

(2008) 05 RAJ CK 0089
In the Rajasthan High Court

Choru Lal, Bhanwar Lal, Karni Singh and Hanuman Singh and Another APPELLANT

Vs

Rajasthan Agriculture University and Another RESPONDENT

Date of Decision : 23-05-2008

Acts Referred:

Citation : (2008) 4 RLW 3296

Hon'ble Judges : Gopal Krishan Vyas, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Gopal Krishan Vyas, J.—In all above writ petitions, petitioners are challenging validity of order dated 20/6/2006 passed by Agriculture University, Bikaner, whereby, petitioners were reverted on the post of class IV employees on the ground that the qualification of Prathma acquired by them from Hindi Sahitya Sammelan, Allahabad due to derecognition with effect from 28/6/1985 cannot be treated equivalent to Matriculation for the purpose of promotion on the post of LDC. The State Government in pursuance of judgment rendered by Full Bench of Rajasthan High Court in case of Prem Kumar v. State of Rajasthan, which is decided along with case of Shanker Lal v. RSEB passed an order on 7/3/2000 that those persons who were promoted on the basis of qualification acquired by them from Hindi Sahitya Sammelan, Allahabad after 28/6/1985 shall be reverted on the post of Class IV employees because the said qualification from Hindi Sahitya Sammelan has not been treated equivalent to the Secondary School Examination and moreover after de-recognition of the qualification from 28/6/1985 those persons who were promoted after 28/6/1985 were not treated qualified for promotion on the ground that as per judgment dated 11/9/1998 of Rajasthan High Court in Prem Kumar case and 13 others, the said qualification has been declared ineligibility for the purpose of promotion on the post of LDC after 28/6/85.

2. Since the point involved in all the above writ petitions is identical, therefore,

for convenience all these writ petitions are decided by this common order. However, it is relevant to notice brief facts of each case.

FACTS OF WRIT PETITION NO. 3235/2006

(Choru Lal v. Raj. Agriculture University and Ors.)

3. Petitioner Choru Lal was initially appointed as class IV employee on 1.3.1966 in Gynecology Department, College of Veterinary and Animal Science, Bikaner. On the basis of qualification of Prathma acquired by him from Hindi Sahitya Sammelan, Allahabad he was promoted on the post of LDC on 19/27.12.1988 on adhoc basis because at that time the said qualification was equivalent to Secondary Education. Later on petitioner was allowed regular pay scale and he was exempted from passing type test vide order dated 25/6/1990/2/7/1990 issued by the Registrar, which is placed on record as Annex.9. Petitioner was further promoted on the post of UDC on 25/4/1995 and benefits of revision of pay scales was also allowed to him from time to time and at the time of filing writ petition, he was getting salary in the pay scale of Rs. 4000-100- 6000/- as per Revised Pay Scales Rules, 1998. Thereafter, a notice dated 17/4/2005 was issued to the petitioner as to why he should not be reverted to the post of Class IV employee in view of the fact that Prathma qualification acquired by him from Hindi Sahitya Sammelan, Allahabad has been de-recognised w.e.f. 1.4.1985. Similar notice was also issued to other persons and they filed detailed reply but without considering the fact that petitioner was promoted in 1988 on the post of LDC and further promoted on the post of UDC, the respondent University passed the impugned order of reversion on the ground that the qualification acquired by him was de-recognised after 28/6/1985 as per Full Bench judgment of this Court in which the qualification of Prathma was not treated equivalent to Matriculation. In para No. 20 of the writ petition, it is stated that earlier also petitioner was issued similar notice on 29/30.3.1994 and he was asked to submit his explanation as to why he should not be demoted on the post of Class IV employee on the ground of derecognition of qualification obtained by him from Hindi Sahitya Sammelan, Allahabad for the purpose of promotion on the post of LDC. In pursuance of said notice an explanation was filed by petitioner in which it was specifically mentioned that he has acquired qualification of Prathma in 1983 before de- recognition of said qualification. Further it is submitted that he was given promotion after considering his qualification and there was no misrepresentation or fraud on his part, therefore, he cannot be put to such a disadvantageous position after such an inordinate delay.

