

**State of Rajasthan Vs. Rajasthan Civil Services Appellate Tribunal, Jaipur and anr.**

**State of Rajasthan Vs. Rajasthan Civil Services Appellate Tribunal, Jaipur and anr.**

**SooperKanoon Citation :** [sooperkanoon.com/756820](http://sooperkanoon.com/756820)

**Court :** Rajasthan

**Decided On :** Dec-19-2000

**Reported in :** 2000WLC(Raj)UC144

**Judge :** Dr. Ar. Lakshmanan, CJ. and; A.K. Parihar, J.

**Acts :** Rajasthan Civil Services (Revised Pay Scale) Rules, 1976 - Rules 2(1), 7 and 29;

**Appeal No. :** D.B. Civil Special Appeal (Writ) No. 191 of 2000

**Appellant :** State of Rajasthan

**Respondent :** Rajasthan Civil Services Appellate Tribunal, Jaipur and anr.

**Advocate for Def. :** Ashok Gaur, Adv.

**Advocate for Pet/Ap. :** A.K. Bhargava, Adv.

**Judgement :**

ORDER

Lakshmanan, CJ.

(1). Heard the learned counsel for both the parties.

(2). State of Rajasthan through Director of Technical Education has filed the above noted appeal against the order dated 20.1.2000 passed by the learned Single Judge of this court.

(3). We have perused the entire pleadings and the orders passed by the Tribunal as well as by this Court.

(4). This case has a checkered history. Respondent No. 2 Prakash Chand Verma was appointed as Instructor of English Stenography vide order dated 1.1.1975 on ad-hoc basis in the grade of Rs. 200-450. After some time in the year 1978 he was regularly appointed as Instructor English Stenography by an order dated 7.9.1978 in the grade of Rs. 500-890. In the year 1982 respondent No. 2 has filed an appeal before the Rajasthan Civil Services Appellate Tribunal, Jaipur, which was duly registered as Case No. 78/82 with the prayer that the order dated 23/28.1.1982 be quashed and set aside and the appellant herein be ordered to fix the salary of the respondent No. 2 in the scale of Rs. 500-890 at Rs. 540/- w.e.f. 1.9.1976 and consequential increments and payments of arrear from 1.9.1976 to upto date with interest @ 12% per annum be allowed. On 23/28.1.1982 the Principal of I.T.I., Ajmer on the basis of audit objections raised by the Accounts Officer vide his order dated 5.10.1979 ordered that the pay scale of Rs. 500-890 can not be allowed till the respondent No. 2 acquired five years' experience and pass afterwards one year in the same status. Respondent No. 2 filed the appeal against the order dated 23/28.1.1982 which was consequential order of letter dated 17.1.1979. The said appeal was dismissed on the ground of delay vide order dated 13.3.1985 by the Tribunal. Against the judgment of the Tribunal dated 13.3.1985, the respondent No. 2 preferred a writ petition before this Court bearing S.B. Civil Writ Petition No. 1641/ 1985, which was decided by the learned Single Judge vide order dated 11.5.1999 by remanding the matter to the Service Tribunal quashing the order dated 13.3.1985, passed by the Tribunal, with the direction to treat the appeal filed in time and decide the same on merits within three months.

(5). The Tribunal, after hearing both the parties, decided the appeal vide order dated 3.8.1999 (Annex. 1 to the writ petition). The Tribunal allowed the appeal with the direction to give the fixation of pay of respondent No. 2 in the pay scale of Rs.

500-890 and to fix at Rs. 540/- as basic pay w.e.f. 1.9.1976 with all consequential benefits. Being aggrieved by the order dated 3.8.1999 passed by the Tribunal, the State Government filed a writ petition before this court as S.B. Civil Writ Petition No. 263/2000 praying to quash the order dated 3.8.1999 passed by the Tribunal, with the declaration that respondent No. is not entitled to get the benefit of the pay scale of Rs. 500-890 w.e.f. 1.9.1976 and that the order dated 23/28.1.1982 is valid. The learned Single Judge, after hearing the State of Rajasthan and the respondent No. 2, passed an order on 20.1.2000. The learned Single Judge upheld the directions issued by the Service Tribunal. The present special appeal is against the said order dated 20.1.2000.

