

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Writ Petition No. 9312/2024

Onkar Meena S/o Sh. Pratap Meena, Aged About 50 Years, R/o Village Khijuria Ahran, Post Phaliyawas, Tehsil Bassi, District Jaipur. Presently posted as Junior Technical Assistant, Panchayat Samiti Shahpura, Dist-Jaipur Gramin, Rajasthan.

----Petitioner

Versus

1. State of Rajasthan, through Additional, Chief Secretary. Rural Development and Panchayati Raj Department, Government Secretariat, Rajasthan, Jaipur.
2. Commissioner EGS, Rural Development & Panchayati Raj Department. (Section 3 Mahatma Gandhi NREGA) Government Secretariat, Jaipur.
3. District Program Coordinator, EGS & District Collector, Shahpura, Dist- Jaipur Gramin, Rajasthan.
4. Chief Executive Officer, Zila Parishad, Shahpura, Dist- Jaipur Gramin, Rajasthan.

----Respondents

For Petitioner(s)	:	Mr. Vikas Jain
For Respondent(s)	:	Mr. Aditya Sharma for Mr. Kesar Singh Shekhawat, Addl. GC

HON'BLE DR. JUSTICE NUPUR BHATI

Order

18/03/2026

1. Writ petition has been filed with the following prayer:

"It is, therefore, most respectfully prayed that your Lordships may graciously be pleased to accept and allow this writ petition and may kindly call for record and same may kindly be perused, if this Hon'ble court so pleases:-

(i) By issuing appropriate writ order or direction, it may kindly be held that the petitioner is eligible for regular appointment under the Rajasthan Contractual Hiring to Civil Posts Rules, 2022 as the petitioner has completed more than 9 years of service as prescribed under the aforesaid rules of 2022.

(ii) By issuing of appropriate writ order or direction, period between the date of termination dated 1/12/15 to the date of reinstatement dated 18/5/23 may kindly be directed to be computed towards length of service of the petitioner by maintaining continuity of services and it may further be held that the petitioner is entitled to have his service counted from the initial date of appointment i.e 7/6/08 till 1/4/24.

(iii) By appropriate writ order or directions, the respondents may kindly be directed to consider the candidature of petitioner for regular appointment under the aforesaid rules of Rajasthan Contractual Hiring to Civil Posts Rules, 2022 against the aforesaid 4966 created posts as and when the appointment process is initiated and in case the petitioner is found suitable and meritorious then appointment may be given to the petitioner.

(iv) In case during pendency of this Writ Petition any order prejudicing the rights of petitioner is passed by the respondents, the same may kindly be taken on record and may also be quashed and set-aside.

(v) Any other Order or direction which this Hon'ble Court deems fit may also be passed in favour of the petitioner."

2. Brief facts of the case are that the petitioner is a resident of Jaipur and was appointed as a Senior Technical Assistant under the MGNREGA scheme in 2008. He worked sincerely, but in 2012 some irregularities were alleged against him. After he submitted his explanation, the matter was closed by imposing a minor penalty of a 10% salary deduction for six months, which he duly complied with. However, after more than two years, the authorities initiated fresh disciplinary proceedings on the same allegations and terminated his services in 2015. The petitioner challenged this termination before the Rajasthan High Court, Jaipur Bench, which, by its order dated 04.05.2023, quashed the termination and directed his reinstatement. He was accordingly reinstated on 18.05.2023, and later, in February 2024, the department also cancelled the disciplinary and recovery proceedings against him. The petitioner submits that, in view of the High Court's order and subsequent departmental actions, his

entire service from the date of initial appointment should be counted continuously. By this calculation, he has completed more than 15 years of service as of April 2024, making him eligible for regular appointment under the Rajasthan Contractual Hiring to Civil Posts Rules, 2022 (for short, 'the Rules of 2022'), which require a minimum of 9 years of service. Despite this, the respondents are excluding the period between his termination and reinstatement while calculating his service, and have not issued him the required eligibility certificate. As a result, he is being unfairly denied consideration for regular appointment, even though the law provides that once termination is set aside, the intervening period should be counted for all service benefits.

3. Learned counsel for the petitioner further submits before the Court that the name of the petitioner has provisionally recommended under the Rules of 2022. In view of the fact that the petitioner's name has already been provisionally recommended for engagement as per the process under the Rules of 2022.

4. Learned counsel for the respondents, at the outset, submits that in view of the interim order granted by the Co-ordinate Bench of this Court vide order dated 31.05.2024 in **S.B. Civil Writ Petition No.9312/2024**, the respondents have considered the case of the petitioner for engagement under the Rules of 2022, which is reproduced as under:

"Counsel for the petitioner submits that the respondents are not considering the case of the petitioner for engaging him under the Rajasthan Contractual Hiring to Civil Posts Rules, 2022 (for short 'the Rules of 2022') in view of the fact that petitioner

remained out of service from 01.12.2015 to 18.05.2023.

Counsel further submits that the petitioner was initially working on the post of Senior Technical Assistant under the Mahatma Gandhi National Rural Employment Guarantee (MGNREGA) Scheme, Rajasthan and was removed from service vide order dated 01.12.2015. However, the aforesaid order was set aside by the Co-ordinate Bench of this Court in **S.B. Civil Writ Petition No.18855/2015, Onkar Meena Vs. State of Rajasthan & Anr. decided on 04.05.2023.**

Counsel further submits that once the order of removal has been set aside, the intervening period during which the petitioner remained out of service is to be treated in service.

