

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH
~~JAKHUR.~~

Date of decision: December 23, 1988

TA 2510/86

Union of India & Others

Appellants

Shri U.D. Sharma

Counsel for appellants

VERSUS

Shri Bhagat Ram Mohan

Respondent

In person

CORAM:

THE HON'BLE SHRI B.S. SEKHON

VICE CHAIRMAN

THE HON'BLE SHRI G.C. SINGHVI

ADMN. MEMBER

G.C. SINGHVI

This is an Appeal filed in the Court of learned District Judge, Jaipur on July 25, 1983 (registered at No.38/83) against the judgment and decree passed on March 30, 1983 in favour of the plaintiff-respondent by the learned Additional Munsif (West) Jaipur City in Civil Suit No.451/52 instituted on August 4, 1972. The Appeal has been transferred to the Tribunal by virtue of the provisions of Section 29(1) of the Administrative Tribunals Act, 1985 and rechristened as Transferred Application No.2510/86.

2. The facts necessary to be noticed for the adjudication of this Appeal/Transferred Application are that the plaintiff was holding the post of Inspector of Accounts in a substantive capacity in the erstwhile State of Bikaner in the scale of 150-5-200 and subsequent to the formation of Rajasthan on 30.3.1949, his services were taken over by the State of Rajasthan and he was posted as Superintendent with headquarters at Sri Ganganagar by the Accountant General Rajasthan. On coming into force of the Constitution of India on 26.1.1950,

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the subject Audit and Accounts of the Union and of Part B States came to adorn the Union list and therefore with effect from 1.4.1950, the administration of Audit and Accounts function was taken over by the Government of India. The post of Superintendent, as averred by the plaintiff, was equated with the post of Superintendent in the Indian Audit and Accounts Department from 1.4.1950. The plaintiff also alleged that the Comptroller and Auditor-General of India, without any authority from the Government of India or without any orders of the President, appointed an adhoc Committee for absorption of Part B States employees on the basis of personal assessment. Orders for the plaintiff's absorption were accordingly issued. As a result of the categorisation made by an illegally constituted adhoc committee, having come into existence without any lawful authority, the plaintiff was illegally fixed as a selection grade U.D.C. in the Central Scale from 1.4.1951, but in fact he continued to discharge duties of Superintendent, as he had been doing thereto. The constitution and proceedings of the adhoc committee were held to be null and void by the Hon'ble High Court of Kerala on 7.7.1965. The Union of India filed an appeal in the Hon'ble Supreme Court against the judgment of the Hon'ble High Court of Kerala. Meanwhile an amendment to Rule 5 relating to absorption of the Part B States Employees Rules, 1953 was issued vide Union Ministry of Finance No.F.4(3)Estt/III/B/65 dated 4.2.1966 and this amendment was given effect to from the date of publication in the gazette viz., from 19.3.1966. The amendment was made applicable to the employees of Part B states who were in service on 19.3.1966. In view of this amendment the appeal filed by the Union of India was withdrawn on 10.3.1970. The plaintiff on these pleadings prayed that on the basis of equation of posts, he was entitled to ~~and~~ be absorbed as Superintendent and not as a selection grade U.D.C.

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3. The learned Additional Munsif after taking into consideration the pleadings, put forward in the plaint, by the plaintiff/respondent and the contentions advanced by the defendants/appellants in the written statement framed 7 issues which are as follows:

i. Whether in the eye of law, the plaintiff was holding the post of Superintendent in the Indian Audit and Accounts Department in a substantive capacity w.e.f. 1.4.1950 ?

ii. Whether constitution of the adhoc committee by the Comptroller and Auditor-General of India vide his secret letter No.14 States 1351-50 dated January 2, 1951 and which categorised non-gazetted staff was legal and whether the categorisation of the plaintiff as a selection grade U.D.C. was Constitutional ?

iii. Whether rule 5 of the Central Civil Services (Part B States Transferred Employees) Rules, 1953 was amended by the memorandum dated February 4, 1966 of the Government of India and if so what effect did it have on the plaint ?

iv. Whether absorption of persons serving in the Indian Audit and Accounts Department was to be made in pursuance of the memorandum dated February 4, 1966 on the basis of equation of posts or on the basis of personal assessment ?

v. Whether the suit was maintainable in view of the notice under Section 80 of the C.P.C. being invalid as it was unsigned ?

vi. (a) Whether the principle of res-judicate applied to the suit ?

(b) Whether the suit was within limitation ?