(6). According to Mr. A.K. Bhargava, learned counsel for the appellant-State, respondent No. 2 has not fulfilled the qualifications laid down for the post in question. The qualification laid down for the post is as under:

'(a) Graduate from a recognised University.

(b) Speed of 100 words per minute in English Stenography and 40 words per minute in English Typewriting. Actual speed test to be taken except in cases of those who have passed the Rajasthan Public Service Commission test of Grade-I Stenography.

(c) Five years' experience as English Stenography in a Government Department or in a private firm.

(d) Must be able to teach 'short-hand' in 'Pitman's Short-Hand' and English Typewriting.

(7). According to Mr. Bhargava, the respondent No. 2 has not satisfied the requirements of Clause - (C) above, namely, five years' experience as English Stenography in a Government Department or in a private Firm. It is the case of the appellant-State that respondent No. 2 has passed his three years' degree course in 1973, he studied as a regular student at least for three years to complete the three years degree course and passed his higher secondary examination in 1968. Therefore, from 1968 the respondent No. 2 must have completed three years in

1971, consequent upon, he should have been a regular student till 1971. However, the certificates submitted by respondent No. 2 only shows an experience as Stenographer from 7.7.1970 to 10.7.1973. Therefore, it is submitted that respondent No. 2 did not have the prescribed five years' experience and thus his initial appointment was incorrect and was not in accordance with the Rules and, as such, the scale allowed by the Service Tribunal is unreasonable and not permissible in the Rules.

(8). Per contra, Mr. Ashok Gaur, learned counsel for respondent No. 2, submitted that the respondent has been indulged into a vexatious litigation by the State Government by filing writ petition and also this appeal. According to Mr. Gaur, respondent No. 2 was appointed on 1.1.1975 on temporary basis for a period of four months or till regularly selected candidates were made available. The answering respondent was appointed in the pay scale of Rs. 200-450 and dearness allowance and other allowances which were admissible to Government Servants were to be given. In his reply, respondent No.2 has reproduced the appointment order which is in Hindi and we have perused the same.

(9). The Revised Pay Scale Rules, 1976, came into force w.e.f. 1.9.1976. The respondent No. 2 had completed one year's of service as such, he was entitled for one increment and he was drawing pay of Rs. 215/- after granting him one grade increment. It is submitted that Rule 29 of the Rajasthan Service Rules, 1951, provides for annual increment. Annual increment is ordinarily drawn until it is withheld by the authorities empowered to withhold such increment in accordance with the relevant provisions of the CCA Rules. In the instant case, respondent No. 2 was treated as a government servant and on completion of one year he was given one grade increment and as such on revision of pay scale, he was entitled to be fixed in pay scale of Rs. 500-890 and he should have been fixed at Rs. 540 on 1.9.1976. It is also brought to our notice that several temporary persons have been given their increment and fixed in revised pay scale also from time to time. Respondent No. 2 has also furnished the names of the persons who are serving on temporary basis yet they have been given benefit of revised pay scale, he has filed an order dated 3.9.1997 containing the names of persons whose term of appointment has been extended from time to time. Though the benefit has been

extended from time to time to other temporary employees, yet the same benefit has not been extended to the respondent which amounts to hostile discrimination.

(10). It is further argued by Mr. Gaur that respondent No. 2 alone has been treated differently and the same yardstick has not been applied to him as in the other cases. It is also seen from the records that respondent No. 2 has been requesting the authorities claiming his due fixation w.e.f. 1.9.1976. Even though 25 years have been passed, yet no relief has been given to the respondent and, as rightly pointed out by the learned counsel for the respondent No. 2, the State Government is indulging in vexatious litigation by filing writ petitions and appeal, impleading respondent No. 2 as a party.