In support of his submissions the counsel has relied upon the order passed in case of **Vinod Kumar Vs. G.N.C.T. of Delhi & Ors. Passed by the High Court of Delhi in Writ Petition (Civil) 1078/2018 decided on 25.09.2023** and also the order passed by the Hon'ble Apex Court in the case of **Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidalaya (D.Ed.) & Ors. (Civil Appeal No.6767/2013) decided on 12.08.2013.**

Issue notice of the writ petition as well as stay application to the respondents. Rule is made returnable within a period of four weeks.

List this matter on 31.07.2024.

In the meanwhile, candidature of the petitioner shall be provisionally considered for engagement as per the process under the Rajasthan Contractual Hiring to Civil Posts Rules, 2022."

5. Learned counsel for the respondents also submits that in compliance of the order dated 31.05.2024, the respondents after considering the name of the petitioner under the Rules of 2022 have provisionally recommended his name.

6. I have heard the rival submissions made by the counsel for the parties and perused the material available on record.

7. This Court has thoughtfully considered the submissions advanced by learned counsel for the parties, the material available on record, as well as the interim order dated 31.05.2024 passed by the Co-ordinate Bench. The core issue which arises for consideration is whether the period during which the petitioner remained out of service, on account of a termination order which has subsequently been set aside, ought to be treated as part of

continuous service for the purposes of eligibility under the Rajasthan Contractual Hiring to Civil Posts Rules, 2022.

8. At the outset, it is not in dispute that the order of termination dated 01.12.2015 passed against the petitioner has already been quashed by this Court vide judgment dated 04.05.2023, and the petitioner has been reinstated in service on 18.05.2023. Once the order of termination has been set aside, the legal effect thereof is that the petitioner is deemed to have continued in service as if the order of termination had never been passed. The interim order dated 31.05.2024 passed by the Co-ordinate Bench has also taken note of this settled position and directed that the candidature of the petitioner be provisionally considered under the Rules of 2022.

9. This Court finds support for the aforesaid proposition from the authoritative pronouncement of the Hon'ble Supreme Court in ***Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) & Ors., Civil Appeal No. 6767/2013***, decided on 12.08.2013, wherein it has been categorically held that in cases of wrongful termination, reinstatement with continuity of service and back wages is the normal rule. The Hon'ble Apex Court has further clarified that where termination is found to be illegal or in violation of principles of natural justice, the employee is entitled to be placed in the same position as if the wrongful action had not been taken. The relevant paragraphs are reproduced hereunder:-

"xxx

33. The propositions which can be culled out from the aforementioned judgments are:

i) In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

ii) The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the Court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.

iii) Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to JUDGMENT the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averment about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.

iv) The cases in which the Labour Court/Industrial Tribunal exercises power under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and / or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.

v) The cases in which the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the concerned Court or Tribunal will be fully justified in directing payment of full back wages. In such cases, the superior Courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc., merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The Courts must always be kept in view that in the cases of wrongful / illegal termination of service, the wrongdoer is the employer and sufferer is the employee/workman and there is no justification to give premium to the employer for his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.

vi) In a number of cases, the superior Courts have interfered with the award of the primary adjudicatory authority on the

premise that finalization of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The Courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer, i.e., the employee or workman, who can ill afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course suggested in Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited (supra).

vii) The observation made in J.K. Synthetics Ltd. v. K.P. Agrawal (supra) that on reinstatement the employee/workman cannot claim continuity of service as of right is contrary to the ratio of the judgments of three Judge Benches referred to hereinabove and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee/workman.

xxx"

10. In the present case, once the termination of the petitioner has been adjudicated to be illegal and has been quashed by a Co-ordinate bench of this Court vide order dated 04.05.2023 (Annex.3), the respondents cannot be permitted to deny continuity of service by excluding the intervening period from 01.12.2015 to 18.05.2023. Such exclusion would amount to giving effect to an order which no longer survives in the eyes of law. The respondents' action, therefore, runs contrary to the settled principles laid down by the Hon'ble Supreme Court in the case of **Deepali Gundu Surwase (Supra)**, which mandate that the employee should not suffer on account of the wrongful act of the employer. Moreover, the Hon'ble Supreme Court has also emphasized that the burden to prove gainful employment during the intervening period lies upon the employer if it seeks to deny

consequential benefits. In absence of any such material on record, the petitioner cannot be deprived of the benefit of continuity of service. The ratio further underscores that denial of such benefits would amount to rewarding the employer for its illegal action, which is impermissible in law.

11. In view of the aforesaid settled legal position, coupled with the interim protection already granted by this Court, this Court is of the considered opinion that the period during which the petitioner remained out of service pursuant to the illegal termination is liable to be counted towards continuous service without any monetary benefits. Consequently, the petitioner is entitled to have his entire service reckoned from the date of his initial appointment for the purposes of determining eligibility under the Rajasthan Contractual Hiring to Civil Posts Rules, 2022.

12. Accordingly, the present writ petition is disposed of with the direction to the respondents to consider and engage the petitioner under the provisions of the Rules of 2022, if otherwise found eligible, within a period of four weeks from the date of receipt of a certified copy of this order.

13. With the aforesaid direction, the instant writ petition stands disposed of.

14. Pending application(s), if any, also stand(s) disposed of.

(DR. NUPUR BHATI),J