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Abdul Hamid v. State of Rajasthan, (Rajasthan)(Jaipur Bench) : Law Finder Doc Id # 821318

[2016\(2\) WLC \(Raj.\)\(UC\) 622](#)

RAJASTHAN HIGH COURT

(Jaipur Bench)

Before:-[Mr. M.N. Bhandari, J.](#)

S.B. Civil Writ Petition No. 5628 of 2016. D/d. 11.7.2016.

Abdul Hamid - Petitioner

Versus

State of Rajasthan & Ors. - Respondents

S.B. Civil Writ Petition No. 13780 of 2015.

Lal Chand Sharma - Petitioner

Versus

State of Rajasthan & Ors. - Respondents

S.B. Civil Writ Petition No. 13915 of 2014.

Bhawani Shankar Saini & Ors. - Petitioners

Versus

State of Rajasthan & Ors. - Respondents

S.B. Civil Writ Petition No. 707 of 2015.

Pyare Lal Sharma & Anr. - Petitioners

Versus

State of Rajasthan & Ors. - Respondents

S.B. Civil Writ Petition No. 7140 of 2016.

Bhagwan Sahai Koli - Petitioner

Versus

State of Rajasthan & Ors. - Respondents

S.B. Civil Writ Petition No. 4467 of 2016.

Chhotu Ram Meena - Petitioner

Versus

State of Rajasthan & Ors. - Respondents

S.B. Civil Writ Petition No. 868 of 2016.

Jeevan Ram - Petitioner

Versus

State of Rajasthan & Ors. - Respondents

S.B. Civil Writ Petition No. 2569 of 2016.

Jagmohan - Petitioner

Versus

State of Rajasthan & Ors. - Respondents

S.B. Civil Writ Petition No. 2584 of 2016.

Pooran Chand - Petitioner

Versus

State of Rajasthan & Ors. - Respondents

S.B. Civil Writ Petition No. 2585 of 2016.

Shankar Singh - Petitioner

Versus

State of Rajasthan & Ors. - Respondents

S.B. Civil Writ Petition No. 2597 of 2016.

Ramchandra Sharma - Petitioner

Versus

State of Rajasthan & Ors. - Respondents

S.B. Civil Writ Petition No. 2598 of 2016.

Shrawan Lal - Petitioner

Versus

State of Rajasthan & Ors. - Respondents

S.B. Civil Writ Petition No. 2617 of 2016.

Bacchu Lal Sharma - Petitioner

Versus

State of Rajasthan & Ors. - Respondents

S.B. Civil Writ Petition No. 3146 of 2016.

Smt. Nirmala Devi - Petitioner

Versus

State of Rajasthan & Ors. - Respondents

S.B. Civil Writ Petition No. 3198 of 2016.

Surya Narayan Yogi - Petitioner

Versus

State of Rajasthan & Ors. - Respondents

S.B. Civil Writ Petition No. 4090 of 2016.

Udai Singh Rawat - Petitioner

Versus

State of Rajasthan & Ors. - Respondents

S.B. Civil Writ Petition No. 4091 of 2016.

Rajendra Singh - Petitioner

Versus

State of Rajasthan & Ors. - Respondents

S.B. Civil Writ Petition No. 4092 of 2016.

Mool Singh - Petitioner

Versus

State of Rajasthan & Ors. - Respondents

S.B. Civil Writ Petition No. 4093 of 2016.

Indrajeet Singh - Petitioner

Versus

State of Rajasthan & Ors. - Respondents

S.B. Civil Writ Petition No. 4094 of 2016.

Jai Singh Verma - Petitioner

Versus

State of Rajasthan & Ors. - Respondents

S.B. Civil Writ Petition No. 4166 of 2016.

Shankar Singh Rawat - Petitioner

Versus

State of Rajasthan & Ors. - Respondents

S.B. Civil Writ Petition No. 4306 of 2016.