(c) Whether the plaintiff was entitled to the pay

scale of Rs. 175-300 w.e.f. 1.4.1950 ?

vii. Relief ?

4. After hearing the arguments of the learned counsel for the plaintiff and the learned counsel for the defendants and going

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through the documents, the learned Additional Munsif decided the aforesaid 7 issues as follows:

i. The plaintiff was, in view of Exhibit-3 which shows that he was absorbed as Superintendent w.e.f. 1.4.1950, and Exhibit-4 which makes the position still clearer as the plaintiff has been shown as permanent Superintendent, therein, non-production of absorption orders of the plaintiff by the defendants and Accountant General Jodhpur's order No.OE/51/3184 dated December 4, 1951 which shows that the plaintiff was categorised as Superintendent from 1.4.1950, adjudged to be holding the post of Superintendent in the Indian Audit and Accounts Department in a substantive capacity w.e.f. 1.4.1950.

ii. The constitution of the adhoc committee, in view of the Kerala High Court judgment, referred to above, was adjudged to be illegal and void and so were its proceedings.

iii. The amendment dated February 4, 1966 was made applicable to employees of Part B states who were in service on March 19, 1966 and as such it was applicable to the plaintiff. The procedure laid down in the orders dated July 2, 1951 i.e. equation of posts was made applicable to the Audit and Accounts personnel serving on March 19, 1966 and in their case absorption was to be deemed to have been made from 1.4.1950. The amendment dated February 4, 1966 was thus final. Therefore, on the basis of equation of posts the plaintiff was entitled to be absorbed as Superintendent from April 1, 1950 (and not as a selection grade U.D.C.) He was also entitled to all benefits consequent upon this absorption.

iv. The memorandum dated February 4, 1966 makes it abundantly clear that absorption relating to persons serving in the Indian Audit and Accounts Department was to be made on the basis of equation of posts and ^{not} on the basis of personal assessment.

v. Since the defendants had failed to prove the want of notice or the inadequacy of the notice under Section 80 of the C.P.C., the suit was maintainable.

vi.(a) The defendants' contention was that this matter was already heard and finally decided by the Hon'ble High Court of Rajasthan in writ petition No.420/60 on September 30, 1964

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and, therefore, the principle of res-judicata was applicable to the suit. But the instant suit was filed subsequent to the amendment of rule 5 relating to absorption of the Part B Employees Rules 1953 issued vide the memorandum dated February 4, 1966. Therefore, the issue in the instant suit is not the same as it was directly and substantially in the writ petition presented in the Hon'ble High Court. Accordingly, the principle of res-judicata is not applicable to the present suit.

vi.(b) The next issue is with regard to limitation. Exhibit-5, letter of defendant No.3 dated August 1, 1970 indicates that on that day the matter of the plaintiff was under consideration. Exhibit-6, another letter of defendant No.3 shows that cause of action arose on August 27, 1970 when the final order was given to the plaintiff. Therefore, the suit is not barred by limitation.

vi.(c) Even on the basis of personal assessment the plaintiff was categorised as Superintendent and not as U.D.C. for absorption in the Indian Audit and Accounts Department from 1.4.1950. The pay scales of the Rajasthan Government employees were revised from 1.4.1950. The Union Ministry of Finance vide their OM dated January 19, 1951 asked the Comptroller and Auditor General of India for revising the scale of pay and allowances of the employees taken over by the Government of India (as an interim measure). Accordingly, the Comptroller and Auditor-General of India vide letter dated February 27, 1951 revised the scales of the employees taken over by the office of Accountant General Rajasthan. The proposals were sanctioned by the President vide order dated March 15, 1951. The proposals were produced in the court on September 4, 1974. Exhibits 8 to 15 showed that the proposals were never made known to the plaintiff despite his repeated requests. These proposals stated that 53 persons working as Superintendents were to be allowed the scale of Rs.175-300 and 25 persons working as Assistant Superintendents the scale of Rs.150-10-250. This shows that the scale of Rs.175-300 was sanctioned for 53 Superintendents. The plaintiff has been fixed as Superintendent but he was allowed the scale of Rs.150-10-250 sanctioned for the Assistant Superintendents. In Exhibit-4, the plaintiff was allowed the scale sanctioned for the post of Assistant Superintendents corresponding to the scale of Rs.150-10-250.