4. It is contended that though in the year 1994 notice to revert him to the post of Class IV employee was given and reply was submitted by him, his case for promotion was considered in the year 1995 and he was promoted on the post of UDC, therefore, though petitioner is employee of the University but since the University has signed MOU with the State Government, therefore, as per order of the Government dated 3/7/2000 the petitioner has been reverted from the post of UDC to class IV employee after eighteen years, therefore, order impugned

dated 20/6/2006 which is passed on illegal grounds deserves to be quashed.

FACTS OF WRIT PETITION NO. 3260/2006

(Bhanwar Lal v. Raj. Agriculture University and Ors.)

5. In this case petitioner was initially appointed as Class IV employee and having acquired the qualification of Prathma from Hindi Sahitya Sammelan, Allahabad petitioner was promoted on the post of LDC on 5/4/1990. Thereafter, petitioner was further promoted to the post of UDC in the year 1996 and benefits of revision of pay scales was also allowed to him from time to time. Thereafter, a notice dated 29/30.3.1994 was issued to the petitioner as to why he should not be reverted to the post of Class IV employee in view of the fact that Prathma qualification acquired by him from Hindi Sahitya Sammelan, Allahabad has been dereognised to which petitioner submitted his representation and demanded copies of certain documents which were not supplied to him by the University. Thereafter he was further promoted to the post of UDC in the year 1996 and while working as such he was again issued a notice dated 17/4/2006 as to why he should not be reverted to the post of Class IV employee on the same ground that Prathma qualification acquired by him from Hindi Sahitya Sammelan, Allahabad has been de-recognised w.e.f. 1.4.1985. Pursuant to notice dated 17/4/2006, petitioner submitted an application demanding copies of some relevant documents to file reply but again he was not supplied the same however, he submitted his reply on 28/4/2006 through proper channel and specifically submitted that he has not made any misrepresentation or fraud, therefore, he should not be reverted to the post of Class IV employee and also prayed for personal hearing. However, without considering his reply and without providing opportunity of personal hearing, vide impugned order dated 20/6/2006 he was reverted from the post of UDC to the post of Class IV employee after working on promotional post for sixteen years. Although the petitioner is employee of the University but he has been reverted from the post of UDC to the post of Class IV employee on the basis of order of State Government dated 3/7/2000 because the University has signed MOU with the Government to comply all the orders of Government, which is illegal and deserves to be quashed.

FACTS OF WRIT PETITION NO. 3218/2006

(Karni Singh v. Raj. Agriculture University and Ors.)

6. The petitioner in this case was initially appointed on 11/4/1966 as class IV employee on adhoc basis and vide order dated 17/1/1968 he was confirmed on the said post w.e.f.11.4.1967. During his service he acquired the qualification of Prathma from Hindi Sahitya Sammelan, Allahabad and looking to his satisfactory service and requisite qualification he was considered for promotion to the post of LDC and promoted as such on 5/4/1990 and benefits of revision of pay scales was also allowed to him from time to time. Thereafter, a notice dated 29/30.3.1994 was issued to the petitioner as to why he should not be reverted to the post of Class IV employee in view of the fact that Prathma qualification

acquired by him from Hindi Sahitya Sammelan, Allahabad has been derecognised to which petitioner submitted his representation and demanded copies of certain documents which were not supplied to him by the University. Thereafter again a notice dated 17/4/2006 was issued to him to show cause as to why he should not be reverted to the post of Class IV employee on the same ground that Prathma qualification acquired by him from Hindi Sahitya Sammelan, Allahabad has been de-recognised w.e.f. 1.4.1985. Pursuant to notice dated 17/4/2006, petitioner submitted an application demanding copies of some relevant documents to file reply but again he was not supplied the same however, he submitted his reply on 28/4/2006 through proper channel and specifically submitted that he has not made any misrepresentation or fraud, therefore, he should not be reverted to the post of Class IV employee and also prayed for personal hearing. However, without considering his reply and without providing opportunity of personal hearing, vide impugned order dated 20/6/2006 he was reverted from the post of LDC to the post of Class IV employee, although petitioner is employee of the University but has been reverted on the basis of order dated 3/7/2000 passed by the State Government because University has signed MOU with the State Government that University will comply all the orders of State Government but this ground of reversion is illegal, therefore, order of reversion dated 20/6/2006 deserves to be quashed.