Ramesh Chand Meena - Petitioner

Versus

State of Rajasthan & Ors. - Respondents

S.B. Civil Writ Petition No. 4307 of 2016.

Makbool Khan - Petitioner

Versus

State of Rajasthan & Ors. - Respondents

S.B. Civil Writ Petition No. 4308 of 2016.

Keshav Dev Sharma - Petitioner

Versus

State of Rajasthan & Ors. - Respondents

S.B. Civil Writ Petition No. 4324 of 2016.

Rakesh Kumar Saini - Petitioner

Versus

State of Rajasthan & Ors. - Respondents

S.B. Civil Writ Petition No. 4361 of 2016.

Jai Kishan Meena - Petitioner

Versus

State of Rajasthan & Ors. - Respondents

S.B. Civil Writ Petition No. 4362 of 2016.

Genda Lal - Petitioner

Versus

State of Rajasthan & Ors. - Respondents

S.B. Civil Writ Petition No. 4374 of 2016.

Gopal Meena - Petitioner

Versus

State of Rajasthan & Ors. - Respondents

S.B. Civil Writ Petition No. 4375 of 2016.

Hanuman Sahai Sharma - Petitioner

Versus

State of Rajasthan & Ors. - Respondents

S.B. Civil Writ Petition No. 4376 of 2016.

Harbaksh Meena - Petitioner

Versus

State of Rajasthan & Ors. - Respondents

S.B. Civil Writ Petition No. 4377 of 2016.

Madan Gopal - Petitioner

Versus

State of Rajasthan & Ors. - Respondents

S.B. Civil Writ Petition No. 4553 of 2016.

Rajesh Kumar Khatik - Petitioner

Versus

State of Rajasthan & Ors. - Respondents

S.B. Civil Writ Petition No. 5222 of 2016.

Bhagwan Sahai - Petitioner

Versus

State of Rajasthan & Ors. - Respondents

S.B. Civil Writ Petition No. 5236 of 2016.

Bansi Lal - Petitioner

Versus

State of Rajasthan & Ors. - Respondents

S.B. Civil Writ Petition No. 5244 of 2016.

Chhotu Lal Koli - Petitioner

Versus

State of Rajasthan & Ors. - Respondents

S.B. Civil Writ Petition No. 5260 of 2016.

Padam Singh - Petitioner

Versus

State of Rajasthan & Ors. - Respondents

S.B. Civil Writ Petition No. 5676 of 2016.

Prem Prakash - Petitioner

Versus

State of Rajasthan & Ors. - Respondents

S.B. Civil Writ Petition No. 5677 of 2016.

Hanuman Prasad Meena - Petitioner

Versus

State of Rajasthan & Ors. - Respondents

S.B. Civil Writ Petition No. 6858 of 2016.

Ladu - Petitioner

Versus

State of Rajasthan & Ors. - Respondents

S.B. Civil Writ Petition No. 6859 of 2016.

Ram Sahai Shreemal - Petitioner

Versus

State of Rajasthan & Ors. - Respondents

S.B. Civil Writ Petition No. 6860 of 2016.

Ramji Lal - Petitioner

Versus

State of Rajasthan & Ors. - Respondents

S.B. Civil Writ Petition No. 6861 of 2016.

Ram Gopal Dhanka - Petitioner

Versus

State of Rajasthan & Ors. - Respondents

For the Petitioners :- Mr. **C . P . Sharma** and Mr. Manoj Pareek, Advocates.

For the State :- Mr. Saurabh Saraswat, Dy Government Counsel.

Service - Circular dated 25.11.1992 and 17.2.1998 - Directions sought for higher pay scale on grant of selection grade - If the Government do not grant higher pay scale then prescription of selection grade shall be of no consequence - Prescription of same pay scale on completion of 9, 18 or 27 years of service as a matter of fact is an illusory benefit and that is not at all grant of selection grade with the spirit of the Circulars/Notifications dated 25.01.1992 and 17.02.1998 - Respondents are directed to give higher pay scale on grant of selection scale in the similar manner as has been directed by this court in earlier cases - Petition allowed - [S.B. Civil Writ Petition No. 3631/2008 decided on 17.11.2008 and S.B. Civil Writ Petition No. 2156/2007 decided on 5.9.2008, Followed].

