



[2024:RJ-JD:36474]

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

S.B. Civil Writ Petition No. 11875/2023

Gauri Shankar Jinger S/o Late Shri Chandra Ratan Jinger, Aged About 42 Years, R/o 32-E-141, Behind Vivekanand School, Jai Narain Vyas Colony, Bikaner (Raj)

----Petitioner

Versus

1. State Of Rajasthan, Through The Principal Secretary, Higher Education Department, Government Of Rajasthan, Jaipur.
2. The Commissioner, College Education Department, Government Of Rajasthan, Jaipur
3. The Joint Director, College Education Department, Government Of Rajasthan, Jaipur
4. The Secretary, Rajasthan Public Service Commission, Ajmer.
5. Jhanwar Ram S/o Shri Mehraj Ram, Aged About 40 Years, R/o Outside Bhawami Pole, Opposite Ramdev Temple, Jatawas, Pokaran, District Jaisalmer (Raj)

----Respondents

Connected With

S.B. Civil Writ Petition No. 610/2023

Jhanwar Ram S/o Shri Mehraj Ram, Aged About 40 Years, R/o Outside Bhawani Pole, Opposite Ramdev Temple, Jatawas, Pokaran, District Jaisalmer.

----Petitioner

Versus

1. The State Of Rajasthan, Through The Principal Secretary, Higher Education Department, Government Of Rajasthan, Jaipur.
2. The Commissioner, College Education Department, Government Of Rajasthan, Jaipur.
3. The Joint Director, College Education Department, Government Of Rajasthan, Jaipur.
4. The Secretary, Rajasthan Public Service Commission, Ajmer.
5. Gauri Shankar Jinger S/o Late Shri Chandra Ratan Jinger,



Aged About 42 Years, R/o 3-E-141, Behind Vivekanand School, Jai Narain Vyas Colony, Bikaner.

----Respondents

For Petitioner(s) : Ms. Varsha Bissa
Mr. Prakash Vyas
For Respondent(s) : Mr. Pukhraj Suthar, DGC
Mr. Falgun Buch
Mr. Gopalkrishna Chhangani
Ms. Simram Mehta



HON'BLE MR. JUSTICE VINIT KUMAR MATHUR

Order

REPORTABLE

03/09/2024

1. Heard learned counsel for the parties.
2. Since both the writ petitions arise out of similar facts having implication on each other, therefore, they are being heard and decided by this common order.
3. Briefly, the facts giving rise to the present writ petitions are that petitioner-Gauri Shankar Jinger, considering himself eligible in all respects, applied for the post of College Lecturer (Philosophy) in pursuance of the Advertisement issued by the respondents on 12.01.2015. The candidature of the petitioner-Gauri Shankar Jinger was considered and since he was not meeting the criteria of 'good academic record' as per the stipulations made in the Advertisement dated 12.01.2015, his candidature was not favourably considered and, therefore, he was not selected on the post of College Lecturer (Philosophy).
4. It is noted that the parameters and applicability of the 'good academic record' was under consideration before this Court in a



bunch of writ petitions led by *S.B. Civil Writ Petition No.7545/2014 "Lalit Kumar Vs. The University Grants Commission & Ors.* While the litigation was pending consideration before this Court as well as the Hon'ble Supreme Court, the State Government issued a Notification on 13.07.2021, wherein it was held that as per Regulation, 2010 of the University Grants Commission, the relaxation of 5% shall be given to the SC/ST and PH Category candidates for consideration of their cases towards 'good academic record'. The embargo of consideration of 5% relaxation towards 'good academic record' only in the post-graduation was waived/mellowed down by this Notification dated 13.07.2021. In the wake of the Notification dated 13.07.2021, the case of the petitioner was reconsidered by the respondent-RPSC and the petitioner was placed at Sr. No.6-A and was recommended for appointment by the State Government vide letter/order 30.09.2022 (Annex.11).

