



RAJASTHAN HIGH COURT

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

S. B. Civil Writ Petition No. 11940/2013

Gopal Sharma S/o Shri Rampal Sharma, aged about 60 years,  
R/o 356, Shopping Centre, Near Jain Temple, Kota.

-----Petitioner

Versus

1. State of Rajasthan through Secretary, the Public Works Department, Jaipur.
2. Chief Engineer, PWD, Station Road, Jaipur.
3. Additional Chief Engineer, Division Kota.
4. Executive Engineer, Public Works Department, Division, District Jhalawar.
5. Pension Department, Jyoti Nagar, Jaipur through Director.

-----Respondents

For Petitioner : Mr. Suresh Kashyap Advocate.  
For Respondents : Mr. Dheeraj Tripathi, Additional  
Government Counsel.

**HON'BLE MR. JUSTICE ANAND SHARMA**

**Judgment**

Date of conclusion of arguments	::	09.01.2026
Date on which judgment was reserved	::	09.01.2026
Whether the full judgment or only the operative part is pronounced	::	Full Judgment
Date of pronouncement	::	15.01.2026

1. The petitioner has approached this Court under Article 226 of the Constitution of India seeking issuance of writ of mandamus directing the respondents to grant him pension and retiral benefits.
2. Briefly stated the facts are that the petitioner was appointed on the post of Lower Division Clerk (LDC) as a substantive employee of the Government of Rajasthan on



20.08.1973. He rendered continuous service from the year 1973 to 1987, till he was transferred vide order dated 14.07.1987. The petitioner has not placed on record any document to show that he reported back for duty thereafter or marked attendance anywhere, or even raised any grievance before the departmental authorities by making a representation. For more than two decades following 1987, the petitioner remained completely silent and took no steps whatsoever to assert any alleged service right.

3. As per the petitioner, his normal date of superannuation was 30.11.2010 and in the absence of any formal order of termination or disciplinary action, his service must be deemed to have continued till his date of superannuation. After keeping silence for more than two decades and after attaining the age of superannuation in the year 2010, the petitioner submitted representations in the year 2012 seeking grant of pension and other retiral benefits, followed by a legal notice dated 27.06.2013. The said request was not entertained by the respondents on the ground that the petitioner had abandoned service in the year 1987 and did not possess the minimum qualifying service required under the applicable pension rules and his service record was missing. Aggrieved thereby, the petitioner instituted the present writ petition in the year 2013.

4. The respondents, in their reply, have specifically pleaded that the petitioner abandoned service in the year 1987 and never reported back thereafter, resulting in cessation of the employer–employee relationship. It has further been contended that the service records of the petitioner are not traceable owing



to passage of time and the petitioner's own prolonged inaction and making verification of his claim was impossible.

5. Despite repeated and strict directions issued by this Court requiring the respondents to explain the loss of records and to produce whatever documents were available as also to explain the loss of service records, the respondents failed to place original records on record and confined themselves to filing affidavits explaining non-availability as well as lodging FIR in this regard. While this Court does not approve such administrative lapse and deprecate the irresponsible attitude of the officials of the respondents, the core question remains whether such lapse can create or resurrect a substantive legal right in favour of the petitioner.

6. Learned counsel appearing for the petitioner assailed the impugned inaction in not granting pensionary benefits as arbitrary, illegal and violative of the Rajasthan Civil Services (Pension) Rules, 1996 as well as Articles 14 and 21 of the Constitution of India. It was submitted that the petitioner was a substantive employee and at no point of time, his services were ever terminated in accordance with law. According to learned counsel, mere non-attendance, in the absence of a formal order of termination, resignation or compulsory retirement, cannot result in forfeiture of service or extinguishment of lien on a substantive post.

7. It was vehemently argued that under the Rajasthan Service Rules, abandonment of service is not an automatic consequence of absence and necessarily requires affirmative departmental action after issuance of notice and grant of





opportunity to the employee concerned. In the present case, no notice of recall, no charge-sheet, no order of termination and no proceedings of any nature were ever initiated against the petitioner. In the absence of such action, the presumption must operate in favour of continuity of service and the respondent-employer cannot be permitted to treat the petitioner as having abandoned service.

