
(2011) 04 RAJ CK 0093
In the Rajasthan High Court
Case No : Civil Writ Petition No. 10286 of 2010

Devi Singh Bhati	Vs	APPELLANT
State of Rajasthan and Others		RESPONDENT

Date of Decision : 10-04-2011

Acts Referred:

Citation : (2011) 3 RLW 2762

Hon'ble Judges : Gopal Krishan Vyas, J

Bench : Single Bench

Advocate : S.D. Vyas, for the Appellant; I.S. Pareek for State and Rakesh Arora, for the Respondent

Final Decision : Allowed

Judgement

Gopal Krishan Vyas, J.—Heard learned counsel for the petitioner and counsel appearing on behalf of Home Department as well as counsel for respondent No. 3. In this writ petition, the petitioner has prayed for quashing order Annex. 2 dated 25.10.2010, whereby, respondent No. 3, who is substantively working on the post of A.P.P. -I, was given posting on his own desire on the higher post of Assistant Director (Prosecution), Jodhpur. Main contention of the petitioner is that in the final seniority list of A.P.Ps. I, dated 22.8.2008/5.9.2008, name of the petitioner appears at S. No. 39 whereas name of respondent No. 3 finds place at S. No. 65, therefore, obviously, respondent No. 3 is much junior to the petitioner as per the seniority-list but ignoring this fact as per desire of respondent No. 3 he has been posted on higher post.

2. Grievance of the petitioner is that respondent No. 3 being much junior candidate cannot be posted on higher post of Assistant Director (Prosecution) at Jodhpur. Further, it is pointed out that no regular promotions through the Department Promotion Committee have been made by the respondent as per rules, therefore, there is no question of giving posting to the junior person on higher post ignoring the petitioner's candidature. So also, no person can be given posting on higher post without adjudging suitability by the DPC; but, here,

in this case, neither the case of the petitioner nor that of respondent No. 3 has been adjudged by the DPC as per rules, therefore, the posting given to respondent No. 3 on the post of Assistant Director (Prosecution), Jodhpur is illegal because the post on which he has been posted is to be filled in by way of promotion and such posting of respondent No. 3 is in complete violation of the rules, therefore, impugned order deserves to be quashed.

3. Learned counsel for the petitioner argues that even though there is provision for promotion in the rules after determination of vacancy by the Departmental Promotion Committee and, at that time, the service record of the incumbent can be assessed; but, here, in this case, a complete good-bye is bid to the rules for the purpose of deputing a junior person on higher post which is further evident from the fact that order of posting has been made as per desire of respondent No. 3. In this view of the matter, the order impugned whereby respondent No. 3 has been given posting on higher post on his desire although he is much junior to the petitioner deserves to be quashed and set aside.

4. Learned counsel for the State submits that this is simple transfer order and not promotion order and the petitioner cannot be allowed to say that State Government cannot pass order deputing any junior person on a higher post. He submits that the petitioners case is under consideration for promotion and, as and when the DPC will finally decide the matter for purpose of giving promotion on the post of Assistant Director (Prosecution), the petitioner shall be given benefit of promotion as per recommendation of the DPC. At present, the State Government is at liberty to give transfer posting to any person on higher post which cannot be objected to by the petitioner.

5. Learned counsel for the State further pointed out that the main limb of argument of the petitioner is that order impugned is promotion order but this fact is not correct because upon perusal of the order impugned it will be revealed that it is only transfer order whereby posting has been made, therefore, the contention of the petitioner is not sustainable that by impugned order of transfer, Annex. 2 dated 25.10.2010 is promotion order and his junior person has been promoted. In this view of the matter, there is force in this writ petition and same may be dismissed.

6. Learned counsel appearing on behalf of respondent No. 3 vehemently argued that as per service record of the petitioner he is not entitled for posting on higher post even though petitioner is senior than respondent No. 3, therefore, obviously respondent No. 3 being junior person can be posted on higher post by way of transfer. It is also argued that order Annex. 2 is transfer order which is passed upon administrative reasons, therefore, it cannot be termed as promotion order on the post of Assistant Director. In fact, it is temporary arrangement till finalization of the matter of promotion by the Departmental Promotion Committee.

7. Learned counsel for respondent No. 3 advanced strange argument that

according to Rule 11, on officiating basis, eligible person can be given posting on higher post, therefore, there is no illegality in the order impugned which is passed upon his desire.

8. After hearing all the parties. It appears that petitioner is challenging order dated 25.10.2010, whereby, admittedly much junior person than the petitioner has been given posting on higher post of Assistant Director (Prosecution), Jodhpur. It is true that order impugned is simple transfer order and it cannot be termed as order of promotion as per rules, therefore, there is force in the argument of learned counsel for the State; but, at the same time, in my considered opinion, respondent cannot be permitted to pass any order to post much junior person on higher post upon his desire to humiliate the senior persons to work under him. Likewise, no service record is required to be seen at the time of passing transfer order or for taking work on higher post, only seniority can be taken into consideration. The purpose of assessment of service record is for regular promotion and not for transfer posting.

9. In this case, it appears from perusal at the bottom of the impugned order dated 25.10.2010 that the order of posting has been passed on the basis of the desire of respondent No. 3 which is evident from following assertion made in the order:

10. In the impugned order dated 25.10.2010, name of respondent No. 3 appears at S. No. 4, therefore, it is obvious that respondent No. 3 has been given posting on higher post on his own desire not on administrative reasons; meaning thereby, at the time of passing the transfer order the Director (Prosecution) ignored all basic principles of administration and fulfilled the desire of respondent No. 3 because no junior person can be given posting on higher post by transfer as per his desire ignoring the claim of senior persons. The Departmental Promotion Committee after adjudging the suitability by scanning service record can opine that senior person is or is not entitled for promotion to higher post; but, at the time of passing simple transfer order, it is not permissible that entire service record is required to be seen. The facts of this case loudly speak that on persons desire of respondent No. 3 the order impugned has been passed ignoring the important aspect of the matter that due to giving posting to the junior person whereby not only petitioner but so many other senior persons are facing humiliation to work under him. In view of the above, this writ petition is allowed. Impugned transfer order dated 25.10.2010, qua respondent No. 3, is quashed. Respondent authorities are at liberty to pass fresh order of posting on the post of Assistant Director (Prosecution) after considering the seniority till final recommendation is made by the DPC for promotion.