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**(2014) 07 RAJ CK 0021**

**In the Rajasthan High Court**

**Case No :** Civil Writ Petition No. 9814 of 2006

Bhairu Bux

APPELLANT

Vs

State and Others

RESPONDENT

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**Date of Decision :** 10-07-2014

**Acts Referred:**

Constitution of India, 1950 — Article 14, 16

**Citation :** (2015) 1 CDR 396

**Hon'ble Judges :** Mohammad Rafiq, J

**Bench :** Single Bench

**Advocate :** Anand Sharma, Advocates for the Appellant; Manu Bhargava, Government Counsel, Advocates for the Respondent

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## **Judgement**

Mohammad Rafiq, J.—This writ petition has been filed by petitioner Bhairu Bux challenging the order dt. 21/22.11.2006 with the prayer that the petitioner be held entitled to pay scale of Rs. 4000-6000 as second selection grade and the respondents be restrained from reducing the pay scale of the petitioner and making recovery. Further prayer is made that the respondents be directed to refund the recovered amount and grant him benefit of third selection grade on completion of 27 years of service with effect from 6.2.2005. Shri Anand Sharma learned counsel for the petitioner has submitted that the petitioner was initially appointed on the post of Class-IV in General Section of the Municipal Board Malpura by order dt. 31.1.1978. He joined such service on 6.2.1978. He was confirmed on that post by order dt. 30.1.1982 passed by the Executive Officer of the Municipal Board Malpura. The Government of Rajasthan has by-Circular dt. 25.1.1992 introduced the scheme for grant of selection grade to the members of Ministerial and Subordinate staff. This Circular was made applicable to the employees of the Municipal Board vide order dt. 23.7.1992. The purpose of introduction of the scheme was to remove the stagnation of the employees who were not able to get a single promotion during the span of nine years. The respondents by order dt. 4.9.1996 granted first selection grade to the petitioner in the pay scale of the post of Jamadar. However, considering that the petitioner

was having the qualification of higher secondary and as per the Rules was entitled to next promotion on the post of LDC, the respondents by subsequent order dt. 25.9.1997 modified the earlier order and granted him first selection grade on completion of nine years with effect from 25.1.1992 in the pay scale of Rs. 950-1680 on the post of LDC and thereafter the second selection grade on completion of 18 years of service in the pay scale of Rs. 1200-2050 applicable to the post of UDC with effect from 6.2.1996. The pay scale of Rs. 1200-2050 was later revised to Rs. 4000-6000 in view of Rajasthan Civil Services (Revised Pay Scale) Rules, 1998. It was thereafter that the petitioner was actually promoted on the post of LDC by order dt. 22.12.1999 and joined such post on 14.1.2000.

2. Shri Anand Sharma, learned counsel for the petitioner has submitted that the petitioner has become entitled to grant of third selection scale on completion of 27 years of service. Before however that could be done the audit party of the Local Fund Audit Department Regional Office. Ajmer in the audit for the financial year 2004-05 raised an objection that the petitioner has wrongly been granted pay scale of LDC while holding the post of Class-IV and an excess amount of Rs. 1,38,992 has been paid to him, which should be recovered. The Executive Officer, Municipal Board, Malpura has by the impugned order withdrawn the pay scale of Rs. 4000-6000 granted to the petitioner and fixed him in the pay scale of Rs. 3050-4590. The basic pay of the petitioner which was earlier Rs. 5000 has indeed been reduced to Rs. 3,725 from November, 2006 and the excess amount ordered to be recovered.

3. Shri Anand Sharma, learned counsel for the petitioner further argued that prior to the passing of the impugned order no opportunity of hearing has been provided to the petitioner nor any show cause notice was served upon him. There can be no question of any recovery because the petitioner has not made any misappropriation nor played any fraud upon the respondents.

4. Shri Ranu Bhargava, learned Government Counsel opposed the writ petition and submitted that the avenue of the promotion from the post of Class IV is to the post of Jamadar, which was pay scale originally granted to the petitioner by order dt. 4.9.1996. However, subsequently, petitioner was wrongly granted the pay scale of the post of LDC. Learned counsel submitted that although 25% of the post of LDC under the relevant rules applicable to the Municipal employees are reserved for the Class IV employees, but in the regular line of promotion, they are entitled to gain promotion only on the post of Jamadar. Inability of the respondents to give promotion to Class IV employees on the post of LDC during relevant nine years may be attributable to various reasons including about the no availability of such Class IV who do not possess the qualification of secondary or even the non-availability of posts of LDC. In the present case, the petitioner could not be promoted earlier because there was no post and, therefore, he could during that period claim promotion only on the post of Jamadar and for that reason, he can claim selection grade only in the pay scale payable to the post of Jamadar. The impugned order has therefore rightly been passed.

5. Having heard learned counsel for the parties, I have given my anxious consideration to the rival submissions and perused the relevant circulars of the Government.

6. The scheme of the Government in their Circular dt. 25.1.1992 is to ensure that no government servant suffers stagnation in his service career. If he is not able to gain promotion in a span of nine years, he is entitled to pay scale of the post of promotion in lieu thereof. Wherever there is no avenue of promotion, the scheme also provides for corresponding pay scale in which such employees can be granted selection grade. Although it is true that in the regular channel, a class IV under the Rajasthan Municipal (Subordinate & Ministerial Service) Rules, 1963 is entitled to promotion on the post of Jamadar, but that avenue of promotion is available to those, who were not eligible to claim promotion on the post of LDC. However Class-IV employees having qualification of secondary examination have an additional avenue of promotion and are entitled to promotion to the post of LDC against quota of 25% meant for the posts. The post of LDC being higher in status carries higher pay scale than the post of Jamadar. The very fact that the petitioner was eventually promoted on the post of LDC fortifies his claim to selection grade in the pay scale of LDC. Petitioner had already completed nine years much before the issuance of circular dt. 25.1.1992, which was adopted by the Municipalities on 25.01.1992. Thereafter when petitioner completed 18 years, he was granted second selection grade on 4.9.1996. Since the petitioner was granted first selection grade in the pay scale of LDC, which is why he was entitled to second selection grade on the post of UDC. Contention that petitioner would be entitled to second selection grade in the pay scale of the post of Jamadar, cannot be countenanced for the simple reason that the petitioner was otherwise entitled to promotion on the post of LDC on the basis of his eligibility whatever may be the quota of promotion and the number of posts. In either eventuality, the purpose of the scheme of the selection grade is to remove the stagnation faced by the members of the ministerial and subordinate staff and, therefore, if there are two avenues and for that matter, two interpretations, possible, this being a beneficial scheme, the view which is favourable to the employee concerned has to be preferred. It is not disputed that the petitioner was eligible for promotion to the post of LDC and he was actually promoted on the post of LDC. The impugned order passed by the respondents withdrawing the first pay-scale of post of LDC and second pay scale of UDC on the basis of audit objection, cannot be upheld. Moreover, the impugned order has been passed merely on the basis of audit objection without any notice or opportunity of hearing to the petitioner. The order is thus illegal and arbitrary and violates the provisions of Article 14 and 16 of the Constitution of India.

7. In the result, the writ petition succeeds and is accordingly allowed. The impugned order dt. 21/22.11.2006 is set aside. The petitioner is entitled to consequential benefit together with interest @9% per annum. Compliance of the judgment be made within period of two months from the date copy of this judgments produced before the respondents.