

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Writ Petition No. 3189/2014

Abdul Hamid S/o Abdul Kadir, R/o Near Ishakiya School,
Jodhpur.

----Petitioner

Versus

1. The State of Rajasthan through Secretary, Public Health & Engineering Department (PHED), Government of Rajasthan, Jaipur (Rajasthan).
2. The Chief Engineer (Rural), Public Health & Engineering Department, Government of Rajasthan, Jaipur (Rajasthan).
3. The Chief Engineer, Public Health & Engineering Department, (Administrative), Government of Rajasthan, Jaipur (Rajasthan).
4. Superintending Engineer, Public Health & Engineering Department, District Circle, Jodhpur (Rajasthan).
5. Executive Engineer, Public Health & Engineering Department, District-II, Jodhpur (Rajasthan).

----Respondents

For Petitioner(s) : Dr. Rakesh Sinha.

For Respondent(s) : Mr. P.S. Chundawat, Govt. Counsel.

HON'BLE MR. JUSTICE ARUN MONGA**Order (Oral)****02/12/2024**

1. The petitioner has filed this petition before the Court, seeking directions to the respondents to regularize his services from the date of joining, i.e., 18.12.1989, instead of 16.01.1992, on the post of Lower Division Clerk (LDC). The petitioner also seeks all consequential benefits from the initial date of joining, 18.12.1989, as per the provisions of Rule 7 of the Rajasthan Subordinate (Ministerial & Establishment) Services Rules, 1957 (hereinafter referred to as "the Rules of 1957").



2. Facts of the Case (as stated in the petition):

2.1. The petitioner was initially appointed on daily wages on 15.10.1982 and has since been working as a Typist in the office of the Executive Engineer, PHED, District-II, Jodhpur (respondent No.5).

2.2. Since his initial appointment, the petitioner has been continuously working as a Typist. He filed a writ petition (SBCWP No. 1822/2003) seeking regularization on the post of LDC/Typist pursuant to the notification dated 18.12.1989. This Court allowed the petition on 16.12.2003, directing the respondents to regularize the petitioner's services as LDC in accordance with the amended rules of the notification dated 18.12.1989, within three months.

2.3. Aggrieved by the said order, the respondent department filed Special Appeal No. 23/2005 (State vs. Abdul Hamid), which was dismissed by this Court on 28.01.2005.

2.4. Subsequently, the respondent department preferred SLP No.1023/2006 before the Hon'ble Supreme Court. However, the SLP was withdrawn, with liberty to file a review petition before the High Court. The review petition was dismissed on 05.10.2009.

2.5. In compliance with the notification dated 18.12.1989, the petitioner was appointed as LDC by order dated 13.01.2005, issued by the Chief Engineer, PHED (Rural), Jaipur, with effect from 16.01.1992. The appointment was subject to the condition that the petitioner must pass the typewriting test within one year, failing which he would not be entitled to the benefits of the LDC post.

2.6. The petitioner successfully passed the typewriting test, as declared by the respondents in their order dated 12.01.2006.



2.7. The petitioner submitted a representation on 20.10.2009, stating that his counterparts, who were similarly regularized, were granted appointments effective from the notification date (18.12.1989), whereas he was denied the same benefit.

2.8. The petitioner argued that the order dated 13.01.2005 was baseless and contrary to this Court's judgment dated 16.12.2003. He asserted that there was no justification for denying him regularization from 18.12.1989, especially since similarly situated employees were regularized from that date.

2.9. Hence, the present petition.

3. Respondents' stand:

3.1. The respondents would submit that the order dated 16.12.2003 was duly complied with, and the petitioner's services were regularized as LDC under Rule 7 of the Rules of 1957, as amended by the notification dated 18.12.1989.

3.2. The respondents further contend that the petitioner acknowledged receipt of all benefits in compliance with the order dated 16.12.2003 through a letter dated 29.07.2005.

3.3. It was also submitted that the petitioner's counterparts were initially appointed as daily wage typists through the employment exchange, whereas the petitioner was not engaged for similar work. Since the petitioner had already been granted all benefits pursuant to the Court's earlier order and had acknowledged the same, the present writ petition is unwarranted and deserves to be dismissed.

4. In the aforesaid backdrop, I have heard learned counsel for the petitioner as well as learned counsel for the respondents and have gone through the case file.



5. At the very outset, it is a conceded position that the petitioner was appointed as LDC in terms of Notification dated 18.12.1989 vide an office order dated 13.01.2005 (Annex.2). Grievance of the petitioner is that while his counterparts who were also given the benefit of regularization were issued appointment letters with effect from the date of notification i.e. 18.12.1989 the petitioner has not been given the same benefit.

6. In para No.9 of the petition, following specific averments have been made in the petition:-

“9. That it is very strange that compliance was not made according to the notification dated 18.12.1989 similar situation persons like:-

1. *Shri Suresh Janagal*
2. *Shri Parmeshwar Sen*
3. *Shri Kamal Singh*

were given appoint w.e.f. 21.12.1989 and one Madan Lal Choudhary case is squarely covered by the petitioner, relief was given from dt. 21.12.1989. Earlier the relief given from 24.01.1992, later on relief given w.e.f. 21.12.1989 on exact copy of the order ated 21.02.2007 is enclosed herewith & marked as Annexure 4.”

