

[ii] Cost of the Writ Petition may be awarded in favour of the petitioner;

[iii] Any other appropriate relief(s) as may be deemed fit may also be made.

7. Both the writ petitions have been seriously opposed by the respondents. In both the cases, the contention is that the petitioners were not eligible to be promoted as Junior Accountants, since they were employees of the Panchayat Samitis and not of the Govt. Promotion to the post of Junior Accountant was governed by the provisions of Rajasthan Subordinate Accounts Service Rules, 1963 (here in after referred as 1963 Rules''). The post of Accounts Clerks in various Panchayat Samitis had been abolished by order Annx. R/8 dated 4-6-1975. By this order, posts of Junior Accountants in various Panchayat Samitis had been created and till such posts were filled by duly selected candidates, such posts were allowed to be filled by U.D.Cs., who were granted the special pay of Rs. 10/- provided they had passed the Accounts Clerk Examination. Both the petitioners were not eligible to be promoted as Junior Accountants as per provisions of 1963 Rules. So far as the case of Khyali Lal is concerned, it is

averred that he was not appointed as Junior Accountant by the competent authority, hence, he could not get any relief on this ground. The petitioners were never confirmed as Accounts Clerks and, therefore, they were not promoted, being ineligible for promotion the is submitted that in these circumstances, there was no discrimination.

8. Two preliminary objections were also raised,, namely, (i) the petition was greatly belated, and (ii) persons mentioned in the aforesaid order of the Chief Accounts Officer dated 26-3-1977 had not been joined as respondents to the writ petition.

9. Both the petitioners filed rejoinders to further elucidate their stand.

10. We have heard the learned Counsel for the petitioner as also learned Counsel for the respondents at considerable length. We have perused the record.

11. The contention of Mr. M. Mridul on behalf of the petitioner is that being confirmed UDCs serving under the Panchayat Samitis and promoted as Accounts Clerks, they were fully eligible to be promoted as, Junior Accountants within the provisions of 1963 Rules. They fulfilled the eligibility requirements laid down by these rules and were wrongly left out of consideration and ought to have been promoted as Junior Accountants w.e f. the dates the persons junior to them were promoted with consequential benefits as may be due including consideration to the next higher posts. It was submitted that the petitioners were members of the Rajasthan Panchayat & Zila Parishad Service, which was a service under the State. The petitioners being members of such service were really under the employment of the Govt. and were eligible for promotion to the cadre of Junior Accountants. Alternatively, it was submitted that the petitioners having been appointed as Accounts Clerks by the Chief Accounts Officer, Rajasthan, had become employees of the Rajasthan Govt. and on this ground also were eligible to be promoted as Junior Accountant. In the case of Khyali Lal. it has been urged that since he has been made to work as Junior Accountant, even though by an incompetent authority, he should be allowed the same emoluments as other Junior Accountant have been drawing. According to him, the principle of equal pay for equal work applies with full vigour to the case of Khyali Lal and Khyali Lal is entitled to recover the arrears of salary with effect from the date he has been actually working as Junior Accountant.

12. Learned counsel for the respondents, besides the two preliminary objections, has urged that petitioners were in no way entitled for promotion to the post of Junior Accountant. They were not entitled to promotion as claimed nor to any consequential benefits. It was submitted that Khyali Lal not having been appointed by a competent authority could not claim any parity with duly selected Junior Accountants.

13. First we would like to take up the preliminary ground of delay. It appears that the petitioners had been agitating their claim for promotion right from 1975 or so. From Annex. 7 filed in the writ petition of Khyali Lal. It appears that the

stand taken by the office of the Chief Accounts Officer was that since the matter pertaining to promotion of employees of Panchayat Samitis as Junior Accountants was under the consideration of the Govt. it was not possible to promote him. It does not appear that the Govt ever finally decided this matter. Hence, if in such circumstances, the petitioners did not file the writ petitions earlier, they cannot be blamed for this delay. At any rate, in the facts and circumstances of the case, we do not consider this delay as fatal and hence, we over-rule this preliminary objection.

