
(1996) 12 RAJ CK 0021
In the Rajasthan High Court
Case No : Civil Writ Petition No. 5935 of 1992

Vinay Kumar

APPELLANT

Vs

University of Raj. and Others

RESPONDENT

Date of Decision : 17-12-1996

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16, 21, 226
Industrial Disputes Act, 1947 — Section 2

Citation : (1997) 2 RLW 965 : (1997) 2 WLC 251 : (1996) 2 WLN 490

Hon'ble Judges : Arun Madan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Arun Madan, J.—The petitioner who is a diploma holder Engineer has moved this Court by way of present writ petition under Art. 226 of the Constitution of India on the grounds inter- alia that the respondent University being a statutory body and hence amenable to the writ jurisdiction of this Court and falls within the ambit of Article 12 of the Constitution of India as defined u/s 2(J) of the Industrial Disputes Act, 1947.

2. The petitioner was appointed as a daily wager @ Rs. 40/- per day with regard to the construction and completion of a particular project undertaken by the University for construction of Gymnasium building w.e.f. 22.1.90. Thereafter the petitioner has been continuously discharging his duties assigned to him in respect of that project and the said project has not been completed though it should have been completed by November, 1996. The grievance of the petitioner in short is that he is entitled to be fixed in the regular pay scale as admissible to regularly appointed diploma holder Engineers which is prevalent in other departments of the Government like P.W.D. P.H.E.D. Irrigation etc. The petitioner has claimed equivalence in the matter of admissibility of pay scale as is being drawn by similarly placed Engineers as of today in the University. The petitioner has further contended that even as per law laid down by apex court in the matter

of Bhagwan Dass and Others Vs. State of Haryana and Others, scale as is being given to the similarly placed diploma holder Engineers working in various departments of the State as referred to above, on the principle of "equal pay for equal work" as enshrined under Article 39(d) read with Articles 14 and 16 of the Constitution of India which have been violated by the respondent- university.

3. I have given my thoughtful consideration to the rival submissions advanced by the learned Counsel for both the parties. Although the petitioner was appointed as a daily wager @ 40/- per day with effect from 22.1.1990 in my view, the services of the petitioner should have been regularised by the University in the same pay scale as admissible to the similarly placed diploma holder Engineers. Prima-facie I am of the view that where the nature of the duties are identical the employer is under obligation to give benefit of same emoluments to the two sets of employees even though falling in different categories with regard to the nature of their employment, keeping in view the aspect of similarity in the nature of duties and qualification performed and possessed by the two sets of employees. I am further of the opinion that irrespective of the source from which the petitioner was appointed whether after regular selection or not, once he has been appointed on a particular project, he cannot claim benefit of continuity of service after the completion of the said project since it is always open to the appointing authority to consider his case for further extension in service or not which is at the discretion of the respondent-university. However, keeping in view the fact that the petitioner has rendered about 6 years of continuous service on the post of Junior Engineer on the project assigned to him by the respondent-university the respondents are under obligation to take the benefit of services of the petitioner with regard to that project only i.e., the completion of Gimnasium Building in the respondent-university. My observations are fortified from the judgment of the Apex Court in the matter of State of Himachal Pradesh through its Secretary, Agriculture, Govt. of Himachal Pradesh v. Nohar Ram, C.A. No. 1539/96, decided on 3.1.1996 reported in 1996(1) U.J. (SC) 226 wherein the question which had arisen for consideration of the Apex Court was as to whether it is obligatory on the employer to continue the services of an employee notwithstanding the completion of the Scheme in which he was engaged and whether the said employee can claim regularisation or continuation of his service. The apex court while expressing its dissent with the observations of the High Court held that the High court was not right in giving direction to regularise the services of the said employees in other places, since no vested right is created in temporary employments and directions cannot be given to regularise their services in the absence of any existing vacancies, nor direction can be given to the State to create new post in a non-existent establishment.

4. Keeping in view the aforesaid observation of the apex court, prima-facie, I am of the view that no vested right can be claimed by the petitioner for continuity in employment beyond the period which is actually spent on completion of the aforesaid project. I am further of the view that respondent shall explore the possibility of engaging the petitioner in any other project which may be available

with the respondents in which the petitioner may be employed. However, it will not be obligatory for the respondents to do so.

5. Keeping in view the facts and circumstances of the case, I am of the view that the petitioner partly deserves to succeed. No vested right has been create in favour of the petitioner to claim benefit of regularisation or continuity in service beyond the completion of the project assigned to him by the respondent-university since the nature of employment was temporary. I am further of the view that no directions can be given to the respondents to regularise the services of the petitioner since his appointment is confined to the completion of particular project in question and it will however be open to the respondents to continue his services after the completion of the said project or any other project thereafter and to suitably absorb him subject to availability of vacancy. Respondents are accordingly directed to avail the benefit of services of the petitioner on the post of Junior Engineer with regard to the project in question as assigned to him by the respondent- university and the petitioner will be entitled to claim the benefit of same pay scale as is admissible to other similarly placed Junior Engineers employed in the respondent-University or other departments of the State Government.

6. I have been informed by the learned Counsel for the petitioner that some posts viz. that to Computer Supervisor/Junior Engineers are lying vacant with the respondent- University which are carrying same pay-scale and qualifications are possessed by the petitioner. If it is so, then the respondent-University is directed to consider the case of the petitioner for absorption in any of the aforesaid specialities in accordance with the Rules. The respondent-University is further directed to comply with the aforesaid direction positively within a period of 3 weeks from the date of receipt of certified copy of this order. It will however be open to the respondent-University keeping in view the fact that the petitioner has already rendered services as Supervisor/Junior Engineer for a long spell of time to the respondent-University, to consider the case of the petitioner for absorption as regularly appointed employee in either of the above mentioned specialities. It has become necessary to give aforesaid direction to the respondent-University keeping in view the fact that the petitioner has already rendered continuous service for more than 6 years to the respondent-University and since the petitioner is likely to become overage for being considered for appointment in Government service and hence it will be wholly improper and unjust if the petitioner is not absorbed or given appointment on similar post in any of the aforesaid specialities or in any project of the respondent-university with a view to suitably absorb the petitioner in any project or specialities, since otherwise his very livelihood will be at stake which will be in negation of Article 21 of the Constitution of India. The petitioner will be entitled to the benefit of said pay scale w.e.f. 25.8.1992 with all consequential benefits.

7. The writ petition is allowed and disposed of with above directions. There will be no order as to costs.