8. Learned counsel further contended that the burden of proving abandonment squarely lies upon the respondent-employer and not upon the petitioner-employee. Since the respondents failed to produce service records, attendance registers, leave records or any legitimate evidence to establish abandonment on the part of the petitioner, an adverse inference ought to be drawn against them. It was argued that loss of records, which are statutorily required to be preserved by the department, cannot be used to defeat the legitimate claim of an employee, particularly when the lapse is solely attributable to the respondents.

9. On the issue of eligibility to get pension, learned counsel submitted that pension is not a bounty, but a statutory and constitutional right which crystallises on the date of superannuation. It was urged that the petitioner's date of retirement being in the year 2010, the pension rules as applicable on that date must govern his case. Under the amended Rajasthan Civil Service (Pension) Rules, 1996, a minimum of ten years' qualifying service is sufficient for grant of pension and such requirement stands satisfied by the petitioner's admitted service of fourteen years from the year 1973 to 1987. Reliance was placed on the judgment of Hon'ble Supreme Court in the case of

***D.S. Nakara & Others v. Union of India, (1983) 1 SCC 305,***

to contend that pension is not a bounty and the Rules must receive a liberal interpretation in favour of employees and technicalities should not defeat substantive rights.

10. It was further argued that the plea of delay and laches is misconceived, as the petitioner could not have claimed pension prior to superannuation. According to learned counsel, the cause of action arose only when pension was denied in 2011 and the writ petition filed by him in 2013 cannot be termed belated. It was contended that pension being a recurring and continuing right, the doctrine of laches has limited application and denial thereof results in continuing wrong.

11. Further, learned counsel urged that the respondents' action suffers from arbitrariness, non-application of mind and violation of principles of natural justice and the petitioner is entitled to pensionary benefits with all consequential reliefs.

12. Per contra, learned Additional Government Counsel appearing for the respondents vehemently opposed the claim of the petitioner and contended that the writ petition is wholly misconceived and deserves to be dismissed at the threshold. It was submitted that the petitioner admittedly stopped attending duties after the year 1987 and never reported back thereafter. Such prolonged and unexplained absence, spanning more than two decades, clearly amounts to voluntary abandonment of service on the part of the petitioner.

13. Learned counsel for the respondents argued that abandonment of service does not require issuance of any formal termination order or prior notice, particularly where the employee



has wilfully disengaged himself from duties. Learned counsel emphasised that in cases of desertion, the relationship of employer and employee comes to an end by operation of law and the employer is not obliged to pass any formal order in this regard.

14. It was further contended that lien on a substantive post is not an absolute or indefeasible right and ceases when the employee abandons service and due to abandonment, no subsequent claim of continuity or pension can be entertained.

15. On the question of pension eligibility, learned Additional Government Counsel argued that eligibility for pension crystallises on the basis of qualifying service rendered till the date of abandonment of service and not on a notional or assumed date of superannuation. In the instant case, no order of retirement under the relevant Rules has been passed in favour of the petitioner. Since the petitioner abandoned service in 1987, the pension rules prevailing at that time would govern his case. Under the rules prevailing at the relevant time, a minimum of twenty years' qualifying service was mandatory, which the petitioner admittedly did not fulfill.

16. Addressing the contention regarding loss of service records, learned Additional Government Counsel submitted that the petitioner's own prolonged inaction materially contributed to the present situation. With passage of time, records might have been weeded out/ misplaced or even lost, however, the petitioner cannot take advantage of his own indolence. It was argued that statutory benefits cannot be granted in the absence of fulfillment of qualifying service, irrespective of non-availability of records,



without there being any proof by the petitioner for verifying his actual service.

17. Finally, on the issue of delay and laches, learned Additional Government Counsel submitted that the writ petition suffers from gross delay of nearly twenty-six years from the date of cessation of service whereas service-related claims must be agitated within a reasonable time and that stale claims ought not to be entertained under Article 226 of the Constitution of India. Learned Additional Government Counsel, thus, urged that the writ petition is barred by delay and laches, devoid of merit and liable to be dismissed with costs.

