

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

D.B. Spl. Appl. Writ No. 237/2024

1. State Of Rajasthan, Through The Director, Department Of Secondary Education, Bikaner (Raj.).
2. The District Education Officer (Headquarter), Secondary Education , Department Of Education, Dungarpur (Raj.).

----Appellants

Versus

1. Smt. Saroj Gandhi W/o Hasmukhlal Gandhi, 261, Sindhi Colony, Near Tower, Dungarpur (Raj.).
2. The Joint Director, Pension And Pensioners, Welfare Department, Udaipur.

----Respondents

Connected With

D.B. Spl. Appl. Writ No. 909/2023

1. State Of Rajasthan, Through The Director, Department Of Secondary Education, Bikaner, (Raj.).
2. The District Education Officer, Headquarter Secondary Education, Department Of Education, Dungarpur (Raj.)

----Appellants

Versus

Smt Memuna Malik W/o Shri Mohd Saiyed Maliik, R/o Ghati Mohalla, Fauz Ka Badla, Dungarpur (Raj.).

----Respondent

D.B. Spl. Appl. Writ No. 918/2023

1. State Of Rajasthan, Through The Director, Department Of Secondary Education, Bikaner (Raj.).
2. The District Education Officer, (Headquarter), Secondary Education, Department Of Education, Dungarpur (Raj.).

----Appellants

Versus

Smt Leela Shah W/o Shri Chandulal Shah, R/o 3/86 Shivaji Nagar Old Housing Board, Dungarpur (Raj.).

----Respondent

D.B. Spl. Appl. Writ No. 934/2023

1. State Of Rajasthan, Through The Director, Department Of

Secondary Education, Bikaner (Raj.)

2. The District Education Officer (Headquarter), Secondary Education, Department Of Education, Dungarpur (Raj.)

----Appellants

Versus

Smt Urmila Chaubisa W/o Chaitenya Kumar Chaubisa, House No.8 Ravindra Nath Tagore Colony, Dungarpur (Raj.).

----Respondent

D.B. Spl. Appl. Writ No. 939/2023

1. State Of Rajasthan, Through The Director, Department Of Secondary Education, Bikaner (Raj.).
2. The District Education Officer (Headquarter), Secondary Education, Department Of Education, Dungarpur (Raj.)

----Appellants

Versus

Smt Nalini Trivedi W/o Harish Upadhyaya, C/o Hansa Traders, Tehsil Road, Kherwara, District Udaipur (Raj.).

----Respondent

D.B. Spl. Appl. Writ No. 943/2023

1. State Of Rajasthan, Through The Director Department Of Secondary Education Bikaner (Raj.)
2. The District Education Officer (Headquarter), Secondary Education Department Of Education, Dungarpur (Raj.)

----Appellants

Versus

Smt. Hemlata Chaubisa W/o Shri Narendra Kumar Chaubisa, A/6 Bankers Street New Colony, Dungarpur (Raj.)

----Respondent

D.B. Spl. Appl. Writ No. 945/2023

1. State Of Rajasthan, Through The Director, Department Of Secondary Education, Bikaner (Raj.).
2. The District Education Officer (Headquarter), Secondary Education, Department Of Education, Dungarpur (Raj.).

----Appellants

Versus

Smt Bhanuprabha Pandaya W/o Shri Vinod Kumar Pandaya, R/o Village And Post Kanba, Tehsil Bichhiwada, District Dungarpur.

-----Respondent

D.B. Spl. Appl. Writ No. 948/2023

1. State Of Rajasthan, Through The Director, Department Of Secondary Education, Bikaner (Raj.).
2. The District Education Officer (Headquarter), Secondary Education, Department Of Education, Dungarpur (Raj.).

-----Appellants

Versus

Smt. Raksha Shah W/o Shri Hariprasad Gupta, R/o H. No. 15, Housing Board, Shivaji Nagar, Behind Raj Tent House, Dungarpur (Raj.).

-----Respondent

D.B. Spl. Appl. Writ No. 951/2023

1. State Of Rajasthan, Through The Director Department Of Secondary Education, Bikaner (Raj.)
2. The District Education Officer (Headquarter), Secondary Education, Department Of Education, Dungarpur (Raj.)

