

(2005) 09 RAJ CK 0038
In the Rajasthan High Court
Case No : Civil Writ Petition No. 2919 of 2002

Bhagwan Singh

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision : 06-09-2005

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 50
Rajasthan Legal (State and Subordinate) Services Rules, 1981 — Rule 41, 6

Citation : (2005) 4 RLW 3048 : (2005) 4 WLC 465

Hon'ble Judges : V.K. Bali, J;Ajay Rastogi, J

Bench : Division Bench

Advocate : Praveen Balwada, for the Appellant; Mohd. Rafiq, AAG, for State-Respondent No. 1 and V.S. Gurjar, for the Respondent

Final Decision : Dismissed

Judgement

Ajay Rastogi, J.—By the instant writ petition, the petitioner, who is a member of Rajasthan Legal Service, has prayed that the respondents be restrained from deputing any of Judicial Officers on the post of Joint Legal Remembrancer who are members of the Rajasthan Higher Judicial Service Rules, 1969 ["Rules of 1969"].

2. The petitioner is substantively holding the post of Dy. Legal Remembrancer and is eligible for promotion for the post of Joint Legal Remembrancer which is next higher post in hierarchy under the Rules of 1981 but because of Judicial Officers being posted on deputation to the post of Joint Legal Remembrancer, his right of consideration is being seriously jeopardized against the post included in the schedule appended to the Rajasthan Legal [State & Subordinate] Service Rules, 1981 ["Rules of 1981"].

3. Mr. Praveen Balwada, counsel for petitioner has urged that the post of Joint Legal Remembrancer is included in the schedule by amendment notification dt. 9th June, 1983 [Ann. 1] which has to be filled 100% by promotion from the feeder post of Deputy Legal Remembrancer with five years of experience and

despite eligible persons including the petitioner are available, the respondents are deputing Judicial Officers on the post of Joint Legal Remembrancer and as per Rule 6(b)(iii) of the Rules of 1981, Judicial Officers, who are members of other service i.e., Rajasthan Higher Judicial Service and Rajasthan Judicial Service, can be considered only in the contingency if the eligible members under Legal Service Rules, 1981 are not available, according to him, eligible officers including the petitioner are available, but still except one post of Joint Legal Remembrancer all are being manned by the Judicial Officers who are members of the Rules of 1969 which action of the respondents is in violation of Articles 14 & 16 of the Constitution of India, particularly when all other rules which are in force immediately before commencement of Rules of 1981 have been repealed by virtue of Rule 41 of the Rules, Judicial Officers could not have been sent on deputation to hold the post of Joint Legal Remembrancer under Rules of 1969.

4. Respondents Nos. 1 and 2 have filed their separate reply to the writ petition wherein it has been averred that only one post of Joint Legal Remembrancer is encadred in the schedule appended to the Rules of 1981 and which is presently manned by one Shri Moti Ram H. Advani who is member of Legal Service and recruited by promotion and two other posts of Joint Legal Remembrancer, which are available in Jaipur Nagar Nigam and Rajasthan Housing Board are also filled by officers of Legal Service who are sent on deputation and rest six posts of Joint Legal Remembrancer are included in the cadre of Rajasthan Higher Judicial Service which are filled from the officers who are members of Rules of 1969 and merely because the nomenclature of the post held by the officers who are members of Rules of 1969 is common that will not hold the petitioner eligible in relation to the post of Joint Legal Remembrancer which are encadred for the members under the Rules of 1969.

5. The respondent No. 2 by filing separate reply supported the submission made by respondent No. 1.

6. Shri Mohd. Rafiq and Shri V.S. Gurjar, counsel for respondents No. 1 & 2 have urged that petitioner's right of consideration is confined to post which is included in the schedule appended to the Rules of 1981 and the same is filled from the officers who are members of Rules of 1981 and post which is encadred for the Officers who are members of Rules of 1969, no grievance could possibly be raised by the petitioner and it is not his case that the post which is cadred post under the Rules of 1981 any appointment has been made of an officer from outside cadre. On the contrary, it has specifically been stated by filing their separate reply that the cadred posts under the Rules of 1981 have been filled only from the officers who are members of Rules of 1981 and the right of consideration of the petitioner is not being defeated or jeopardized at all.

7. It has been further urged by them that Rule 6 (b) (iii) of the Rules of 1981 is to be considered in an emergent situation where members of Rules of 1981 if are not eligible for promotion appointment can be made till they attain their eligibility from the officers of Rajasthan Higher Judicial Service and so far as Rule 41 is

concerned which referred to repeal and saving the earlier Rules governing the Service of the legal services officers, stood repealed, but that will not repeal all other Service Rules which do not govern the service conditions of Legal Service Officers.