14. Now we may consider the next preliminary objection viz. that persons mentioned in the order of the Chief Accounts Officer dated 26-3-1977 have not been joined as respondents to the writ petition Learned Counsel for the petitioners has categorically stated before us that the petitioners did not seek any relief against the persons mentioned in the order of the Chief Accounts Officer dated 26-3-1977. By relying upon that order, they were merely trying to show that they have been discriminated unjustly in the matter of promotion to the post of Junior Accountants, More over, they were agitating solely the question of interpretation of the provisions of the relevant rules and hence, the persons mentioned in the aforesaid order dated, 26-3-1977 were not necessary parties. Learned counsel for the respondents has not been able to tell us why it was necessary to implead the respondents, particularly in view of the submission made by the learned Counsel for the petitioners. We therefore, find no force in this preliminary objection and over-rule the same.

15. Now coming to the merits of the controversy, it is uncontroverted that both the petitioners were duly appointed LDCs. in their respective Panchayat Samitis. Both of them had been duly promoted as UDCs. Both of them had been confirmed as UDCs. This fact is also uncontroverted that Sumer Singh passed the Junior Accounts Examination in 1964 and Khyali Lal passed the said examination in 1965. This is also an admitted fact that both the petitioners had been appointed as temporary Accounts Clerks by none other than the Chief Accounts Officer, Rajasthan, Jaipur Annex- 2 in writ petition No. 2308/86 and Annex. 1 in Writ Petition N6. 2309/86, amply demonstrate this position. This is also an admitted position that Khyali Lal was eventually promoted to the post of Junior Accountant but not by the Chief Accounts Officer, Rajasthan but by Director Community Development and panchayat Department and he has been working as such as would be evident from Annexs. 13 and 14 filed in Writ Petition No. 2309/86, of course Sumer Singh continues to serve as U.D.C.-cum-Accounts Clerk.

16 It would be proper to mention here that as a result of democratic decentralisation in Rajasthan, Panchayat Samitis and Zila Parishads were formed. In 1959, Rajasthan Panchayat Samitis and Zila Parishads Act, 1959 (Act No. 37 of 1959) there in after referred to, as ''the Act"), was promulgated by the State Legislature. By Section 86 of this Act, a service known as Rajasthan Panchayat Samiti & Zila Parishad service was constituted. Admittedly, petitioners being

confirmed LDCs. and UDCs belong to this service. The constitution of such service is regulated by provisions of Section 86 of the 1959 Act. Provisions of Sub-section (10) of Section 86 of the Act are relevant for the present discussion. Thus Sub-section reads as follows:

(10) Persons holding posts encadred in the service shall be eligible for appointment or promotion to posts in a State Service or under the State Government in accordance with rules made in that behalf by the State Government and subject to terms and conditions laid down in such rules, and the persons so appointed or promoted shall count the period of their holding posts in the service constituted under this section for purposes of seniority and pension.

17. A bare reading of this section goes to show that persons holding posts encadred in the Service eligible for appointment or promotion to the post in State Service or under the State Govt. Of course, such eligibility is to be regulated in accordance with the rules made in that behalf by the State Govt. Such appointment and promotion is subject to terms and conditions laid down in such rules. Thus Sub-section goes to the extent of saying that the persons so appointed and promoted shall count the period of their holding posts in the Service constituted under this section for purposes of seniority and pension.

18. Unfortunately, it appears that no rules have been framed for achieving the objective of the aforesaid Sub-section (10) of Section 86 of the Act of 1959. No rules have been made available to us, which might have been framed by the Government in this behalf. The result is that eligibility conferred by the above Sub-section has been rendered nugatory and does not help the petitioners in any manner.

19. Learned counsel for the petitioners vehemently contended that members of the Panchayat Samiti and Zila Parishad Service were for all practical purposes employees of the Government and as such, were as of right entitled to be considered for promotion to the post of Junior Accountants. In this connection, reliance has been placed upon Mehtab Ali Khan v. BDO, Panchayat Samiti, Chaksu and Ors. 1981 WLN 523 , Mathuradas Mohanlal Kedia and Ors. v. S.D Munshaw and Ors. and State of Gujarat and Others Vs. Raman Lal Keshav Lal and Others, and State of Gujarat and Anr. v. Raman Lal Keshav Lal Soni and Ors. and State of Gujarat and Another Vs. Raman Lal Keshav Lal Soni and Others,

20. Learned counsel for the respondents submits that these rulings do not apply to the present cases. All these rulings were given on particular facts of each case and they cannot be read out of context so as to help the case of the petitioners.

