



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



S. B. Civil Writ Petition No. 15954/2012

Mahendra Kumar Sharma son of Shri Banshidhar Sharma, aged about 51 years, resident of Ward No. 2, House No. 236, Shrimadhapur, District Sikar (Rajasthan).

-----Petitioner

Versus

1. State of Rajasthan through Director, State Insurance and GPF Department, Rajasthan, Jaipur.
2. Deputy Director, State Insurance And GPF Department, Sikar (Rajasthan).

-----Respondents

For Petitioner : Mr. Gaurav Sharma Advocate.
For Respondents : Mr. Abhishek Paliwal Advocate on behalf of Mr. Dheeraj Tripathi, Additional Government Counsel.

HON'BLE MR. JUSTICE ANAND SHARMA

Judgment

Date of conclusion of arguments	::	13.01.2026
Date on which judgment was reserved	::	13.01.2026
Whether the full judgment or only the operative part is pronounced	::	Full Judgment
Date of pronouncement	::	16.01.2026

1. Instant writ petition has been filed by the petitioner invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, assailing order dated 13.06.2012 passed by the respondents, whereby the petitioner has been treated as regularly appointed only with effect from 15.02.2012 after qualifying the efficiency test on 09.04.2012, with further prayer to treat the services of the petitioner as pensionable as well as to grant benefit of pay fixation and other consequential



benefits as directed vide judgment dated 03.12.2009 passed earlier by this Court in S.B. Civil Writ Petition no. 1591/1996.

2. The factual matrix, as pleaded in the writ petition, reveals that the petitioner was initially appointed on the post of Lower Division Clerk on 15.01.1985 on temporary/daily wage basis. His services were abruptly terminated in October, 1987, notwithstanding the fact that fresh appointees were engaged in his place. Aggrieved thereby, the petitioner approached this Court by filing S. B. Civil Writ Petition No. 726/1988, which came to be decided on 05.02.1993 with a direction to the respondents to consider his case sympathetically in light of the judgment of the Hon'ble Supreme Court in the case of **Surendra Kumar Gyani v. State of Rajasthan** reported in **AIR 1993 SC 115**. In pursuance thereof, the petitioner was reinstated in service vide order dated 08.07.1993 and he joined duties on 17.07.1993.

3. It is further stated that prior to disposal of the aforesaid writ petition, the State Government issued a notification dated 12.10.1992 inserting sub-rule (10) to Rule 25 of the Rajasthan Subordinate Offices Ministerial Staff Service Rules, 1957 (hereinafter to be referred as 'the Rules of 1957'), providing for regularisation of daily wage/ad-hoc LDCs working during the period from 01.01.1985 to 31.03.1990, subject to their qualifying the departmental efficiency examination. Departmental examinations were conducted on 24.01.1993 and 14.08.1994 and similarly situated persons, who were appointed along with the petitioner and whose services had not been interrupted, were permitted to appear in the said examinations and were regularised





vide order dated 30.03.1993. The petitioner, however, was denied such opportunity.

4. The petitioner thereafter approached this Court again by filing S. B. Civil Writ Petition No.3991/1994 seeking grant of minimum pay scale, which was allowed on 26.05.1995. However, instead of regularising his services, the respondents once again terminated the petitioner vide order dated 19.02.1996 on the purported ground of availability of RPSC-selected candidates. Challenging the said termination, the petitioner filed S. B. Civil Writ Petition No. 1591/1996, which was finally allowed by this Court vide judgment dated 03.12.2009. This Court quashed termination order dated 19.02.1996, directed reinstatement of the petitioner and specifically ordered that he be considered under Rule 25(10) of the Rules of 1957, granting him notional fixation of pay and other benefits, though denying back wages for the intervening period.

5. It is also stated that judgment dated 03.12.2009 was unsuccessfully challenged by the respondents by way of filing D.B. Special Appeal (Writ) No. 3267/2010, which was dismissed vide judgment dated 08.02.2011. Thus, judgment dated 03.12.2009 stood confirmed even by the Division Bench of this Court.

6. Despite the aforesaid categorical directions in judgment dated 03.12.2009, the petitioner was constrained to file contempt proceedings as the respondents failed to reinstate him. Ultimately, the petitioner was reinstated vide order dated 09.02.2011, initially on daily wage basis, which was later modified vide order dated 10.08.2011 placing him in the regular pay scale. He was required





to appear in the efficiency/typing test, which he ultimately cleared on 15.02.2012. However, vide impugned order dated 13.06.2012, the respondents treated the petitioner as regularised only with effect from 15.02.2012 and subjected him to the new pension scheme, thereby, denying him continuity of service, notional pay fixation and consequential pensionary benefits.

7. In the reply to the writ petition, the respondents have not disputed the issuance of notification dated 12.10.1992 inserting sub-rule (10) in Rule 25 of the Rules of 1957. However, they have contended that the petitioner was not actually working in the department on the date of amendment and was reinstated only on 08.07.1993 as a daily wage employee. It is asserted that the petitioner was reinstated in the same status as existed on the date of termination and that his regularisation was rightly made only after he qualified the efficiency test on 15.02.2012. The respondents have further taken the stand that since the petitioner was not a regularly selected employee, he was not entitled to increments, pensionary benefits, or continuity of service prior to that date and, therefore, no illegality has been committed.

8. Learned counsel for the petitioner, while assailing the impugned order dated 13.06.2012, has contended that the action of the respondents is patently arbitrary, illegal and amounts to overreaching judgment dated 03.12.2009 passed by this Court. It is submitted that once termination order dated 19.02.1996 stood quashed and the petitioner was reinstated with a specific direction to be considered under Rule 25(10) of the Rules of 1957 along with grant of notional benefits, the respondents could not have



treated his regularisation as prospective from 15.02.2012. It is argued that the petitioner, by legal fiction, stood in service on the date of amendment of in Rule 25 of the Rules of 1957 and was entitled to the same treatment as other similarly situated employees, who were permitted to appear in the efficiency test held on 24.01.1993 and were regularised on 30.03.1993.