5. In pursuance of the order dated 30.09.2022, the petitioner-Gauri Shankar Jinger was called for Counselling and Document Verification and it was decided that the petitioner-Gauri Shankar Jinger may be granted appointment on the post of College Lecturer (Philosophy). As a natural consequence of the order having been passed in favour of the petitioner-Gaur Shankar Jinger, the petitioner-Jhanwar Ram (petitioner in the connected writ petition bearing No.610/2023) was issued a Show Cause Notice on 28.12.2022 as he was the last candidate in the select list for appointment on the post of College Lecturer. In these circumstances, the petitioner-Jhanwar Ram approached this Court by way of filing a writ petition and the co-ordinate Bench of this



Court issued notices and stayed further proceedings of the Show Cause Notice dated 28.12.2022. Thus, the petitioner-Jhanwar Ram continued to serve the respondents on the post of College Lecturer (Philosophy). Though the petitioner-Jhanwar Ram was given Show Cause Notice for dispensing with his services, but the petitioner-Gauri Shankar Jinger has not been given appointment by the respondents, therefore, petitioner-Gauri Shankar Jinger approached this Court by way of filing the present writ petition.

6. Mr. Buch, learned counsel for the petitioner-Gauri Shankar Jinger submits that in light of the State Government's order dated 13.07.2021 and the recommendations of the RPSC dated 30.09.2022, the petitioner-Gauri Shankar Jinger is required to be given appointment on the post of College Lecturer in subject Philosophy as he is meeting all the criteria laid down by the respondents. He, therefore prays that the respondents may be directed to immediately issue appointment order in favour of the petitioner-Gauri Shankar Jinger.

7. On the other hand, Ms. Bissa, learned counsel for the petitioner-Jhanwar Ram submits that the petitioner has not misrepresented before the respondents as he was duly selected in the selection process undertaken by the respondent-Department. As a natural consequence, he was appointed as College Lecturer (Philosophy) and is rendering his services from the date of his appointment till date. She submits that since the respondents are having a number of posts lying vacant in the Department, therefore, the services of the petitioner-Jhanwar Ram should not be dispensed with in light of the judgment passed by this Court in a bunch of writ petitions led by **S.B. Civil Writ Petition**



No.8951/2022 "Neeraj Kumari Meena Vs. State of Rajasthan & Ors." decided on 07.12.2023. She, therefore, prays that the writ petition preferred by the petitioner-Jhanwar Ram may be allowed and the appointment given to him may be protected and he may be allowed to continue on the post of College Lecturer.

8. Considering the rival contentions, this Court on 07.08.2024 directed the learned State Counsel to file an Additional Affidavit with respect to availability of vacant posts of College Lecturer (Philosophy) in the respondent-Department.

9. In pursuance of the directions issued by this Court, an Additional Affidavit has been filed by the respondent-State reflecting the position that 17 posts of Lecturer (Philosophy) are lying vacant with the respondent-Department, out of which, a requisition was sent to the RPSC in the year 2022 for selections on 11 posts and the process of selection is still being carried out by the recruiting agency i.e. RPSC.

10. In these circumstances, the learned State Counsel submits that although there is no fault on the part of the petitioners but the State is under an obligation to give Show Cause Notice to the petitioner-Jhanwar Ram for making way for appointment of petitioner-Gauri Shankar Jinger in light of the developments as narrated in the preceding paras. Learned State Counsel very fairly submits that petitioner-Jhanwar Ram has not misrepresented any fact and since he was falling in the merit list, therefore, on the recommendations made by the RPSC, he was given appointment. Learned State Counsel submits that as per his instructions and the



Additional Affidavit filed, vacancies of College Lecturer (Philosophy) are still available with the respondent-Department.

11. I have considered the submissions made at the Bar and have gone through the relevant record of the case.

12. The chronology of events narrated above very clearly show that the petitioner-Jhanwar Ram was selected by the RPSC and was recommended for appointment on the post of Lecturer (Philosophy) in pursuance of the Advertisement issued by the respondents on 12.01.2015 and after his appointment, he is discharging the duties as such to the utmost satisfaction of the respondents. By efflux of events, the State Government has changed the criteria for consideration of 'good academic record' vide their letter dated 13.07.2021 and in furtherance thereof, the candidature of the petitioner-Gauri Shankar Jinger was favourably considered and he was recommended for appointment on the post of College Lecturer (Philosophy) by the RPSC. Since the case of the petitioner-Gauri Shankar Jinger has been recommended for appointment, the State is under an obligation to give him appointment as he is meeting all the eligible criteria for the post of College Lecturer (Philosophy).

