

Brij Mohan Sharma Vs. the State of Rajasthan and anr.

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Court : Rajasthan

Decided On : Mar-01-1982

Reported in : 1982WLN(UC)181

Judge : S.C. Agrawal, J.

Appeal No. : S.B. Civil Writ Petition No. 316 of 1975

Appellant : Brij Mohan Sharma

Respondent : The State of Rajasthan and anr.

Disposition : Petition allowed

Judgement :

S.C. Agarwal, J.

1. In this writ petition filed under Article 226 of the Constitution of India the petitioner has prayed that an appropriate writ order or direction may be issued to quash the orders (Exhibits 4 and 5) dated August 23, 1971 and October 12, 1971, passed by the Principal, R.N.T. Medical College and Controller Associated Group of Hospitals, Udaipur (respondent No. 2 here in after).

2. By order dated June 19, 1963, the petitioner was appointed on the post of Modeller in the Grade of Rs. 115-335. The aforesaid appointment of the petitioner was made on the basis of selection through the Director of Public Relations,

Rajasthah, Jaipur. In pursuance of the aforesaid order the petitioner joined as Modeller on September 23, 1963. By order dated September 23, 1964, the petitioner was promoted as Artist in the Grade of Rs. 170-385. The aforesaid promotion was made on temporary basis for a period of six months or till a candidate selected by Rajasthan Public Service Commission was made available, whichever ever was earlier. The petitioner, however, continued to hold the post of Artist till the order dated October 22, 1969, was passed by Respondent No. 2. In the aforesaid order it was stated that two posts of Artists in the College had been abolished and one post of senior Artist had been created by the State Government and that as a result of the same Shri Satya Narain Bharadwaj, who was holding the post of Artist, was being appointed in the new post of senior Artist, and the petitioner, who was holding the other post of Artist, was being appointed on the post of Modeller in place of one Shri Govind Singh, who was being declared surplus. Thereafter an order dated August 23, 1971, was passed by respondent No. 2, wherein it was ordered that the petitioner had been initially appointed as Modeller in the College with effect from September 23, 1963, in the pay scale of Rs. 115/335 and he was subsequently promoted as Artist with effect from September 24, 1964, in the pay scale of Rs. 170-385 which he was holding up to October 31, 1969, and then he was re-posted to his initial post of Modeller with effect from November 1, 1969. In the said order it was further stated that the pay scale of Modeller had changed to Rs. 180-425 and that pending his pay fixation the petitioner should have been allowed the pay arrived, if he would have continued as Modeller or the minimum of the pay scale of Modeller under the Rajasthan Civil Services (New Pay Scale) Rules, 1969 (hereinafter referred to as 'the New Pay Scale Rules') whichever ever was higher, but he had been allowed to draw Rs. 220/- per month which he had been drawing as an Artist and that in order to regularise the said issue the petitioner would be provisionally allowed to draw Rs. 180/- per month, the minimum of the pay scale, with effect from November 1, 1969. The aforesaid order dated August 23, was followed by the order dated October 12, 1971, passed by Respondent No. 2. By the aforesaid order the pay of the petitioner on the post of Artist as on September 1969 was fixed at Rs. 210/- per month in accordance with the New Pay Scale Rules and his pay as on September 24, 1968 and on September 24, 1969, was fixed at Rs. 220/- and Rs.

235/-respectively. In the said order dated October 12, 1971, it was further directed that since the petitioner had been reverted to the post of Modeller with effect from November 1, 1969, his pay from November 1, 1969, had been fixed at Rs. 180/- per month, and since a sum of Rs. 1418/- had been paid in excess to the petitioner, steps should be taken to recover the said excess amount from the pay of the petitioner at the rate of Rs. 50/- per month. The petitioner submitted representations to the State Government against the aforesaid orders dated August 23, 1971, and October 12, 1971. The said representations were ultimately rejected by the order dated November 11, 1974, passed by the Assistant Secretary to the Government, Medical and Health Department, Rajasthan, Jaipur, where in it was stated that since the petitioner was not declared surplus, it was not possible to protect his pay. Thereupon the petitioner filed this writ petition for the reliefs referred to above.

