

Govind Dan Charan Vs. State and Ors

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Court : Rajasthan Jodhpur

Decided On : Dec-17-2015

Appellant : Govind Dan Charan

Respondent : State and Ors

Judgement :

1 IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR :

JUDGMENT

: D.B.CIVIL SPECIAL APPEAL (WRIT) NO.1068/2014 Govind Dan Charan versus State of Rajasthan & ORS.D.B.CIVIL SPECIAL APPEAL (WRIT) NO.1071/2014 Smt.

Sariya Devi versus State of Rajasthan & ORS.D.B.CIVIL SPECIAL APPEAL (WRIT) NO.1074/2014 Khetpal Sharma versus State of Rajasthan & ORS.D.B.CIVIL SPECIAL APPEAL (WRIT) NO.1075/2014 Sagar Dan Bithu versus State of Rajasthan & ORS.D.B.CIVIL SPECIAL APPEAL (WRIT) NO.1077/2014 Ratan Lal Chouhan versus State of Rajasthan & ORS.D.B.CIVIL SPECIAL APPEAL (WRIT) NO.1084/2014 Alladin versus State of Rajasthan & ORS.D.B.CIVIL SPECIAL APPEAL (WRIT) NO.1208/2014 Narayan Das Swami versus State of Rajasthan & ORS.Date of Judgment :: 17.12.2015 PRESENT HON'BLE THE ACTING CHIEF JUSTICE Mr.AJIT SINGH HON'BLE Mr.JUSTICE ARUN BHANSALI Mr.Rajeev Purohit, for the appellants.

Mr.P.S.Bhati, AAG with Mr.S.S.Rathore, for the respondents.

---- 2 BY THE COURT: (Per Honble Arun Bhansali, J.) These appeals have been filed by the appellants aggrieved against order dated 15.04.2014 passed by the learned Single Judge, whereby the learned Single Judge found the writ petitions filed by the appellants as premature and left them free to pursue their notice for demand of justice and representation before the respondent-Authority and the writ petitions were disposed of.

The appellants filed the writ petitions seeking relief regarding correct fixation in the pay-scale after completion of 18 and 27 years of service and also sought re-fixation of pension, gratuity and other retiral benefits pursuant to the correct fixation of selection grade.

The above relief was sought based on the facts that the appellants were appointed as Malaria Surveillance Worker (MPW) by open selection after their names were called from Employment Exchange and Selection Committee interviewed them.

Whereafter, the appellants having served with the respondent-Department, retired from time to time.

It is claimed that the post of MPW is governed by Rajasthan Medical & Health Subordinate Service Rules, 1965 (Rules of 1965) and is required to be filled 100% by direct recruitment.

For employees, who were not promoted from time to time, to remove the stagnation in service, the State Government issued a circular dated 25.01.1992 providing for grant of selection grade after completion of 9 years, 18 years and 27 years of service respectively.

It is claimed that the appellants were entitled for pay-scale of third promotional post.

When in spite of the circular 3 dated 25.01.1992, the same was not implemented qua the appellants, directions were issued for giving selection grades to MPWs on 07.09.1994.

The dispute raised by the appellants in the writ petition pertain to the appropriate pay-scale in which they were required to be placed at the completion of 9, 18 and 27 years of service respectively and the date from which they were entitled to get the period of 9, 18 and 27 years counted.

The respondents granted the pay-scale of Rs.975-1720 on completion of 9 years, Rs.975-1720 again on completion of 18 years and Rs.1200- 2050 at the completion of 27 years. Whereas, the appellants claimed pay-scales of Rs.975-1720, Rs.1200-2050 and Rs.1640-2900 at the end of 9, 18 and 27 years of service respectively and prayed that the respondents be directed to revise the retiral benefits after grant of the selection grade in the scale of 5500-9000 (revised from 1640-2900) from the date of initial appointment.

The writ petitions were opposed by the respondents, inter alia, on the ground of availability of alternative remedy of appeal before the Rajasthan Civil Services Appellate RCSAT (the RCSAT). It was also claimed that the appellants were not entitled to the pay-scale of Rs.1640-2900 and the applicable pay-scale has already been provided.