21. We have considered this submission carefully. First of all we would take up the 1981 SC Case. In this case, there were two categories of employees. One category of the employees consisted of Kotwals and Ors., who were Government Servants. The other category consisted of the employees who belonged to the various Municipalities. On promulgation of the Gujarat Panchayat Act, 1961, the two cadres were merged to form a Panchayat Service of the State of Gujarat.

Two Pay Commissions, namely, the Sarela Pay Commission and the Desai Pay Commission were appointed by the State of Gujarat, which recommended revision of salaries of Government servants. The recommendations of these two Commissions were accepted by the State of Gujarat and certain benefits regarding revision of pay scale etc. were conferred upon those members of the Panchayat Service, who had initially been recruited as Government employees. The petitioners in that case were representatives of the erstwhile Municipal employees of the Panchayat Service, who had been denied similar revision of pay scales etc. Such employees instituted a writ petition impleading the State of Gujarat and Ors. and prayed that they be directed (i) to pass orders regarding the appointment of the persons for and on whose behalf of the said application had been filed, in equivalent posts in the Panchayat Service of the State Govt, fixation of their seniority and pay scales and allowances in the equivalent posts with retrospective effect and, payable to them of the difference in salary and allowances to which they would become entitled on such benefit of salary and allowances payable to them, (ii) frame rules providing for promotional avenues to the Panchayat Service as also in the State Service and (iii) to extend to them the benefits flowing from the pay revisions ordered by the State Government on the basis of the recommendations of the first Pay Commission (Sarela Commission) and the Second Pay Commission (Desai Commission) retrospectively. They also prayed for certain incidental reliefs. The Gujarat High Court accepted the Writ Petitions and directed the State Govt. (i) to issue suitable orders in so far as the members included in the local cadre were con concerned regarding the equivalence of posts, fixation of pay scales for such posts fixation of the petitioners and the persons when they represent at an appropriate stage in such pay scales and other incidental matters and to give effect to such orders from the date of allegation of the petitioners and Ors. whom they represent to the Panchayat Service, that is to say, from February 1969, (ii) to fix their initial pay scales and allowances and to revise them in accordance with the orders passed by the State Government in the case of other Government employees on the basis of the first Commission (Sarela Commission) and of the second Commission (Desai Commission) with effect from the dates on which similar benefits were extended to other State Civil Services and (iii) to consider question of making suitable provisions on the appropriate rules providing for promotion of the members of the local cadre who were formerly the employees of the Municipalities.

22. Aggrieved by the above directions, the State Government and the Development Commissioner filed an appeal before the Apex Court.

23. The Apex Court after survey of the various provisions of the Gujarat Panchayat Act, arrived at the conclusion that the Panchayat Service constituted under the said Act was a civil Service of the State. Their Lordships of the Supreme Court in that case observed as follows:

Merely because the Panchayats are declared to be body corporate, it cannot be said that any of the persons working under them cannot be considered as members of a civil service under a State. The Panchayats constituted under the Panchayats Act derive their authority from the statute and are under the control of the State Government. They form part of the local self-Government an organisation which the State Government is under an obligation to foster under Article 40 of the Constitution. Entry 5 of List II of the Seventh Schedule to the Constitution specifically refers to local authorities established for the purpose of local self-Government or village administration as part of local Government. The local authorities are included in the definition of the expression ''State'' in Article 12 of the Constitution. The Panchayats exercise many Governmental functions which the State Government can perform. They are entrusted with the power to levy taxes and to exercise large number of powers which are loosely called as "police powers" regulating several aspects of human life. Articles 276 and 277 of the Constitution also take note of the powers of local authorities to levy certain taxes. In addition to the express powers granted to the Panchayats, the State Government is also authorised under the Panchayat Act to delegate many of its functions to them and to transfer many of its officers and servants to function Under their supervision and control as members of the Panchayat Service. It is manifest form the foregoing discussion that it cannot be said that persons working as members of the Panchayat Service are not persons engaged in Governmental functions and, therefore, it is not possible to treat them as. members of the State Civil Service, we, how ever, make it clear that it is quite possible that under the statute it may be open to the Panchayats to employ Servants for the purpose of administration of the Panchayats who may not be members of the Panchayat Service.