-----Appellants

Versus

Brij Bala Pandya W/o Late Shri Rajendra Prasad Pandya, R/o Plot No. 117, Subhash Nagar, Behind New Hospital, Dungarpur (Raj.).

-----Respondent

D.B. Spl. Appl. Writ No. 972/2023

1. State Of Rajasthan, Through The Director Department Of Secondary Education, Bikaner (Raj.)
2. The District Education Officer (Headquarter), Secondary Education, Department Of Education, Dungarpur (Raj.)

-----Appellants

Versus

Smt Bhanumati Sharma D/o Jayanti Lal Sharma, Village And Post Malpur, District Gujarat. At Present Village And Post Santhuna, Tehsil Simalwara, District Dungarpur (Raj.).

-----Respondent

D.B. Spl. Appl. Writ No. 983/2023

1. State Of Rajasthan, Through The Director, Department Of Secondary Education, Bikaner (Raj.).
2. The District Education Officer (Headquarter), Secondary Education, Department Of Education, Dungarpur (Raj.).

----Appellants

Versus

Smt Mani Rot W/o Shri Bhagwan Ji Rot, R/o H. No. E/18, Ashok Nagar, Dungarpur (Raj.).

----Respondent

D.B. Spl. Appl. Writ No. 988/2023

1. State Of Rajasthan, Through The Director, Department Of Secondary Education, Bikaner (Raj.).
2. The District Education Officer, (Headquarter) Secondary Education, Department Of Education, Dungarpur (Raj.).

----Appellants

Versus

Parvin Jaha Pathan D/o Shri Aalaudin Khan Pathan, R/o Plot No.12/a, Patrakar Colony, Dungarpur (Raj.).

----Respondent

D.B. Spl. Appl. Writ No. 1011/2023

1. State Of Rajasthan, Through The Director Department Of Secondary Education, Bikaner (Raj.)
2. The District Education Officer (Headquarter), Secondary Education Department Of Education Dungarpur (Raj.)

----Appellants

Versus

Smt. Laxmi Vakhariya W/o Shri Bharat Lal Vakhariya, Vakhariya Chowk, Dungarpur (Raj.).

----Respondent

D.B. Spl. Appl. Writ No. 1058/2023

1. State Of Rajasthan, Through The Director, Department Of Secondary Education, Bikaner (Raj.).
2. The District Education Officer (Headquarter), Secondary Education, Department Of Education, Dungarpur (Raj.).

----Appellants

Smt Ishwari Devi W/o Shri Navin Chandra Pandya, R/o Village And Post Naval Shyam, Tehsil Bichhiwada, District Dungarpur (Raj.).

-----Respondent

D.B. Spl. Appl. Writ No. 1091/2023

1. State Of Rajasthan, Through The Director, Department Of Secondary Education, Bikaner (Raj.).
2. District Education Officer, (Headquarter), Secondary Education Department Of Education, Dungarpur (Raj.).

-----Appellants

Versus

Smtjaiprabha Pandaya W/o Late Shri Manoharlal Pandaya, Village And Post Kanda, Tehsil Bichhiwada, District Dungarpur.

-----Respondent

D.B. Spl. Appl. Writ No. 11/2024

1. State Of Rajasthan, Through The Director, Department Of Secondary Education, Bikaner (Raj.).
2. The District Education Officer (Headquarter), Secondary Education, Department Of Education, Dungarpur (Raj.).

-----Appellants

Versus

Miss Asha Shah D/o Late Shri Hukamlaji Shah, R/o Street No. 2 Gokul Dham, New Colon, Dungarpur (Raj.).

-----Respondent

D.B. Spl. Appl. Writ No. 117/2024

1. State Of Rajasthan, Through The Director, Department Of Secondary Education, Bikaner (Raj.).
2. The District Education Officer, Headquarter Secondary Education Department Of Education, Dungarpur (Raj.).

-----Appellants

Versus

Mrs. Nalini Choubisa W/o Shri Yogesh Chandra Choubisa, Gandhi Ashram Sabela Bye Pass Road, Rotary Club Ke Piche, Dungarpur (Raj.).

-----Respondent

D.B. Spl. Appl. Writ No. 120/2024

1. State Of Rajasthan, Through The Director, Department Of Secondary Education, Bikaner (Raj.).
2. The District Education Officer (Headquarter), Secondary Education, Department Of Education, Dungarpur (Raj.).

