
(2007) 01 RAJ CK 0016
In the Rajasthan High Court
Case No : Civil Writ Petition No. 4581 of 2006

Tola Ram and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 18-01-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2007) 3 WLN 207

Hon'ble Judges : H.R. Panwar, J

Bench : Single Bench

Judgement

H.R. Panwar, J.—By the instant writ petition under Article 226 of the Constitution of India, the petitioners seek a direction to the respondents to grant all benefits as per the provisions of Rajasthan Service Rules, 1951 (for short "the R.S.R." hereinafter) from the date the petitioners No. 1 to 6 were absorbed in the regular cadre post as Beldar and petitioner No. 7 as Helper vide Annex.P-3 and to consider the case of the petitioners for promotion to the next higher post as per the provisions of Rajasthan Engineering Subordinate Service (Public Health Branch) Rules, 1967 (for short "the Rules of 1967" hereinafter) and to pay all consequential benefits as per the provisions of the R.S.R. from the date of issuance of Annex.P-3 dt. 23.03.1998.

2. I have heard learned Counsel for the petitioners and the Assistant Government Advocate appearing for the respondents.

3. The facts and circumstances giving rise to the instant writ petition are that the petitioners were initially appointed as work charge employees under the provisions of Work Charged Employees Rules, 1964 (for short "the Rules of 1964" hereinafter) and petitioners No. 1 to 6 have been working on the post of Beldar and the petitioner No. 7 on the post of Helper. The petitioners were declared semi permanent by order dt. 02.05.1992 under the provisions of Rules of 1964 on completion of two years satisfactory services vide order Annex.P-1. On 28.02.1994 by the order of the respondent State Government, the

engagement of the work charged employees under the Rules of 1964 was discontinued with immediate effect, however, the provision was made that the work charged employees who have rendered ten years of service as on 31.12.1993 shall be treated as regular employee w.e.f. 01.04.1994 and brought them under the provisions of R.S.R. A further provision was made that such employees will be regularized in phase manner. In pursuance of the order Annex.P-2, the respondents issued an order dt. 23.03.1998 Annex.P- 3 whereby the petitioners were absorbed in the regular cadre on the terms and conditions mentioned in the order. Thus, according to the learned Counsel for the petitioners, the petitioners are governed by the provisions of R.S.R. By order Annex.4 dt. 04.08.2001, the respondents issued a seniority list in respect of the employees who were absorbed in the regular cadre. The names of the present petitioners find place in the seniority list Annex.P-4. Subsequent thereto, another seniority list was issued by the respondents vide Annex.P-5 dt. 13.06.2003. After publishing of the seniority lists by Annex.P-4 and Annex.P-5, the petitioners made a representation to the respondents stating therein that they hold the permanent post of Beldar and Helper and therefore, the post which the petitioners held is a promotional post and therefore, the case of the petitioners may be considered for promotion to the next higher post under the provisions of Rules of 1967. However, they were not considered for promotion on the ground that the post of helper is a regular post under the Rules of 1967 and it could not be filled up by work charged employees assuming that the petitioners are still work charged employees under the Rules of 1964 vide Annex.P-8. Aggrieved by the order Annex.P-8, the petitioners have filed the instant writ petition.

4. A reply to the writ petition has been filed by the respondents. Paras No. 1 to 10 of the writ petition have been admitted.

5. Para 5 of the writ petition reads as under:

5. That as per the order dt. 28.02.1994 Annex.P-2 the respondents issued an order dt. 23.03.1998, whereby the petitioners were absorbed in the regular cadre. They were made permanent in the regular cadre on the conditions mentioned in the order. Meaning thereby, by the said order the petitioners were declared permanent and absorbed in the regular cadre against the regular post. They were brought in preview of the Service Rules, 1951. A copy of the order dt. 23.03.1998 is being submitted herewith and marked as Annex.P-3.

6. In reply to para 5 of the writ petition, the respondent submitted that the petitioners were granted permanent status w.e.f. 01.01.1998. So far as the seniority lists prepared vide Annex.P-4 and Annex.P-5 wherein the names of the petitioners find place, have been admitted in para 6 of the reply. So far as the petitioners No. 1 to 6 working on the post of Beldar and petitioner No. 7 working on the post of Helper is concerned, in reply to para 8 it has been stated by the respondents that the petitioner No. 1 is working on the post of Beldar, however, it has not been denied that the petitioners No. 2 to 6 are working on the post of Beldar and petitioner No. 7 is working on the post of Helper. Thus, the case as

set up by the petitioners has not been controverted by the respondents.

7. From the documents annexed with the writ petition as noticed above, undisputedly, the petitioners have been absorbed as regular employees and brought under the preview of R.S.R. As also that they are now governed by the Rules of 1967.

8. Rules of 1967 provides for promotional avenues from the post of Beldar to the post of Helper and from the post of Helper to Mason. Relevant portion of the Schedule attached to the Rules of 1967 is reproduced hereinafter:

1. 2. 3. 4. 5. 6. S. No. Names of posts, pay scales No. Method of recruitment with percentage Direct Promotion Qualification & Experience for direct recruitment Post from which promotion is to be made. 45. Mason 75% 25% Helper 46. Helper or 75% 25% Beldar, Keyman Chowkidar or any unskilled Worker. Qualification and experience for promotion Seniority Remarks 7. 8. 9. Mason Should have put in 5 years Unit-wise service as Helper in the trade. seniority Helper or Should have put in 5 years service -do- Keyman. as Beldar/ Chowkidar/Gardener or any un-skilled worker.

9. Thus, so far as the petitioners No. 1 to 6 are concerned, as per the Schedule attached to Rules of 1967, they have promotional avenue to the post of Helper and petitioner No. 7 is having promotional avenue from the post of Helper to Mason, and therefore, in my view, the respondents were not justified in declining consideration for promotion assuming that the petitioners are still work charged employees under the Rules of 1964. In this view of the matter, the writ petition deserves to be allowed.

10. In the result, the writ petition is allowed and order Annex.8 dt. 30.09.2005 is quashed and it is declared that the petitioners are governed under the provisions of Rajasthan Service Rules, 1951 on being absorbed on the regular cadre and therefore, entitled for the benefit under the RSR and also being employees governed under the Rules of 1967 having promotional avenues, are entitled to be considered for promotion whenever the promotional vacancies accrue and sought to be filled by the respondents. There shall be no order as to costs.