FACTS OF WRIT PETITION NO. 3219/2006

(Hanuman Singh v. Raj. Agriculture University and Ors.)

7. In this case petitioner No. 1 Hanuman Singh was initially appointed in the year 1978 and petitioner No. 2 Surendra Kumar Sharma was appointed in the year 1966 as class IV employees. While working on the post of Class IV employees petitioners acquired qualification of Prathma in the year 1985 and 1982 respectively. Thereafter, looking to their work and qualification, they were promoted on the post of LDC on 5/4/1990 and 27/4/1989 respectively. However, a notice dated 29/30.3.1994 was issued to the petitioners to show cause as to why they should not be reverted to the post of Class IV employee in view of the fact that Prathma qualification acquired by them from Hindi Sahitya Sammelan, Allahabad has been derecognised. Petitioners submitted their reply and submitted that since they are working on the post of LDC for years together and no misrepresentation or fraud has been committed by them at the time of their promotion, therefore, they should not be reverted to the post of Class IV employee. Thereafter, again on 17/4/2006 petitioners were issued similar notice on the ground that the Prathma qualification acquired by them from Hindi Sahitya sammelan, Allahabad has been derecognised, to which petitioners filed their reply but without considering the reply of petitioners vide impugned order dated 20/6/2006 they were reverted from the post of LDC to the post of Class IV Employee. According to the petitioners respondents have illegally reverted them to the post of Class IV employee because there was no misrepresentation or fraud on their part in seeking promotion to the post of LDC, whereas,

respondents themselves with open eyes after considering their qualification granted promotion on the post of LDC, therefore, they ought not be reverted after working on the post of LDC for long period, therefore, the order impugned deserves to be quashed.

8. In all the above writ petitions, petitioner are challenging the validity of order dated 20/6/2006, whereby, they were reverted from the post of UDC/LDC to the post of Class IV employee. The main contention of learned Counsel for the petitioners is that petitioners are working on their respective posts after due promotion by the respondent University while considering their qualification acquired from Hindi Sahitya Sammelan, Allahabad, therefore, now at a later stage it is not proper to revert the petitioners to the post of Class IV employee when they have gained experience of more than sixteen years. The reversion order has been passed on the ground that State Government has issued order dated 3/7/2000 for reverting those employees who were promoted after 28/6/85 on the basis of Prathma qualification on the post of LDC which is held ineligible in case of Prem Kumar and 13 others by the High Court.

9. Further it is submitted that petitioners are working in Rajasthan Agriculture University which is an autonomous body and they have been reverted in pursuance of notification issued by the State Government on 3/7/2006, whereby, it was ordered by the State of Rajasthan that all those class IV employees who were promoted on the basis of Prathma qualification acquired from Hindi Sahitya Sammelan, Allahabad have not been held eligible for promotion on the post of LDC because the said qualification is not equivalent to Secondary School Examination after derecognition by the State Government w.e.f. 28/6/1985, therefore, as per respondent University petitioners were not eligible for promotion on the post of LDC but on the basis of said qualification they were illegally promoted and now the State Government has passed an order in pursuance of judgment rendered by this Court in Prem Kumar's case and since the University has signed the memorandum of understanding with the State Government, therefore, it is required to follow the directions issued by the State Government on 3/7/2000 and reverted the petitioners to the post of Class IV employees.