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The plaintiff has, therefore, a legal right to be fixed in the Superintendents' scale of Rs.175-300 from 1.4.1950 and then in the corresponding scale of Rs.200-500 under the Central scales. The fixation made vide Exhibits 3 and 4 being obviously wrong was required to be amended in the light of the proposals dated February 28, 1951 sanctioned by the President.

vii. This issue was decided in favour of the plaintiff as on the basis of equation of posts and on the basis of personal assessment, the plaintiff was entitled to be absorbed as Superintendent in the office of Accountant General Rajasthan, w.e.f. 1.4.1950 (and not as selection grade U.D.C.) He was also entitled to all due benefits of promotion, fixation etc.

5. In view of the findings on the 7 issues as narrated hereinabove, the suit was decreed in favour of the plaintiff and against the defendants in the manner that the plaintiff had held the post of Superintendent from 1.4.1950 in the office of Accountant General Rajasthan, Jaipur and all due benefits of promotion, seniority, fixation etc be given to him without any break or loss. It was further declared that the plaintiff was entitled to be fixed in the Superintendents' scale of Rs.175-300 from 1.4.1950 and then in the corresponding scale of Rs.200-500 under the Central Scales. The fixation made vide Exhibits 3 and 4 being wrong was ordered to be amended in the light of the proposals. The plaintiff was also made entitled to the costs of the suit.

6. It was against the above judgment and decree that the instant Appeal was filed by the appellants/defendants. In their appeal they stated at the outset that the plaintiff had filed a writ petition in the Hon'ble Rajasthan High Court (D.B.Civil Writ Petition No.420/60) challenging the fixation of the plaintiff by the Federal Integration Committee as a U.D.C. we.f. 1.4.1950. In this writ petition, the Union of India and the Accountant-General Rajasthan were also parties. The writ petition was decided on

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September 30, 1964, justifying the appointment of the plaintiff/respondent as selection grade U.D.C. w.e.f. 1.4.1950. Against this judgment of the Hon'ble High Court, the plaintiff/respondent did not prefer any appeal. Instead on August 4, 1972 on the same facts he filed the instant suit whereon the learned Munsif had given a decision in his favour on March 30, 1983. On the findings given by the learned Munsif on all the 7 issues, framed by him the submissions of the appellants/defendants are as follows:

i. The learned Munsif without taking into consideration the facts that the plaintiff/respondent was neither holding the post of Superintendent nor drawing the pay of Superintendent on 1.4.1950 decided this issue in his favour. It was averred that the lower court had not properly interpreted Exhibit-3. When the respondent was not appointed as a Superintendent, the question of his being absorbed as a Superintendent does not arise.

ii. In case the plaintiff/respondent wanted to challenge the constitution of the committee he should have done so in 1950 when he was working as a U.D.C. and the aforesaid D.B. Civil Writ petition was decided against him. This issue, therefore, cannot be raised again in the court.

iii. The Rules do not apply to the instant case because the matter was decided in relation to the plaintiff/respondent in 1950 and he did not succeed in his writ petition filed in the Hon'ble High Court of Rajasthan.

iv. At the time of Federal Integration, the plaintiff/respondent was working as U.D.C. and getting the salary etc. of a U.D.C. As such the question of his being appointed as a Superintendent and paying him the salary of a Superintendent does not arise. The learned Additional Munsif did not pay any heed to the judgment of the Hon'ble High Court of Rajasthan.

v. The suit was not maintainable because of the writ petition filed by the plaintiff/respondent having been rejected by the Hon'ble High Court on September 30, 1964.

vi. Because of the Hon'ble High Court's judgment dated September 30, 1964 the principle of res-judicata applied

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to the instant suit. The cause of action could not have arisen on August 27, 1970. The suit was barred by limitation because the issue had been decided in 1964.

vii. In view of the Hon'ble High Court's decision in 1964, the learned Munsif was not competent to decide the issue again in 1983. Moreover the plaintiff/respondent had retired from service also quite some time ago. In the Appeal preferred by the appellants/defendants they have harped on the principle of res-judicata and limitation as applied to the instant case and have prayed that the judgment and decree dated March 30, 1983 passed by the learned Additional Munsif be set aside and the suit be decided in favour of the appellants/defendants with costs.