3. In the writ petition the petitioner has submitted that the on abolition of the post of Artist held by the petitioner, the petitioner was absorbed on the post of Modeller in accordance with paragraph 9 of the Circular of the State Government dated July 23, 1966 and the Petitioner should therefore, be deemed to have been absorbed on the post of Modeller under Rule 7 (3) of the Rajasthan Civil Services (Absorption of Surplus Personnel) Rules (here in after referred to as the 'Absorption of Surplus Personnel Rules'). The case of the petitioner is that in view of his absorption on the post of Modeller by virtue of Rule 7 (3) of the Absorption of Surplus Personnel Rules, the petitioner was entitled to draw the same salary on absorption as he was drawing on the post of Artist on the date he was absorbed on the post of Modeller and that the mere fact that before his appointment on the post of Modeller with effect from November 1, 1969, the petitioner was not declared surplus is of no consequence. In the writ petition the petitioner has also submitted that the petitioner was also entitled to the protection of the pay drawn r y him prior to November 1, 1969, on his appointment on the post of Modeller with effect from November 1, 1969, by virtue of the provisions contained in Rule 26 B of the Rajasthan Service Rules. The petitioner has also submitted that in any event this was a fit case in which the petitioner should have been given the benefit of the power of relaxation that has been confened on the Government under Rule 3 of the New Pay Scale Rules, in as much as Shri Govind Singh who was junior to the

petitioner and had been declared surplus on the post of Modeller, by order dated October 22, 1969, has been absorbed on the post of Modeller and was drawing a salary of Rs. 250/-per month and the petitioner who was senior to Shri Govind Singh, was being made to draw lesser salary than Shri Govind Singh.

4. The writ petition has been contested by the respondents and a reply has been filed on their behalf. In the said reply it has been asserted that the post of Artist was within the purview of the Rajasthan Public Service Commission till 1966, and that the appointment of the petitioner on the post of Artist had been made on a temporary basis and when the post of Artist was abolished, the petitioner was reverted to the post of Modeller and he was fixed on the basic salary of Rs. 180/- prescribed for the said post. The case of the respondents is that Rule 7 (3) of the Absorption of Surplus Personnel Rules, is not applicable to the case of the petitioner and that the provisions of Rules 26 B of the Rajasthan Service Rules are also not applicable to his case. In the said reply it has been admitted that Shri Govind Singh was junior to the petitioner and he had been declared surplus under order dated October 22, 1969, and he has been absorbed on the post of Modeller and he was drawing a salary of Rs. 250/- per month. But it has been asserted that the fixation of the pay of the petitioner at the rate of Rs. 180/- per month with effect from November 1, 1969, was in accordance with law and that the petitioner was not entitled to get his salary re-fixed.

5. I have heard Shri M. Mridul, the learned Counsel for the petitioner and the learned Dy. Government Advocate for the respondents.

6. The narration of the facts referred to above shows that the service rendered by the petitioner on the post of Modeller and Artist from September 23, 1963 to November 1, 1969 has been completely ignored & on his reversion to the post of Modeller with effect from November 1, 1969, the pay of the petitioner has been fixed at Rs. 180/- per month i.e. the lowest range of the ladder in the pay scale of Rs. 180-425 fixed for the post of Modeller. The learned Dy. Government Advocate, has however, submitted that there is nothing illegal in the aforesaid fixation. The question which arises for consideration is whether in the matter of fixation of his pay on reversion to the post of Modeller under order dated October 22, 1969, the

petitioner is entitled to have the service rendered by him on the post of Modeller and Artist from September 23, 1963. to November 1, 1969, taken into consideration.