(11). In our opinion, the present special appeal is wholly not maintainable and an abuse of process of law. The order passed by the Tribunal and as confirmed by the learned Single Judge is perfectly in order and does not call for any further interference of this court.

(12). In the reply, filed on behalf of respondent No. 2 it has been clearly spell out as to how the matters have been dragged from 1982 onwards. The writ petition was filed by the respondent in the year 1985 which was disposed of by this Court on 11.5.1999. The learned Single Judge remanded the matter back to the Service Tribunal by quashing the order dated 13.3.1985 with a direction to treat the appeal in time and to decide the same within a period of three months. The Tribunal, vide its judgment dated 3.8.1999 allowed the appeal filed by the respondent No. 2 after interpreting Rajasthan Civil Services (Revised Pay Scales) Rules, 1976. We have perused the operative portion of the Tribunal's order which has also been reproduced at page 3 of the reply, filed to the present on behalf of the respondent No. 2. A writ petition was again filed against the said order dated 3.8.1999 before this court, which was also dismissed by the learned Single Judge on 20.1.2000 and against the dismissal of the same, the present appeal has been filed.

(13). As already noticed, the learned counsel for the appellant in this appeal has urged that respondent No. 2 has not acquired the required qualifications and the learned Single Judge ought to have refused to interference in the matter as there were on legal issues involved in the writ petition. We are unable to agree with the

contentions raised by the learned counsel for the appellant- State. The appellant itself has admitted that the respondent No. 2 has passed his higher secondary examination in 1968 and did his three years' degree course in 1973. Thus there is gap of five years in between. The circular dated 20.9.1972 clearly spelt out that five years experience as English Stenographer from the Government Department or in a Private firm should be possessed., It is also the case of the respondent that he did not work in Government Department but he had gained his experience of Stenographer in a private firm/Lawyers firm. It is argued by the learned counsel for the appellant that even though the claim of the respondent, no certificate issued by the Lawyers firm has been produced. On the other hand it is submitted by the learned counsel for the respondent that till date no notice or any explanation has been called wherein it has been alleged that experience gained by the answering respondent from 1972-73 was not true.

(14). In our opinion, in the absence of any notice or any other contra material, the plea raised by the respondent with regard to experience gained by him while working in the Lawyers firm has to be taken into account. In this case respondent No. 2 has clearly mentioned that he has acquired the required experience from the private Lawyers Firm. There is no reason to disbelieve the said statement. The Rajasthan Civil Services (Revised Pay Scale) Rules, 1976 clearly provided in Rule 2(1) the category of Government Service to whom the Rules applied. The category provided In the said Rule 2(1) of the Rules reads thus:

'(a) Persons not in whole time employment in the Government.

(b) Persons paid out of contingencies.

(c) Persons paid on contract except with the contract provides otherwise.

(d) Government Servants, after their retirement, whether on attaining, age of superannuation or otherwise, are employed by the Government.

(e) Ex-Military Persons are employed by the Government after attaining the age of superannuation.

(f) Persons employed on workcharge basis.

(g) Persons specifically excluded wholly or in part from operation of these rules.'

(15). It is the pleading of the above Rules which indicate that the respondent No. 2 does not fall in any of the above categories and as such, on revision of pay scales, his pay was to be revised as per Rule 7 of the Rules of 1976. The respondent No. 2 was existing government servant. The existing government servant as per Rules of 1976, means a government servant who is in service on 1.9.1976 and drawing pay in an existing pay scale. The respondent No. 2, after his regular selection as Instructor in Stenography in 1979, has been promoted to the post of Senior Instructor and he is also a confirmed employee on the post of Junior Instructor and Senior Instructor.

(16). In our opinion, the Tribunal has rightly interpreted the Rules of 1976 and has properly given direction for fixation of the pay of respondent No. 2 by the appellant-State.

(17). Thus, there is no merit in the present appeal. It, therefore, fails and is dismissed accordingly. We direct the State of Rajasthan to implement the order of the Tribunal as confirmed by the learned Single Judge and by this Bench also.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**