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Court : Rajasthan

Decided On : May-04-1998

Reported in : 1999(2)WLC363; 1998(1)WLN240

Judge : G.L. Gupta, J.

Appeal No. : S.B. Civil Writ Petition No. 1984 of 1997

Appellant : Devi Singh

Respondent : State and ors.

Disposition : Petition dismissed

Judgement :

G.L. Gupta, J.

1. The petitioner's case is that he was appointed on the post of part-time Peon (Class-IV) on a sanctioned and vacant post in the office of respondent no. 4 Gram Panchayat on 29.5.1963. In the beginning he was paid Rs. 10/- per month but the amount was increased time to time. When the writ petition was filed, he was getting Rs. 200 per month. It has been averred that the petitioner discharges the same duties which are being discharged by the Class-IV employees and therefore he was entitled to get salary in the regular pay scale of Class IV employee with all consequential benefits but the respondents have ignored his legitimate demands.

It has been prayed that the respondents be directed to pay the petitioner his salary and other consequential benefits of the post of Class IV employee from the date of his initial appointment.

2. In the reply filed by respondents no. 1 to 3 it has been averred that the petitioner was appointed purely on part time basis and he was not discharging the duties of Class-IV employees. It has been stated that the petitioner is asked to work only for two days in a month-i.e. on the day the meetings of Gram Panchayat are held. It has been denied that there is any sanctioned post of Class-IV employee. It has been averred that the petitioner was engaged without the permission of the Gram Panchayat (sic : Panchayat Samiti) and he is not entitled to get salary in the regular pay scale and the other benefits payable to Class-IV employees.

3. In the reply filed by respondent no. 4 it has been averred that at no point of time there was sanctioned post of Class-IV in the Gram Panchayat and that the petitioner was engaged purely for working on two days in a month when the meetings of the Gram Panchayat are held and for the rest of the days, he is free to do other work.

4. Mr. Purohit contended that the petitioner who is working in the office of respondent no. 4 for the last about 34 years is entitled to salary in the regular pay scale of Class IV employees on the principle of 'equal pay for equal work'. He has placed reliance on the decision of this Court rendered in the case of State of Rajasthan v. Heeralal (D.B. Special Appeal No. 598/95) decided on 26.8.1996.

5. Mr. Bishnoi, on the other hand, contended that there was no sanctioned post of Class IV in the Panchayat and that the appointment of the petitioner was not made with the prior permission of the Panchayat Samiti and that he was appointed only as a part-time employee on the fixed pay and therefore he is not entitled to wages in the regular pay scale of Class-IV employee. He placed reliance on the cases of Garhwal Jal Sansthan Karamchari Union and Anr. v. State of U.P. : (1997)IILLJ147SC , State of West Bengal and Ors. v. Hari Narayan Bhowal and Ors. : (1995)IILLJ328SC , State of U.P. and Ors. v. U.P. Madhyamik Shiksha Parishad Shramik Sangh and Anr. : AIR 1996 SC708 , Roop Lal v. State of Raj. 1997 WLC (UC) 69, Chandra Shekhar Sharma and Ors. v. State of Raj. 1997

WLC (UC) 228 and Joga Ram v. State of Raj. and Ors. (S.B.C. Writ Petition No. 6416/91) decided on 28.11.1997.

6. I have considered the above arguments. Section 23(1)(a) of the Rajasthan Panchayat Act, 1953 provides for appointment of a Secretary in a Panchayat. Clause (b) of Sub-section (1) provides that with the previous approval of Panchayat Samiti a Panchayat may also appoint such other staff as may be necessary for carrying out the duties imposed on it. It is obvious that apart from the post of Secretary in all Panchayats, the other staff members can be appointed with the previous approval of the Panchayat Samiti under whose jurisdiction the Panchayat falls. In the instant case there is nothing on record to hold that the petitioner was appointed in 1963 on the post of part-time peon with the previous approval of the Panchayat Samiti. The respondents have categorically stated that there is no sanctioned post of Class-IV in the Panchayat and that the permission for the appointment of part time peon was not sought from the Panchayat Samiti. The petitioner has not been able to establish that there was a sanctioned post of Class-IV in the Panchayat as has been averred by him in the writ petition. It may be that the petitioner has been continuously working as Peon for the about 34 years in the Panchayat but by this it cannot be presumed that there was sanctioned post of peon.

7. In the case of State of U.P. v. U.P. Madhyamik Shiksha Parishad Shramik Sangh (supra) it has been held by the Apex Court that unless the post is created, a person working as Class-IV is not entitled for payment of equal wages. It is significant to point out that in that case High Court had directed the State Government to pay equal wages and to regularise the services of the petitioner but the Apex Court allowed the appeal of the State Government.

8. In the case of Chandra Shekhar Sharma (supra) even it was an admitted fact that the Nakedars were appointed Under Section 23(1)(b) of the Rajasthan Panchayat Act, 1963 with the approval of the Panchayat Samiti, yet this Court rejected the prayer of their regularisation. The Nakedars were also refused wages on the ground that there was no regular permanent post in the establishment and the creation of post is prerogative of the executive.

9. In the case of Rooplal (supra) the Division Bench of this Court had an occasion to consider about the regularisation of service and the wages of the class IV employees of Panchayat Samiti. The petitioner of that case was employed on daily basis to render Chowkidari works on the beeds to keep watch over the cattle. The learned Single Judge of this Court held that principle of 'equal pay for equal work' could not be invoked and the petitioner was not entitled to payment in the regular pay scale prescribed for Class-IV employees. This view of the learned Single Judge was upheld by the Division Bench holding that the applicants had not been recruited against any cadre post and therefore they were not entitled to regularisation in service.