It was further observed at page 64 of the report as under:

We do not have a corresponding provision in the Panchayats Act providing for the constitution of a service for each Panchayat but on She other hand, the statutory requirement is that a Panchayat Service should be constituted in respect of all the panchayats i.e. District Panchayats, Taluka Panchayats & Gram and Nagar Panchayats. Such a common service constituted for the benefit of all Panchayats leads to the inevitable conclusion that the State alone can be the master of the members of that service and not the individual Panchayats. The decision relied on has, therefore, no bearing on the question before us. We, therefore, reject the contention of the State Government that the Panchayat Service is not a civil service under the State. We, how ever, make it clear that the view taken by us in the present case does not necessarily lead to the. conclusion that every employee of a local body who is not a member of the Panchayat Service should be treated as a member of the State Civil Service. ft is a question of fact to be decided in each case depending on the circumstances of that case.

24. The provisions of the Raj Panchayat Samitis and Zila Parishads Act were analysed by Hon''ble Mr. Justice M.B. Sharma in 1981 WLN 523, Mehtab Ali Khan v. B.D.O. Panchayat Samiti, Chaksu and Ors. This was a case where appellant

had been charge-sheeted for certain delinquency. He was eventually dismissed from service in consequence of the aforesaid charge sheet The appellant filed a suit of declaration that his dismissal was illegal as he was not granted opportunity to defend himself, and it was passed in violation of the principles of natural justice, and that no second notice was given to him under Article 311(2) of the Constitution of India. The learned trial court held that before dismissal, notice to inflict the proposed punishment should have been given to the plaintiff in accordance with the provisions of Art 311 of the Constitution; it was held that no such notice was given and the dismissal of the plaintiff-appellant was bad. The B.D.O., Panchayat Samiti, Chaksu, filed an appeal before the District Judge, who allowed the appeal. The learned District Judge held that Article 311 of the Constitution of India was applicable only to a civil servant holding a post under the State, and it did not apply to a civil servant holding a post under the local self Government. Upon such view of the matter, the learned District Judge accepted the appeal and dismissed the suit of the plaintiff-appellant. Aggrieved the plaintiff-appellant went to the High Court and it was contended that the provisions of Article 311 of the Constitution of India applied to his case because he was a member of the Pancnayat Samiti and Zila Parishad Service, which was a Civil Service of the State. After a survey of the various provisions of the Act as also the provisions of the Rajasthan Panchayat Samiti and Zila Parishad Service Rules, 1959, his Lordship M.B. Sharma, J. held that the Panchayat Samiti and Zila Parishad Service was a State Civil Service and provisions of Article 311 of the Constitution applied to a member of such service. Reliance was placed upon the 1981 Supreme Court Cases referred to above, ln this context,, it was observed as under:

It will, therefore, be clear from the provisions of the Act, the Rules of 1961, the Rules of 1960 that the ultimate master of an employee in the "service" is the State Government.

Learned counsel fox the petitioners vehemently relied upon the aforesaid observations. To our mind, the aforesaid observations do not apply to the cases in hand. In a wider sense, the ultimate master of an employee in the Panchayat Samiti and Zila Parishad Service may be the State, but this fact does not clinch the issue. The question to toe examined in this case is (i) whether the petitioners were the members of the Panchayat Samiti & Zila Parishad Service (ii) whether they were entitled to be promoted to the post of Junior Accountant in accordance with the provisions of the relevant rules? So far as the first question is concerned, it does not present any difficulty The matter stands concluded by the aforesaid 1981 Supreme Court Case, which was followed in 1981 WLN 523.

