

**(2000) 11 RAJ CK 0001**  
**In the Rajasthan High Court**  
**Case No : Civil Writ Petition No. 4972 of 2000**

Bhagwan Singh

APPELLANT

Vs

R.S.R.T.C. and Another

RESPONDENT

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**Date of Decision :** 28-11-2000

**Acts Referred:**

Constitution of India, 1950 — Article 14, 226

**Citation :** (2002) 93 FLR 74 : (2001) 2 RLW 888 : (2001) 4 WLC 392 : (2001) 2 WLN 477

**Hon'ble Judges :** R.R. Yadav, J

**Bench :** Single Bench

**Advocate :** Mahendra Shah, for the Appellant;

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**Judgement**

Yadav, J.—Heard.

(2). Perused the averments made in the writ petition.

(3). It is contended by the learned counsel for the petitioner that the petitioner was appointed as a Conductor in the Rajasthan State Road Transport Corporation, therefore, it ought to have been proper to file a copy of the appointment letter along with the writ petition inasmuch as the terms and conditions stipulated in the appointment letter is binding on the employee and employer both but since in the present case, the Department has asked option of the petitioner to change his cadre from the post of Conductor to the post of Booking Clerk and the petitioner has exercised his option for changing his cadre from the post of Conductor to the post of Booking Clerk, therefore, In the present case, filing of the appointment letter appointing him on the post of the Conductor is not essential. It is urged by the learned counsel for the petitioner that Annexure-1, seniority list of Booking Clerks is sufficient to hold that the cadre of the petitioner was changed from the post of Conductor to the post of Booking Clerk. It is urged by the learned counsel for the petitioner that cadre of Booking Clerk is different to the cadre of Conductor.

(4). It is well to remember that terms and conditions stipulated in appointment letters are conclusive and final between the employees and employers and both of them are bound by the terms and conditions of appointments, disclosed in the appointment letters. In absence of appointment letter, in the present case, it is not decipherable to hold that the petitioner after his appointment on the post of Conductor is entitled to be absorbed in the cadre of Booking Clerk delinking his lien on the post of Conductor and now the respondents are debarred to treat him Conductor by impugned order dated 21.10.2000 Annexure-2 to the writ petition. It goes without saying that, if the lien of the petitioner on the post of Conductor remains intact, then respondents are entitled to treat the petitioner as Conductor by the impugned order dated 21.10.2000, to the writ petition and a argument contrary to it, based on seniority list of Booking Clerks, Annexure-1, is not acceptable and It is hereby repelled.

(5). From the aforesaid discussion, it is held that lien of the petitioner on the post of Conductor on which post indisputably he was initially appointed will not come to an end automatically unless the option asked by the Department from the petitioner for change of his cadre from the post of Conductor to the post of Booking Clerk, is established to the satisfaction of this Court together with proof of exercise of option by the petitioner by cogent and convincing materials on record. To my mind, the aforesaid fact cannot be proved by seniority list of Booking Clerks, as urged by the learned counsel for the petitioner.

(6). As a matter of fact, the change of cadre by exercise of option by the petitioner is required to be proved by the materials available on record, showing the option asked by the Department from the petitioner to change his cadre from Conductor to Booking Clerk and it is further to be established that in pursuant to asking of change of cadre from the Department the petitioner has exercised his option for changing his cadre from the post of Conductor to the post of Booking Clerk. In the present case, neither the petitioner has filed any document which indicates that Department has asked from him to change his cadre nor he filed any document to indicate that he has exercised his option for change of his cadre from the post of Conductor to the post of Booking Clerk.

(7). The affidavit filed in support of averments made in the writ petition, does not inspire my confidence, as it has not been sworn in accordance with Rules of the Court, which provides that each paragraph is to be sworn either on personal knowledge or on basis of record or on legal advice or on information received. Under the Rules of the Court if a particular paragraph is sworn on the basis of record, then, in support of averment the documents on which it is based is required to be annexed to the writ petition. Similarly if a particular paragraph of an affidavit is alleged to be based on information, the source of information is to be disclosed. It is held that if an averment is made in the writ petition, which is based on record, then, the record itself is to be filed in support of such averments. I am of the view that the failure of asking of option from the petitioner by the Department to change his cadre from the post of Conductor to

the post of Booking Clerk and exercise of option to this effect by the petitioner is to be established by filing the letter of department and reply in writing given by the petitioner exercising his option to change his cadre from the post of Conductor to the post of Booking Clerk. Delinking of lien from the post of Conductor cannot be proved either by filing seniority list of Booking Clerks or from averments made in the writ petition, which suits the petitioner today to undermine the order impugned dated 21.10.2000 Annexure-2 to the writ petition.