13. Considering the fact that the petitioner-Jhanwar Ram has served the respondent-Department for a pretty long time now, though under the interim orders passed by this Court, the services of petitioner-Jhanwar Ram can be continued in light of the judgment rendered by this Court in the case of Neeraj Kumari Meena (supra), wherein the co-ordinate Bench of this Court has held as under:-



"15. This Court also observes that the petitioners appeared in the examination in question with bona fide belief and there was no misconduct on the part of the petitioners, and the respondents themselves duly appointed them as per the marks obtained by the petitioners in the examination in question, which clearly reflects that they were falling in the earlier merit list. Therefore, at a belated stage, they cannot be ousted from the employment by depriving them of their legitimate right to continue as an employee, on the basis of the faulty exercise so conducted by the respondents.

16. This Court further observes that the petitioners were working on the post in question for more than 2 years, and it is a settled proposition of law, as per the afore-quoted judgments, that once the persons are selected and appointed as per the merit list and there is no **fraud, mischief, misrepresentation or mala fide on their part**, as is with the petitioners in the present case, then their continuous services cannot be terminated only on the ground of revision in cut off marks, whereby they were sought to be ousted from the employment in question, that too at a quite belated stage, and thus, the petitioners are suitable to hold the posts in question.

17. Thus, in light of the aforementioned observations as well as in view of the afore-quoted precedent laws and looking into the factual matrix of the present case, the present petitions are **allowed** and the **impugned orders dated 24.06.2022 & 01.06.2022 (CW No.8951/2022), 01.06.2022 & 02.06.2022 (CW No.8559/2022), 08.06.2022 (CW No.8661/2022), 21.06.2022 (CW No.8935/2022), 21.06.2022 (CW No.8974/2022), 05.07.2022 (CW No.9585/2022), 05.07.2022 (CW No.9610/2022), 05.07.2022 (CW No.9613/2022) and 12.07.2022 (CW No.9916/2022) are hereby quashed and set aside.** The respondents are accordingly directed to pass appropriate orders for the continuance of the petitioners on their respective post i.e. Constable (GD)/Constable (Driver), with all consequential benefits. All pending applications stand disposed of."

14. The Court exercising jurisdiction under Article 226 of the Constitution of India is also a Court of equity. It is not only within its power but also the duty of the High Court while exercising such





a power to advance the ends of justice and to uproot injustice. While granting relief, the High Court is expected to balance equities by passing an appropriate order which justice may demand and equities may project. Courts of equity should go much further, both to give and refuse relief in order to better serve the ends of justice. The granting of relief or withholding it would depend upon considerations of justice, equity and good conscience.

15. To settle the balance of equity in the present case, keeping in mind the fact that the vacancies are available with the respondent-Department, ends of justice will be met if the appointment of petitioner-Jhanwar Ram is protected by continuing him in the service on the post of College Lecturer (Philosophy) and a direction is issued to the respondents for appointment of petitioner-Gauri Shankar Jinger on the post of College Lecturer (Philosophy), whose name has been recommended by the Rajasthan Public Service Commission.

16. Thus, the writ petition (S.B. Civil Writ Petition No.610/2023) filed by petitioner-Jhanwar Ram merits acceptance and the same is allowed. The Show Cause Notice dated 28.12.2022 issued to him for termination of his services is quashed and set aside and he is allowed to continue on the post of College Lecturer (Philosophy).

17. Now coming to the fact that petitioner-Gauri Shankar Jinger's case has been recommended by the RPSC as he fulfills all the eligibility criteria for appointment, the writ petition (S.B. Civil Writ Petition No.11875/2023) filed by petitioner-Gauri Shankar Jinger also stands allowed and the respondents are directed to grant



appointment to the petitioner-Gauri Shankar Jinger on the post of College Lecturer (Philosophy) which is lying vacant with the respondents, within a period of four weeks from today.

18. It is made clear that the petitioner-Gauri Shankar Jinger will be given all the notional benefits from the date petitioner-Jhanwar Ram has been given appointment and the petitioner-Gauri Shankar Jinger will be entitled to all the service benefits from the date on which he assumes charge on the post of College Lecturer (Philosophy).

19. Stay petitions as well as other pending applications, if any, shall stand disposed of.

20. Photocopy of this order be placed in the connected file.

(VINIT KUMAR MATHUR),J

44-45-/Vivek Mishra/-