

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

D.B. Special Appeal (Writ) No.1016/2018
With
D.B. Civil Misc. Stay Application No.14375/2018
In
S.B. Civil Writ Petition No.19393/2017

1. The State Of Rajasthan, Through Its Secretary, Secondary Education Department, Government Of Rajasthan, Secretariat, Jaipur
2. Director, Secondary Education, Rajasthan, Bikaner
3. Deputy Director, Secondary Education, Bharatpur

----Appellants

Versus

Shyam Veer Singh Son Of Late Shri Pooran Chand, Aged About 52 Years, Resident Of H-30, Ekta Vihar Colony, Behind Fci Godown, Sonkh Road, Bharatpur, Rajasthan

----Respondent

For Appellant(s) : Mr. S.K. Gupta, Additional Advocate General, with Mr. Y.S. Jadaun

For Respondent(s) :

**HON'BLE MR. JUSTICE MOHAMMAD RAFIQ
HON'BLE MR. JUSTICE GOVERDHAN BARDHAR**

Order

29/09/2018

For stated reasons, the delay in filing the appeal is condoned. D.B. Civil Miscellaneous Application No.781/2018 accordingly stands allowed.

Mr. S.K. Gupta, learned Additional Advocate General for the appellant-State, submits that this matter is squarely covered by the order dated 14.08.2018 passed by a coordinate bench of this court in D.B. Special Appeal (Writ) No.917/2018 - State of Rajasthan and Others Vs. Sandesh Gautam and prays that this appeal may also be disposed of in view thereof. The order dated 14.08.2018 reads thus:-

"1. Yet another case where writ petition filed has been disposed of on the very first date of listing without notice to the respondents.

2. On 29.07.2015 deciding D.B. Civil Writ Petition No.2963/2007 Gopal Kumawat v. State of Rajasthan & Others, it was held that employees in State of Rajasthan who are appointed against regular vacancies but kept on probation would be entitled to salary in the pay scale applicable and not consolidated salary.

3. Taking said decision as the fulcrum of the case, the respondent filed a writ petition pleading that she joined as a probationer on 30.03.2011. She pleaded that in spite of two years probation period being over she was still being paid consolidated salary. There are lose and laconic pleadings regarding the writ petitioner being on leave.

4. The roller coaster writ petition prayed that the writ petitioner should be paid wages as per the Division Bench judgment in Gopal Kumawat's case.

5. Various issues arose for consideration before the learned Single Judge. At the foremost was the leave repeatedly taken by the writ petitioner as pleaded by herself and she not being confirmed as a probationer. Entitlement to annual increments would flow with reference to the service rendered by the respondent, if the stand of the Department was that for periods she remained unauthorisedly absent she would not be entitled to be treated as in service for said periods. Of course, issue of application of the law laid in Gopal Kumawat's case also arose for consideration.

6. Under the circumstances, we dispose of the appeal setting aside the impugned order dated 02.05.2017. Writ petition filed by the respondent is restored for adjudication afresh by the learned Single Judge who shall grant appellants an opportunity to file their reply."

In the result, the appeal is disposed of. The order dated 02.11.2017 of learned Single Judge in S.B. Civil Writ Petition No.19393/2017 is set aside. Writ petition filed by the respondent

is restored for adjudication afresh by the learned Single Judge, who shall grant appellants an opportunity to file their reply.

This also disposes of stay application.

(GOVERDHAN BARDHAR),J

(MOHAMMAD RAFIQ),J

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RAJASTHAN HIGH COURT



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