Based on the judgment of the Supreme Court in the case of State of Rajasthan v.

Jagdish Narain Chaturvedi : 2009 (12) SCC49 it was submitted that services rendered before regular appointment cannot be counted for the purpose of grant of selection grade.

Further submissions 4 were made questioning the claim made by the appellants and it was prayed that the writ petitions be dismissed.

The learned Single Judge after hearing the parties noticed that the controversy raised by the appellants-petitioners was no more res integra in view of the judgment of the Supreme Court in the case of Jagdish Narain Chaturvedi (supra) and Division Bench judgment of this Court in the case of State of Rajasthan v.

Karan Singh : DBSAW No.382/2013, decided on 25.03.2014 and in view of the fact that relying on the above judgments, a similar writ petition being Laxmi

Narayan Vyas v.

State of Rajasthan & Ors.: SBCWP No.5181/2013 was decided by the learned Single Judge on 26.02.2014.

However, in view of the fact that the notice for demand of justice sent by the appellants was pending consideration, the learned Single Judge found the writ petitions to be premature and disposed of the same as noticed hereinbefore after quoting the case of Karan Singh (supra). It is submitted by learned counsel for the appellants that the learned Single Judge was not justified in disposing of the writ petitions on account of pending notice for demand of justice, inasmuch as, the issue was no more res integra and, therefore, the appellants were entitled for grant of relief similar to what was granted to persons, who were identically situated to the appellants and judgments were upheld by the Division Bench.

Reliance was placed on the case of Karan Singh (supra). State of Rajasthan v.

State of Rajasthan & Ors. v. Chandra Shekhar & Ors.: D.B. Civil Special Appeal (Writ) No.994/2011, 5 decided on 11.10.2011, against which, SLP was also dismissed by the Supreme Court and State of Rajasthan & Ors. v. Kishan Lal Maru : D.B. Civil Special Appeal (Writ) No.5/2015, decided on 06.10.2015.

Learned counsel for the appellants also relied on several judgments delivered by the learned Single Judges taking similar view, essentially relying on the case of Chandra Shekhar (supra) and also contended that the said judgments have been implemented and the petitioners therein were granted the desired relief i.e. third selection grade in the pay-scale of Rs.1640-2900.

Opposing the submissions made by learned counsel for the appellants, learned counsel for the respondent-State submitted that in so far as the relief claimed by the appellants for grant of selection grade is concerned, the same already stands granted and as held in the case of Jagdish Narain Chaturvedi (supra). The appellants are not entitled for grant of selection grade from the date of initial appointment.

Regarding the claim of particular pay-scale i.e.Rs.1640-2900 (revised 5500-9000).it was submitted that the reliance placed on the case of Chandra Shekhar (supra) for the purpose of grant of the said pay-scale is baseless, inasmuch as, the said issue was not before the Courts.

Further the Division Bench decided the appeal relying on the Policy decision dated 20.08.2010 and the appellants are not entitled to any relief under the said Policy decision and, therefore, the claim made is baseless and even if the appeals were to be allowed, the appellants are not entitled for grant of 6 the pay-scale as claimed.

We have considered the submissions made on either side and have perused the material placed on record.

The issue as to whether the persons like the appellants, who were appointed as Malaria Surveillance Worker/Multi Purpose Works (MPW) are entitled to the selection grade on completion of 9, 18 and 27 years of service in the pay-scale of Rs.1640-2900 as claimed by the appellants or Rs.1200-2050 as claimed by the respondents, is no more res integra and has been repeatedly decided by this Court in innumerable cases.

The submissions made by learned Additional Advocate General regarding the judgment in the case of Chandra Shekhar (supra) being not applicable and the issue having not been raised therein needs a detailed scrutiny.

The issue was raised by Chandra Shekhar & ORS.by filing Appeal No.351/1999 before the RCSAT.