(8). In the present case, the petitioner was required to file the letter of the Department asking from him to change his cadre from the post of Conductor to the post of Booking Clerk and further, he was required to file his option in writing, agreeing with offer by Department to change his cadre from the post of Conductor to the post of Booking Clerk. The petitioner in the present case, miserably failed to prove the offer given by department and his acceptance to change his cadre from the post of Conductor to the post of Booking Clerk.

(9). The learned counsel cited decisions in support of his contention that whenever and wherever an employee was asked by Department to change his cadre and the employee gave his consent to change his cadre, then, in such a situation, the lien on the earlier post was to be deemed to have come to an end. Suffice it to say in this regard that in those cases a positive finding was recorded by the Courts that Department has asked from the employee to change his cadre and the employee has exercised his option in changing his cadre in pursuance of offer by department to change his cadre but in the present case, the petitioner miserably failed to establish that Department had asked from him to change his cadre and in pursuance thereof he had exercised his option to change his cadre from the post of Conductor to the post of Booking Clerk, therefore, the facts of the decision cited by the learned counsel for the petitioner are distinguishable from the facts of the present case and ratio of these cases are not applicable to the facts and circumstances of the present case.

(10). This Court cannot afford to give recognition to unethical back-door entry of the petitioner from the post of Conductor to the post of Booking Clerk, in absence of any cogent and convincing material available on record to establish that his lien on the post of Conductor has come to an end. In the present case, the petitioner fails to prove that Department has made an offer to him to change his cadre from the post of Conductor to the post of Booking Clerk and pursuant thereto he has given his consent to change his cadre from the post of Conductor to the post of Booking Clerk. In these circumstances I do not think it proper to make the order impugned dated 21.10.2000, Annexure-2 to the writ petition, to be ineffective by issuing a writ of certiorari, under Article 226 of the Constitution, which deserves to be invoked only on recognised line to maintain the supremacy of rule of law. I refrain to invoke the equitable extraordinary jurisdiction under Article 226 of the Constitution, in favour of petitioner, who has obtained back-door entry from the post of Conductor to the post of Booking Clerk.

(11). It is submitted by the learned counsel for the petitioner that, if after

change of cadre from the post of Conductor to the post of Booking Clerk, some of the employees are allowed by the court to work as Booking Clerk, then, denial of the same benefit to the petitioner amounts to hostile discrimination within the meaning of Article 14 of the Constitution.

(12). The aforesaid contention of the learned counsel for the petitioner is not acceptable for the simple reason that in the present case the petitioner miserably failed to establish that an offer to change his cadre from the post of Conductor to the post of Booking Clerk was given (o him from Department and in pursuant thereof he exercised his option to change his cadre from the post of Conductor to the post of Booking Clerk. As the petitioner failed to prove change of his cadre as discussed hereinabove, his lien on the post of Conductor shall continue to exist and the respondents are entitled to treat him Conductor by order impugned dated 21.10.2000, Annexure-2, to the writ petition. The change of cadre from the post of Conductor to the post of Booking Clerk cannot be inferred from the seniority list Annexure-1, dated 30.9.1997. The facts of decisions cited by the learned counsel for the petitioner are not analogous to the facts and circumstances of the present case, therefore, I do not propose to burden this judgment by making thread-bare discussion of these decision.

(13). I am of the view, that if the petitioner on the ground of administrative exigency of the Department was allowed to officiate for some time as a Booking Clerks, then, in such a situation his mere working on officiating capacity on the post of Booking Clerk will not delink his lien from the post of Conductor. It is held that so long lien of the petitioner on the post of Conductor remains intact, the respondents are entitled to treat him as Conductor by impugned order and an argument contrary, to it is not acceptable.

(14). As a result of the aforesaid discussion, I see no merit in the instant writ petition and it is hereby dismissed in limine.