----Appellants

Versus

Smt Laxmi Purohit W/o Shri Devkinandan Purohit, R/o 43, Pratap Nagar Colony, Dungarpur (Raj.).

----Respondent

D.B. Spl. Appl. Writ No. 232/2024

1. State Of Rajasthan, Through The Director, Department Of Secondary Education, Bikaner (Raj.).
2. District Education Officer, Secondary Education, Department Of Education, Dungarpur.
3. State Of Rajasthan, Through The Director, Department Of Elementary Education, Bikaner.
4. District Education Officer, Elementary Education, Department Of Education, Dungarpur.
5. Principal, Government Girls Senior Secondary School Khadagda, District Dungarpur.

----Appellants

Versus

1. Smt. Bharti Bhatt W/o Shri Ishwar Chand Bhatt, R/o Vivekanand Colony, Khadagda, District Dungarpur (Raj.)
2. The Joint Director, Pension And Pensioners Welfare Department, Udaipur.

----Respondents

D.B. Spl. Appl. Writ No. 251/2024

1. State Of Rajasthan, Through The Director, Department Of Secondary Education, Bikaner (Raj.).
2. District Education Officer (Headquarter), Secondary Education, Department Of Education, Dungarpur (Raj.).
3. The Principal, Govt. Senior Secondary School, Paatil Gurjeshwar Through The District Education Officer (Headquarter), Secondary Education, Department Of

Education, Dungarpur.

----Appellants

Versus

Sadhna Pandya W/o Shri Anil Pandya, C/o Anandi Devi Pandya,
Talab Wala Mohalla, Ravle Ke Pass, Village And Post Simalwada,
District Dungarpur (Raj.).

----Respondent

D.B. Spl. Appl. Writ No. 267/2024

1. State Of Rajasthan, Through The Director, Department Of Secondary Education, Bikaner (Raj).
2. District Education Officer, (Headquarter), Secondary Education, Department Of Education, Dungarpur (Raj.).

----Appellants

Versus

1. Vimla Kalal W/o Shri Chhanganlal Kalal, Mathugamda Road, Near Sushil Vatika, Near New Bus Stand, Dungarpur (Raj).
2. The Joint Director, Pension And Pensioners Welfare Department, Udaipur.

----Respondents

For Appellant(s)	:	Mr. Tapendra Sankhla for Mr. B. L. Bhati, AAG
For Respondent(s)	:	Mr. Prithvi Raj Singh Jodha Mr. Himmat Singh Bhati

HON'BLE DR. JUSTICE PUSHPENDRA SINGH BHATI
HON'BLE MR. JUSTICE MUNNURI LAXMAN

Order**01/03/2024**

1. An application under Section 5 of the Limitation Act has been preferred with a prayer to condone the delay in filing the present appeals.

2. For the reasons mentioned in the aforesaid application, the same is allowed and delay in filing the present appeals is condoned.

3. The present special appeals are filed by the appellant-State seeking following reliefs:-

“It is, therefore, most respectfully and humbly prayed that this Special Appeal Writ may kindly be allowed and the order impugned dated 14.03.2023 as passed by Learned Single Judge in SBCWP No.338/2023 kindly be set aside and the writ petition as preferred by the petitioner may kindly be dismissed.”

4. The respondents were appointed on the post of Teacher Grade-III in the year 1985. Since at the time of recruitment, sufficient number of female candidates, in the tribal districts of Banswara and Dungarpur, were not available which prompted the State to relax the qualification to metric. While relaxing the qualification, the private respondents were given ad-hoc appointment and as soon as they completed necessary qualification/training, their services were confirmed.

5. Thereafter, in pursuance of the circular by the State dated 25.01.1992, the respondents were allowed the selection grade on completion of 9, 18 and 27 years.

6. The present cause of action arose because the State started implementing the judgment of **State of Rajasthan & Ors. vs. Jagdish Narayan Chhaturvedi** reported in **(2009) 12 SCC 49** and thereby brought two orders, one dated 29.06.2009 and another dated 20.09.2018.

