

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

S.B. Civil Writ Petition No. 1313/1999

Deep Upadhyaya S/o Shri Shambhu Dayal Upadhyaya,
121/149, Vijay Path, Agarwal Farm, Mansarovar, Jaipur.

-----Petitioner

Versus

1. State Of Rajasthan Through Secretary To The Government, Department Of State Insurance And Gpf, Secretariat, Jaipur.
2. The Director, State Insurance And Gpf Department, Bani Park, Jaipur, Rajasthan.

-----Respondents

For Petitioner(s) : Mr. Virendra Dangi, Adv.

For Respondent(s) : Mr. Vivek Tyagi, DGC

HON'BLE DR. JUSTICE PUSHPENDRA SINGH BHATI

Judgment / Order

30/08/2019

1. Petitioner has preferred this writ petition seeking following reliefs:-

"(i) by an appropriate writ, order or direction quashing and setting aside the impugned order dated 19.2.1996 (Annexure-6) filed with the appeal and part of Exhibit-1 of this writ petition) issued by the respondent No.2.

(ii) by an appropriate writ, order or direction the respondents be directed to reinstate the services of the petitioner w.e.f. 25.4.1986 and to regularise his services from the date his juniors were regularised with all consequential benefits;

(iii) by an appropriate writ, order or direction the petitioner may also be awarded appropriate compensation in lieu of his undue harassment/victimisation and ruining of his entire family members, mental torture, agony and burden of heavy expenditure on account of so many innings of litigation imposed upon him by the respondents in violation of Art. 21 of the Constitution of India;

(iv) Heavy exemplary cost may be awarded in favour of the petitioner;

(v) any other appropriate order which may be found just and proper in the facts and circumstances of the case in favour of the petitioner may kindly be also passed."

2. Brief facts of the case as noticed by this Court are that the petitioner was appointed on daily wages basis as Lower Division Clerk with the respondent-department on 17/10/1984. He was removed from the job on 08/10/1985. He challenged the order of removal dated 08/10/1985 by filing SB Civil Writ Petition No.2276/1985 which was allowed and an order was passed in accordance with the order passed in earlier writ petition bearing SB Civil Writ Petition No.1720/1985 (Surendra Gyani & ors. Vs. State) in favour of the petitioner. The petitioner was reinstated on 24/02/1986 as LDC and paid full back wages. In 1986, the State filed DB Special Appeal (Writ) No.258/1986 against the judgment of learned Single Judge dated 10/01/1986. In the meanwhile, the petitioner was again removed from service on 25/04/1986 during pendency of the DB Special Appeal (Writ) No.258/1986. A DB Special Appeal (Writ) No.1720/1985 was filed by the State against the judgment passed in SB Civil Writ Petition No.1720/1985 in one Surendra Gyani's case which was partly allowed against which Surendra Kumar Gyani, Sunil Keshwani & ors. filed SLP before the Supreme Court wherein the Supreme Court vide order dated 03/09/1992 held that against 191 vacant posts of LDC, only 59 persons were working on daily wages and that the petitioners in that SLP be considered for appointment and regularization if possess requisite eligibility qualifications. The respondents thereafter issued notification on 12/10/1992 amending the Rajasthan Subordinate Offices Ministerial Staff Rules of 1957 whereby Rule 25(10) was added to the effect that from

01/01/1985 to 31/03/1990, all adhoc or daily wagers appointed will be regularized if they clear exam to be held within 3 years. Out of 3 attempts pursuant to which the respondents passed orders whereby all similarly situated persons including Surendra Gyani, Sunil Keshwani etc. were regularized and the other persons junior to the petitioner herein were retained and regularized. The DB Special Appeal (Writ) No.258/1986 of the State was decided on 21/07/1993 directing the State Government to give same relief to the petitioner as given to similarly situated persons like Surendra Gyani and Sunil Keshwani. The petitioner filed a contempt petition on 26/05/1994, bearing No.327/1994 where the respondents undertook that they shall make necessary compliance within a period of one week and thus, the contempt petition was disposed of. In pursuance of the undertaking, the petitioner was again appointed on daily wages on 09/09/1995. The petitioner was again removed w.e.f. 20/02/1996. He again moved a contempt petition bearing No.57/1996. The same removal order dated 19/02/1996 was also challenged by the similarly situated persons like Anil Kumar Sharma before the Rajasthan Civil Services Appellate Tribunal and the Tribunal stayed the removal order dt. 19/02/1996 qua Anil Kumar Sharma on 25/03/1996. The Tribunal finally allowed Anil Sharma's appeal No.174/1996 on 21/05/1996. Mr. Anil Sharma, though being junior to the petitioner, was given all the benefits. The similarly situated person Mr. Khangar Singh Chauhan also received the same benefits while challenging the same removal order dated 19/02/1996. The petitioner filed an appeal before the learned Service Tribunal. In the meanwhile, the Contempt Petition No.57/1996 was dismissed while holding that fresh cause of action has arisen. The

petitioner's appeal before the learned Service Tribunal was dismissed on 14/09/1998 on account of the fact that the learned Service Tribunal by then did not have jurisdiction in termination matters as per the precedent law. The petitioner, thus, preferred the instant writ petition.

3. Mr. Virendra Dangi, learned counsel for the petitioner submits that the petitioner was entitled to be regularized and given regular appointment at par with the others including Surendra Gyani initially and subsequently Anil Sharma and Khangar Singh Chauhan.

4. Learned counsel for the respondents vehemently opposed the submissions of learned counsel for the petitioner.

5. After hearing learned counsel for the parties and perusing the material available on record, this Court finds that the order passed by this Court in the matter of Surendra Gyani and the present petitioner was the same. This Court further takes note of the fact that the termination order dated 19/02/1996 was common to the order passed in the case of Anil Sharma and Khangar Singh Chauhan but they both joined back with the respondents as the order of learned Service Tribunal was in their favour. Mr. Khangar Singh Chauhan and Mr. Anil Sharma, being appointed subsequent to the petitioner, were regularized in 1996 itself. Initially Mr. Surendra Gyani and others were also extended all the benefits.

6. The over all conclusion of the litigation being contested by the petitioner since 1985 was that one after another he succeeded in the Courts but somehow the respondents avoided fruitful compliance of the decision of the Courts on some or the other pretext. At this juncture, on total examination of the matter, this

Court finds that the petitioner is entitled to be regularized at par with Mr. Surendra Gyani, Mr. Sunil Keshwani, Mr. Anil Sharma and Mr. Khangar Singh Chauhan but the same could not be done in the case of the petitioner. This Court, however, also finds that any reinstatement at this belated stage, would not be possible as this severance from service of the respondents has been for long time as the petitioner is out of duty since termination dated 19/02/1996. Moreover, the petitioner is near to superannuation age.

7. Thus, while partly allowing the writ petition, the respondents are directed to pay compensation to the petitioner in lieu of reinstatement of the petitioner to the tune of Rs.Two Lac alongwith interest at the rate of 6% per annum from the date of filing of the instant writ petition till the date of actual payment which shall be suffice to compensate the petitioner against severance and unlawful infringement of his rights on the part of the respondents. The compliance of this order be made by the respondents within three months of the receipt of certified copy of this order.

(PUSHPENDRA SINGH BHATI),J