7. In the matter of absorption of surplus personnel provisions are made in the Absorption of Surplus Personnel Rules, which were published in the Rajasthan Gazette dated December 11, 1969. The said Rules have been brought into force with effect from January 1, 1954. Prior to the promulgation of these rules there was in force a circular of the Government dated July 23, 1966, which made provisions for absorption of surplus employees and termination of service of temporary persons not entitled to absorption.

8. Para 9 of the aforesaid circular provided as under:

9. Absorption within Department:--All the Heads of Departments are requested to explore the possibility of departmental absorption first. In doing so the Heads of Departments should try to adjust surplus employees in similar posts in the department for which they are qualified and in order to achieve this object they should revert or discharge employees in other similar posts in the department, who may be junior in the service. Such departmental absorption should, however, be got confirmed by the absorbing authority to ensure that junior or unqualified employees are not unduly retained in the department.

9. Rule 7 of the Absorption of Surplus Personnel Rules prescribes the procedure of absorption of surplus personnel. Sub-rule (3) of Rule 7 which is relevant for the purpose of present case reads as under:

(3) In respect of the period from 1st January, 1954, to the date of publication of these Rules, the various circulars of the Appointments and General Administration Departments of the Government mentioned in the Schedule, and applied during the said period for the appointment by absorption of surplus employees, shall apply in relation to them as if they form part of these rules and such appointments shall be substantive, officiating, temporary or ad hoc as indicated in the table given below Sub-rule (1) hereof.

10. Sub-rule (1) of Rule 7 postulates that a person who was holding a temporary appointment on a temporary post on the date he was declared surplus would be given temporary appointment after absorption, and a person who was holding an ad hoc appointment on a temporary post on the date he was declared surplus would be given an ad hoc appointment after absorption.

11. Rule 11 of the Absorption of Surplus Personnel Rules lays down the procedure for adjudging the suitability and substantive appointment of surplus employees in the case mentioned therein. Sub-rule (1) of Rule 11 relates to absorption on posts which fall within the purview of the Rajasthan Public Service Commission. Sub-rule (2) deals with absorption on posts which fall out side the purview of the Rajasthan Public Service Commission and postulates that the suitability of such employees shall be adjudged by a Screening Committee. Sub-rule (5), however, lays down that it would not be necessary to adjudge the suitability of these permanent or temporary absorbed surplus employees who were initially appointed on previous posts either on the recommendation of the Commission or in a regular manner by the Appointing Authority and was subsequently appointed to new posts.

12. In the present case there is no dispute that prior to November 1, 1969, the petitioner was holding the post of Artist and the said post of Artist which was being held by the petitioner was abolished by the State Government and thereupon, by order dated October 22, 1969, the petitioner was appointed on the post of Modeller in the place of Shri Govind Singh who was holding the said post at that time and Shri Govind Singh was declared surplus. It is true that there was no formal order declaring the petitioner as surplus, on the abolition of the post of Artist, held by the petitioner. But in my view that is of little consequence in as much as the post of Artist which was held by the petitioner had been abolished by the State Government and as a result of the abolition of said post of Artist the petitioner could not hold the post of Artist thereafter. In my opinion, the order for appointment of the petitioner on the post of Modeller which was passed on October 22, 1969, should be treated to be an order passed in accordance with paragraph 9 of the circular dated July 23, 1966, which required all the Heads of the Departments to explore the possibility of departmental absorption first and they

were asked to adjust surplus employees in similar post in the department for which they are qualified and in order to achieve the said object they were directed to revert or discharge employees in other similar post in the department who may be junior in service. In accordance with the aforesaid directions, on the abolition of the post of Artist by the State Government, the petitioner was absorbed on the post of Modeller and Shri Govind Singh who was junior to the petitioner and was holding the post of Modeller, was declared surplus. The aforesaid order dated September 52, 1969, whereby the petitioner was appointed on the post of Modeller should, therefore, be treated as an order of absorption passed in accordance with paragraph 9 of the Circular of the State Government dated July 23, 1966. Once it is held that the order dated October 22, 1969, appointing the petitioner on the post of Modeller was an order with regard to the absorption of the petitioner on the post of Modellar, passed in accordance with paragraph 9 of the circular of the State Government dated July 23, 1966, the petitioner will have to be treated to have been absorbed as a surplus employee under Sub-rule (3) of Rule 7 of the Absorption of Surplus Personnel Rules and he would be entitled to the protection of the said rules.

