

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

S.B. Civil Writ Petition No. 10980/2017

Kailash Chandra Agarwal S/o Shri Khetsi Das Agarwal, R/o Tulsi Khet 5 K.m. Ajmer Road Village Mataji Ka Kheda Gram Panchayat Argia Tehsil And District Bhilwara Raj..

----Petitioner

Versus

1. The State Of Rajasthan Through Secretary, Co-Operative Department, Government Of Rajasthan, Jaipur.
2. The Co-Operative Department Through Registrar, Nehru Shakar Bhawan, Jaipur.
3. The Central Co-Operative Bank Ltd., Bhilwara Through Its Managing Director, Bhilwara.

----Respondents

Connected With

S.B. Civil Writ Petition No. 10810/2017

Jagdish Prasad Sharma S/o Shri Banshi Lal Sharma, R/o Village And Post Shakargarh, Tehsil Jahazpur, District Bhilwara.

----Petitioner

Versus

1. The State Of Rajasthan Through Secretary, Co-Operative Department, Government Of Rajasthan, Jaipur
2. The Co-Operative Department Through Registrar, Nehru Shakar Bhawan, Jaipur.
3. The Central Co-Operative Bank Ltd., Bhilwara Through Its Managing Director, Bhilwara.

----Respondents

S.B. Civil Writ Petition No. 10926/2017

Bhagwati Lal S/o Shri Kanwar Lal Hiran, R/o Nolakha Mohalla Street No. 6 Gangapur District Bhilwara Raj.

----Petitioner

Versus

1. The State Of Rajasthan Through Secretary, Co-Operative Department, Government Of Rajasthan, Jaipur.
2. The Co-Operative Department Through Registrar, Nehru Shakar Bhawan, Jaipur.
3. The Central Co-Operative Bank Ltd., Bhilwara Through Its Managing Director, Bhilwara.

----Respondents

S.B. Civil Writ Petition No. 10928/2017

Jaidev Devpura S/o Shri Ram Chandra Devpura, R/o Goshala Road Dr. Nuwal Ke Samne Gulabpura District Bhilwara Raj..

----Petitioner

Versus

1. The State Of Rajasthan Through Secretary, Co-Operative Department, Government Of Rajasthan, Jaipur.
2. The Co-Operative Department Through Registrar, Nehru Shakar Bhawan, Jaipur.
3. The Central Co-Operative Bank Ltd., Bhilwara Through Its Managing Director, Bhilwara.

----Respondents

S.B. Civil Writ Petition No. 12158/2017

Bhagchand Jain S/o Shri Fateh Lal Jain, R/o 17-B Vivekanand

Colony Kisan Takies Ke Pas District Tonk Raj..

----Petitioner

Versus

1. The State Of Rajasthan Through Secretary, Co-Operative Department, Government Of Rajasthan, Jaipur.
2. The Co-Operative Department Through Registrar, Nehru Shakar Bhawan, Jaipur.
3. The Central Co-Operative Bank Ltd., Bhilwara Through Its Managing Director, Bhilwara.

----Respondents

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For Petitioner(s) : Mr. A. K. Choudhary (through VC).

For Respondent(s) : Mr. M. S. Rathore (through VC).

Mr. P. S. Rathore (through VC).

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**HON'BLE MS. JUSTICE REKHA BORANA**

**Order**

**17/01/2022**

The petitioners were appointed on various posts with the respondent Bank No.3-Central Co-Operative Bank Ltd. During the tenure of their services, the respondent Bank passed a resolution dated 25.05.2010, whereby, the superannuation age of the employees was reduced from 60 years to 58 years. The said resolution was challenged in ***S.B. Civil Writ Petition No. 5332/2010, which was decided on 05.07.2011*** and the respondent Bank was directed to reconsider the age of retirement and also to continue with the services of the employees. In pursuance to the directions of this Court, the respondent Bank reconsidered the issue but again took a resolution to fix the age of superannuation at 58 years. As a consequence, the petitioners stood retired.

The resolution dated 18.07.2011 was again challenged and vide interim order dated 06.09.2011, the effect and operation of the resolution was stayed. In consequence thereof, the petitioners were allowed to resume their duties.

During the pendency of the writ petitions, the Bank again took a resolution to increase the age of superannuation from 58 years to 60 years. The statement to that effect was made before the Court on behalf of the respondent Bank and in view of the submission made, the petitions of the petitioners were dismissed as having become infructuous.

Meanwhile, the petitioners after completing the age of 60 years, superannuated.

The grievance in the present writ petition of the petitioners is that they were not paid the salary of the period during which they remained out of service because of the resolutions being passed by the Bank.

The period during which the petitioners remained out of service is as under:

Petitioner	SBCWP No.	Period
Kailash Chandra Agarwal	10980/2017	21.07.2011 to 06.09.2011 (47 days)
Jagdish Prasad Sharma	10810/2017	01.02.2011 to 06.09.2011 (218 days)
Bhagwati Lal	10926/2017	21.07.2011 to 06.09.2011 (47 days)
Jaidev Devpura	10928/2017	21.07.2011 to 06.09.2011 (47 days)
Bhagchand Jain	12158/2017	21.07.2011 to 06.09.2011 (47 days)

Learned counsel for the petitioners has averred that it was only on the basis of the submission made by the Bank that the earlier writ petition was rendered as infructuous as the Bank had promised the consequential benefits also in pursuance to the resolution.

