
(2002) 05 RAJ CK 0098

In the Rajasthan High Court

Case No : Civil Writ Petition No. 4368 of 1992

Sushma Saxena (Smt.)

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 17-05-2002

Acts Referred:

Citation : (2003) 3 RLW 1636 : (2002) 5 WLN 535

Hon'ble Judges : Sunil Kumar Garg, J

Bench : Single Bench

Advocate : Rajesh Joshi, for the Appellant; Chandralekha, Dy. G.A., for the Respondent

Final Decision : Allowed

Judgement

Garg, J.—This writ petition under Article 226 of the Constitution of India has been filed by the petitioner on 17.7.1992 against the respondents with the prayer that by an appropriate writ, order or direction, the respondents be restrained from holding interviews and appointing a Librarian for the post which the petitioner is holding i.e. for the post of Librarian Gr.II at Shri Ganga Sadul Rajkiya Acharya Sanskrit College, Bikaner and the respondents may further be directed to pay the petitioner salary of the post of Librarian Gr. II since her appointment etc. etc.

2. It arises in the following circumstances:

The respondent No. 3 Shri Ganga Sadul Rajkiya Acharya Sanskrit College was formerly a private aided Institution and the petitioner joined its services on the post of Librarian on joined its services on the post of Librarian on joined its services on the post of Librarian on 11th September, 1976. It was taken over by the Government of Rajasthan on 1st July, 1981 through the Rajasthan Civil Services (appointment and other Service Conditions of Employees of Private Institutions and other Establishments taken over by the Government) Rules, 1977 (hereinafter referred to as "the Rules of 1977"). She continued to serve the

said Institution and is still serving there as Librarian Grade III against the post of Librarian Gr. II. The copy of her appointment order is marked as Annex. 1.

It was submitted by the petitioner that she was first appointed in the grade of Rs. 110-5-160-8-210-10-230 which was subsequently revised into the grade of Rs. 355-570 in the month of Sept. 1976 and she was given the salary accordingly upto October, 1977. Thereafter, vide order dated 28.11.1977 which was conveyed to the petitioner by letter dated 2nd December, 1977, she was given a fixed salary of Rs. 300/- per month. A copy of the order of the Director, Sanskrit Education, Jaipur dated 2nd December, 1977 is marked as Annex.2. It was further submitted by the petitioner that she was continuously kept in IIIrd grade Librarian and on a fixed pay of Rs. 300/- per month though the post was one of Librarian Gr. II. The reasons for the anomaly have been explained by the Director, Sanskrit Education, Jaipur vide order dated 28.9.1978, a copy of which is marked as Annex.3.

It was further submitted by the petitioner that she passed Certificate course in Library Science from the University of Rajasthan, Jaipur in September, 1981, which is recognized by the Government of Rajasthan. Therefore, she passed Bachelor of Library -Science Examination in March, 1992 and a copy of the mark sheet showing that she passed the said examination is marked as Annex.4. The information regarding the acquisition of this qualification was duly sent by the petitioner to the Director, Sanskrit Education, Jaipur through the Principal, Shri Ganga Sadul Rajkiya Acharya Sanskrit College, Bikaner. According to the petitioner, the said qualification makes her qualified for appointment of Librarian Grade-I also.

It was further submitted by the petitioner that she has been working on the post of Librarian since her appointment in 1976 and she possesses all the qualifications which entitle her to keep the job and the post but to utter surprise and shock, an advertisement has been published by the Govt. of Rajasthan in Rajasthan Patrika and other newspapers advertising the post on which the petitioner has been working for the last 16 years. A copy of the relevant advertisement is marked as Annex.5.

II was further submitted by the petitioner that continuous injustice has been done to her first by keeping her in Grade III against a post of Second Grade; secondly by paying her a fixed amount of Rs. 300/- per month from Nov. 1977 to 23rd Sept. 1981, which is less than the minimum of the grade of Rs. 355-570; thirdly, by denying her IInd Grade from 23rd Sept. 1981 onwards when she obtained Certificate in Library Science Course from the University of Rajasthan; and fourthly, by advertising the post on which she is working and inviting applications for the same.

The main grievance of the petitioner is that since she is working for the Last 16 years and since 1981 against the post of Librarian Gr. II, therefore, she should be paid salary of Library Grade-II. It is further submitted by the petitioner that

through order dated 28.11.1981 (Annex. 13) passed by the Director, Sanskrit Education, Jaipur though the petitioner was given the pay scale of Librarian Gr. III, but she was asked to work against the post of Librarian Gr. II and thus, with no exception and doubt, since 28.11.1981, she has been working against the post of Librarian Gr. II, but getting the pay scale of the post of Librarian Gr. III. The further case of the petitioner is that asking the petitioner to appear in the interview pursuant to the advertisement Annex.5 would be injustice to her.

Hence, this writ petition with the prayers as stated above.