7. At this juncture we would like to dwell on four documents which have prominently figured in the instant suit. To start with, we would reproduce the Government of India order dated February 4, 1966:

GSR-393:- In exercise of the Powers conferred by the Proviso to Article 309 and clause (5), of Article 148 of the Constitution and after consultation with the Comptroller and Auditor General of India in relation to persons serving in the Indian Audit and Accounts Department, the President hereby makes the following Rules to amend the Central Civil Services (Part B States transferred Employees) Rules 1953, published with the notification of the Government of India in the Ministry of Finance S.R.O. 843 dated the 29th April 1953, namely:-

(1) These rules may be called the Central Civil Services (Part B States transferred employees) Amendment Rules, 1965.

(2) They shall come into force on the date of their publication in the official Gazette.

2. In the Central Civil Services (Part B States transferred employees) Rules, 1953, for Rule 5, the following rule shall be substituted and shall be deemed always to have been substituted namely:-

"A transferred employee shall be fitted into appropriate grade under Government in accordance with with procedure laid down in the Ministry of States Office Memorandum issued vide No.16/FFI/50 Estt (Part II) dated 24th March 1951, circulated with Notification No.18/14/51 Est. dated 2nd July 1951 issued by the Ministry of Home Affairs and such absorption shall be deemed to have been made with effect from the relevant date. Any such employee who is not so absorbed shall continue to be governed by the State Rules provided that any modification in the State Rules after the relevant date shall be subject to the specific orders of the Government."

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Exhibit 3 is a U.O. written on December 5, 1951 by Assistant Accounts Officer (O.E.) Rajasthan, Jaipur. It says that "the statement of fixation in Rajasthan Pay Scales on 1.4.1950 together with the Rajasthan election forms are sent herewith as desired." The enclosure to this letter is a tabulated statement in respect of the plaintiff/respondent under head 'Superintendent'. He was fixed in the revised grade and his date of next increment was to be 1.4.1951. Exhibit-4 is a copy of office order dated December 14, 1951 issued by Deputy Accountant-General Rajasthan Jaipur. It deals with fixation of pay under central scales-S.A.S. Superintendents and selection grade U.D.Cs. Enclosure to this order is a tabulated statement dealing with the plaintiff/respondent showing him as permanent superintendent. The fourth document is the communication No.OE/51/3184 dated 4.12.1951 addressed by the Accountant-General Rajasthan, Jodhpur to the Treasury Officer Ganganagar saying that "Shri Bhagat Ram Mohan has been categorised as Superintendent in the grade of Rs.150-10-250 w.e.f. 1.4.1950 and has been fixed as under:-

Pay	Rs.170/-
Special Pay	Rs. 30/-
D.A.	Rs. 25/- "

The self-explanatory contents of all these four documents make the judgment of the learned Additional Munsif crystal clear and tend to put the entire case in its correct perspective.

8. We have heard the arguments addressed at the Bar and have also perused the pleadings and the documents on record.

9. In the course of arguments, the learned counsel for the appellants as well as the respondent in person reiterated their respective stands taken in the appeal and the written

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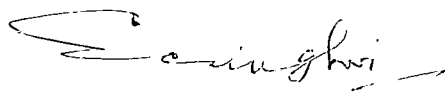
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statement and in the plaint and the counter respectively.

10. From all that has been said and discussed above, we find that the judgment delivered by the learned Additional Munsif is a well reasoned one and the learned Additional Munsif has covered all conceivable points raised in the suit. The judgment takes the wind out of the sails of the appellants' strenuous arguments relating to the applicability of the principle of res-judicata to the suit and the suit being barred by limitation. The appellants have miserably failed tangibly to question and efficaciously repel the correctness of the learned Additional Munsif's findings on all the 7 issues framed by him. Since the issues and the learned Additional Munsif's findings thereon together with the basic facts forming the backdrop of the case have been recapitulated hereinabove, we would not like to encumber this judgment with a repetition of the facts, issues and the findings arrived at by the learned Additional Munsif thereon. Suffice it to say that these findings are logical, rational and sound and as such unassailable.

11. In view of the foregoing, we hold that the appeal is devoid of merit. Accordingly the judgment and decree of the learned Additional Munsif dated March 30, 1983 are hereby affirmed. In fine the appeal filed by the appellants is hereby rejected. The Transferred Application is disposed of accordingly leaving the parties to bear their own costs.


(G.C. SINGHVI)
ADMN. MEMBER.
23-12-88.


(B.S. SEKHON)
VICE CHAIRMAN.
23-12-88

Copy of decision sent to the -
Pet (Secretary, Ministry of Finance)
N/S E.H.F.
Resp (Sanjay Ram, Jaipur)
Vide No. 6236/83 dated 29/12/88
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