Learned counsel for the petitioner has relied upon the judgment passed in **Civil Appeal No. 5527/2012 ; State of Uttar Pradesh v. Dayanand Chakrawarty & Ors.** He has submitted that the employees had remained out of service only because of the wrong decision taken by the Bank and not because of any fault on their part.

Learned counsel has stated that even while passing the interim order dated 06.09.2011 in the earlier writ petition (S.B. Civil Writ Petition No. 7263/2011), the issue pertaining to the arrears was kept pending by the Court for decision at the time of final hearing. But because of the petition being dismissed as infructuous, the same could not be decided at that stage.

Learned counsel further submitted that two employees namely Kailash Chandra Shotriya and Harish Chandra Joshi have been paid the arrears of salary of the disputed period by the Bank and the present petitioners have been denied the same without any plausible reason.

Learned counsel for the respondent Bank has submitted that as the petitioners had not worked during the period as alleged, they were not entitled to the salary for that period on the principle of 'no pay no work'.

Learned counsel did not dispute the fact of the other two employees as named by the petitioners being paid the salary but submitted that the same was on medical grounds.

Heard learned counsel for the parties and have perused the material available on record.

It is clear on record that the respondent Bank had passed the resolutions dated 25.05.2010 & 18.07.2011 without any logic or reason, which were interfered in by this Court and ultimately



the resolution dated 16.12.2013 was passed by the Bank in the interest of the Bank only. The said resolution dated 16.12.2013 was passed with the clear understanding that the benefits of that decision are to be granted to even those employees who had retired by that time.

The relevant portion of the resolution dated 16.12.2013 reads as under:

"बाद विचार विमर्श सर्व सम्मति से बैंक कर्मचारियों/ अधिकारियों की सेवा निवृत्ति की अधिवार्षिक आयु 58 वर्ष के स्थान पर पुनः 60 वर्ष किये जाने का निर्णय लिया जाता है। साथ ही जो कर्मचारी/अधिकारी उच्च न्यायालय के स्टे प्राप्त कर सेवा निवृत्त हो चुके हैं उन्हें भी 58 के स्थान पर 60 वर्ष के हिसाब से सेवा निवृत्ति परिलाभ दिये जाने का निर्णय लिया जाता है। इस सन्दर्भ में माननीय राजस्थान उच्च न्यायालय जोधपुर में कर्मचारियों/अधिकारियों की सेवा निवृत्त के सम्बन्धित जो प्रकरण लम्बित हैं उक्त निर्णयानुसार समाप्त किये जाने के लिए नियमानुसार विधिक कार्यवाही करने का भी निर्णय लिया गया, संयुक्त रजिस्ट्रार (बैंकिंग) के उक्त पत्र दिनांक 10.10.2013 के क्रम में माननीय न्यायालय द्वारा प्रकरण में दिये गये स्थगन आदेश को निस्तारित करवाया जावे एवं डी. पी.सी. की कार्यवाही की जावे, इस कार्यवाही हेतु बैंक के अध्यक्ष एवं प्रबन्ध निदेशक को अधिकृत किया जाता है।"

The Hon'ble Apex Court in the case of Dayanand Chakrawarty (supra), while relying upon earlier judgments passed in **Harwindra Kumar reported in 2005(13) SCC 300, Radhey Shyam Gautam reported in 2007(11) SCC 507 and Jaswant Singh reported in 2006(11) SCC 464** observed as under:]

*"We observe that the principle of 'no pay no work' is not applicable to the employees who were guided by specific rules like Leave Rules etc. relating to absence from duty. Such principle can be applied to only those employees who were not guided by any specific rule relating to absence from duty. If an employee is prevented by the employer from performing his duties, the employee cannot be blamed*

*for having not worked, and the principle of 'no pay no work' shall not be applicable to such employee.*

*38. In these cases as we have already held that Regulation 31 shall be applicable and the age of superannuation of employees of the Nigam shall be 60 years; we are of the view that following consequential and pecuniary benefits should be allowed to different sets of employees who were ordered to retire at the age of 58 years:*

*(a) The employees including respondents who moved before a court of law irrespective of fact whether interim order was passed in their favour or not, shall be entitled for full salary up to the age of 60 years. The arrears of salary shall be paid to them after adjusting the amount if any paid."*

In view of the ratio as laid down by the Hon'ble Apex Court in Dayanand Chakrawarty's case (supra), it is held that the present petitioners would be entitled for the salary for the period during which they remained out of service. The same shall be paid to them within a period of three months from the date of receipt of the copy of this order. If the same is not paid within the said period, it would then be payable along with an interest at the rate of 6% per annum.

With these observations, the present writ petitions are allowed.

**(REKHA BORANA),J**