25. 1984 Supreme Court Case also arose out of the same matter, out of which the 1981 Supreme Court case cited above had arisen. Hon''ble Apex Court again surveyed and examined the provisions of the Gujarat Act and the relevant Panchayat Service Rules and finally up-held the directions given by the Gujarat High Court and held that members of Gujarat Panchayat Service were members

of State Civil Service and as such, were entitled to all those benefits of pay revision etc., which had been allowed to the other Government servants. Their Lordships of the Apex Court made certain observations upon which, the learned Counsel for the petitioners has placed great reliance. Hon''ble Judges observed as under:

It is also argued that the several Panchayat Institutions are declared to be bodies corporate by the Act and, therefore their servants cannot be Government Servants. We are unable to see any force in the submission. Government servants do not cease to be Government servants merely because, for the time being, they are allotted to different Panchayat Institutions and are paid out of the funds of those institutions. We have already explained why the servants belonging to the various cadres of the Panchayat Service cannot be considered to the servants of individual. Panchayats. It is unnecessary to pursue the matter further.

We, are, therefore of the view that the Panchayat Service constituted u/s 203 of the Gujarat Panchayats Act is a civil service of the State and that the members of the service are Government Servants. This very question had been decided by the High Court of Gujarat more than 15 years back in G.L. Shukla and Another Vs. The State of Gujarat and Others, and there appears no good reason to depart from the view then taken by the High Court. Bhagwati, J., who spoke for the Court had said. The Panchayat Service contemplated under the Act is as much a civil Service of the State as the State Service. The Legislature by enacting the Act provided for the establishment of the Panchayat Organisation of the State and for Use efficient administration of the Panchayat Organisation, particularly in view of the fact that a large part of the service personnel would be drawn from different sources and would, therefore, be heterogeneous, in composition with widely differing scales of pay and conditions of service, the Legislature felt that it would be desirable to have a separate civil service of persons employed in the discharge of functions and duties of Panchayats with uniform scales of pay and uniform conditions of service and, therefore, with that end in view the Legislature provided for constitution of the Panchayat service. All the provisions of the Act relating to the Panchayat Service point unmistakably and inevitably to one and only one conclusion, namely that the Panchayat Service is one single service with the State as the master.

Their Lordships further observed as under:

It was argued that the High Court was wrong in issuing directions for equation of posts, revision of pay scales and payment of salaries We do not think that the High. Court committed any error in issuing the directions which were consequential to its findings. The High Court had directed the State Government to discharge its statutory duty to make orders for the equation of posts and to extend benefits arising out of the reports of the two Pay Commissions, which benefits had been denied to the local cadre only The obligation to make provision for the payment of salaries, allowances and other benefits to the Government

Servants did not cease by their being allocated to the Panchayat Institutions not with standing that Section 204 places an obligation on the Panchayat under whom an officer or servant of the Panchayat Service may serve for the time being to meet the expenditure towards the pay, allowances and benefits available to such officer or Servant We do not have any doubt that the case was correctly decided by the High Court and that the appeal deserves to be dismissed with costs which we quantify at Rs. 15,000/-.

In our opinion, aforesaid observations do not help the petitioners in any manner so far as their cases are concerned On the basis of the aforesaid observations, we have no hesitation in holding that the Panchayat Samiti and Zila Parishad Service constituted u/s 86 of the Rajasthan 1959 Act is a civil service of the State and in. a wider context, members of such public service are Government Servants. But merely saying that in the particular context, employees of the Panchayat Samitis or Zila Parishads are employees of the Government does not help the petitioners, as we shall presently indicate.

26. Appointment to the post of Junior Accountants is regulated by Rule 27 of the Rajasthan Subordinate Accounts Service Rules, 1963. Rule 27 of the Rules as it stood on relevant dates, reads as follows:

27(1) persons who were holding the posts of Upper Division Clerks on 31-3-1972 in a substantive capacity and were actually working as Accounts Clerks on the said date, and who have passed the Accounts Clerks Examination shall be eligible for appointment to the post of Junior Accountants.

