

(2002) 12 RAJ CK 0005
In the Rajasthan High Court
Case No : Civil Writ Petition No. 4659 of 1997

Babu Lal Sharma

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 02-12-2002

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2003) WLC 268 : (2003) 2 WLN 329

Hon'ble Judges : Shiv Kumar Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Shiv Kumar Sharma, J.—The petitioner came to be initially appointed as Chowkidar by the District Board, Ajmer vide order dated 10.12.1956. The petitioner was thereafter promoted as Cess Clerk vide order dated 14.4.1958. In the year 1959 after winding up of the District Board, Ajmer, the Administrator appointed the entire staff on temporary basis and the petitioner was appointed as Lower Division Clerk vide order dated 16.9.1959. After the Panchayat Samiti and Zila Parishad Act came into force with effect from 2.10.1959, the staff of various District Boards was absorbed in Zila Parishads. The petitioner vide order dated 29.10.1966 was temporarily promoted as Upper Division Clerk in pursuance to the recommendation of District Employees Committee and vide order dated 2.9.1969 the promotion of petitioner was confirmed.

2. On attaining the age of superannuation, the petitioner came to be retired on 31.12.1994. When the retiral benefits were not paid to the petitioner, he submitted representation on 20.2.1996. When no relief was granted the petitioner instituted the instant writ petition claiming the retiral benefits alongwith the interest.

3. The respondents No. 1, 3 and 4 filed joint return to the writ petition, whereas the respondent No. 2, Pension Department, has submitted independent reply. It

is averred in the reply that the petitioner was made Cess Clerk, LDC and UDC without considering his educational qualification. The petitioner was only middle pass and he could not have been promoted as LDC or UDC. The case of petitioner was sent to Department of Personnel for relaxation, but no relaxation was granted to him.

4. The petitioner submitted rejoinder to the reply reiterating the averments made in the writ petition. The petitioner averred that he was appointed as Chowkidar and was also required to discharge the duties as Peon in office additionally. The petitioner was promoted on newly created post of Cess Clerk. Thereafter the petitioner was given promotion to the post of LDC and UDC. Now after about 40 years the respondents are estopped from pleading that the promotion given to petitioner was illegal. The promotion was given to petitioner after considering his candidature, experience as well as length of service.

5. Mr. Reashm Bhargava, learned Counsel appearing for the petitioner in the course of arguments intimated the Court that during pendency of writ petition the respondents have provided some retiral benefits to petitioner treating him as Lower Division Clerk on pay of Rs. 2,240/- per month. The Pay Order in regard to following sum was passed:

(1) Gratuity 36,960/-

(2) Commutation Payment 46,819/-

(3) Pension 1,120/- per month

Payable 747/- per month

Learned Counsel for the petitioner contended that the relief which remains to be granted is as under:

(1) Redetermination/ revision of gratuity, commutation value and Pension as per pay of UDC, while treating the petitioner as UDC.

(2) Consequential arrear along with the interest 18% per annum from 1.1.1995 till the date of payment of arrears.

(3) Interest on the amount of gratuity, commutation value and Pension at the rate of 18% per annum from 1.1.1995 till 20.10.1997 (when retiral benefits were given to petitioner treating him LDC).

Learned Counsel placed reliance on *Prahlad Kumar v. Unio of India and Ors.* 2000(1) WLC (Raj.) 761; *Mohan Lal v. The State of Rajasthan and Anr.* 1999 (2) WLC (Raj.) 100; *Charan Das Kalla v. State of Raj.* 2002(2) RLR 403 and *Vijay L. Mehrotra v. State of UP and Ors., Judgment Today* 2000 (5) SC 171.

6. Per contra, Mr. B.C. Chirania, learned Counsel appearing for respondents contended that the petitioner was not entitled to retiral benefits of the post of UDC as the relaxation in educational qualification was not given to the petitioner and if any illegality was committed by respondents in promoting the petitioner, it

could be cured.

7. I have pondered over the rival submissions and carefully scanned the material on record.

8. In *Prahlad Kumar v. Union of India and Ors.*, (supra) it was indicated that denial of pensionary benefits on the ground of his not being of 17 years at the time of enrolment was not justified as it has neither any nexus with the object of pensionary benefits nor the person getting enrolled prior to 17 years of age can be put into a separate class having reasonable differentia for this purpose.

9. In *Mohan Lal v. The State of Rajasthan and Anr.*, (supra) it was observed that the authority cannot be allowed to act after the gross delay of 11 years for reverting the employee on the ground that he was not having requisite qualification.

10. The Division Bench of this Court in *Charan Das Kalla v. State of Raj.*, (supra) propounded that even if promotion was irregular, the employee is entitled to retiral benefits on the promoted post.

11. In *Vijay L. Mehrotra v. State of U.P. and Ors.*, (supra) their Lordships of Supreme Court held that the employee retiring after having rendered service is expected that all the payment of the retiral benefits should be paid on the date of retirement or soon thereafter. There is absolutely no reason or justification for not making the payments for months together. The employee was entitled to the interest at the rate of 18% per annum with effect from the date of retirement till the date of actual payment.

12. In the instant case, as already noticed the petitioner was appointed as Chowkidar on 10.12.1956 and he was retired on 31.12.1994 on attaining the age of superannuation, while he was serving as Upper Division Clerk. During the entire service tenure of the petitioner his promotion was never questioned. After the petitioner served the respondents satisfactorily and was superannuated while working as UDC., he is entitled to draw the retiral benefits on the promoted post of UDC even if his promotion is treated as irregular. The respondents are estopped from questioning the promotion after a lapse of forty years. Denial of retiral benefits to petitioner on the promoted post is arbitrary and violative of Article 14 of the Constitution of India.

13. For the reasons aforementioned, I allow the writ petition. The respondents are directed to redetermine the amount of gratuity, commutation value and Pension while treating the petitioner as UDC. The consequential arrears shall be paid to petitioner along with the interest at the rate of 18% per annum from 1.1.1995 till the date of actual payment. The petitioner is also entitled to the interest at the rate of 18% per annum on the amount of gratuity, commutation value and Pension from 1.1.1995 till 20.10.1997 which was paid to petitioner during the pendency of writ petition. The respondents shall ensure the compliance of this order within sixty days from today. There shall be no order as

to costs.