The appeal was filed against the order dated 07.06.1999, whereby the selection grade in the pay-scale of Rs.1640-2900 granted to them was amended and the appellants were granted pay-scale of Rs.1200-2050.

The RCSAT noticed two issues for determination, (i) the pay-scale, to which, the appellants were entitled and, (ii) date, from which, they were entitled for such pay-scale.

The RCSAT based on its earlier order in the case of Durga Prasad Saini v.

Director, Medical & Health Department & Ors., decided on 16.10.2001, came to the conclusion that the appellants would be entitled to pay-scale of Rs.1640-2900 from the date of initial appointment and allowed the appeal vide its order dated 25.02.2002.

Aggrieved against 7 the order dated 25.02.2002, the State filed S.B.Civil Writ Petition No.4627/2005, which was decided on 21.09.2005.

The writ petition was dismissed holding that the judgment was based on sound appreciation of existing legal position and the judgment did not require any interference.

Whereafter, the State preferred Special Appeal and in the Special Appeal decided on 11.10.2011 (supra) held as under:- The matter pertains to grant of selection grade which was granted earlier but later on it was withdrawn without giving opportunity of hearing and recovery was sought to be made.

The RCSAT has quashed the order of recovery which has been passed against the respondent.

Writ Petition was preferred before the Single Bench, same has also been dismissed by the impugned order.

Aggrieved thereby, the intra-court appeal has been preferred.

Though the period was counted with effect from the date of initial appointment on ad hoc basis, the said period could not have been counted in view of the decision of the Apex Court in State of Rajasthan versus Jagdish Narain Chaturvedi, (2009) 12 SCC49 However, the State Government in order to avoid the hardship has taken the policy decision after the decision rendered by the Apex Court on 20.08.2010 not to review the cases where the benefit of selection grade has already been granted after counting the period spent on ad hoc offication.

In view of the decision taken by the State Government as stated in the order dated 20.8.2010 and 29.6.2009, nothing further survives in the appeal as the benefit of

selection grade has been granted earlier.

In view of the above, the appeal stands dismissed.

From the above, it would be noticed that though the Division Bench came to the conclusion that the period could not be counted from the date of initial appointment as per the judgment in the case of Jagdish Narain Chaturvedi (supra).in view of the Policy decision dated 20.08.2010 taken by the State after the judgment not to review the cases, where the benefit of 8 selection grade had already been granted after counting the period spent on adhoc officiation, the appeal was dismissed.

The circular dated 20.08.2010, which has been placed for perusal of the Court, merely dealt with cases, where selection grades were granted after taking into consideration the adhoc service and the said circular had nothing to do with a particular pay-scale, inasmuch as, the circular was a general circular and was not specific either to the Department or to the post held by the appellants.

In view of the above state of affairS.it is apparent that the grant of pay-scale of 1640-2900, which was sought to be withdrawn by the State was quashed by the RCSAT, and was upheld by the learned Single Judge and the Division Bench of this Court and the issue pertaining to the date for grant of selection grade was dealt with in terms of the Policy decision of the State dated 20.08.2010 and, therefore, the submissions made by learned counsel for the respondents regarding the judgment in the case of Chandra Shekhar (supra) not being applicable to the facts of the case has apparently no basis.

Against the judgment of the Division Bench, the State preferred SLP, which was dismissed by the Supreme Court on 07.05.2013 as time barred.

Further in the case of Vijay Pal Dabi v.

State of Rajasthan & Ors.: S.B.Civil Writ Petition No.1633/2012 and connected matters decided on 28.01.2013, the following direction was issued by a learned Single Judge, which also dealt with both the issues i.e.the date for grant of

selection grade and the pay-scale 9 i.e.Rs.1640-2900:- In view of the above, the present writ petition is allowed and the respondents are directed to fix the selection grades of the petitioners in the first, second and third selection grades in the pay scales of 975- 1720, 1200-2050, 1640-2900 on completion of 9, 18 and 27 years of service respectively from their initial date of appointment.

The exercise shall be completed within a period of two months from today.

