
(2010) 02 RAJ CK 0101
In the Rajasthan High Court

Arjun Lal Meena

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 19-02-2010

Acts Referred:

Citation : (2010) 02 RAJ CK 0101

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mohammad Rafiq, J.—This writ petition was filed by petitioner in the year 1997 with a prayer that respondents be directed to treat him continuous in their service on substantive basis on the post of Lower Division Clerk (LDC) with effect from 21.12.1985 and accordingly assign him seniority on the post of LDC; or, in alternative at-least assign him seniority from 20.06.1987; further prayer has been made that the order dated 25.02.1997 passed by the Government be quashed and set-aside.

Shri Arpit Srivastava, learned Counsel for petitioner, has argued that petitioner was selected on the post of LDC by Rajasthan Public Service Commission (RPSC) and appointed on temporary basis in pay scale of 490-840 under a scheme of 20-point programme by Office of Executive Engineer, Irrigation Department, Division Banswara, vide office order dated 30.03.1983. After joining service with respondent Irrigation Department, petitioner came to know about advertisement published by RPSC for recruitment on the post of LDC. Petitioner also applied in response thereto and, for that purpose, he duly sought permission of the Executive Engineer, Irrigation Department where he was posted. Petitioner was declared successful in that selection conducted by the RPSC and his name was placed at Serial No. 104 in the merit list prepared by the RPSC. However, unfortunately, instead of Irrigation Department, he was allocated to State Insurance and Provident Fund Department of the Government of Rajasthan, and under this allocation, the Additional Director (Administration), State Insurance

and Provident Fund Department, Government of Rajasthan, issued an appointment order dated 21.12.1985 directing him to join his duties at Bundi in the Office of State Insurance and Provident Fund Department. Petitioner immediately thereafter requested the Executive Engineer, Irrigation Department, for relieving him to join duties at newly allocated Department but the Executive Engineer, instead of relieving him, asked him to continue in the Irrigation Department itself with assurance to forward his case for allocation to Irrigation Department. The Executive Engineer, by his letter dated 27.01.1986 wrote to Superintending Engineer, Irrigation Department, Udaipur, for getting his allocation to Irrigation Department in favour of petitioner. The Superintending Engineer forwarded his letter to the Chief Engineer along-with his letter dated 07.02.1986. Petitioner genuinely believed that his allotment would be changed to Irrigation Department and, on assurance given by his superiors, he continued to work with the Irrigation Department. Since he was not relieved by the Executive Engineer, he could not join at the place where he was offered posting by the State Insurance and Provident Fund Department. Learned Counsel invited attention of the Court towards another letter dated 13.08.1986 (Annexure-6) written by the Executive Engineer to the Superintending Engineer to the same effect. In those facts, the Deputy Director (Administration), State Insurance & Provident Fund Department, vide his order dated 20.10.1986, cancelled appointment of petitioner.

It was thereafter that the petitioner received a notice dated 27.10.1986 from the General Administrative Department of the Government of Rajasthan whereby he was asked to show cause as to why he did not join his duties at the allocated department. Petitioner submitted reply to aforesaid notice on 04.11.1986 explaining all above noted facts and difficulty on account of which he could not join his duties. At this, the said allocation of State Insurance & Provident Fund Department was changed and petitioner was reallocated to World Food Progress Project, Forest Department, Udaipur. In response to that letter, the petitioner by his application dated 21.12.1986 again wrote to the General Administrative Department of the State Government for allocating him Irrigation Department. The Executive Engineer, Irrigation Department, again wrote a letter to the Superintending Engineer on 28.04.1987 explaining that since the Government has taken up Bisalpur Project in hand, it would be in the interest of the Department to retain him. For proper function of the Project, the Government of Rajasthan transferred some of the employees from Irrigation Department to new project including petitioner whose name was figured at Serial No. 5 of the order dated 10.06.1987, whereby he was posted with that project.

Learned Counsel for petitioner submits that even otherwise, according to Sub-rule (viii) of Rule 25 of the Rajasthan Subordinate Officer & Ministerial Staff Rules, 1957, which was newly added by amending the Rules, all persons working as Lower Division Clerks during the period from 01.04.1980 to 31.12.1984 on urgent temporary basis were entitled to be made permanent subject to their clearing qualifying test.