Explanation I-Such persons as are referred to above, they after having actually worked as Accounts Clerk were officiating on higher posts, on 31st March, 1972 will also be eligible for appointment as Junior Accountants, provided a certificate is granted by the Head of the Department concerned that such officials would have continued to work as Accounts Clerks on 31st March, 1972 but for their appointment on the higher posts.

Explanation II-For the purpose of explanation (1) above the term ''higher post, means the post carrying a pay scale the maximum of which was higher than the maximum of the pay scale of the post of Accounts Clerk as on 31st March, 1972.

Explanation III-Persons who were not holding the posts of Upper Division Clerks on 31st March, 1972 in a substantive capacity but who are subsequently confirmed with retrospective effect from 31st March, 1972 or an earlier date shall not be eligible for appointment under this rule; vide F.D. Notification No. F. 2 (37) FD (R & AI)/69 Pt. II dt. 4-2-1977, with effect from the date of publication in Rajpatra, which was published vide G.S.R. 209 Dt. 10-2-1977.

A bare reading of the aforesaid rule goes to show that a person to be eligible to be appointed to the post of Junior Accountant should (1) hold the post of U.D C. on 31-3-1972; (ii) he should hold such a post in substantive-capacity; (iii) he should have been actually working as Accounts Clerk on the said date and (iv) he should have passed the Accounts Clerks Examination. All these conditions are mandatory and before a person can claim to be eligible to be appointed to the post of Junior Accountant, he should fulfil all the aforesaid conditions. All these conditions are concomitant and if any one of the conditions is not fulfilled, the person would not be eligible to the appointed to the post of Junior Accountant.

27. The expression "Accounts Clerk" occurring in Rule 27 above has been defined in Rule 2(c) of the Rules. This definition read as follows:

Accounts Clerk" means a substantive or temporary Upper Division Clerk or a Lower Division Clerk officiating as- Upper Division Clerk in the Rajasthan Government Secretariat, Rajasthan High Court and Courts Subordinate thereto, Rajasthan Public Service Commission, the State Legislative Assembly or any Government Department, who has passed the Accounts Clerks Examination and is actually drawing the special pay sanctioned for the post of Accounts Clerk or, any other post declared by the Govt. equivalent thereto for holding of which it is necessary to pass the. Accounts Clerks Examination, or an Accounts Inspector of the Famine Relief Department who has passed the Accounts Clerks Examination and the "The Accounts Clerks Examination" includes any examination which has been declared equivalent there to by the Government." (emphasis supplied by us)

An Accounts Clerk to be eligible to be promoted to the post of Junior Accountant has necessarily to be one serving in the (i) Rajasthan Government Secretariat, (ii) Rajasthan High Court and courts subordinate thereto; (iii) Rajasthan Public Service Commission,(iv) The State Legislative Assembly; or (v) any Government Department.

28. In the present case, there is no dispute that the petitioners were holding the post of U.D Cs. in substantive capacity. This is also undisputed that they had passed the Accounts Clerk Examination. This is also true that they were employed as Accounts Clerks in their respective Panchayat Samitis but the question is whether they could be called Accounts Clerks within the meaning of Rule 2(e) above. It is clear that they did not belong to cadre of U.D.Cs of the Raj. Govt. Secretariat. Likewise, they did not belong to such a cadre of the Rajasthan High Court and courts subordinate thereto. They also did not belong to such a cadre of Rajasthan Public Service Commission. They also did not belong to a similar cadre the of Rajasthan Legislative Assembly. The question is whether the expression "any Government Department" would embrace Panchayat Samitis within its ambit.

29. To our mind, Panchayat Samitis, by no stretch of imagination, can be called a "Government Department", in the sense in which the expression is usually understood. The expression "Government Department" has not been defined in the Rules. The Rajasthan General Clauses Act has, of course, defined the expression "Government" but this Act has also not defined the expression "Government Department". To our mind, Panchayat Samitis are not Govt department for the purposes of these Rules. Chambers Twentieth Century