[Paras [7](#), [9](#) and [10](#)]

Cases Referred :-

Sharvan Kumar v. State of Rajasthan, S.B. Civil Writ Petition No. 2156 of 2007, decided on 5.9.2008.

Sohanlal Mathur v. State of Rajasthan, S.B. Civil Writ Petition No. 3631 of 2008, decided on 17.11.2008.

ORDER

Mr. M.N. Bhandari, J. - Since common questions of facts and law are involved in these writ petitions, they were heard together and are being decided by this common judgment. By these writ petitions, a direction is sought for higher pay scale on grant of selection scale.

2. Learned counsel for petitioners submit that State of Rajasthan issued circular on 25.1.1992 to provide benefit of selection scale if one is not given promotion during his service career. It is to remove stagnation. The said circular was superseded by the circular dated 17.2.1998. The petitioners herein were given benefit of selection scale. On completion of 9, 18 and 27 years of service, as the case may be, the respondents allowed selection scale but by keeping the petitioners in the same pay scale itself. In view of above, petitioners stagnated on the same pay scale, whereas, promotion or selection scale should entitle an employee to get higher pay scale. The prayer is accordingly made to direct the respondents to allow higher pay scale of Rs.5000-8000 (1400-2600) to the petitioners on grant of selection scale. Reference of various judgments of this court has been given.

3. Shri Saurabh Saraswat, learned Deputy Government Counsel appearing for respondents, argued that the Rules and the Circulars dated 25.01.1992 and 17.02.1998 need to be given interpretation in their true spirit. The benefit of selection scales on completion of 9, 18 and 27 years of service has rightly been given to the respondents in terms of Circulars dated 25.01.1992 and 17.02.1998. A bare perusal of the Circulars clearly reveals that the benefit of first selection grade shall be given to the employees in the pay scale of next promotional post, second selection grade shall be given to the employee in the pay scale of second promotional post and benefit of third selection grade shall be given in the pay scale of third promotional post. Meaning thereby, the pay scale may be higher or lower or equal depending on the pay scale of promotional post. It is according to para 4 of the Circulars dated 25.01.1992 and 17.02.1998. The respondents are working on the post, which carry promotion channel, therefore, they are governed by Para 4 of the Circulars dated 25.01.1992 and 17.02.1998. According to the provisions of both the Circulars, the respondents are not entitled to get the benefit of the Table given in para 5 of the Circulars because the pay scale given in Table of para 5 is meant for, if one is not in possession of the required qualification of promotional post or is a case of isolated post.

4. Learned Deputy Government Counsel argued that there is no bar in the rule for fixing in the same pay scale on promotion or on grant of selection scale. Looking to the difficulties being faced by the employee in such circumstances, the rule making authority enacted rule 26A for meeting out injustice in regard to same pay scale. In case the promotional post carries same pay scale then employee is given one advance grade increment of the pay scale. It is mentioned in para 12 of the Circular dated 17.02.1998. Para 5 of the Circular dated 17.02.1998 would not be applicable because the pay scales given in the Table are meant for isolated posts etc. The respondents have complied the Circulars dated 25.01.1992 and 17.02.1998 in letter and spirit and the said Circulars have not been challenged by petitioners.

