

(2013) 11 RAJ CK 0062
In the Rajasthan High Court
Case No : Civil Writ Petition No. 4066 of 1999

Bheeka Ram

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 18-11-2013

Acts Referred:

Citation : (2013) 11 RAJ CK 0062

Hon'ble Judges : Amitava Roy, C.J.;Pratap Krishna Lohra, J

Bench : Division Bench

Advocate : M.S. Singhvi and Mr. Amit Tatia, for the Appellant; R.L. Jangid, Additional Advocate General and Mr. Rishab Tayal, for the Respondent

Judgement

Amitava Roy, C.J.—By the instant petition, the petitioner seeks to annul the order dated 25.9.1999 whereby he was discharged from service in terms of Rule 22(4) of the Rajasthan Civil Services (Departmental Examinations) Rules, 1959 (for short, hereafter referred to as "the 1959 Rules") read with the Rajasthan Civil Services (Subordinate Accounts Service) Rules, 1963 (for short, hereinafter referred to as "the 1963 Rules"). The petitioner has impeached as well the vires of the provisions contained in these Rules prescribing passing of the departmental examination to be a pre-requisite for confirmation of a member of the Rajasthan Subordinate Accounts Service as envisaged in the 1963 Rules. We have heard Mr. M.S. Singhvi, learned Senior Advocate for the petitioner and Mr. R.L. Jangid, learned Additional Advocate General for the respondents.

2. The abridged version of the petitioner's pleaded case is that on being duly selected by the Rajasthan Public Service Commission (for short, hereinafter referred to as "the Commission") in a process initiated for the purpose, he was appointed on probation for two years to the post of Junior Accountant vide order dated 7.12.1993. In terms of Rules 32 and 34 of the 1963 Rules, a probationer is required to pass the departmental examination as contemplated therein to be eligible for confirmation in service. According to the petitioner, the departmental examinations so contemplated were held successively in the months of March-

April, 1994; February, 1996 and in July-August, 1997. In the first examination, he cleared 2 out of 5 papers prescribed and the other two papers were cleared in the second examination. Though he appeared in the third examination, he could not pass the remaining paper. He has averred that the fourth examination was held in the month of August, 1998. By then, he had been transferred to Panchayat Samiti Balesar from the Panchayat Samiti Osian vide order dated 5.11.1996, whereupon he joined his new place of posting on 2.12.1996. He alleged that inspite of this information, though the respondents authorities called him to take the fourth examination as aforementioned, communications to that effect were addressed at Panchayat Samiti, Osian from where he had already been transferred so much so that on being re-directed, the same were received by him only on 10.8.1999, the date on which fourth examination was scheduled to be held. His representations before the concerned authorities to accord him an opportunity to take another examination in the above circumstances did not evoke any response and instead by the impugned order dated 25.9.1999, he was discharged from service. The challenge has been laid in this factual background.

3. The respondents in their reply while referring to Rules 32 and 34 of the 1963 Rules and Rule 22(4) of the 1959 Rules in essence have not only endorsed the validity of the action taken but also have asserted that as the petitioner inspite of being granted full opportunities to pass the departmental examination, having failed to do so, he was rightly discharged from service as mandated by the Rules. The answering respondents have added that his inability to appear in the fourth examination is wholly insignificant as in terms of Rule 22 of the 1959 Rules, he was only entitled to three chances which he had already availed by 1997, but was unsuccessful to pass the same. That he was inadvertently called to appear in the fourth examination, has been stated. Due emphasis has been laid on the essentiality of the departmental examination for the purpose as a condition precedent for confirmation of members of the Service as predicated by the Rules.

4. Mr. Singhvi has emphatically argued that as the petitioner had been appointed on probation on being duly selected by the Commission, he by no means could be subjected to the prescription of Rule 22(4) of the 1959 Rules as it applies only to the persons appointed on temporary/officiating basis. As the appointment of the petitioner was neither on temporary nor on officiating basis, this provision of Rule 22(4) of the 1959 Rules is not applicable to him and thus, the impugned order of his discharge is patently illegal and void, he urged. Moreover, reckoned from the date of his appointment i.e. 7.12.1993, as the last departmental examination in 1997 had not been conducted within three years therefrom, even otherwise Rule 22(4) of these Rules could not have been invoked vis-a-vis the petitioner, he insisted.

5. The learned Senior Counsel referring to Rules 30, 32, 32A, 33, 34 and 34A of 1963 Rules highlighting the distinguishing features vis-a-vis of appointees on probation and on temporary/officiating basis and the pre-requisites stipulated thereby for the purpose of confirmation of the concerned incumbents, has

contended that there is no mandate for discharge of a probationer on his/her failure to pass the departmental examination. According to him, the only consequence in terms thereof is that the unsuccessful probationer would not be confirmed in service. In that view of the matter as well, Mr. Singhvi has urged that the impugned order of discharge from service is ab initio void. Referring to Rule 33 of the 1963 Rules in particular, the learned Senior Counsel has insisted that discharge or termination from service of a probationer would follow only in the eventualities as mentioned therein and by no means failure by him/her to pass the departmental examination can entail in his/her discharge from service. The learned Senior Counsel has urged that insistence on a pass of departmental examination vis-a-vis those who had been inducted in service following their selection by the Commission on due evaluation of their merit and suitability, is wholly unwarranted and irrelevant and the provisions with regard thereto in the Rules are unreasonable, illogical and discriminatory and thus are liable to be adjudged ultra vires the Constitution of India.

