

Lokesh Kumar and ors. Vs. State of Rajasthan and anr.

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Court : Rajasthan

Decided On : Jan-09-2008

Reported in : RLW2008(2)Raj1418

Judge : Gopal Krishan Vyas, J.

Appellant : Lokesh Kumar and ors.

Respondent : State of Rajasthan and anr.

Disposition : Petition allowed

Judgement :

Gopal Krishan Vyas, J.

1. By this joint writ petition, the petitioners are seeking relief for the grant of pay-scale of Rs. 470-830 under the Pay Scales Rules of 1976 and promotion from the date the petitioners completed one year of service in the work-charged cadre or in the regular cadre on the post of Assistant Driller.

2. According to facts of the case set out in the writ petition, vide order Annex.-1 dated 3.6.1980, petitioners No. 1 to 15 were appointed to the post of Assistant Driller in the pay-scale of Rs.295-500 on work-charge basis. Vide order dated 17.11.1980, pay-scale of Rs. 385-650 was allowed to them with effect from 1.11.1980. By another order dated 6.1.1982, all the petitioners in the writ petition,

were employed as Assistant Drillers in the pay-scale of Rs. 385-650 and thus all the petitioners happened to be on the regular cadre of Assistant Driller with effect from 6.1.1982. It is submitted in the writ petition that this appointment was made in accordance with the Rajasthan Subordinate Engineering Service (Public Health Division) Rules, 1966 after due selection.

3. The respondent Department issued an order on 19.7.1989 whereby the petitioners were posted as Driller on working basis against the posts of Driller. The petitioners were allowed pay-scale of Rs. 1400-2300, the pay-scale prescribed for the post of Driller with effect from 10.9.1990. Later on, vide office order dated 8.2.1993 passed by the Senior Personnel Officer, Public Health Department, Jaipur all the petitioners were promoted as Driller. It is stated that the Chief Engineer (Rural), Public Health Engineering Department, Jaipur published a seniority list of the Drillers under Rule 28 wherein names of the present petitioners appear from S. No. 18 to 36. In the said seniority-list, names of persons whom pay-scale of Rs. 470-830 in the work-charge cadre of Assistant Driller was allowed have been shown from S.No. 37 onwards. Aforesaid seniority-list was issued on 1.2.1993.

4. According to the petitioners, they are possessed of Proficiency Certificate in Drilling which is equivalent to Diploma in Mechanical Engineering. It is contended in the writ petition by the petitioners that despite the fact that petitioners have proficiency-certificate which is equivalent to Diploma, they were not allowed the pay-scale of Rs. 470-830 which was allowed to the persons who were junior to them merely on the basis that they were Diploma holders.

5. It is submitted that the respondent Department vide order dated 13.1.1994 allowed the pay-scale of Rs. 470-830 to the Assistant Drillers who were Diploma holders in pursuance of the order dated 22.9.1992 passed by this Court in S.B. Civil Writ Petition No. 5848/1990, filed by the PHED Diploma Holder Drillers Association and further to grant the benefit to those similarly situated persons from the date of completion of one year's service as Assistant Driller on work-charge basis. The petitioners' grievance is that though they are senior than the persons whom the pay-scale of Rs. 470-830, enumerated in the Revised Pay Scales rules

1976, was allowed but the same relief was not granted to them. Accordingly, the petitioners are claiming that they may be granted the benefit of pay-scale of Rs.470-830 at par with the persons who were appointed subsequently on the posts of Assistant Driller. So also, it is submitted that the Proficiency Certificate in Drilling issued by the GWD is required to be treated as equivalent to the Diploma in Mechanical Engineering. Therefore, on the basis of having acquired equal qualification, the same benefit is required to be granted to the petitioners also.

6. Learned Counsel for the petitioners argued that this Court has held in the judgment rendered in Mani Ram's case reported in 1980 (1) SLR that certificate of proficiency awarded by the Rajasthan Ground Water Board shall be treated equivalent to the Diploma in Mechanical Engineering and, once the position as regards persons having the qualification of Proficiency Certificate is legally settled, the same benefit as is available to the Diploma holders is required to be extended to the persons having the Proficiency Certificate awarded by the Ground Water Board. Admittedly, the persons whom the said benefit was given on the basis of their being possessed of Diploma qualification are junior to the petitioners from the very beginning in the service. It is pointed out by learned Counsel for the petitioners that the said judgment in Mani Ram's case was upheld by the Division Bench of this Court and was also affirmed by the Hon'ble Supreme Court. It is further submitted that in pursuance of the judgment rendered in Mani Ram's case, whereby the Proficiency Certificate awarded by the Rajasthan Ground Water Board was held to be equivalent to Diploma in Mechanical Engineering, benefit of fixation of pay was allowed while treating the said certificate as equivalent to the Diploma in Mechanical Engineering. Therefore, according to learned Counsel for the petitioners, the petitioners are entitled to get the same benefit which was granted to the junior persons vide order dated 13.1.1994.