10. As already stated, in the instant case, there was no sanction post of peon in the Gram Panchayat and therefore the petitioner is neither entitled to regularisation, nor wages on the principle of 'equal pay for equal work'.

11. Apart from this, there is specific provision in Rule 25 of the Rajasthan Panchayat (General) Rules, 1961 providing for emoluments of the staff of the Panchayat. Rules 1A and 2 deserve to be reproduced-

1A The pay of whole time class IV Servants of a Panchayat shall be in the time scale of 25-1-45

2 The Panchayat shall however be competent to allow a lower pay scale or fixed pay to part-time employees.

It is obvious that if there is a sanctioned post of Class-IV in Panchayat, the incumbent is entitled to pay in the time scale fixed under the Rules, but the Panchayat is authorised to appoint a part-time employees on a fixed pay. In the instant case, it is the petitioner's case that he was appointed as part-time peon. The averments made in the petition clearly indicate that from the very beginning the petitioner was appointed as part-time peon. Initially his pay was fixed at Rs. 10/- per month. The pay was increased from time to time. At the time the writ petition was filed the petitioner's pay was Rs. 2001- per month. The terms of the contract of service of the petitioner shall obviously be covered by Sub-rule (2) of Rule 25 of the Rules of 1961 and he cannot claim wages in the regular pay scale

of Class TV employees.

12. It is to be noticed that under the Rules of 1961 for appointing a person on part-time basis, it is not necessary that he was not less than 18 years of age at the time of his appointment which is a condition precedent for the appointment on the post of Class-IV. Under Rule 23 of the Rules of 1961, it is clearly laid down that for part-time employees the restriction of the minimum age shall not apply i. e. a part time employee can be appointed even if he was below 18 years of age. It is significant to point out that the petitioner was 48 years when he filed the instant writ petition and it has been averred that he had put in 34 years of service at that time. It is evident that the petitioner was hardly 14 years of age when he was appointed as part-time peon. Similarly there is no retirement age of the part-time employee. It has, been provided in Rule 23 that a. part-time employee can be appointed even after he attain the age of 55 years. Rule 32 further provides that there is no retirement age of the part-time employee. He can serve the Panchayat even after he attains the age of 60 years. Thus there are different service conditions of the part-time employees of the panchayat under the Rules of 1961. In my opinion, the part time peon of Gram Panchayat cannot be equated with the Class-IV employees appointed on regular basis in accordance with the Rules. As such, the question of application of the principle of 'equal wages for equal work' does not arise.

13. In the case of State of Haryana and Ors. v. Jasmer Singh : (1997)IILLJ667SC it has been observed by the Apex Court that if the workers are not required to possess the qualification prescribed for regular workers, nor, do they have to fulfill the requirement relating to age and are not selected in the manner in which regular employees are selected, they cannot be allowed wages on the principle of 'equal pay for equal work'.

14. In the instant case, as already stated the petitioner was not appointed against a sanctioned post, rather he was appointed as a part time employee under Rule 25(2) of the Rules on fixed pay. He is therefore not entitled to regularisation of service nor he is entitled to the wages of Class-IV employees.

15. It is relevant to state that in the reply it has been clearly stated that the petitioner is required to attend the Panchayat office only for two days in a month and he is free to do other work in the remaining period. This averment of the respondents remains uncontroverted. The petitioner has not filed rejoinder to deny that he is required to work only for two days in a month. Looking to the nature of the duties of the petitioner, it cannot be accepted that he performs the same duties which are required to be performed by regular Class-IV employees. He is therefore, neither entitled to the wages in the regular pay scale of Class IV employee nor regularisation.

16. Now about the case of State of Raj v. Heeralal (supra) on which the learned Counsel for the petitioner has placed reliance. Six appeals were decided by the judgment dt. 26.8.1996. Two of the appeals were of the part-time employees of Panchayat Samiti and Panchayat. A reading of the judgment clearly reveals that in that case, it was admitted position that since the time of their initial appointment, the petitioners were working as peons and were discharging the duties and work and responsibilities which were being discharged by the other regularly appointed Class IV employees. The respondents in the writ petitions had not been able to show any difference between the discharge of duties of the regularly appointed class IV employees and petitioners. It is obvious that in these matters, this was not the case for the respondents in the writ petitions that the two employees of the Panchayat/Panchayat Samiti worked only for some days in a month and they were free to do any other work during the remaining period of the month. Those cases were thus decided on the peculiar facts of those cases. Furthermore, the contention that the Panchayat was not authorised to appoint petitioners was also not raised by the respondents in the reply to the writ petition and therefore the Division Bench did not allow the fresh ground to be raised in the appeal. In the instant case, it is the contention of the respondents in the written statement that the Gram Panchayat had not obtained prior approval of the Panchayat Samiti to appoint the petitioner. Thus, the case relied on by Mr. Purohit is clearly distinguishable.

17. In the case of Shyam Babu Verma v. U.O.I. : (1994)ILLJ815SC the Hon'ble Apex Court has observed that before direction is issued by the Court regarding

payment of wages on the doctrine of 'equal pay for equal work' the claimants are required to establish that there was no reasonable basis to treat them Separately for the payment of wages. In the instant case, not only that the petitioner has not been able to establish that he could not be treated in different manner in the payment of wages, but he even admits that he was appointed as part-time peno and he is still working as part time employee. It has also been found that he works for two days only in a month. In these circumstances, the petitioner is certainly not entitled to the payment of the wasges on the principle of 'equal pay for equal work' and also he is not entitled to regularisation.

18. Consequently, there is no merit in this writ petition which is hereby dismissed.

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