
(2010) 01 RAJ CK 0094
In the Rajasthan High Court

Dr. Rahul Kumar Sharma

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 05-01-2010

Acts Referred:

Citation : (2010) 1 WLN 662

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Judgement

Mohammad Rafiq, J.—This writ petition was filed by the petitioner way back in the year 1996 challenging therein the judgment dated 01.03.1996 of the Rajasthan Civil Services Appellate Tribunal, Rajasthan, Jaipur, (for short, "the Tribunal") by which, promotion granted to him on the post of Associate Professor (Paediatrics Surgeon) was set-aside and the recommendation of the Departmental Promotion Committee for such promotion against the quota of the year 1991-92 was ordered to be reviewed. The appeal was allowed on the ground that the petitioner did not fulfill the requirement of possessing seven out of seven outstanding/very-good APARs for preceding years; the Departmental Promotion Committee (for short, "the DPC") was convened on 24.10.1991, and that the Rules, amended vide Notification dated 30.11.1991, which provided that such outstanding/very-good APARs would be required only in five years out of preceding seven years, would apply prospectively. The learned Tribunal while allowing the appeal filed by respondent No. 3 relied on the judgment of the Hon'ble Supreme Court in Shambhu Singh Meena and Others Vs. State of Rajasthan and Others,

2. Learned Counsel for the petitioner, although in the very beginning assailed the judgment of the learned Tribunal, but when pointedly asked whether the review DPC was convened in compliance of the impugned judgment of the learned Tribunal and consequential order was passed on 27.06.1996 promoting both, the petitioner and the respondent No. 3, it was stated that the petitioner was promoted on the post of Associate Professor against the quota of the year

1994-95 whereas, respondent No. 3 was promoted on that post against the quota of the year 1991-92. This Court while issuing notice of the writ petition, did not deem it appropriate to pass interim-order and, therefore, the respondent State issued order of promotion for remaining posts and both the parties availed the benefit thereof and enjoying the same for the last 15 years.

3. The learned Counsel further submitted that the impugned-judgment is bad in law because respondent No. 3, promoted against the quota of the year 1991-92, did not perform the teaching job for a considerable time period of about three years as he was on an assignment away from the country and, as such, he is not entitled for any benefit of the said period of service unless the duty certificate is issued by the Government of Rajasthan under Rule 7(8)(b) of the Rajasthan Service Rules. The learned Counsel submitted that this argument though was noticed by the Tribunal in Para No. 2 of its judgment but no finding has been rendered thereabout. The learned Counsel referred to Para F of the writ petition and submitted that the said assertion made by the petitioner has not been disputed either by the Government in its reply or even by respondent No. 3. Both the respondents have all along asserted that the petitioner did not have outstanding/very-good APARs for seven out of seven for the preceding years. The judgment of the learned Tribunal therefore deserves to be set-aside on this ground alone and consequential order of promotion passed in compliance thereof would therefore automatically go.

4. In my considered view, unless a specific challenge is made to the order of promotion which was passed way back on 27th June, 1996, the validity thereof cannot be indirectly examined, more particularly when both, the petitioner as well as respondent No. 3, have availed all consequential benefits. Further, the petitioner did not seek to amend his writ petition. At the same time, I find that the contention of the learned Counsel for the petitioner that the Tribunal having noticed the submission made by the petitioner that respondent No. 3 did not perform the teaching job for all preceding seven years, did not render its finding thereon. The contention of the learned Counsel therefore needs to be examined in this context that even if the respondent No. 3 does not possess outstanding/very-good APARs for seven out of seven preceding years, how could he be considered eligible for promotion if actually he did not discharge teaching duties for all preceding seven years or did not have complete seven outstanding/very-good APARs of those preceding seven years. This is a question of fact which ought to be satisfactorily replied by the respondents. This Court by its order dated 03.07.2009 required the Government to produce the APARs of respondent No. 3 as also the petitioner pertaining to the years 1984-85 to 1990-91. The matter was then adjourned to enable the respondents to produce such APARs on 24.07.2009, 21.08.2009 and thereafter again on 04.09.2009, 18.09.2009, 27.10.2009, 10.11.2009 and 24.11.2009. Despite number of opportunities granted in this regard, the Government has not been able to produce the above APARs.

5. In view of the fact that the writ petition remained pending before this Court for last about 13 years and that the order of promotion i.e. subsequent order was issued in compliance of the judgment of the learned Tribunal impugned herein, I deem it appropriate to dispose of this writ petition with liberty to the petitioner to challenge now, within 60 days from the date of receipt of certified copy of this order, the subsequent order of promotion dated 27.06.1996 before the Rajasthan. Civil Service Appellate Tribunal raising all the afore noticed grounds and the learned Tribunal shall examine the validity of such promotion.

6. With the liberty aforesaid, the writ petition is disposed of.