
(2008) 04 RAJ CK 0047
In the Rajasthan High Court

Bachhana Ram

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 01-04-2008

Acts Referred:

Industrial Disputes Act, 1947 — Section 12

Citation : (2008) 4 RLW 2949 : (2009) 2 SLR 62

Hon'ble Judges : Gopal Krishan Vyas, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Gopal Krishan Vyas, J.—By way of filing the present writ petition, the petitioner has prayed for directions to the respondents to release all retiral benefits i.e. pension, gratuity to the petitioner with interest at the rate of 18% p.a. from the date the same has become due till the same is paid. Further it is prayed that the respondents may be directed to grant selection grade to the petitioner on completion of 9, 18 and 27 years of service.

2. According to the facts of the case stated in the writ petition, the petitioner was initially appointed as Pump Driver under the Work Charged Rules in the pay scale of 75-160 on 1.10.1965 and he was also allowed regular increments.

3. The petitioner raised an industrial dispute u/s 12(3) of the Industrial Disputes Act, 1947 in which a compromise was arrived at in between the parties and in that compromise, the petitioner agreed to accept his seniority on the post of Electrician Grade-H to be determined w.e.f. 6.12.1969, so also accepted that his pay may be fixed in the pay scale of Electrician Grade II w.e.f. 1.11.1973. The department agreed to fix the petitioner's pay in the pay-scale of Rs. 130.8.170.10.210-300 w.e.f. 1.11.1973.

4. In pursuance of the said, compromise, the pay fixation of the petitioner was made after due verification by the respondent- department. Thereafter, the petitioner was promoted on the post of Supervisor vide order dated 31.10.1985

in the pay scale of Rs.470.10.490-20-830 retrospectively w.e.f. 30.10.1976 but the said promotion was given on notional basis and if in case arrear is admissible as per rules then the same were ordered to be paid accordingly. After promotion, the annual grade increments were also granted to the petitioner and benefit of fixation was given to the petitioner from time to time as and when the pay scale were revised and in this process lastly the petitioner's pay was fixed in the pay scale 5000-150-8000 w.e.f. 1.1.1996 as per the fixation approved by the Assistant Accounts Officer of the Department. The petitioner after attaining the age of superannuation retired from service on 30.6.2003 and at that time he was getting salary in the pay scale of Rs.5000-150-8000/-.

5. After retirement, the retiral benefits were not paid to the petitioner. However, he was informed that provisional pension is being granted to him subject to the decision on the final grant of pension and retiral benefits.

6. The petitioner in this writ petition has prayed for granting selection pay scale as per circular dated 25.1.1992 while treating his initial appointment as 1.10.1965, so also raised grievance that though he has been retired on 30.6.2003 but respondents are not granting his retiral benefits including final pension and other benefits. For the same though he has served notice of demand of justice upon the respondents on 17.4.2004 but they are not giving any heed to the representation.

7. As per the information of the petitioner, the respondents are not finalizing his retiral benefits because on 15.1.2004, a letter was issued by the Chief Engineer addressed to the Superintending Engineer wherein certain objections were raised. The petitioner has placed on record, the said letter dated 15.1.2004 on record as Annx.-3.

8. Upon perusal of Annexure-3, it is revealed that the case of the petitioner for grant of selection scale w.e.f. 1.1.1998 was sent to the Office of the Chief Engineer and upon enquiry it is found that the petitioner was wrongly granted promotion on the post of Supervisor as he was not possessing qualification for the post of Supervisor, therefore, while observing in the letter by the Chief Engineer, Irrigation (North), Hanumangarh that promotion of the petitioner on the post of Supervisor w.e.f. 30.10.1976 was illegal, therefore, the matter may be decided after re-fixation and recovering the amount from the petitioners, meaning thereby vide this order Annexure- 3, the respondent has defined the order of the promotion as illegal and contrary to the rules and order of the recovery and re-fixation has been made.