7. It is vehemently submitted by learned Counsel for the petitioners that the order dated 13.1.1994 (Annex.-9) was passed in pursuance of the directions issued by this Court in the judgment dated 22.9.1992 passed in S.B. Civil Writ Petition No. 5848/1990 filed by Diploma holders who were appointed as work-charged Assistant Drillers, wherein the learned Single Judge has held as follows:

In the result, the petition is allowed in part. Respondents are directed to give benefit of the post of Driller (Work-charged) in the pay scale of 470-830 to the members of petitioner Association and other similarly situated persons with effect from the date of completion of one year's service by each one of them as Assistant Driller (Work-charged). All these persons should be given consequential benefits within a period of six months of the submission of certified copy of this order. Question of promotion on regular posts of Driller shall however be considered by the Government in accordance with the provisions of the amendments made in the Rajasthan Engineering Subordinate Service (Public Health Branch) Rules, 1967. Decision for such consideration shall be undertaken within a period of six months of the submission of certified copy of the order. Parties are left to bear their own costs.

Upon the aforesaid judgment passed by this Court, when the benefit was given to the junior persons who were possessing Diploma, in view of the fact that the qualification of Proficiency Certificate stands at equivalence with the Diploma in Mechanical Engineering, the same benefit is required to be given to the petitioners also. It is urged by learned Counsel for the petitioners that this Court specifically directed vide the afore-quoted order to give benefit of the post of Driller (Work-charged) in the pay scale of 470-830 to the members of petitioner Association and other similarly situated persons with effect from the date of completion of one year's service by each one of them as Assistant Driller (Work-charged). Therefore, the respondents are under obligation to treat the petitioners as having the equal qualification as the Diploma holders and grant the same benefit to the petitioners also and the denial of the benefit to the petitioners is arbitrary and, illegal being violative of Article 14 of the Constitution of India.

8. Per contra, the learned Dy. Government Advocate vehemently submitted that the State Government has jurisdiction to provide the pay-scale on the basis of different qualifications. It is contended that grant of different pay-scale on the basis of higher qualification cannot be questioned in this writ petition because there is no provision in the relevant rules that due to proficiency certificate the benefit of higher pay-scale may be granted. According to the learned Dy. Government Advocate, at the time of appointment of Diploma holders through the Manpower

Department, they were assured that their cases will be considered for grant of pay-scale of Rs. 470-830 after completion of one year's service because vacancies were in existence. While inviting attention towards Annex.-R/2 the Counsel for the State apprised this Court that assurance of the pay-scale of Rs. 470-830 was given to the Diploma holders while granting them appointment on work-charged basis on the posts of Assistant Driller in the pay-scale of Rs. 385-650 for one year. It is submitted that order Annex.-9 was issued in pursuance of the directions issued by this Court whereby the learned Single Judge considered the assurance given to the Diploma holder incumbents for the grant of pay-scale of Rs. 470-830. As such the benefit of pay-scale of Rs. 470-830 has been given in compliance of the order passed by this Court in S.B. Civil Writ petition No. 5848/1990, decided on 22.9.1992 and this Court passed the above order on the basis of higher qualification of the incumbents who were, however, appointed subsequently. It is argued by the learned Dy. Government Advocate that in view of the aforesaid facts and circumstances the present petitioners cannot claim parity for the grant of pay-scale with the incumbents who are Diploma holders.

9. Learned Counsel for the private respondents, who filed application for impleading as party, argued that those diploma-holders who were appointed as Assistant Driller on work-charge basis were given assurance by the Addl. Chief Engineer that after one year their cases will be considered for appointment on the posts of Driller on regular basis in the pay-scale of Rs. 470-830; and, on that assurance, because those work-charged Assistant Drillers who were possessing diploma were allowed the pay-scale of Rs. 470-830 and though they have been shown junior in the seniority-list but the fact remains that they were possessing diploma and as per the Revised Pay Scale Rules of the Work-charged employees, diploma-holders were entitled for higher pay-scale. Therefore, it was rightly granted by the State Government and the petitioners cannot claim parity with the diploma-holders as they did not possess the diploma qualification prescribed for the post of Driller. It is prayed that accordingly the writ petition may be dismissed.

10. I have considered the rival submissions and carefully perused the material on record. I have also gone through the judgments cited by respective parties as well as judgment dated 22.9.1992 passed by this Court in S.B. Civil Writ Petition No.