18. Having considered the rival submissions and perused the record, this Court finds the petitioner admittedly ceased to attend duties in 1987 and remained completely silent for more than two decades. The contention that the cause of action arose only upon superannuation in 2010 is misconceived. The cause of action, if any, arose when the petitioner stopped discharging duties and allegedly perceived deprivation of his service rights. A vigilant employee would have immediately sought redressal through departmental or judicial remedies. The jurisdiction under Article 226 of the Constitution of India being discretionary and equitable, relief can be declined on the ground of unreasonable delay alone. The Hon'ble Supreme Court has consistently held that stale service claims ought not be entertained. Entertaining a claim after twenty-six years would unsettle settled administrative positions and defeat the principle of finality. On this ground alone, the writ petition is liable to be dismissed.





19. Even otherwise, on merits, the petitioner has failed to establish continuity of service beyond 1987. His prolonged and unexplained absence squarely attracts the doctrine of abandonment of service. Long unauthorised absence in the present case can also be treated as voluntary abandonment of service. The contention of the petitioner that absence of a formal termination order presumes continuity is, thus, legally untenable.

20. The argument of learned counsel for the petitioner that loss of service records should operate in favour of the petitioner also cannot be accepted. Maintenance of service records is undoubtedly a statutory obligation and this Court deprecates the respondents' lapse in this regard. However, loss of records does not ipso facto confer substantive rights in favour of the petitioner. Entitlement to pension must flow from statutory compliance and proved qualifying service.

21. It is settled preposition of law that pension is a deferred benefit earned for service actually rendered and eligibility crystallises on the basis of qualifying service till cessation of service. The petitioner's service effectively came to an end in 1987 upon abandonment. The rules prevailing at that time required a minimum of twenty years' qualifying service, which the petitioner admittedly did not fulfill. Subsequent amendments/ new Rules reducing the qualifying service to ten years cannot be applied retrospectively to revive a concluded service relationship due to abandonment. Inaction of the respondents in passing any final order for terminating relationship does not dispense with the statutory requirement of minimum qualifying service.





22. The reliance placed by learned counsel for the petitioner on the judgment of the Hon'ble Supreme Court in the case of ***D.S. Nakara & Others (supra)*** is totally misplaced in the facts and circumstances of the instant case. The said judgment deals with uniformity among eligible pensioners and does not dispense with the statutory requirement of minimum qualifying service and directions for grant of pension cannot be granted in the absence of fulfillment of criteria of qualifying service.

23. Granting relief in the present case would set an unhealthy precedent by encouraging resurrection of long-buried service disputes, thereby undermining administrative certainty and public interest. The extraordinary jurisdiction of this Court under Article 226 of the Constitution of India cannot be converted into a forum for revival of stale claims founded on prolonged indolence and neglect.

24. For the reasons aforesaid, this Court does not find any merit in the writ petition and the same is accordingly dismissed.

25. Before parting, this Court finds it necessary to record its strong disapproval of the plea taken by the respondents regarding loss of the service records of the petitioner. Service records constitute the foundational basis for determining the rights and entitlements of an employee and are required to be maintained and preserved with due care in accordance with the statutory rules and administrative instructions. The respondents are trustees of public records and cannot be permitted to take shelter behind a bald assertion of loss of record, particularly when such plea is raised in the course of judicial proceedings. Despite repeated and specific directions issued by this Court to trace,



reconstruct or produce the relevant service records, the respondents have failed to do so and have confined themselves to filing routine affidavits, reflecting a casual and indifferent approach. Such conduct not only demonstrates administrative reluctance but also erodes public confidence in governance and accountability. The loss or misplacement of service records is not a mere procedural lapse, but a serious dereliction of duty for which responsibility must be fixed. Accordingly, this Court directs the Principal Secretary of Public Works Department, Government of Rajasthan to conduct an appropriate enquiry for ascertaining the responsibility for loss of petitioner's service records and to initiate suitable legal and disciplinary action against the erring officials in accordance with law. A detailed compliance report indicating the steps taken, the officials found responsible and the action initiated their against shall be placed on record before this Court within a period of four months from today.

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

(ANAND SHARMA),J

MANOJ NARWANI /