Dictionary defines the term "Department" as a part: a special or allotted function, sphere of activity, duty, or competence: a section of an administration university, office of other organisation: a division of a country, esp. of France Looking from the above dictionary meaning of Department'' it does not appear that Panchayat Samitis can qualify to be a Department of the Government Panachayat Samiti has been included in the definition of local authority given in Clause (43) of Section 32 of the Rajsathan General Clauses Act, 1955. According to Clause (33) of Section 32 of the Rajasthan Clauses Act, expression "Government" or "the Government has been defined to include both the Central Govt. and any State Government. Even this definition of Government would not appropriate in the context of the Rules with which not are concerned. If it were to be so, even Accounts Clerks serving under the various Departments of the Central Government would claim eligibility for appointment to the post of Junior Accountant. To our mind, the expression "Government department" used in Rule 2(e) of the aforesaid Rules, in the context and setting of the Rules means only a department of the State Govt. as commonly understood and would not include Panchayat Samitis, Zila Parishads or for that matter, any other local authority within its ambit. In a large sense, the expression "State Government" may at times include such local authorities as has been held in the two Supreme Court cases referred to above and the Weekly Law Notes case already referred to, but this definitely does not hold good in the narrower context of the Rules with which we are concerned at the moment.

30. Learned counsel for the petitioners submitted with great vehemence that in this case, it was the Chief Accounts Officer, Rajasthan, Jaipur, who had appointed the petitioners as Accounts Clerks and, therefore, it should be held that the petitioners by virtue of such appointments, became employees of the Govt. In this context, he has in particular referred to Annex. 2 in writ petition No. 2308/86 and Annex. 1 in Writ Petition No. 2309/86. This is true that by these orders, the Chief Accounts Officer, Rajasthan, Jaipur, purported to appoint the respective petitioners as Accounts Clerks''. He also purported to place them on deputation to the concerned Panchayat Samiti. By Annex. 12 in Writ Petition No. 2308/86, Sumer Singh was treated to be an employee of the Rajasthan Local Fund Audit Department and it was on this assumption that the Examiner, Local Fund Audit, Rajasthan Jaipur, placed him under suspension. It was by Annex. 13 that the Community Development and Panchayat Department exonerated him of the charges and reinstated him. In the case of Khyalilal, as already stated, he was appointed as Accounts Clerk by the Chief Accounts Officer, Rajasthan, Jaipur. The Examiner, Local Fund Audit, Rajasthan, Jaipur, by the order dated 28-7-1972 Annex. 12 in Writ Petition No. 2309/86 again appointed him as Accounts Clerk. The Director, Community Development transferred Khyali Lal vide Annex. 19 and Annex. 14. It is submitted that these facts go to show that the petitioners had been treated as employees of the Govt. and had been treated as such by the concerned Govt. officials and as such. Govt. should not be permitted to say that they were not employees of Government department. At first flush, the argument

appears to be plausible and attractive but on closure scrutiny, we find that actually the petitioners had never been observed by the Government as Government employees. Of course, by the orders, referred to above, the petitioners had been dealt with as if they were employees of the Government. But, this was not at all proper and regular. Since, Rules u/s 86(10) had not been framed, they could not have been regularly appointed to any post under the Government. As such, the various functionaries, who passed the aforesaid orders, errnenously treated the petitioners as Government employees, though in fact, the petitioners were not employees of any Department of the Government. In connection with Annex. 15 (Khyali Lal''s case) we would like to observe that it would hardly matter that persons mentioned in the aforesaid order were permanent. The crux of the matter was if the petitioners or their likes could have been treated as employees of a Government Department, to our mind, the erroneous assumption on the part of the Government authorities would not change or alter the true position. We have already examined sub- Section (10) of Section 86. We have already pointed out that no rules have been placed before us, which might have been framed under the aforesaid Sub-section. Therefore, we are of the view that the petitioners, by erroneous assumption on the part of the functionaries of the Government could not have become employees of a Department of the Govt This very fact holds good so far as the appointment of Shri Khyali Lai as Junior Accountant is concerned. Under the Rules, the Director, Community Development and Panchayat Department is not competent to appoint any body to the post of Junior Accountant. This could have been done only by the Chief Accounts Officer.

