

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

D.B. Special Appeal Writ No. 339/2020

1. The State Of Rajasthan, Through Additional Chief Secretary, Department Of Higher Education, Govt. Of Raj., Secretariat, Jaipur.
2. The Commissioner, College Education, Dr. Radha Krishnan Shiksha Sankul, J.I.n. Marg, Jaipur.

----Appellants

Versus

Smt. Usha Agrawal W/o Late Dr. Kamlesh Nandan Arya, Aged About 62 Years, R/o B-11, Girraj Colony, Inside Killa, Bharatpur.

----Respondent

Connected With

D.B. Special Appeal Writ No. 276/2020

1. State Of Rajasthan, Through The Additional Chief Secretary, Department Of Higher Education, Govt. Of Rajasthan, Secretariat, Jaipur.
2. The Commissioner, College Education, Dr. Radha Krishnan Shiksha Sankul, J.I.n. Marg, Jaipur.

----Appellants

Versus

Vijay Singh S/o Shri Ganesh Singh, Aged About 62 Years, R/o Pemasar Road, Udasar, Post Udasar, District Bikaner.

----Respondent

D.B. Special Appeal Writ No. 279/2020

1. State Of Rajasthan, Through The Additional Chief Secretary, Department Of Higher Education Govt. Of Rajasthan, Secretariat, Jaipur.
2. The Commissioner, College Education, Dr. Radha Krishnan Shiksha Sankul, J.I.n. Marg, Jaipur

----Appellants

Versus

Baldev Prasad Gupta S/o Shri Laxmi Narayan Gupta, R/o B-38, Hasan Khan Mewat Nagar, Alwar.

----Respondent

For Appellant(s) : Mr. Prakhar Gupta for Mr. Vibhuti
Bhushan Sharma, AAG

For Respondent(s) : Mr. Lokendra Singh Shekhawat

HON'BLE MR. JUSTICE GOVERDHAN BARDHAR
HON'BLE MR. JUSTICE PANKAJ BHANDARI

Judgment

31/03/2021

1. Heard on application under Section 5 of the Limitation Act for condonation of delay in filing of the appeals.
2. The application for condonation of delay is not opposed by counsel for the respondents, hence, delay is condoned.
3. State has preferred these appeals aggrieved by Order dated 01.04.2019, whereby the Writ Petitions were allowed and respondents-State was directed to count services of the petitioners rendered by them prior to their regular appointment for the purpose of senior selection scale and selection scale and the respondents were further directed not to insist for having the consistently good service record for the purpose of grant of benefit under the CAS, as the action of the respondents of possessing the consistently good service record not found tenable in view of non-communication of satisfactory remarks in APAR to the petitioners.
4. It is contended by counsel for the appellants that the issue with regard to break in service was raised before the learned Single Judge but the same was not dealt with in the impugned order. It is also contended that the APAR was communicated to the respondents but they have not submitted any representation to the State.
5. Counsel for the respondents has opposed the appeals. It is contended that the satisfactory remarks in the APAR was communicated to the respondents after filing of the Writ Petitions i.e. after more than thirty years. It is informed by counsel for the respondents that the service of the appellants has been counted

after the break in service and the respondent-Ushal Agarwal has been given the benefit according to the judgment of the learned Single Judge. Respondent-Usha Agarwal has also withdrawn the contempt petition filed by her upon satisfaction with the aforesaid compliance.

6. We have considered the contentions.

7. As far as the issue with regard to break in service is concerned, it is evident that the same was not dealt with by the learned Single Judge. However, it is informed that only the service period after the break in service has been counted and therefore, the question with regard to break in service loses its importance. As far as the present appeals are concerned, the other issue raised by counsel for the appellants is with regard to non-communication of satisfactory remarks in the APAR. It is evident that the satisfactory remarks in APAR was communicated after filing of the writ petitions i.e. after more than thirty years.

8. Counsel for the appellants has placed reliance on "**Prakash Chandra Sharma vs. the Oil and Natural Gas Commission & Ors.**" (1970) 4 SLR 116, "**Anil Kumar vs. Union of India & Ors.**" Civil Appeal No.888/2019 decided by the Apex Court on 21.01.2019 and "**Union of India vs. S.L. Meena & Ors.**" Special Leave Petition (Civil) Diary No(s).37463/2018 passed by the Apex Court on 12.11.2018, is still pending before the Apex Court.

9. Counsel for the respondents has placed reliance on "**Sukhdev Singh vs. Union of India & Ors.**" (2013) 9 SCC 566, wherein the Apex Court has held that every entry in ACR, whether poor, fair, average, good, very good or outstanding, should be communicated to concerned employee within a reasonable period.

10. Learned Single Judge has directed that the appellants should not insist for having consistent good service record for the purpose of grant of benefit under the CAS in view of non-communication of satisfactory remarks.

11. The Apex Court in Sukhdev Singh vs. Union of India (Supra) has specifically dealt with the issue and has held that the ACR needs to be communicated to the employees within a reasonable time. Since the APAR in this case has been communicated after the filing of the writ petitions i.e. after more than thirty years and now directing the respondents to submit the reply or representation would be a futile exercise, as the respondents have retired way back. It is also evident that since 1988, satisfactory remarks has been made the yardstick for grant of senior/selection scale and respondents herein have satisfactory remarks in addition to good and outstanding, they have no adverse remarks in their entire career, hence, we do not find any force in the present appeals.

12. Accordingly, Special Appeals Writs are dismissed.

13. However, it is made clear that the judgment passed by this Court would not have any adverse effect on the litigation pending before other Courts and would only apply to the facts of this instant special appeal writ alone.

14. Stay application stands disposed.

15. A copy of this order be placed in connected file.

(PANKAJ BHANDARI),J

(GOVERDHAN BARDHAR),J