A reply to the writ petition was filed by the respondents on 18.3.1994 and it was submitted by the respondents that the petitioner is working as Librarian in Gr. HI at Shri Ganga Sadui Rajkiya Acharya Sanskrit College, Rani Bazar Bikaner. The said Institution in which the petitioner was initially appointed was taken over by the Government with effect from 1.7.1981 under the Rules of 1977, but she is serving as Librarian Gr. HI. It was further submitted by the respondents that when the petitioner was initially appointed as Librarian, she was untrained Librarian and she was not possessing requisite qualifications for the post of Librarian Gr. II and the diploma possessed by the Government, but it has been admitted by the respondents that the petitioner passed Bachelor of Library Science Examination in the year 1992 and the said degree makes her eligible for the post of Librarian Gr. II and not Librarian Gr. 1. It was further admitted by the respondents that the petitioner is still working as Librarian Gr. III in the pay scale of Rs. 950-1680 against the sanctioned post of Librarian Gr. II in the pay scale of Rs. 1400-2600. It was further submitted by the respondents that the Director Sanskrit Education, Jaipur on 30.5.1992 advertised vacant post of Librarian in the IInd Grade because of the fact that the appointment of the petitioner was approved against the sanctioned post till the vacancy is filled according to the Rajasthan Sanskrit Education Subordinate Service Rules, 1978 (hereinafter referred to as "the Rules of 1978") which requires 100% by direct recruitment having a qualification of Graduate with Degree/Diploma in Library Science from a recognized Institution. Thus, since the petitioner was a Librarian Gr. III, she is not entitled to pay scale of Librarian Gr. II and furthermore, since all the vacancies have to be filled up through advertisement Annex.5, therefore, there is no case for the petitioner that she should not be allowed to go through interviews as per the terms and conditions of the advertisement dated 30.5.1992 (Annex.5). Hence, this petition be dismissed.

A rejoinder to the reply was filed by the petitioner.

3. I have heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents and gone through the materials available on record.

4. Before proceeding further, the facts which are not in dispute may be narrated here:-

(1) That the petitioner was initially appointed as Librarian Gr. III vide order dated

23.8.1976 (Annex.1) in the private institution known as Shri Ganga Sadul Rajkiya Acharya Sanskrit College, Bikaner for a period of one year and she was working as such.

(2) That the said Institution was taken over by the State Government through the Rules of 1977 with effect from 1.7.1981.

(3) That through order dated 28.11.1981 (Annex.13) passed by the Director, Sanskrit Education, Jaipur, the petitioner was shown as Librarian Gr. III, but she was posted against the post of Librarian Gr. II and thus, she was working on the post of Librarian Gr. II since 28.11.1981 even after the taking over the said Institution by the Government of Rajasthan.

(4) That though the petitioner was working against the post of Librarian Gr. II, but she was getting the pay of Librarian Gr. III.

(5) That the petitioner passed the Bachelor of Library Science Examination in March, 1992 and that degree entitles her to be posted as Librarian Gr. II and this fact has been admitted by the respondents themselves.

(6) That through advertisement dated 30.5.1992 (annex.5), the posts of Librarian were advertised.

5. In my considered opinion, looking to the entire facts and circumstances of the case the facts that the petitioner since 28.11.1981 is working against the post of Librarian Gr. II; the petitioner passed Bachelor of Library Science Examination in March, 1992, which entitles her to be posted as Librarian Gr. II; and that the petitioner is going to retire in the months of Sept. 2002, in these circumstances, now to ask the petitioner to appear in the interview pursuant to the advertisement Annex.5 does not appear to be just and proper. However, the respondents may take interview of the other persons pursuant to the advertisement Annex.5, but so far as the case of the petitioner is concerned, there is no need for her now to appear in the interview and the respondents shall not ask the petitioner to appear in the interview pursuant to the advertisement Annex.5.

6. In my considered opinion, the principle of equal pay for equal work in some exceptional cases can be applied, where question of equation of duties and responsibilities are involved and present case is one of them.

7. In the present case, the petitioner was working against the post of Librarian Gr. II since 28.11.1981 as is evident from the order Annex. 13 dated 28.11.1981 and she obtained the degree of Bachelor of Library Science in the month of March, 1992, which entitles her to be posted as Librarian Gr. II and thus, in these circumstances, though the petitioner is working against the post of Librarian Gr. II since 28.11.1981, but as she obtained degree of Bachelor of Library Science in March, 1992 entitling her to be posted as Librarian Gr. II; therefore, she is entitled to the pay scale of Librarian Gr. II with effect from the date when she obtained degree of Bachelor of Library Science i.e. March, 1992 as she was

performing the duties and responsibilities of the post of Librarian Gr.II.

8. For the reasons stated above, it is held that the petitioner is entitled to the salary of the post of Librarian Gr.II with effect from March, 1992 when she obtained the degree of Bachelor of Library Science, which entitled her to be posted as Librarian Gr.II.

In the result, this writ petition filed by the petitioner is allowed to the extent that the respondents are directed to pay the petitioner salary of the post of Librarian Gr. II with effect from March, 1992 with all consequential benefits. The respondents are further directed not to ask the petitioner to appear in the interview pursuant to the advertisement Annex. 5. However, the respondents may take interview of other persons pursuant to advertisement Annex.5, if not taken so far.