7. The counsel for the State has hinged the arguments on the concluding para of the circular which reads as follows:

"Accordingly, the State Government has reconsidered the matter and in partial modification of order of even number dated 29.6.2009, the Governor is pleased to order that in cases where Government servants have been granted selection grade prior to order dated 29.6.2009 by counting period of ad-hoc service, such cases may not be reviewed. However, their additional selection grades become admissible to such employees after 29.6.2009 under the rules, this shall be granted by excluding the period of ad-hoc service as per the order of Hon'ble Supreme Court. For example, if any employee got the advantage of first selection grade prior to 29.6.2009, on completion of service of 9 years (after inclusion of, say, three years' ad-hoc service), his next selection grade on completion of service of 18 years, on or after 29.6.2009, shall be granted only after three years of ad-hoc service is added to 18 years i.e. $18+3=21$ years.

All pending cases would be decided as per these orders.

The cases of grant of selection grade decided subsequent to order of even number dated 29.6.2009, may be reviewed and revised in accordance with the provisions of this order. Similarly pension cases of Government servants, finalized after re-fixation of pay under order dated 29.6.2009, may also be reviewed and revised. However cases of persons who retired prior to 29.6.2009 would not be re-opened."

8. The counsel for the appellant - State submits that it was well within the domain of the State to implement the judgment of Jagdish Narayan Chaturvedi (supra) and thus not to grant selection grade for the period of ad-hoc services of the respondents. Counsel for the State further submits that the learned Tribunal has committed an error by not allowing the recovery from the respondents.

9. Counsel for the State has drawn the attention of this court to conditions No.3 and 5 of ***State of Punjab & Ors. Vs. Rafiq Masih (White Washer) & Ors.*** reported in ***(2015) 4 SCC 334***.

The operative portion which reads as thus:

"8. As between two parties, if a determination is rendered in favour of the party, which is the weaker of the two, without any serious detriment to the other (which is truly a welfare State), the issue resolved would be in consonance with the concept of justice, which is assured to the citizens of India, even in the Preamble of the Constitution of India. The right to recover being pursued by the employer, will have to be compared, with the effect of the recovery on the employee concerned. If the effect of the recovery from the employee concerned would be, more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer to recover the amount, then it would be iniquitous and arbitrary, to effect the recovery. In such a situation, the employee's right would outbalance, and therefore eclipse, the right of the employer to recover.

xxx xxx xxx

18. It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

- (i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

- (ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.
- (iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.
- (iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.
- (v) In any other case, where the court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

10. Counsel for the respondents Mr. Jodha submits that the condition No.1 of the Rafiq Masih's case (supra) clearly pass the recovery from the employees belonging to Class-III and Class-IV services and admittedly, the present respondents are Teacher Grade-III and belong to Class-III of the services and thus, no recovery can be made from them.

11. Mr. Jodha further submits that most of the respondents present before this Court have retired as they were appointed in the year of 1985 and already a period of about 39 years has lapsed since the original recruitment.

12. Mr. Jodha submits that there are concurrent findings of the learned appellate tribunal, learned State tribunal as well as from the Single Bench of this Hon'ble Court and thus, unless something grave is pointed out by the State, no interference is called for.

13. Mr. Jodha further submits that the judgment passed by this Hon'ble Court in Single Bench is supported by the case law of the Hon'ble Apex Court in Rafiq Masih's case (supra) and thus, fortifies the case of the respondent and hence, no case for recovery at such a belated stage is called for.

14. This Court, after hearing both the parties, restricts its adjudication to the core prayer of the respondents which originated when recoveries were being made because the respondents' ad-hoc service was sought to be excluded from the service to be counted for the purpose of granting of selection grade.

15. It is a fact that after about 39 years, all the beneficiaries/Teacher Grade-III/respondents in these special appeal writs have retired and the peculiar facts of the case arise out of the relaxation granted by the State to the female candidates in tribal districts of Dungarpur and Banswara for the purpose of appointment of teacher grade-III in 1985 and thus, the law laid down in Rafiq Masih's case (supra) is absolutely applicable (in particular condition No.1). Since the respondents belong to Class-III services and are retired, therefore, no recovery from them can be made.

16. Therefore, no cause to differ to the concurrent finding is made out. Hence, the present appeals are dismissed.

(MUNNURI LAXMAN),J

(PUSHPENDRA SINGH BHATI),J

1-21supp - AjaySingh/-