11. The petitioners have been appointed as Assistant Driller on the basis of their having acquired the Proficiency Certificate which is equivalent to Diploma in Mechanical Engineering. Therefore, on the strength of the Proficiency Certificate the petitioners were eligible to be appointed as Assistant Driller. Annex.-R/2 filed alongwith the reply speaks that for appointment on the post of Driller the eligibility qualification is Diploma and assurance was given to the Diploma holders that after completion of one year's service their cases will be considered for the post of Driller and granting pay-scale of Rs. 470-830. But, at the initial stage, they were appointed on the post of Assistant Driller on work-charge basis in the pay-scale of Rs. 385-650. On the basis of assurance conveyed through Annex.-R/2, the Diploma holders filed writ petition before this Court and in the said writ petition, vide judgment dated 22.9.1992, direction was issued by this Court for the grant of pay-scale of Rs. 470-830 after completion of one year's service in the work-charged cadre. Vide judgment dated 22.9.1992, this Court further ordered to give benefit of the post of Driller (Work-charged) in the pay scale of 470-830 to the members of not only the petitioner Association but other similarly situated persons also with effect from the date of completion of one year's service by each one of them as Assistant Driller (Work-charged).

12. As afore-noted, the award of Proficiency Certificate by the Rajasthan Ground Water Board department has been held equivalent to the Diploma in Mechanical Engineering by this Court in Mani Ram's case (supra) and the verdict of the learned Single Judge, after having been considered by the Division Bench and upheld, came to be affirmed by the Supreme Court, therefore, there does not remain any dispute with regard to the equivalence of the Proficiency Certificate thus awarded by the Ground Water Board department with the Diploma in Mechanical Engineering. As a consequence, no question arises for differentiation between the two qualification on any count and it is not open to the respondents to say that pay-scale of Rs.470-830 was made available to the Diploma holders on the basis of higher qualification. Therefore, the present petitioners are also entitled to the same benefit which was extended to the Diploma holders vide Annex.-9.

13. It may also be observed that during the course of arguments learned Counsel for the petitioners has brought to the notice of the Court that the State Government issued an order on 3.6.1981 whereby, on the same facts in the Agricultural Department, the Government decided to treat the Certificate of Proficiency awarded by the Rajasthan Ground Water Board department equivalent to the Diploma in Mechanical Engineering on the basis of the adjudication made by this Court and the verdict having been affirmed upto the

Supreme Court. The said order dated 3.6.1981 runs as under:

RAJASTHAN GOVERNMENT

AGRICULTURE (GR.III)

No. F. 21(25)Agr/v/ss/75. Jaipur, 3 June, 81Chief Engineer,

Ground Water,

Jodhpur.

Sub: State of Rajasthan v. Shri Mani Ram-special leave petition Civil No. 10352 of 1980-Fixation of pay of Blasters under the New Pay scale Rules, 1969 w.e.f. 1.9.68 payment of arrears thereto.

Ref: Yours letter No. F.2/Estt/Eng/81/58, dated 6.1.1981, and No. F.2 (Estt/Eng/81/238, dated 2-1-1981.

Sir,

I am directed to say that the matter has been considered in consultation with the Law Department and it is to inform you that the certificate of proficiency awarded by the R.G.W.B. in equivalent to the Diploma in Mechanical Engineering. In view of the contents of the judgements of the SB and DB of the Rajasthan High Court, which have been up held by the Supreme Court of India by their order dated 16.12.1960, the petitioner Shri Mani Ram Rakhecha as well as all other Blasters, who possess the qualification equivalent to diploma in mechanical engineering as laid down in the Rajasthan Subordinate Services (Recruitment) and other service

conditions Rules, 1960 are entitled to have their pay fixed in the scale of pay of Rs. 180-425 w.e.f. 1.9.1968, if they have otherwise opted for the said scale of pay under the New Pay Scale Rules, 1969. Necessary action in this regard may kindly be taken

As regards the other point raised in your letter dt. 6.1.81, a separate communication would follow.

Yours faithfully,

Sd/-

Deputy Secretary to Government

Obviously, the present petitioners are senior to the persons and possessing equivalent qualification of diploma who were granted the benefit of pay-scale of Rs. 470-830 on the basis of their qualification of Diploma vide Annex.-9. Therefore, refusal to grant pay-scale of Rs. 470-830 at par with the diploma holders to the petitioners who are senior than the said diploma-holders is arbitrary and in violation of Article 14 of the Constitution of India.

14. In the facts and circumstances narrated above, the writ petition deserves to be allowed and the same is hereby allowed.

15. The respondents are directed to grant the same benefit of pay-scale of Rs. 470-830 to the petitioners which is allowed vide Annex.-9 dated 13.1.1994 to their junior persons whose names appear in the seniority-list at S. No. 37 to 65. As a result of grant of pay-scale of Rs. 470-830, re-fixation of pay shall accordingly be made within a period of three months from the date of submission of certified copy of this order.

16. No order as to costs.