

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

S.B. Civil Writ Petition No. 6654/2012

Sharwan Kumar

----Petitioner

Versus

State Panchayati Raj Depors

----Respondent

Connected With

S.B. Civil Writ Petition No. 6651/2012

Babulal Saini S/o Shri Gopal Lal Saini, R/o Govind Nagar, National Highway No. 12, Bundi Raj. Presently Working As Gram Sevak/paden Sachiv, Gram Panchayat Sahaspuria, Panchayat Samiti, Hindoli, District Bundi Raj.

----Petitioner

Versus

1. State Of Rajasthan Through Secretary, Panchayati Raj, Department, Rajasthan Secretariat, Jaipur Raj.
2. State Of Rajasthan Through Secretary, Irrigation, Sichai Bhawan, Jaipur Raj.
3. Chief Executive Officer, Zila Parishad Bundi Raj.
4. Block Development Officer, Panchayati Samiti, Hindoli, District Bundi Raj.

----Respondents

For Petitioner(s) : Mr. Shailesh Prakash Sharma

For Respondent(s) : Mr. Pradeep Kalwania

HON'BLE DR. JUSTICE PUSHPENDRA SINGH BHATI

Judgment / Order

30/08/2019

Learned counsel for the parties jointly submits that the controversy in question is covered by the judgment of this court in the matter of Rajkumar Agarwal Vs. State of Rajasthan & Ors. rendered in SBCWP No.5400/2015 decided on 12.04.2007.

Relevant portion of the judgment reads as under:-

"Heard the learned counsel for the parties and with their assistance perused the relevant materials available on record as well as gave my thoughtful consideration to the rival submissions at Bar.

Indisputably, the petitioner was appointed as 'Gram Sewak' under the Rules of 1969. It is also not in dispute that while the petitioner was absorbed in the service of Panchayati Raj Department as 'Gram Sewak', a contemplation in the order dated 23rd January, 2001, specifically protected his pay on the substantive post. Selection scales, after completion of 9, 18 and 27 years of service, were also accorded to the petitioner.

The pay of the petitioner according to the clarification is to be fixed in view of mandate of Rule 26 (1)(a)(ii). At this juncture, it is relevant to take note of text of Rule 26 of Rajasthan Service Rules, 1951, which reads thus:

"Rule 26. (1) A Government Servant already service in one service, cadre or department who is appointed to another service, cadre or department by direct recruitment or special selection, (including transfer other than by deputation) from one service, cadre or department to another and not by promotion according to service rules, shall have his initial pay fixed as follows :-

Category	Last pay on old post
----------	----------------------

(a) Substantive on a permanent post and not Officiating on a

Initial pay on new post

3

(a) Persons in category (a) shall have pay fixed as in the manner stated

higher post. below:- (I) if the maximum of the scale of the new post is higher than the maximum of the old post, then the maximum of the old post, then pay shall be fixed at the stage of the time scale of the new post next above the last substantive pay in the old post. (ii) If the maximum of the scale of the new post is equal to the maximum of the old post, or then pay shall be fixed at the stage of the time scale of the new post which is equal to his last substantive pay on the old post, if there is no such stage, the stage next below that pay plus personal pay equal to the difference. (iii) If the maximum of the scale of the new post is lower than the maximum of the old post, then the pay shall be fixed at the stage which he would have been entitled to as if the period of service rendered on the old post would have been counted as rendered against the new post, subject to the condition that the pay fixed shall be restricted to the pay drawn in the old post. (iv) if minimum pay on the new post is higher than pay admissible under clause (i), (ii) and (iii) above, then minimum pay shall be allowed. "

Rule 14 of the Rules of 1969, makes a provision for regulation of pay, increment, leave etc. of surplus employees, which reads thus:

"Regulation of pay, increment, leave etc. - The pay, increment, allowance and leave etc. of surplus employees during the period they remain surplus and on absorption shall be regulated by the provisions of the Rajasthan Service Rules and other relevant rules and orders issued from time to time."