8. We have considered the submissions made by the counsel for parties and perused the material available on record.

9. There are two set of Service Rules; one is Rajasthan Legal [State & Subordinate] Service Rules, 1981 and one post of Joint Legal Remembrancer is included in the schedule appended to the Rules of 1981 by virtue of amendment notification dt. 9th June, 1983 [Ann.1] is to be filled 100% by promotion from the feeder post of Dy. , Legal Remembrancer, another set of Rules namely; Rajasthan Higher Judicial Service Rules, 1969 wherein 6 posts of Joint Legal Remembrancer are encadred and both have a separate mode of recruitment governed by their independent Rules and merely because the nomenclature of the post is common that will not give any precedence to members of Rules of 1981 to get their rights of consideration for promotion against the posts which are not meant for them.

10. Rule 6[b] [iii] & Rule 41, which have been referred to by the petitioner, are reproduced hereunder:

Rule 6(b) (iii) that if the Appointing Authority is satisfied in consultation with the Commission that no suitable person is available for promotion to the post of Dy. Legal Remembrancer/Assistant Legal Draftsman/Assistant Legal Remembrancer, these posts may be filled in temporarily till the members of this service become eligible for promotion, from amongst the Members of other service viz. The Rajasthan Judicial Service or Rajasthan Higher Judicial Service; and"

Rule 41 Repeal and Savings:--All rules and orders in relation to matters governed by these rules and in force immediately before the commencement of these rules are hereby repealed.

Provided that any action taken under the rules and orders so superseded shall be deemed to have been taken under the provision of these rules.

11. The above rules are of no help to the petitioner. On the contrary, if suitable officers from legal service are not available for promotion in such contingency the post can be filled from the officers of Rajasthan Higher Judicial Service, Rajasthan Judicial Service, but there is no such vice versa provision and as per Rule 6[b][iii] to meet with the contingency, post can be filled from the Judicial Officers who are members of Rules of 1969. So far as Rule 41 is concerned, this only repeal the rules existing prior to the Rules of 1981, which are related to Legal Service Officers, but it will not repeal all other Service Rules, which are not even remotely related to the scheme of Rules of 1981 and such submission made by the counsel for petitioner, in our opinion, is of no substance and deserves rejection.

12. The next submission made by the counsel that by induction of such officers on the executive post of Joint Legal Remembrancer, it violates the provisions of Article 50 of the Constitution of India, in our considered opinion, is without any substance. Despite the question put to him as to how the independent of judiciary as provided in Article 50 is going to be defeated, there was no answer forthcoming and rightly so, when officers are sent on deputation they are not discharging judicial function at the relevant time. In our considered opinion, Article 50 of the Constitution has no application in the facts of the present case.

13. Counsel for petitioner has placed reliance on the Single Bench judgment of this Court in C.W. No. 1581/83 [Pyare Mohan Bagarhatta v. State] and has submitted that the writ petition preferred by the Judicial Officer against the appointment of Miss Suniti Malhotra on the post of Joint Legal Remembrancer who was member of Rules of 1981 has been dismissed by this Court as such, induction of Judicial Officers is not permissible in view of aforesaid judgment. We feel that counsel has not read the judgment before citing the same. On the contrary, it goes against him. The Judicial Officers filed writ petition questioning the appointment of Miss Suniti Malhotra who was promoted against the post of Joint Legal Remembrancer which is included in the schedule appended to the Rules of 1981 and the objection was that the post of Joint Legal Remembrancer is to be filled by Judicial Officers who are members of Rules of 1969. Such appointment on the post of Joint Legal Remembrancer from Legal Service Rules, 1981 is bad, but this Court dismissed the writ petition after holding that since the post of Joint Legal Remembrancer which is cadred post under the Rules of 1981 has to be filled by members of Legal Service Officers alone and cannot be encroached upon by officers who are members of Rules of 1969 and rightly so since the post which is included in the schedule appended to the Rules of 1981 has to be filled from the officers who are members of Rules of 1981 and posts, which are cadred posts under the Rules of 1969, have to be filled from their officers and no one can intrude upon either side. On the contrary, the view expressed by Single Bench of this Court, we are in agreement with the same. No other submission has been made.

14. We find no merit in this petition, the same is, accordingly, dismissed with no order as to costs.