9. The petitioner has challenged the said order because after superannuation, the order dated 15.1.2004 has been passed in which it is mentioned that the petitioners promotion which was made notionally w.e.f. 30.10.1976 vide order dated 1.10.1985, was illegal.

10. Learned counsel for the petitioner argued that this action of the respondents is totally illegal because after superannuation when the petitioner made prayer

for selection scale then the matter was sent to the higher authorities for consideration and in return vide order dated 15.1.2004 it is observed by the Chief Engineer that the promotion of the petitioner in the year 1985 w.e.f. "30.10.1976 was illegal because the petitioner was lacking requisite qualification.

11. According to the learned Counsel for the petitioner Annexure-5 is also illegal because by this order again, it is reiterated by the Executive Engineer while sending communication to the Superintending Engineer Raisinghnagar Headquarters Chhatargarh that the petitioner's fixation made earlier was illegal and matter is to be decided in accordance with the order passed by Chief Engineer Irrigation Department dated 15.1.2004 (Annexure-3). According to the learned Counsel for the petitioner, the action of the respondents is totally illegal because after superannuation, such objection has been raised by the respondents that at the time of promotion on the post of Supervisor the petitioner was lacking qualification. But this objections was not faised during his service tenure of the petitioner and after his superannuation w.e.f. 30.10.1993, the respondents are raising objection that his promotion was illegal as he was not possessing requisite qualification at the time of promotion.

12. Learned counsel for the petitioner has invited the attention of this Court towards the judgment rendered by Hon"ble Apex Court in case of Bhagwati Prasad Vs. Delhi State Mineral Development Corporation, wherein the Hon"ble Apex Court has held that the academic qualification can be seen at the time of initial entry into the service, so also the question of academic qualification is relevant at the stage of initial appointment.

While inviting attention of this Court towards the facts of this case, it is argued by learned Counsel for the petitioner that in this case, admittedly the petitioner was promoted in the year 1985 retrospectively w.e.f. 30.10.1976 and said promotion was treated as on notional basis and after the year 1985 till his superannuation, petitioner worked on the post of Supervisor and respondents took work from the petitioner on the post of Supervisor and superannuated him from the post of supervisor but at the time of considering his case for selection scale, after retirement it is observed that at the time of promotion on the post of Supervisor, the petitioner was not possessing qualification for the post of Supervisor and, therefore, his promotion was illegal. As per petitioner, in view of the judgment in case of Bhagwati Prasad v. Delhi State Mineral Development Corporation (supra), the respondents cannot term the promotion of the petitioner as illegal after his superannuation because they themselves granted promotion to the petitioner and allowed him to work on the post of Supervisor till his superannuation. Therefore, now the respondents are under obligation to grant all retiral benefit and to treat the petitioner's promotion as valid because the petitioner has acquired the academic qualification by way of experience.

13. Per contra, counsel for the respondents vehemently argued that the promotion of the petitioner on the post of Supervisor was not in conformity with the Rules and the petitioner was not possessing the requisite educational/

technical qualification. Thus, he was wrongly promoted on the post of Supervisor and the promotion given to the petitioner was against the statutory provisions of the Rules, governing the field. Therefore, the Chief Engineer, Irrigation (North) Hanumangarh has rightly observed and passed an order that the petitioner's promotion was illegal and he was not entitled for promotion on the basis of his qualification in the year 1985.

14. After hearing both the parties and perusing the entire record of the case, it is obvious that the petitioner was promoted by the respondents themselves in the year 1985 retrospectively, so also, the petitioner was allowed to work on the post of Supervisor till his superannuation. Till his superannuation, no objection was raised by the respondents that the petitioner's promotion was illegal but at the time of retirement when the petitioner made a claim for granting him selection scale, then, vide Annexure-3, it is informed by the Office of Chief Engineer to the Superintending Engineer that the petitioner's promotion was illegal on the post of Supervisor, therefore, the fixation may be made and recovery may also be made from the petitioner's salary. No specific order of reversion was passed by the respondents but only assurance has been made in the communication Annexure-3 dated 15.1.2004, that too, after superannuation of the petitioner.