10. As per petitioners at the time of granting promotion, their qualification was properly considered and till the judgment of Full Bench in the year 1998 number of judgments were given by Single Bench and Division Bench of this Court in which the qualification of Prathma acquired from Hindi Sahitya Sammelan, Allahabad was held to be valid for the purpose of promotion and later on the matter with regard to eligibility for promotion on the basis of Prathma qualification was referred to larger Bench in Shanker Lal Verma v. Raj. State Electricity Board reported in 1999 (1) WLC 1, it has been held by the larger Bench that Hindi qualification of 'Prathma' was derecognized w.e.f. 28/6/1985, therefore, those class IV employees possessing 'Prathma' qualification became ineligible for promotion on the post of LDC after 28/6/85. It is submitted that the

judgment of Full Bench in Shanker Lal's case was to be given effect prospectively and all those promotions which were made before Shanker Lal's case should not be disturbed but contrary to law all the promotions made by the various departments before the judgment of Shanker Lal's case which were not subject matter of the case, while applying the said judgment retrospectively, were disturbed vide order dated 3/7/2000 passed by the State Government.

11. Learned Counsel for the petitioners while inviting my attention towards judgment of this Court passed upon identical facts in case of an employee of State Government (Ratan Puri v. State of Rajasthan and Ors. S.B. Civil Writ Petition No. 1940/2000 decided on 13/10/2000) submitted that the notification dated 3/7/2000 upon which petitioners have been reverted on the post of class IV employees was considered and the judgment of Full Bench rendered in Shanker Lal's case (supra) was also considered and learned Single Judge of this Court in Ratan Puri's case and it has held that petitioner was promoted under the belief that he was eligible for promotion and possessing requisite qualification, which had, at a very later stage, been declared as an ineligibility after decognition. In obtaining the promotion, there has been no misrepresentation or fraud on the part of petitioner, rather the respondents themselves understood the law that petitioner was eligible for promotion upon the existing adjudication of the relevant time, therefore, it was held that substantial justice requires that petitioner may not be reverted after having an experience of nine years on the promotional post. Rather the respondents ought to have considered to apply the said judgment prospectively and not disturbing the promotions made prior to the said judgment. While observing above facts, this Court quashed the reversion order passed in case of Ratan Puri.

12. It is also submitted that not only in case of Ratan Puri but so many identical cases were decided by this Court on similar line and the view taken by learned Single Judge in Ratan Puri's case was upheld by the Division Bench in D.B.Civil Special Appeal No. 828/2001 (State of Rajasthan and Ors. v. Mani Lal Joshi) decided on 25/11/2002, in which case of Shanker Lal v. Rajasthan State Electricity Board 1999 (1) WLC 1 was considered and Division Bench of this Court has held that respondent petitioner has already acquired experience of working as clerk for 8 years which does not required any special training as such is sufficient substitute for the educational qualification required for the post.

13. Learned Counsel for the petitioners further invited my attention towards judgment reported in Bhagwati Prasad Vs. Delhi State Mineral Development Corporation, in which Hon'ble Apex Court has held that educational qualification is relevant at the time of appointment and not at the state of confirmation when employee gained long practical experience. While inviting attention towards para 6 it is submitted that respondent University cannot revert petitioners after working on the promotional post for 18 years because they were promoted after considering their qualification and at a later stage the Larger Bench of this Court has held that the said qualification acquired by the petitioners was decognised,

therefore, it was not valid qualification for the purpose of promotion.

14. In these circumstances, when petitioners have acquired long practical experience and at a later stage it has been held by larger Bench of this Court that qualification of Prathma acquired from Hindi Sahitya Sammelan, Allahabad not a valid qualification for promotion after 28/6/85, the petitioners should not have been reverted as held by this Court while considering the judgment of larger bench in Ratan Puri's case (supra), therefore, reversion order may be set aside.