Petitioner submitted a representation on 23.01.1989 which was favourably recommended by the Superintending Engineer and by his letter dated 26.12.1989 sent the same to the Additional Chief Engineer. At that stage, surprisingly the Chief Engineer, Irrigation Department, demanded from the Additional Chief Engineer, copy of order of petitioner's appointment with the State Insurance & Provident Fund Department. Learned Counsel submitted that the Superintending Engineer by his letter dated 28.12.1989 conveyed to the petitioner that his case has been forwarded to the Government but so far no reply has been received. It was thereafter that on 24.01.1990 a notice was issued to the petitioner by the General Administrative Department again requiring him to join his duties at the newly allotted place of posting i.e. World Food Progress Project, Forest Department, Udaipur, otherwise his appointment will be cancelled. Petitioner gave a detailed reply in response to that notice dated 24.01.1990. In the meantime the respondents allowed the petitioner to work with them as LDC in the Irrigation Department. The Executive Engineer by his letter dated 02.01.1997 wrote to the Chief Engineer, Bisalpur Irrigation Project, Jaipur, and therein stated reasons for which the petitioner was not relieved. The petitioner was surprised to know that the Irrigation Department of the Government of Rajasthan has rejected the representation of the petitioner that he cannot be assigned seniority in the Irrigation Department because he was not appointed in that Department on being selected by the RPSC.

Shri Hemant Mathur, learned Deputy Government Counsel appearing for respondents, opposed writ petition and submitted that since petitioner was initially allotted the State Insurance and Provident Fund Department of the Government of Rajasthan to join his duties therewith, where he did not join and thereafter he was reallocated World Food Progress Project, Forest Department, Udaipur, to join where also he did not join. His services with the Irrigation Department cannot be taken on substantive basis. Learned Counsel submitted that since originally petitioner was appointed in Irrigation Department on ad-hoc/temporary basis, he cannot be treated to have been appointed substantively and, therefore, he cannot be assigned seniority from the date of clearing the qualifying test conducted by the RPSC.

Detailed submissions made by learned Counsel for petitioner noticed above and number of documents which the petitioner has produced with the writ petition clearly show that even though petitioner was already appointed with the respondent Irrigation Department prior to his selection by the RPSC but when he was selected by the RPSC the departmental authorities did not relieve him to go and join the service with the State Insurance & Provident Fund Department and they periodically have been recommending his case to the Government in its General Administrative Department for allocating him to the Irrigation Department. The General Administrative Department not being sensitive to the request of petitioner, rather allotted him to World Food Progress Project, Forest Department, Udaipur. Even thereafter petitioner made several representations which were forwarded with favourable recommendations to the Government. The

General Administrative Department of the Government of Rajasthan, instead of acceding to such request, twice issued notice to petitioner as to why his appointment be not cancelled.

It appears that case of petitioner for his non-joining in the State Insurance & Provident Fund Department and subsequent thereto, non-joining with the World Food Progress Project, Forest Department, Udaipur, was dealt with separately whereas number of representations with letters of the Departmental authorities of Irrigation Department was being processed separately, though in same Department and they never got clubbed together. It is in those circumstances that Irrigation Department by the impugned order dated 25.02.1997 declined to grant seniority to petitioner from the date he was selected by the RPSC.

Petitioner filed this writ petition way back in 1997 along with stay petition. However, the stay petition was rejected by this Court while admitting the writ petition. The respondents have so far not relieved the petitioner from his duties and have thus allowed him to continue in the service of their Irrigation Department.

It is quite surprising that when petitioner was selected by the RPSC and was working with the Irrigation Department, which Department had been periodically requesting the General Administrative Department of the Government of Rajasthan, for allocating him to the Irrigation Department, why should the General Administrative Department not consider such a genuine request. Non-joining of petitioner in the State Insurance & Provident Fund Department was for the aforesaid reasons and it cannot be said to be a deliberate non-joining. In any case petitioner had been serving the respondent Irrigation Department even after his selection by the RPSC, therefore his appointment and continuity on such appointment should be for all purpose be treated as made after due selection by the RPSC. Technicality of non-allocation of the petitioner to Irrigation Department should not come in his way now as he has already completed 27 years of service with the respondent Department and out of which 25 years are those which he has served the Irrigation Department after his selection by the RPSC.

In the result, this writ petition is allowed. The respondents are directed to treat the petitioner to have been substantively appointed with the Irrigation Department as LDC with effect from 21.12.1985, on which date he was issued appointment order to join with the State Insurance & Provident Fund Department. The petitioner is held entitled to all consequential benefits.

Compliance of the judgment be made within a period of three months from the date its copy is produced before the respondents.