

(2014) 04 RAJ CK 0019

In the Rajasthan High Court

Case No : Civil Writ Petition Nos. 8135 and 8336/2011

G.P. Sharma and Others

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 29-04-2014

Acts Referred:

Citation : (2014) 04 RAJ CK 0019

Hon'ble Judges : Gopal Krishan Vyas, J.

Bench : Single Bench

Advocate : Kuldeep Mathur, for the Appellant; Devkinandan Vyas, Dy. Govt. Counsel, for the Respondent

Final Decision : Partly Allowed

Judgement

Gopal Krishan Vyas, J.?In both above writ petitions, a common question is involved, therefore, they are being decided by this common order.

2. For convenience, the facts of SBCWP No. 8336/2011 are hereby taken into account to adjudicate the controversy.

3. In this writ petition, the petitioners are challenging the validity of the order dated 11.8.2011 (Annex. 8), passed by the Labour Commissioner, Jaipur, whereby the earlier order of appointment passed as per amendment in Rule 7 of the Rajasthan Subordinate Service (Recruitment & Other Service Conditions) Rules, 1960 dated 16.9.1998 was modified and further prayed that the respondents may be directed to extend all consequential benefits, including second and third Selection Grade to the petitioners from the date of joining in the department, as mentioned in the order dated 16.9.1998.

4. The brief facts of the case are that the petitioners were initially appointed on the post of Labour Inspector on ad-hoc/temporary basis for a period of six months or till the regularly selected candidates are made available through Rajasthan Public Service Commission, in short "the RPSC", in the pay scale of Rs. 640-1180/-.

5. Petitioners were allowed to work without any break and they performed their duties with satisfaction of the department. The service conditions of the petitioners are governed by the Rajasthan Subordinate Service (Recruitment & Other Service Conditions) Rules, 1960, (for short hereinafter referred to as "the Rules") in which an amendment was made vide notification dated 9.4.1997 in which it was specifically provided that the services of those ad-hoc/temporary appointees appointed in between 1975 to 1983 will be regularized after screening their service record by the Screening Committee.

6. The case of the petitioners was considered by the Screening Committee and after examining the record of the petitioners, their services were regularized with effect from their initial appointment vide order dated 16.9.1998.

7. In the amendment dated 9.4.1997, a proviso to Rule 21 was also added to determine the seniority of petitioners on the post of Labour Inspector and in pursuance of the said proviso, the seniority of the petitioners was also determined by the respondents.

8. Learned counsel for the petitioners submits that after passing the aforesaid orders, petitioners were enjoying their service benefits regularly but all of a sudden, when the petitioners claimed their right of Selection Scale, the respondent Labour Department passed an order on 11.8.2011, whereby the order dated 16.9.1998 was amended and benefit of regularization from the date of initial appointment was modified whereby instead of granting benefit from initial entry in the service, it was ordered that the benefits are hereby granted with effect from 5.8.1998.

9. Learned counsel for the petitioner vehemently argued that the order dated 11.8.2011 has been passed without providing any opportunity of hearing to the petitioners, therefore, the order impugned may be quashed because it is against the principles of natural justice and respondent department may be directed to restore all the benefits as per the order of regularization dt. 16.9.98 with effect from their initial appointment.

10. Per contra, learned counsel for the respondents has vehemently opposed the prayer and submits that all the petitioners were granted appointment on ad-hoc/urgent temporary basis in the year 1983, vide order dt. 2.7.1983 (Annex. 1) in which it was specifically observed that this appointment on the post of Labour Inspector is purely on temporary/ad-hoc basis for a period of six months or till the duly selected candidates are made available through the RPSC. The petitioners were allowed to work on ad-hoc basis till 1997, therefore, an amendment was made in the Rules vide notification dated 9.4.1997, whereby the petitioners were granted benefit of regularization after screening their service records but in the amendment, it was nowhere provided that after screening, the benefit will be extended from the date of initial appointment because the intention of the amendment was to grant regularization and not the appointment with effect from the date of initial appointment, because initial appointment was

purely on temporary basis without following procedure provided in the Rules, therefore, it is felt necessary by the respondents to modify the order dated 16.9.1998, whereby by mistake, benefit of regular appointment was granted contrary to the amendment made under Rule 7 vide notification dated 9.4.1997 from the date of initial appointment, therefore, it is not a case of snatching any right of the petitioners but it is a case of rectification of mistake by the respondents vide impugned order dated 11.8.2011, therefore, prayed that the writ petitions may be dismissed.

11. After hearing learned counsel for the parties and having perused the initial appointment order dt. 2.7.1983 (Annex. 1), it is evident that in the order of appointment, it was specifically observed that this appointment is for a period of six months on temporary/ad-hoc basis or till the duly selected candidates are made available. Meaning thereby the initial appointment of the petitioners was not on regular basis but petitioners were allowed to work on ad-hoc basis contrary to the rules, therefore, for the purpose of regularization of their services, an amendment was made on 9.4.1997 by which the following proviso was added in Rule 7 of the Rules of 1960:

12. In pursuance of above amendment, the respondent department constituted a Screening Committee for the purpose of granting regularization and after screening service record of the petitioners, the benefit of regularization was granted vide order dated 16.9.1998 but contrary to the amended rule, the benefit of regularization was extended from the date of initial entry into service but in fact, it was not the intention of the amendment made in the Rules. It appears from the impugned order passed by the respondents dated 11.8.2011 to rectify the mistake committed by the respondent authority for granting the benefit of regular appointment from the initial entry into the service after screening record of the petitioners but this court cannot lose sight of the fact that before passing the order dated 11.8.2011, no opportunity of hearing was given to the petitioner and after 13 years, straightway the order impugned dt. 11.8.2011 has been issued by the Labour Commissioner, Govt. of Rajasthan, Jaipur, therefore, the order impugned passed by the Labour Commissioner, Govt. of Rajasthan, Jaipur is not sustainable in law because it has been passed without providing an opportunity of hearing to the petitioners, therefore, it is against the principles of natural justice.

13. Resultantly, both the writ petitions are partly allowed and the order dt. 11.8.2011, impugned in both writ petitions, is hereby quashed & set aside with liberty to the respondents to pass fresh order after providing an opportunity of hearing to the petitioners strictly in accordance with the Rules and amendment dated 9.4.1997 within a period of three months from the date of receiving certified copy of this order. A copy of this order be also placed in S.B. Civil Writ Petition No. 8135/2011.