A conjoint reading of the two rules, extracted herein above, would reflect that the case of the petitioner falls within the contemplation of Rule 26(1) under Clause(ii). A glance of Clause

(ii), would reveal that it deals with an eventuality wherein the maximum of the scales of the new post is equal to the maximum of the old post, which is not the case at hand. The stand of the petitioner that he was never given an option to opt for lower pay scales, is not in dispute, therefore, he cannot be deprived of the right accrued to him in view of specific contemplation under communication/order dated 23rd January, 2001, which specifically provided for protection of pay of the petitioner on the substantive post.

A glance of the clarification/instruction as referred to below Rule 38 of Rajasthan Civil Services Pension Rules, 1996, it would further reflect that the employee who is absorbed on a lower post owing to the abolition of the post held by him, said employee should be intimated of the pay being offered to him on his appointment to the new post as required by Clause (b) of the Rule. It is further provided that on abolishing of post, the permanent incumbent should, as far as possible, be absorbed on an equivalent post. It will be relevant to consider the text of instruction which reads thus:

"Rule 38 (1) of the Rajasthan Civil Services (Pension) Rules, 1996 provides that when a Government servant is selected for being absorbed on a lower post owing to the abolition of the post held by him, the employee should be intimated of the pay being offered to him on his appointment to the new post as required by Clause (b) of the said Rule. Instead of intimating the pay offered, the Government is moved for protection of pay the employee was last drawing

while holding the permanent post. It is to state that when a post is abolished, the permanent incumbent should as far as possible be absorbed on an equivalent post. On the principles laid down under Rule 26(a)(ii) of the Rajasthan Service Rules. In case where it is not possible to absorb an employee on an equivalent post, the employee should be given two options as mentioned in the said Rule namely (I) taking the compensation pension or gratuity to which he is entitled for the service already rendered or (ii) accepting another appointment on such pay as may be offered. In regard to the pay to be offered on the new post, since the employee does not retain any substantive pay on abolition of his permanent post, he will be treated a fresh employee for the purpose of initial fixation in the new post. The Government, can, however, fix his pay at a stage higher than the minimum of the pay scale but not exceeding the last pay drawn by the employee. This pay, however, would be further limited to the maximum of the scale of the new post to which he is appointed."

A glance of the instruction, as extracted herein above, would reflect that absorption of the employee on abolition of a post held by him, is to be made as far as possible on an equivalent post and on appointment on an equivalent post, pay is to be fixed on the principle as contemplated under Rule 26 (1) (a)(ii) of the Rajasthan Civil Services Rules, 1951.

In the case at hand, the petitioner was not absorbed on the equivalent post, and therefore, contemplation under order/communication dated 23rd January, 2001, for protection of pay was provided. The petitioner, accepting the contemplation of pay protection joined the post of 'Gram Sewak', with the Panchayati Raj Department. Hence, the case at hand falls within the contemplation of Clause (iii) of Rules 26 (1)(a).

In the case of M. M. Bhavsar (supra), in somewhat similar circumstances and factual matrix the option of the incumbent to lower category of post under the State with pay protection was not treated as waiver of protection of pay to which incumbent was entitled on the date of absorption. In the case at hand, the petitioner opted for absorption under the Panchayati Raj Department on the post of 'Gram Sewak' in the backdrop of a specific contemplation as to pay protection accorded to him vide order/communication dated 23rd January, 2001. That fact that the petitioner continued in the same protected pay scale

and retired attaining the age of superannuation on 30th September, 2016, is also not in dispute. Thus, while the petitioner was absorbed on the post of 'Gram Sewak' a post in lower pay scale but with pay protection, would not amount to his waiver of the protection of pay accorded by the State-respondents vide order dated 23rd January, 2001.

No other point was raised by the counsel for the parties for consideration of this Court.

For the reasons and discussion aforesaid, the writ application succeeds and is hereby allowed.

Impugned orders dated 20th October, 2010 (Annexure-5), and 9th March, 2012 (Annexure-8), qua the petitioner; are hereby quashed. As a consequence thereof, the petitioner would be entitled all consequential benefits.

No costs. "

In the light of the aforesaid submissions, present writ petition is disposed of in the light of the aforementioned terms. The petitioner shall be entitled to all the consequential retiral benefits within a period of two months from today.

(PUSHPENDRA SINGH BHATI),J

Sunita Kanwar /21-22

सत्यमेव जयते