

(2020) 09 RAJ CK 0076

In the Rajasthan High Court

Case No : Civil Writ Petition No. 21799 Of 2018

Ashok Kumar Soni

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 10-09-2020

Acts Referred:

Citation : (2020) 09 RAJ CK 0076

Hon'ble Judges : Sanjeev Prakash Sharma, J

Bench : Single Bench

Advocate : S.L. Kumawat, Udit Sharma, Rajesh Maharshi

Final Decision : Partly Allowed

Judgement

1. The petitioner by way of this writ petition assails the orders dated 27.3.2004, 11.1.2007, 24th May, 2017, 8th May, 2018 & 30th July, 2018 and prays to quash for grant of benefit of selection scale to the petitioner on completion of 9, 18 & 27 years of service after counting length of service from the date of initial appointment. However, the petitioner prays that no recovery be made from his salary and also refunded the entire recovered amount to him with interest @12 % per annum.

2. Learned counsel for the petitioner further prays that he should be placed in the seniority list of UDC and also considered for further promotion on the post of AAO and pay scale of the said post be also granted to him.

3. This is a second round of litigation initiated by the petitioner. Earlier, the petitioner had preferred a Writ Petition No.1104/2007 before this court assailing the order dated 27.3.2004, whereby the petitioner was promoted on the post of UDC dated 23.12.1994 and confirmation order dated 30.12.1998 had been cancelled. The order dated 11.1.2007 was also assailed, whereby the representation filed by the petitioner was rejected and further the petitioner also prayed that no recovery be made.

4. This court after having examined the provisions of Rajasthan Subordinate Offices Ministerial Staff Rules 1957 and amendment made in the Rules of 1957 vide notification dated 21.12.1994, reached to the conclusion that the writ petition was devoid of substance and lacked in merit and deserves to be dismissed. However, with reference to the recovery and promotion of juniors, the court granted liberty to the petitioner to address a comprehensive representation with the directions to the respondents to consider and decide the same in accordance with law.

5. The aforesaid directions have resulted in the present writ petition being filed against the rejection order dated 24.10.2017 and the order of recovery as well as the order of denying grant of ACP till the recovery is fully made dated 8 th May, 2018 and 30th July, 2018.

6. Learned counsel for the petitioner has again taken this court to the order which was subject matter of adjudication in the earlier writ petition in relation to his reversion and submits that the reversion was wrongly made and the petitioner's promotion could not have been cancelled. However, learned counsel submits that there could not have been made any recovery from the petitioner and relies on circular issued by the Finance Department dated 17th August, 2016 as well as also relies on the judgment passed by the Apex Court in the case of "State of Punjab & Ors. Vs. Rafiq Masih (White Washer)" reported in 2015(4)SCC334.

7. Learned counsel submits that the petitioner who was appointed on 16th September, 1992 in District and Sessions Court was transferred on his request to Consumer Court vide order dated 27.8.1994 and joined on 31st August, 1994 at District Consumer Redressal Forum, Sikar. He was granted adhoc promotion by the orders of the District Consumer Redressal Forum on 23rd December, 1994 as UDC and was confirmed on 31.12.1998 as UDC. The respondents passed an order dated 27.3.2004 reverting him to the post of LDC and cancelled the promotion order dated 23.12.1994 and confirmed the order dated 31.12.1998 on the ground that the concerned authority who had promoted the petitioner as adhoc UDC and later on confirmed him, was not competent under the Rules to make the said promotion.

8. The said aspect has already been examined in the aforesaid writ petition (supra) and the Court has already held the said order passed by the respondents as in accordance with law and the writ petition has been dismissed in this regard. The petitioner has not challenged the said dismissal part before any higher court. Maintaining the judicial discipline therefore, this court would not re-examine the said aspect and prayer made by the petitioner with regard to the aforesaid aspect only on the ground that the same has been examined again in the representation decided by the respondents is held to be without basis and not maintainable. Accordingly, the prayer for quashing and setting aside the orders dated 27.3.2004 and 11.1.2007 is rejected.