15. Per contra, learned Counsel for the respondent submitted that petitioners were promoted under the belief that said qualification acquired by them is equivalent to the Secondary School Examination but after the judgment of larger bench of this Court in Prem Kumar's case and Shanker Lal's case, the said qualification was held to be not equivalent to Secondary School Examination for the purpose of promotion and in pursuance of said judgment State Government has issued notification dated 3/7/2000 and same was sent to the University for compliance because University has signed the memorandum of understanding with the State Government by which the University is under obligation to follow the directions issued by the State Government, therefore, reversion order has been passed in pursuance of notification dated 3/7/2000 issued by the Department of Personnel, Government of Rajasthan, Jaipur in which it has been held that all those persons who were promoted after 28/5/1985 on the post of LDC on the basis of Prathma qualification acquired from Hindi Sahitya Sammelan, Allahabad shall be reverted to the post of Class IV employee because said qualification has been derecognised for the purpose of promotion against vacancies after 28/6/1985, therefore, petitioners were rightly reverted from the post of UDC/LDC to the post of Class IV employees in which there is no illegality, more so the State Government has issued an order in pursuance of judgment rendered by Full Bench of this Court in Shanker Lal's case, therefore, there is no illegality in the order of reversion dated 20/6/2006.

16. Learned Counsel for the respondent has relied on the following judgments in support of his contention:

- (i) State of Rajasthan v. Kastoor Singh D.B. Civil Special Appeal No. 137/96
- (ii) Shanker Lal Verma v. State and Ors. D.B.Civil Special Appeal No. 2789/94
- (iii) State of M.P. and Others Vs. Shyama Pardhi etc. etc.,
- (iv) Chairman, School of Buddhist Philosophy, Leh, Ladakh (J and K) Vs. Makhan Lal Mattoo and Another,
- (v) Dolly Chhanda Vs. Chairman, JEE and Others,
- (vi) State of Raj. v. Kulwant Kaur 2006 (6) RDD 165
- (vii) I.C.A.R. and another Vs. T.K. Suryanarayan and others,

17. I have considered the rival submissions. From the material on record, it is obvious that petitioners at the time of promotion have not misrepresented or committed any fraud and respondent University considered the qualification of Prathma possessed by petitioners to be equivalent to Secondary School Examination/Matriculation so also authorities of the University understood the law that petitioners were eligible to be promoted and promotions were made way back in 1988 and 1990 and out of five petitioners two were further promoted to the post of UDC. In my opinion, reversion order is not sustainable before the eye of law because petitioners have acquired requisite qualification by way of experience because they are performing duties on promotional post for two decades and the learned Single Judge in Ratan Puri's case and Division Bench in Mani Lal Joshi's case held that while working on the higher post an employee has acquired experience of functioning as clerk, which does not require any special training as such is sufficient substitute for the educational qualification required for the post. Therefore, this Court while considering the notification issued by the State Government on 3/7/2000 and the judgment of Full Bench in Shanker Lal's case set aside the order of reversion on the basis of acquired experience of number of years and case of present petitioners is squarely covered by the said proposition of law laid down in Ratan Puri's case and Mani Lal Joshi's case. Most of judgments relied upon by the learned Counsel for the respondent have been considered in above two judgments of Ratan Puri and Mani Lal Joshi's case. However, the controversy involved in this case, in my opinion, is squarely covered by the aforesaid two judgments in case of Ratan Puri and Mani Lal Joshi.

18. The judgment of Division Bench in Kistoor Singh's case and the judgment in Shanker Lal and Prem Kumar's case delivered by Full Bench of this Court were considered in case of Ratan Puri v. State of Rajasthan and Ors. S.B. Civil Writ Petition No. 1940/2000 decided on 13/10/2000, learned Single Judge has held as under:

There can be no dispute to the legal proposition that at the time of seeking appointment/promotion, a candidate must possess the currently prescribed qualification (vide Union of India v. Yogendra singh JT 1994 SC 642; and R. Dayal and Ors. v. State of Rajasthan 1996 (3) WLC 513 FB). Subsequently, the Full Bench of this Court in Shanker Lal Verma v. R.S.E.B. 1999 (1) WLC 1, has reiterated the same view. Earlier, a Division Bench of this Court had taken the same view in D.B.Civil Special Appeal No. 137/1996, State of Rajasthan v. Kistoor Singh, decided on 18-12-97.