Against the said judgment of Vijay Pal Dabi (supra).Special Appeal was preferred by the State and the Division Bench in its judgment dated 25.03.2014, which was delivered in the case of Karan Singh & other connected cases (supra) noticed and held as under:- While distinguishing their cases with those who, according to them, are similarly placed, it has been stated that the respondents-writ-petitioners had been granted selection grades in the admissible pay scales on completion of required length of service as per the Rules as due to them.

It has been averred as well that the respondents-writ-petitioners were not entitled to the pay scale of Rs.1640-2900 on completion of 27 years of continuous service as claimed by them.

The reiterated that the respondents-writ petitioners were entitled to selection grades as per the circular dated 25.1.1992 in the following terms:- Selection Post Pay Revised Pay Grades Scale Scale w.e.f.01.09.1996 1st Health Worker 975-3200-4900 (Male) 1720 Sr.Scale/Sr.MPW1025 3400-5200 2nd Sector Supervisor 1800 1200- 4000-6000 3rd Malaria Inspector 2050 In the above view of the matter, we find substantial merit in the present appeals.

The impugned judgments and orders are thus set aside.

We make it clear that by the determination herein the aspect of entitlement to the selection grades scales of pay on completion of 9, 18 and 27 years of services on the basis of the legal proposition as propounded in Jagdish Narain Chaturvedi (supra) has only been made.

The appeals are allowed in the above terms. A copy of this judgment be placed in all the files.

10 From the above, it is ex-facie clear that the Division Bench while deciding the case, made it clear that the determination was only based on the legal proposition as propounded in Jagdish Narain Chaturvedi (supra) and the appeals were allowed in the said terms i.e. the respondents therein were not entitled to get the period spent on adhoc, daily-wages or work-charge basis for grant of selection scale and the other part of the order, where the respondents therein were held entitled to grant of selection scale in the pay-scale of 1640-2900 was not disturbed.

Besides the above, the issue was determined way back in State of Rajasthan & Ors.v.Akhil Rajasthan Medical & Health and Family Welfare, Multi-purpose Workers Employees Union : D.B.Civil Special Appeal (Writ) No.982/2001, decided on 23.04.2002 at Jaipur Bench, wherein the Division Bench held that fir's selection grade and second selection grade cannot be similar and the MPWs were entitled to third appropriate selection grade.

Again in State of Rajasthan & Ors.v.Rameshwar Prasad Sharma & Ors.: D.B.Civil Special Appeal (Writ) No.1025/2003, decided on 18.04.2004 at Jaipur Bench, a similar issue raised was also determined based on judgment in the case of Akhil Rajasthan M&H (supra). In view of the above, it is apparent that the issue pertaining to entitlement of the appellants to the third selection grade in the pay-scale of Rs.1640-2900 (5500-9000) already stands determined in the case of Karan Singh (supra). Chandra Shekhar (supra) and Vijay Pal Dabi (supra) and the contentions 11 to the contrary by the State cannot be countenanced.

So far as the direction of the learned Single Judge in directing the appellants to pursue their notice for demand of justice is concerned, in view of the fact that the issue already stood settled by way of two Division Bench judgments and when a similarly situated petitioner had already been granted relief in the case of Laxmi Narayan Vyas (supra) decided by the learned Single Judge, there was apparently

no reason for denying the similar relief to the appellants.

In view of the above discussion, the appeals filed by the appellants are allowed.

The order dated 15.04.2014 passed by the learned Single Judge in all the writ petitions is set aside, the writ petitions filed by the petitioners-appellants are allowed to the extent that the appellants would be entitled to selection grade and get fixation in the pay-scale of Rs.975-1720, 1200-2050 and 1640-2900 (5500-9000) on completion of 9, 18 and 27 years of service respectively in terms of judgment in the case of Jagdish Narain Chaturvedi (supra) i.e.from the date of regular appointment.

The required exercise would be completed by the respondents within a period of three months from the date of this Judgment.

No order as to costs.

(ARUN BHANSALI).J.

(AJIT SINGH).ACTG.

CJ.

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