9. Question now remains only with regard to;

(i) whether the respondents could have made recovery of the amount which the petitioner had received from 1994 upto March, 2004 by way of salary on the post of UDC;

(ii) further question which the court has to examine whether the petitioner would be entitled to receive the selection scale in terms of the Finance circular dated 25.9.1992 and subsequent circular of 1998 on completion of 9, 18 & 27 years of service and;

(iii) whether the respondents could have deferred the ACP benefits till the recoveries are made from the petitioner. However, this court would also examine whether the petitioner would be entitled for further promotion on the post of AAO being senior-most UDC.

10. Question regarding Recovery:-

It is an admitted position that the petitioner has subsequently been promoted on 1.10.2009 as UDC. Vide order dated 3.2.2010, he has also been granted first selection scale.

11. In the case of "State of Punjab & Ors. Vs. Rafiq Masih(White Washer)" reported in 2015(4)SCC334, the Apex Court held as under:

"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."

12. However, this judgment came to be considered again by another Coordinate Bench of the Supreme Court in High Court of Punjab and Haryana Vs. Jagdev Singh reported in AIR 2016 SC 3523 and it was distinguished to the extent of proposition no.2 as under:

"11. The principle enunciated in proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking.

12. For these reasons, the judgment of the High Court which set aside the action for recovery is unsustainable. However, we are of the view that the recovery should be made in reasonable instalments. We direct that the recovery be made in equated monthly instalments spread over a period of two years."

13. Admittedly, the petitioner's case does not fall in category two of the

directions of "State of Punjab & Ors. Vs. Rafiq Masih(White Washer)"(supra) and therefore the judgment of High Court of Punjab and Haryana Vs. Jagdev Singh(supra) would have no application to the present case. Even otherwise, this court finds that the petitioner had been promoted on 23.12.1994 and had been given regular pay scale of UDC from 31.12.1998 and therefore, he had already completed six years of service as on 31.12.1998. As per the Rajasthan Subordinate Offices Ministerial Staff Rules 1957, he was eligible to be promoted.

Now the basis on which the petitioner was reverted was only the incompetency of the concerned officer who had issued orders of promotion. If the said discrepancy would have been detected in time, the controversy regarding recovery would not have come at all. However this court finds that the petitioner has continuously performed his duties as UDC right from 23.12.1994 upto 27.3.2004 and if the principle of equal pay for equal work is applied then the petitioner who had performed duties on the higher post would be entitled to get salary for working upto the time on the higher post. Later on, the petitioner has already been promoted in 2009 on regular basis and he has been drawing salary of UDC thereafter. The recovery therefore for the period during which the petitioner had worked as UDC, though by orders which were passed by incompetent authority, is held to be unjustified. The respondents could not have made recoveries of salary from a person who has actually performed duties on higher post.

14. This court finds that the mistake cannot be attributed to the petitioner and in view of thereof, the principle laid down in "State of Punjab & Ors. Vs. Rafiq Masih(White Washer)" (supra) will also be applicable for restraining the respondents from making recovery.

15. Question Regarding Grant of Selection Scale:-

As regards the grant of selection scale, the petitioner has admittedly been working since 1992 on the post of LDC till he was promoted on 23.12.1994 and after he has been reverted, he would be treated to be continuously working on the post of LDC right from 1992 till 2009. Upto 2009, he has therefore completed almost 18 years of service and therefore he was entitled to grant of selection scale benefits as LDC and atleast one selection scale would have been granted to him during the said period. The respondents have though mentioned of having granted one selection scale to the petitioner as per their letter dated 15.2.2010. The denial of grant of ACP subsequently on account of the recoveries cannot be accepted.

16. This court has already set aside the recovery aspect, there should be no difficulty for grant of benefits of ACP now to the petitioner if he is entitled to grant of promotion on the post AAO.

17. This court finds that while the petitioner may be No.1 in the seniority list of UDC, the promotion on the higher post is domain of the respondents. Therefore, only direction this court can pass is to consider the case of the petitioner as and

when regular promotion on the post of AAO.

18. In view of the aforesaid finding, the writ petition is partly allowed to the extent of quashing and setting aside the recovery of salary for the period from 23.12.1994 to 27.3.2004 i.e. for the period during which the petitioner had worked as UDC against the orders passed by District Consumer Forum.

19. If any recovery has already been made, the same shall be refunded to the petitioner within a period of three months henceforth. The recovered amount shall also carry interest @ 9% per annum.

20. All pending applications also stand disposed of.