13. The learned Dy. Government Advocate has submitted that even if it be assumed that the petitioner was absorbed as surplus employee under paragraph 9 of the circular of the Stated Government dated July 23, 1966, the petitioner cannot claim his benefit of the protection of his pay. In support of the aforesaid submission, the learned Dy. Government Advocate has referred to paragraph 2 of the aforesaid circular dated July 23, 1966. A perusal of paragraph 2 of the said circular, however, shows that the said paragraph relates to employees who had put in less than one year's service on 1st October, 1965, and whose services were being terminated after notice, as required under the rules.

14. In paragraph 2 of the circular it was laid down that during the period of notice of termination of service or after actual termination of service a person with less than one year's service on October 1, 1965, will not have any right to be absorbed on a vacant post which may exist or on a vacancy which may arise after termination of service and that he may be considered for and offered appointment on an existing vacancy or a future vacancy, in accordance with rules regulating the

filling up of the vacancy, even if such post carries pay in scale different from or lower than the pay scale attached to the post for which he was rendered surplus, and that if such offer of appointment was accepted, he would be appointed to such post but no protection would be given to pay scale admissible to him on the post from which he was rendered surplus. It is thus apparent that the aforesaid paragraph relates to employees who had put in less than one year's service on October, 1965, and whose services had terminated and who were being offered alternative employment. The petitioner was not a person who had put in less than one year's service on 1st October, 1965, and his case, was, therefore, not covered by paragraph 2 of the circular.

15. Another contention which was urged by the learned Dy. Government Advocate was that since the appointment of the petitioner on the post of Artist was only temporary in nature, the petitioner was not entitled to the protection of the Absorption of Surplus Personnel Rules. The aforesaid contention is also without any substance. As noticed earlier the provisions of the Absorption of Surplus Personnel Rules are applicable to permanent as well as temporary employees and persons holding ad hoc appointment on temporary basis have also been protected under the said rules. In so far as the case of the petitioner is concerned it is squarely covered by Sub-rule (3) of Rule 7 of the Absorption of Surplus Personnel Rules.

16. Once it is held that the petitioner should be deemed to have been absorbed as a surplus employee under Sub-rule (3) of Rule 7 of the Absorption of Surplus Personnel Rules, the impugned orders, whereby the pay of the petitioner on the post of Modeller had been fixed at Rs. 180/- per month, cannot be sustained and the case of the petitioner with regard to the fixation of his pay on the post of Modeller has to be reconsidered on the basis that he had been absorbed on the said post of Modeller under Sub-rule (3) of Rule 7 of the Absorption of Surplus Personnel Rules.

17. I would therefore, allow this writ petition and set aside the orders (Exbt. 4 and Exbt. 5 dated August 23, 1971. & October 11, respectively passed by the Principal. R. N. T. Medical College and Controller Associated Group of Hospitals,

Udaipur, and the order (Exbt. 12) dated November 11, 1974, passed by the Assistant Secretary to the Government, Medical and Public Health Department, Rajasthan, Jaipur and direct the respondents to fix the pay of the petitioner on the post of Modeller with effect from November 1, 1969, considering him to be a surplus employee absorbed under Sub-rule (3) of Rule 7 of the Absorption of Surplus Personnel Rules.

18. Taking into consideration, the facts and circumstances of the case the parties are left to bear their own costs in this writ petition.

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