31. Learned counsel for the petitioners contends that by Annex. 15 (Khyali lal''s case), the Chief Accounts Officer, Raj., Jaipur appointed a number of Accounts Clerks serving in various Panchayat Samitis as Junior Accountants and thus, the petitioners were discriminated. Learned counsel for the respondents submits in this regard that the Junior Accountants, had been permanently appointed as Clerks who had been appointed as Accounts Clerks and as such, their cases stood on a different footing Suffice it to say that such persons are not before us and it will not be proper to comment upon the position of these persons at their back How ever, we are baffled how the authorities could appoint U.D.Cs. of Panchayat Samitis as permanent Accounts Clerks and then promote them as Junior Accountants, without first framing rules u/s 86(10) of the Panchayat Samiti & Zila Parishads Act Assuming that petitioners have been discriminated, we find that in the light of the view, we have taken of the matter, we cannot order that the petitioners should be promoted as Junior Accountants. Since, the persons mentioned in the aforesaid order are not before us, we refrain from making any further comments upon the matter.

32. In view of what we have stated above, we find that the petitioners were not and are not eligible to be appointed as Junior Accountants under the Rajasthan Subordinate Accounts Service Rules, 1963.

33. Learned counsel for the petitioners submits that so far as Khyali Lal is concerned, he has been in fact discharging functions of Junior Accountants, having been so appointed by the Director, Community Development and Panchayat Department. He submits that on the principle of equal pay for equal work, Khyali Lal is entitled to get the same wages and emoluments as other Junior Accountants have been getting. Learned counsel for the respondents has not been able to controvert this stand but has taken shelter under the fact that Director of Development and Panchayat Department, Rajasthan, Jaipur, was not competent to appoint Khyali Lal as Junior Accountant.

34. To our mind, case of Khyali Lal stands on a surer footing so far as this contention is concerned. The doctrine of equal pay for equal work has been accepted by the Apex Court and by all the High Courts of the Country. We have, therefore, no hesitation in saying that Khyali Lal is entitled to get the same emoluments as other Junior Accountants in the State are getting with periodical revisions from time to time with effect from the date, he was appointed Junior Accountant.

35. Before we close this discussion, we would like to observe that the Government has totally failed in carrying out its obligations imposed upon it by virtue Sub-section (10) of Section 86 of the Rajasthan Panchayat Samitis and Zila Parishads Act, 1959. Failure of Government to make Rules in accordance with the aforesaid Sub-section (10) has resulted in grave injustice to the petitioners. We find that so far as the petitioners are concerned, their service has become almost a closed cadre. They initially joined as LDCs and are likely to retire as UDCs because of the apathy of the Government. Every public servant has certain aspirations in life. He aspires for certain promotional avenues and we find that in most of the services, normally an efficient and honest public servant, on an average, gets three to four promotional avenues, so that by the time he retires, he is a contented and a happy person. By not framing Rules under aforesaid subsection (10) of Section 86, the Government has deprived the petitioners of their normal and reasonable aspirations. We take notice of the aforesaid position with dismay and grief.

36. In the facts and circumstances of these cases, we partly accept both these writ petitions and direct the Government to frame rules within a period of four months to achieve the objectives underlying the provisions of Sub-section (10) of Section 86 of the Rajasthan Panchayat Samitis & Zila Parishads Act, 1959. In framing such rules, the Government shall keep in view the plight of the petitioners viz. that they have been stagnating in their present cadre for pretty long period. After such rules have been framed, the Govt. shall consider the cases of the petitioners for promotion to such posts in a State Service or under the State Government to which they are eligible under the rules and shall pass suitable orders in this regard. All this shall be done within a period of six months from today.

37. We are conscious that such a relief was not sought by the petitioners, but we

are of the view that such a relief would eminently meet the ends of justice in the present cases. We feel that we are not powerless to grant such a relief which would be met and proper in the circumstances of these cases.

38. In case of Khyali Lal, we further direct that he shall be paid emoluments of a Junior Accountant, as revised from time to time, from the date he was initially appointed as Junior Accountant by the Director, Community Development and Panchayat Department. He shall be paid his arrears of revised salary within a period of three months with interest @ 12% p.a. In the circumstances of the case costs shall be easy.