The reversion order has been passed on the basis of the Government order dated 3/7/2000, wherein, after considering all the aforesaid judgments, the direction has been issued that the class IV employee, who did not possess the requisite qualification after 28/6/1985, should be reverted in view of the aforesaid judgments.

Undoubtedly, petitioner had been promoted under the belief that he was eligible

for promotion and possessing requisite qualification, which had, at a very later stage, been declared as an ineligibility after decognition. In obtaining the promotion, there has been no misrepresentation or fraud on the part of petitioner, rather the respondents themselves understood the law that petitioner was eligible for promotion. The substantial justice requires that petitioner may not be reverted after having an experience of nine years on the promotional post. Rather the respondents ought to have considered to apply the said judgment prospectively and not disturbing the promotions made prior to the said judgment.

Thus, the petition succeeds and is allowed. The impugned order dated 12/5/2000 (Annex.2) is hereby quashed as required to meet the ends of justice. There shall be no order as to costs.

19. Similarly, Division Bench in Mani Lal Joshi's case held that reversion of such employee, who has been promoted on the basis of Prathma qualification is illegal after lapse of number of years. The relevant part of the order reads as under:

It is in aforesaid circumstances when the petitioner challenged his reversion order, learned Single Judge has allowed the writ petition by holding that in view of the law declared by this Court which was holding the field when the petitioner was promoted. Subsequent reversal of that view on different petitions in different matters ought not to affect the transactions which have been completed on the belief about the correctness of law as was declared by this Court interpreting the relevant Rules and by which State too was bound to act in consonance thereof. In these circumstances it will not be just and fair to revert petitioner after a so long period. Interest of justice demands that as a result of declaration of effect of amendment in Rules vide notification dated 28/6/1985 be applied prospectively to future promotions, else it will result in serious injustice to petitioner who has otherwise rightly promoted as per declaration of law by this Court having binding force when promotion was made and the petitioner could not be held responsible for that in any manner.

Moreover, the respondent petitioner has already acquired experience of functioning of clerk for 8 years which does not required any special training as such is sufficient substitute for the educational qualification required for the post.

In the totality of the circumstances, we are of the opinion that the discretion exercised by the learned Single Judge in exercise of its extra ordinary jurisdiction to grant relief to the petitioner in the facts and circumstances is just and proper and is in furtherance of substantial justice. Therefore, no interference is called for in the order passed by the learned Single Judge.

This special appeal is dismissed accordingly.

20. In this view of the matter, the controversy involved in these cases is squarely covered with the above judgments in which the learned Single Judge and Division Bench of this Court has held that if an employee has acquired

experience of number of years and he was promoted by the respondents under the belief that he is possessing requisite qualification which is valid for promotion and there is no allegation of misrepresentation or fraud on the part of employee for obtaining promotion then substantial justice requires that petitioner shall not be reverted after having acquired experience of number of years on the promotional post rather respondents ought to have considered to apply the said judgment prospectively and not disturbing the promotion given prior to said judgment.

21. Other judgments cited by learned Counsel for the respondent are not relevant because in none of the cases question of reversion of an employee after 15 or 20 years is involved and controversy involved in this case has already been decided in Ratan Puri's case by Single Bench and in case of Mani Lal Joshi's case by the Division Bench in which it has been held that after working on promotion post for more than 8 and 9 years the question of possessing qualification on the date of promotion become redundant because the question of validity of qualification was not in existence and respondent understood the law that petitioners are eligible for promotion and, therefore, granted promotion to the post of LDC.

22. The question of validity of qualification arose at very later stage and after many years ineligibility has been declared on the ground that "Prathma" qualification is derecognized by the State Government on 28/6/85.

23. In this view of the matter, all the writ petitions succeed and are hereby allowed. The impugned order of reversion dated 20/6/2006 passed by Registrar, Rajasthan Agriculture University, Bikaner is hereby set aside as required to meet the ends of justice and respondents are directed to grant all consequential benefits to the petitioners, as if they were not reverted from the post of UDC/LDC to the post of Class IV employees within a period of three months from the date of receipt of certified copy of the judgment. No order as to costs.