

(2016) 02 RAJ CK 0039

In the Rajasthan High Court

Case No : Civil Writ Petition Nos. 10534, 10567, 10569 and 10613/2015

Vijay Kumar Jagid and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 04-02-2016

Acts Referred:

Citation : (2016) 02 RAJ CK 0039

Hon'ble Judges : M.N. Bhandari, J.

Bench : Single Bench

Advocate : Hemant Gajraj, for the Appellant; S.K. Gupta, Additional Advocate General, Aniket Vyas and Ashok Kr. Kasera, for the Respondent

Final Decision : Dismissed

Judgement

M.N. Bhandari, J.—1. By these writ petitions, a challenge is made to the action of the respondents for not relieving the petitioners for joining the post in pursuance to new appointment, thus petitioners were forced to resign from the post.

2. Learned counsel for the petitioners submits that in pursuance to the selection on the post of Teacher Gr.III, the petitioners were appointed in the year 2012 by different orders. In the case of Vijay Kumar Jagid, it was vide order dated 10th September, 2012. The respondents thereupon issued another advertisement in the year 2013 for the same post. The petitioners applied for the post again after seeking no objection certificate from the department. The petitioners again remained successful in the selection and accordingly, appointed on the same post in the year 2015 by different orders. The petitioners made a request to relieve and when the request was not accepted, resigned from the post. The petitioners then joined the post in pursuance to new order of appointment but are deprived to get benefit of past service. The prayer in the writ petitions is to hold action of the respondents not to relieve the petitioners to be arbitrary. It is despite of the fact that petitioners appeared in selection pursuant to the no objection given by the respondents themselves and accordingly, to quash the order affecting the rights of the petitioners.

3. Learned Additional Advocate General Mr. S.K. Gupta submits that issue raised by the petitioners herein was an issue before the Principal Seat, Jodhpur in bunch of writ petitions led by SB Civil Writ Petition No. 2490/2015 in the case of Saroj & Ors. Vs. State & Anr. decided on 22nd May, 2015. The Court denied any benefit to those who resigned from earlier assignment for joining new post. It is looking to the fact that after resignation, benefit of past service for any purpose, which includes, the previous period spend on probation, cannot be given. In the result, one has to be governed by the new order of appointment. In the light of the aforesaid, relief claimed by the petitioners may not be granted. It is moreso when, the respondents never forced the petitioners to resign from the post, rather they resigned from service immediately on issuance of new order of appointment in their favour. For illustration, in the case of Vijay Kumar Jagid, the petitioner was given fresh appointment vide order dated 23rd March, 2015 and he resigned from service on 26th March, 2015 itself. The resignation was within three days of the new order of appointment, thus it is even without giving request to relieve him to join the new post and thereupon, waiting for relieving, thus the allegations made against the Government are not tenable.

4. I have considered the submissions made by learned counsel for the parties and perused the record.

5. The brief facts of the case are that in pursuance to the earlier selection to the post of Teacher Gr.III, the petitioners were appointed on the post in the year 2012. They continued on the post and in the meanwhile, another advertisement was issued in the year 2013. The petitioners again applied for the same post. It seems to be for the reason that in pursuance to the earlier appointment, they were given posting in those districts from where transfer to other district is not permissible. The petitioners remained successful in pursuance to the new selection and this time, posting was given either to the place of their choice or to a place from where they can be transferred to the other place. In the case of Vijay Kumar Jagid, the order of appointment is dated 23rd March, 2015 and without waiting for relieving within reasonable time, the petitioner resigned from the service by giving application on 26.03.2015, i.e., within three days of the new order of appointment. The said petitioner joined the post on 31st March, 2015. The position of fact is almost similar in other cases also. The facts available on record do not suggest that the allegations made against the respondents to be true and correct. The petitioner was not asked to resign for joining the post in pursuance to the new order of appointment, thus allegations made by the petitioners cannot be accepted.

6. The other issue is for grant of benefit of past service.

7. It is a case where benefit claimed by the petitioners herein has been denied by the Coordinate Bench at Principal Seat, Jodhpur in the case of Saroj & Ors. (supra). The following directions have been given in para No. 15 of the judgment supra and are quoted hereunder for ready reference:

"15. As a result of the aforesaid discussion, the instant writ petitions deserve to be and are hereby allowed in the following terms:-

(1) If the petitioners have not been relieved till date from their earlier assignment for joining on the post of Teacher Grade-III pursuant to their selection in the new selection process of the year 2013, the authorities shall forthwith relieve them and allow them to join at their respective fresh posting places. The period of delay in joining, if any, shall be relaxed with the outer date being the date of reopening of the Government schools after the ongoing summer vacation.

(2) The service put in by the petitioners in their earlier assignment shall not be counted towards seniority. Their seniority shall be counted from the date of joining the post.

(3) This order shall not govern the cases of such candidates who resigned from the earlier assignment for joining the new post. 28 S.B. CIVIL WRIT PETITION No. 2490/2015 Saroj & Ors. Vs. State of Rajasthan & Ors. And other 165 connected writ petitions.

(4) The claim of the petitioners for counting the length of service in the previous assignment for the purposes of the service benefits viz., regularization, fixation, increments etc. shall be governed by the applicable Service Rules."

8. Sub-para (3) of para 15 of the said judgment excludes those who resigned from service. The benefit of past service for any purpose would not be available to those who resigned from service, though even for those, who have been given same benefit in Sub-para (1), is without benefit of seniority as has been referred in Sub-para (2) of para 15. The previous service for those who are governed by Sub-para (1) of para 15, is for regularization/fixation/increment, etc.

9. In view of the facts given above and as the benefit claimed herein has been denied by the Coordinate Bench in the case supra, I am unable to take a different view from the Coordinate Bench and otherwise, for the reasons specified in the judgment in the case of Saroj & Ors., I do not find that a case is made out for grant of prayer.

10. Accordingly, all the writ petitions are dismissed so as the stay applications.