6. In reply, Mr. Jangid has urged that in the face of unambiguous enjoinments of Rule 22(4) of the 1959 Rules as well as Rule 34 of the 1963 Rules, the petitioner having admittedly failed to pass the departmental examination inspite of having availed the three opportunities prescribed, he was rightly discharged from service. According to the learned Additional Advocate General, the Rules having been framed under the proviso to Article 309 of the Constitution of India, those are absolute and binding on all concerned and as the impugned action has been taken in conformity therewith, challenge thereto is misconceived. As the necessity of the departmental examination, having regard to the nature of the service to be rendered, for the members of the Service has been ordained by the Rules in the interest of institutional excellence, the justifiability thereof is not open to challenge and thus, the impugment of the vires of the provisions of the Rules to this effect is wholly fallacious, he maintained. Mr. Jangid, to reinforce his contentions, placed reliance on the decision of the Hon'ble Apex Court in *State of Rajasthan and Others Vs. Jagdish Narain Chaturvedi*,

7. We have duly considered the rival pleadings as well as the emphatic arguments based thereon.

8. To start with, we are left unconvinced by the challenge to the vires of the provisions of the Rules prescribing a pass in the departmental examination as an indispensable pre-condition for confirmation in service. Having regard to the nature and quality of service to be rendered, in our view, a stipulation to this effect, if insisted upon by the rule makers to promote the organizational efficiency and institutional accomplishments, the same cannot per se be repudiated to be irrelevant, insignificant and uncalled for. The framers of the Rules in their wisdom having evaluated the essentialities of the service to be rendered while prescribing the departmental examination to be an essential pre-requisite to test the suitability of a member of the Service for his/her confirmation, we see no tangible, cogent or convincing reason to dub the same

to be arbitrary or illogical or discriminatory. The plea that such a stipulation vis-a-vis the candidates recruited on the basis of their selection by the Commission whose suitability is already adjudged, is unnecessary and thereby they are subjected to unwarranted exercise, does not commend for acceptance. The challenge to the vires of the provisions obligating a pass in the departmental examination to be a condition precedent for confirmation in service therefore fails.

9. A bare reading of Rules 30, 32, 32A, 33, 34 and 34A of the 1963 Rules in conjunction with Rule 22 of the 1959 Rules, in our discernment, clearly brings out the distinction between a person appointed on temporary or adhoc basis and the one drafted into the service on probation following his/her selection. The relevant provisions of the Rules more particularly 1963 Rules delineate the prescriptions for these two categories of incumbents. Whereas Rule 30 of the 1963 Rules sets out the eventualities in which temporary or officiating appointments can be made, Rule 32A deals with the aspect of their confirmation in service. Rule 33 spells out the consequences of unsatisfactory service of a probationer during the probationary period. Rule 34 sets out the contingencies in which he/she would be confirmed at the end of his/her probation period. Rule 34A contemplates the exigencies in which a probationer would be confirmed at the end of his/her period of probation, even if the prescribed departmental examination etc. has not been held within the said period. The contention raised on behalf of the petitioner based on the distinction between these two groups of the members of Service thus, according to us, has substance. In other words, atleast with regard to the modalities for recruitment and their confirmation in service, the 1963 Rules do maintain a distinction between these two groups of members of Service.

10. Adverting to Rule 22 of the 1959 Rules, it is apparent therefrom that whereas under sub-rule (1) thereof, a Government servant appointed on probation would not be confirmed, if not exempted under Rule 18, unless he passes in not more than three attempts the departmental examination prescribed, sub-rule (4) thereof mandates that a person appointed on temporary/officiating basis after due selection shall be reverted to the lower post on which he holds lien or discharged from service if he fails to pass the departmental examination in three chances within three years as required under Rule 19. Rule 19 incidentally marks a ceiling of three chances to pass the departmental examination in all subjects as required under the 1959 Rules.

11. A plain reading of the aforementioned provisions of Rule 22 of the 1959 Rules unfailingly demonstrates that thereby the consequence of discharge from service of a person appointed on probation on his/her failure to pass the departmental examination in three attempts is not comprehended therein. Rules 22(1) and 22(4) when read in juxtaposition convincingly reinforce this proposition. The Rules of 1963 having maintained a distinction between a person appointed on probation and one on temporary/officiating basis, any interpretation of Rule 22 of the 1959 Rules either in supersession thereof or in

repugnance thereto, in our view, would be extinctive of the scheme of 1963 Rules which had never been intended. Apart from the fact that third examination, as the records would reveal, has been held beyond the period of three years from the date of appointment of the petitioner, his failure to pass the departmental examination even after availing the third chance, in our estimate, can at the most disqualify him for being confirmed in service, but by no means can result in his discharge therefrom.

12. On an overall consideration of various aspects of the determination made hereinabove, we are of the firm opinion that the impugned order of discharge of the petitioner is not sustainable in law and on facts. It is thus interfered with. As a result, the petitioner is entitled and is directed to be reinstated in service. However, having regard to the time gap in between and the admitted position that he has not rendered any service, we are disinclined to grant him the benefit of back wages. On his reinstatement, however, the petitioner would be entitled to continuity in service for the purpose of seniority and other benefits except pay during the interregnum. To reiterate, the challenge to the vires of the provisions of the Rules pertaining to the prescription of the departmental examination is negated. The petition is thus partly allowed in these terms.