7. Apropos, in the counter affidavit, in corresponding para 9, following stand has been taken:-

“9. That the averments made in para no. 9 of the writ petition are not admitted in the manner stated by the petitioner. It is submitted that the compliance was made accordingly to the order passed by the Hon'ble Court on 16.12.2003 with the following order “The controversy involved in the instant case is squarely covered by the decision of the co-ordinate Bench of this Court in Lalit Singh Vs. State of Rajasthan & Ors. WLR 1992 Raj. 351. Consequently the writ petition is allowed and the respondents are directed to regularize the services of the petitioner on the post of Lower Division Clerk in pursuance of the rules as amended by Notification dated 18.12.1989 within a period of 3 months from today.”



*In compliance of said order, Lalit Singh and Nagaram benefited from 16.01.1992. A copy of the office order of appointment of Lalit Singh and Nagaram Choudhary on the post of LDC is annexed herewith and marked as **Annexure-R/1**. Petitioner also gave letter on 29.05.2007 stating that he received all the benefits in compliance of order passed by Hon'ble Court on 16.12.2003 in S.B. Civil Writ Petition No. 1822/2003 'Abdul Hamit Vs. State'. A copy of the letter dated 29.05.2007 is submitted herewith and marked as **Annexure-R/2**. The answering respondents are also placing on record the copy of judgment passed by the Hon'ble High Court in the case of Lalit Singh Vs State of Rajasthan & Ors. S.B. CWP No. 2014/1997 and Naga Ram Choudhary Vs. State of Rajasthan & Ors. WLR 1992 Raj. 351 as **Annexure-R/3**.*

*It is further submitted that in the matter of Suresh Janwal, Parmeshwr Sen and Kamal Singh, they were initially appointed as daily wages typist through employment exchange @ Rs. 15/ per day whereas, Abdul Hamit was not engaged for same nature of work, therefore, the petitioner cannot claim parity. Copies of appointments orders of Suresh Janwal, Parmeshwar Sen and Kamal Singh are submitted herewith and marked as **Annexure-R/4**. It is respectfully submitted that case of Madan Lal Choudhary is covered under "Samvilikaran" whereas, the case of petitioner is squarely covered by the case of Naga Ram Choudhary and Lalit Singh (Supra)."*

8. A reading of the aforesaid stand leaves no manner of doubt that the contents of para 9 of the petition have been denied for the mere sake of it. Reading of para 9 of the counter affidavit, in its entirety, clearly reflects that there is an admission, though of course, a tacit one, on the part of the respondents that the counterparts of the petitioner were indeed assigned the date of regularization prior to the petitioner, based on the same very notification dated 18.12.1989.

9. At the very thresh hold, I am of the opinion that petitioner is entitled to equal treatment under the notification dated 18.12.1989, which regularized other employees in similar



circumstances. The petitioner's counterparts were granted regularization benefits effective from 18.12.1989, and denying the same to the petitioner constitutes a violation of the principle of equality guaranteed under Article 14 of the Constitution.

10. Moreover, the petitioner's earlier writ petition (SBCWP No. 1822/2003) was allowed, and subsequent appeals and review petitions by the respondent department were dismissed. The Court's order directed regularization in accordance with the notification dated 18.12.1989. Failure to implement the same undermines the administrative propriety. Especially, when other employees such as Suresh Janagal, Parmeshwar Sen, and Kamal Singh were regularized with effect from 18.12.1989. Given that the petitioner is similarly placed and has satisfied the requisite conditions, including passing the type test, he is entitled to the same treatment.

10.1. The principle of equity warrants equal treatment for employees in comparable situations. However, the respondents appointed the petitioner as LDC effective from 16.01.1992, creating an arbitrary distinction without reasonable justification. This action amounts to hostile discrimination. Notably, the respondents admitted that counterparts were regularized under the same notification. Their argument that the petitioner's initial work on daily wages differs is irrelevant once the conditions for regularization were fulfilled. Denying regularization from the correct date infringes on the petitioner's rights to equal pay for equal work and protection under Articles 14 and 16 of the Constitution, which ensure equality before the law and prohibit discrimination in employment.



11. Qua the petitioner's letter dated 29.07.2005, which acknowledged receipt of benefits, the same does not negate the Court's directive for compliance with the notification dated 18.12.1989. Petitioner's acknowledgment pertains only to immediate compliance and does not waive claims for retrospective benefits.

12. As an upshot, I see no reason as to why the petitioner should be meted out with the hostile discrimination without any reasonable basis.

13. Accordingly, the petition is allowed. Respondents are directed to consider the case of the petitioner on parity with the counterparts in terms of the Notification dated 18.12.1989 within a period of two months from his approaching them with web print of the instant order, by according him the same date of regularization i.e. 18.12.1989, with consequences to follow.

14. All pending application(s), if any, stands disposed of accordingly.

(ARUN MONGA),J

159-A.K. Chouhan/Mohan/-

Whether Fit for Reporting – Yes / No