9. Learned counsel for the petitioner further submitted that during the pendency of present writ petition, the petitioner has already attained the age of superannuation in the year 2019 and has retired without being extended pensionary benefits, solely on account of the illegal interpretation adopted by the respondents. It is contended that if notional benefits are confined to the date of passing the efficiency test in 2012, the entire relief granted by this Court earlier would be rendered illusory and meaningless, depriving the petitioner even of pension, despite having put in service since 1985.

10. Per contra, learned counsel for the respondents has reiterated the stand taken in the reply and submitted that the petitioner was rightly regularised only after passing the efficiency test and that no vested right accrues to him prior thereto. It is contended that the writ petition is devoid of merit and deserves to be dismissed by this Court.

11. I have heard rival submissions of learned counsel for the parties and perused the record.

12. It is an undisputed fact that judgment dated 03.12.2009 passed in S. B. Civil Writ Petition No.1591/1996 had attained finality and was affirmed by dismissal of the intra-court





appeal. The said judgment unequivocally quashed the termination order dated 19.02.1996, directed reinstatement of the petitioner and further mandated that he be considered under Rule 25(10) of the Rules of 1957 with grant of notional fixation of pay and other consequential benefits.

13. Once the termination was set aside and reinstatement was ordered, the petitioner stood restored to service by operation of legal fiction and such fiction necessarily relates back to the date when the illegal action intervened in the continuity of service of the petitioner. Consequently, the petitioner must be deemed to have been in service on 12.10.1992, the date on which sub-rule (10) was inserted in Rule 25 of the Rules of 1957. The respondents cannot be permitted to rely upon the very termination, which has been declared illegal, to deny the petitioner the benefit of a beneficial statutory provision.

14. The direction for grant of "notional fixation of pay and other benefits" in this Court's earlier order dated 03.12.2009, is of decisive significance. The concept of notional fixation is not an empty formality. It is intended to place an employee in the position he would have occupied, but for the illegal act of the employer, while denying actual monetary benefits for the period not worked. Such benefits are granted precisely to neutralise the adverse civil consequences flowing from an illegal action of the employer, while at the same time balancing the equities by denying back wages for the period during which the employee did not actually work. Therefore, once the petitioner qualified the efficiency test, the notional benefits had to be extended from the





same date on which similarly situated employees, whose services were uninterrupted, were granted such benefits and not from the date of passing the examination in 2012. Any other interpretation would perpetuate the illegality and defeat the very object of Rule 25(10) of the Rules of 1957. To postpone the grant of notional benefits to the year 2012, merely because the petitioner was permitted to appear in the efficiency examination after the earlier judgment, would render the direction for notional benefits otiose and illusory.

15. It is a matter of record that the petitioner was denied the opportunity to appear in the efficiency examination held in January, 1993 solely due to the illegal termination of his services. It is well settled that a litigant cannot be made to suffer on account of the delay occasioned due to prolonged litigation, particularly when such delay is attributable to the employer and the termination itself has been found unsustainable. The petitioner was deprived of the opportunity to appear in the efficiency examination at the relevant time solely due to the wrongful termination of his services. Having regard to the facts and circumstances of the case, more particularly directions given by this Court vide order dated 03.12.2009, subsequently confirmed by the Division Bench of this Court, the petitioner cannot be placed in a worse position than those employees whose services were never terminated and who were extended the benefit of Rule 25(10) of the Rules of 1957 in due course.

16. Moreover, the interpretation sought to be advanced by the respondents would result in hostile discrimination and would





be violative of Article 14 of the Constitution of India. Two sets of employees, similarly situated and governed by the same statutory rules, cannot be treated differently merely because one of them was subjected to an illegal termination which was subsequently set aside by judicial intervention. Acceptance of the respondents' stand would perpetuate the consequences of an illegality and would defeat the very object of Rule 25(10) of the Rules of 1957, which was enacted as a beneficial provision to regularise long-serving ad hoc and daily wage employees.

17. This Court is also mindful of the fact that the petitioner attained the age of superannuation in the year 2019. If the grant of notional benefits is deferred to the date of passing the efficiency examination in 2012, the petitioner would be deprived not only of meaningful service benefits, but also of corresponding pensionary entitlements. Such an outcome would be wholly inequitable, unjust and contrary to the spirit of the earlier judgment as well as settled principles of service jurisprudence.

18. Accordingly, this writ petition deserves to be allowed and the same is hereby allowed. Consequently, impugned order dated 13.06.2012 passed by the respondents is hereby quashed and set aside. It is held that upon qualifying the efficiency examination under Rule 25(10) of the Rules of 1957, the petitioner shall be entitled to notional fixation of pay and all consequential service benefits from the date on which similarly situated employees, whose services were not interrupted, were granted such benefits, however, petitioner shall not be entitled for arrears of back wages for the period during which the petitioner





did not actually discharge duties. The respondents are, therefore, directed to re-compute the petitioner's service benefits, including pensionary benefits, strictly in terms of the above directions. The petitioner shall also be treated as governed by the Rajasthan Civil Services (Pension) Rules, 1996 and shall be granted all consequential pensionary benefits accordingly. The respondents shall ensure compliance of this judgment within a period of three months from the date of receipt of certified copy of this judgment.

19. Pending applications, if any, stand disposed of.

(ANAND SHARMA),J

MANOJ NARWANI /