15. In this case, there is no allegation against the petitioner that he obtained promotion by fraud or illegally. The petitioner was promoted by the respondents and they allowed the petitioner to work on the post of Supervisor till his superannuation, so also, the promotion was made retrospectively w.e.f. 31.10.1976. The Hon'ble Supreme Court in case of Bhagwati Prasad v. Delhi State Mineral Development Corporation (supra) has held as follows:

6. The main controversy centres round the question whether some petitioners are possessed of the requisite qualifications to hold the posts so as to entitle them to be confirmed in the respective posts held by them. The indisputable facts are that the petitioners were appointed between the period 1983 and 1986 ever since, they have been working and have gained sufficient experience in the actual discharge of duties attached to the posts held by them. Practical experience would always aid the person to effectively discharge the duties and is a sure guide to assess the suitability. The initial minimum educational qualification prescribed for the different posts, is undoubtedly a factor to be reckoned with, but it is so at the time of the initial entry into service. Once the appointments were made as daily rated workers and they were allowed to work for a considerable length of time, it would be hard and harsh to deny them the confirmation in the respective posts on the ground that they lack the prescribed educational qualifications. In our view, three years' experience, ignoring artificial break in service for short period/periods created by the respondents, in the circumstances, would be sufficient for confirmation. If there is a gap of more than three months between the period of termination and re-appointment that period may be excluded in the computation of three years period. Since the petitioners before us satisfy the requirement of three years' service as calculated

above, we direct that 40 of the senior most workmen should be regularised with immediate effect and the remaining 118 petitioners should be regularised in a phased manner, before April 1, 1991 and promoted to the next higher post according to the standing orders. All the petitioners are entitled to equal pay at par with the persons appointed on regular basis to the similar post or discharge similar duties, and are entitled to the scale of pay and all allowances revised from time to time for the said posts. We further direct that 16 of the petitioners who are ousted from the service pending the writ petition should be reinstated immediately. Suitable promotional avenues should be created and the respondent should consider the eligible candidates for being promoted to such posts. The respondent is directed to deposit a sum of Rs. 10,000 in the Registry of this Court within four weeks to meet the remuneration of the Industrial Tribunal. The writ petitions are accordingly allowed, but without costs.

16. Upon perusal of the above judgment, it is obvious that the educational qualification is to be seen at the time of appointment and not at the time of confirmation. Here, in this case, the petitioner was not only promoted but he was given notional promotion w.e.f. 30.10.1976 and till his superannuation, he was allowed to work on the post of supervisor and after retirement the respondents have withheld his retiral benefits while saying that at the time of promotion he was not possessing the qualification. It is very strange that respondents themselves allowed the petitioner to work on the post of supervisor without any objection till his superannuation and now they are denying the retiral benefits to the petitioner after superannuation.

17. In my opinion, the action of the respondents is totally Illegal, unconstitutional in view of the aforesaid judgment rendered by Hon"ble Supreme Court. The petitioner was allowed to work on promotional post for more than 15 years, thereafter after superannuation, the respondents cannot be allowed to snatch the fruits of service tenure of the petitioner for which he worked on the post of supervisor.

18. In this view of the matter, the respondents are directed to treat petitioner's promotion legal for all purposes.

19. Upon above conclusion, the Annexure-3 dated 15.1.2004 and Annexure-5 passed by Chief Engineer as well as the order passed by the Executive Engineer dated 30.10.2004 are hereby set aside. The respondents are directed to grant all retiral benefits to the petitioner for the post of Supervisor and grant him all consequential benefits and consider his case for selection scale. The respondents are further directed to complete this exercise within a period of three month from the date of filing of representation and If all the retirement benefits are not paid to the petitioner within three months while treating the petitioner on the post of Supervisor till his superannuation, then the petitioner will be entitled for interest at the time of 12% per annum.

20. Accordingly, the writ petition is allowed.