
(2009) 01 RAJ CK 0006
In the Rajasthan High Court

Ghanshyam Singh Saini

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 05-01-2009

Acts Referred:

Citation : (2009) 01 RAJ CK 0006

Hon'ble Judges : Govind Mathur, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Govind Mathur, J.—By an order dt. 25th August, 2007 passed by the Chairman, Municipal Board, Suratgarh appointment was given to the petitioner as Pump Driver on temporary basis in the pay scale Rs. 40-2-60 with admissible allowances including D.A. The petitioner qualified the test for grant of permit of Wireman in the year 1977. Accordingly, permit was issued in his favour by the competent authority. After obtaining necessary permit, appointment of the petitioner was converted as Lineman from the post of Pump Driver Grade-II under an order dt. 24th June, 1981 passed by the Executive Officer, Municipal Board, Suratgarh.

2. The conversion made in pursuance to order 24th June, 1981 also stand regularised by an office order dt. 06th September, 2006 passed by the Executive Officer. It is pertinent to note that the regularisation under Order dt. 06th September, 2006 was made in compliance of the instructions given by the Deputy Director, Local Self Department, Bikaner Region, Bikaner under a communication dt. 11th June, 2006. The respondents also allowed selection grades to petitioner on completion of 9, 18 and 27 years of service, as apparent from perusal of the office order dt. 02nd June, 2007 (Annx.6). The petitioner on attaining the age of superannuation stood retired from service on 31st May, 2007. It is only after his retirement, certain objections were raised by the Directorate of Local Self Government regarding grant of pension. As per the Directorate, the petitioner was not eligible to hold the post of Pump Driver as

well as Lineman and therefore, his initial appointment made on 25th June, 1967 was erroneous. The Executive Officer, Municipal Board, Suratgarh by communication dt. 23rd October, 2007 made a request to the Director, Local Self Government, Jaipur to extend relaxation in educational qualification to the petitioner and to regularise his appointment. However, no positive action was taken by the Director and by an order dt. 01st February, 2008, the Executive Officer, Municipal Board, Suratgarh ordered for recovery of sum of Rs. 1,16,985/- from the petitioner, against the amount said to be paid in excess, against his gross retiral benefits. The recovery aforesaid was made in pursuance of directions given by the Deputy Director, Department of Local Self Government, Bikaner Region, Bikaner by letter dt. 09th September, 2007. The respondents have also yet not released pension to the petitioner. Being aggrieved by the same, this petition for writ is preferred.

3. A reply to the writ petition has been filed on behalf of respondents, stating therein that the petitioner was not possessing the requisite qualification i.e. of having Middle School certificate with ITI in the trade concerned, to hold the post of Pump Driver as well as the post of Lineman. As such, his appointment was erroneous from inception. According to the respondents, the petitioner is not entitled for pensionary benefits and other post retiral benefits.

4. Heard learned Counsel for the parties.

5. It is not in dispute that the petitioner entered in the services of the Municipal Board, Suratgarh much back in the year 1967. His appointment to the post of Pump Driver Grade-II was converted to the post of Lineman in the year 1981 and necessary sanction in this regard was also granted by the Department of Local Self Government through its Deputy Director, Bikaner Region, Bikaner. The respondents also allowed selection grades to the petitioner and ultimately, he retired from service on 31st May, 2007. It is really surprising that no action was taken by the respondents for years together to point out the deficiency in qualification of the petitioner to hold the post of Pump Driver Grade-II as well as the post of Lineman. It is only after his retirement the respondents choose to raise objections regarding grant of pension and other post retiral benefits. As a matter of fact, the approval granted for petitioner's appointment as Lineman by the Local Self Government is conscious and positive act on the part of respondents to condone and relax the qualification required to hold the post concerned. It is relevant to note the Rajasthan Municipalities (Ministerial & Subordinate Staff Service) Rules, 1963 empowers the respondents to relax the eligibility for appointment in the service concerned, relating to age and experience. Once the petitioner has been allowed to continue in the service for about a period of 40 years, assumption is that the respondents have granted relaxation to the petitioner for the required eligibility to hold the post of Pump Driver and then the post of Lineman. In view of it, appointment of the petitioner on the posts concerned is valid and denial of pension and other post retiral benefits to him is bad.

6. Accordingly, this petition for writ is allowed. The respondents are directed to determine and pay the pension and all other post retiral benefits relating to the petitioner by treating him a person retiring from the post of Lineman under the Rajasthan Municipalities (Ministerial & Subordinate Staff Service) Rules, 1963. The orders dt. 01st February, 2008 and 06th February, 2008 to effect recovery from post retiral benefits of the petitioner are hereby quashed.

No order as to costs.