5. Learned Deputy Government Counsel further argued that Para 12 of the Circular dated 17.02.1998 provides that in case an employee, who gets his regular promotion after getting selection grade, which may be identical or lower than the pay scale of promotional post, his pay shall be fixed in accordance with provisions of Note 4 to Rule 26A of the Rajasthan Service Rules. In case the promotional post carries the same pay scale, then benefit of Rule 26A of the RSR is given to the employee. The respondents are duty bound to comply with the provisions of the Circulars and no order be passed contrary to the said Circulars as the same have not been quashed by the court. It is contended that there are two types of posts. One category is of general posts and second category is of isolated posts. General posts are those which carry promotion channel and are governed by Para 4 of the Circulars dated 25.01.1992 and 17.02.1998, whereas isolated posts carry no promotional channel and

therefore, they are governed by Table of Para 5 of said Circulars. In the case of "**Sohanlal Mathur v. State of Rajasthan**", **S.B. Civil Writ Petition No. 3631/2008, decided on 17.11.2008** at Principal Seat, Jodhpur, Table given in Para 5 of the Circular dated 17.02.1998, has wrongly been applied.

6. I have considered rival submissions of the parties and perused the record.

7. Although, it may be true that the Supreme Court, while dismissing the SLP filed by the State in the case of Sohanlal Mathur (supra) had left the question of law open but what is being argued before this court, cannot be said to be purely a question of law. It is common knowledge that the scheme/policy for grant of selection scales to the employees of the State Government and its instrumentalities was introduced with a view to remove stagnation faced by members of the ministerial/subordinate services. Due to non-grant of timely promotion and if the Government, while granting selection scale, does not grant higher pay scale, then prescription of selection grade, as rightly held by this court in the case of "**Sharvan Kumar v. State of Rajasthan & ors**", **S.B. Civil Writ Petition No. 2156/2007, decided on 5.9.2008**, shall be of no consequence. The grant of same pay scale on selection scale would be illusory being contrary to the spirit of the scheme. Para 4(i) of the Circular dated 25.01.1992, which is reiterated in Circular dated 17.02.1998, provided that first selection grade, whenever admissible in terms of the said order, shall be the pay of promotional post in the same service/cadre. It further provided that in case there is no promotional post in the same service/cadre or the employee does not possess the academic qualification prescribed for promotion, the selection scale shall be the pay scale corresponding to his pay scale specified in para 5.

8. Learned Deputy Government Counsel for respondents argued that similar provisions are contained in para 4(i) of the Circular dated 17.02.1998 and the Table of the pay scales available in para 5 of the Circular would be applicable to only isolated posts having no avenue of promotion but that argument is not commensurate with the very language of the aforesaid para 4(i). It envisages other categories as well, namely, when there is no promotional post or where employee does not possess requisite qualification for the promotion. While keeping in view these facts, para 5 of the Circular dated 25.01.1992 as also Circular dated 17.02.1998 would apply. Para 5 of the Circular dated 17.02.1998 indeed provides selection grades when there is no promotional post or the employee does not possess academic qualification prescribed for promotion.

9. This court in Sharvan Kumar and Sohanlal Mathur (supra) has decided the same question in terms that if the Government do not grant higher pay scale then prescription of selection grade shall be of no consequence. Prescription of same pay scale on completion of 9, 18 or 27 years of service as a matter of fact is an illusory benefit and that is not at all grant of selection grade with the spirit of the Circulars/Notifications dated 25.01.1992 and 17.02.1998. This purposive interpretation of para 4 and 5 of the said Circulars has been approved not only by the Division Bench in above referred cases but also by the Supreme Court. This does not involve any question of law and therefore the contention that judgment in Sohanlal Mathur (supra) has not been decided on correct perspective and the matter should be reopened all over again to be decided afresh, cannot be accepted. This court is informed that the department has made compliance of similar judgments in the case of several employees and therefore, cannot seek to create two classes of employees of the very same Department of the State, who are otherwise similarly situate.

10. In view of aforesaid, all the writ petitions are allowed. The respondents are directed to give higher pay scale on grant of selection scale in the similar manner as has been directed by this court in the cases of Sohanlal Mathur and Sharvan Kumar (supra). The petitioners would accordingly be entitled to the higher pay scale instead of same pay scale on grant of selection scale. The compliance of the order be made within three months from the date of

receipt of copy of this order.

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

All writ petition allowed.

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