

(2009) 04 RAJ CK 0092
In the Rajasthan High Court

Gulam Kabeer Ahmed

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 02-04-2009

Acts Referred:

Rajasthan Civil Services (Service Matters Appellate Tribunal) Act, 1976 — Section 4

Citation : (2009) 2 RLW 1308

Hon'ble Judges : Sangeet Raj Lodha, J;Arvind Mohanlal Kapadia, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Sangeet Lodha, J.—This special appeal is directed against order dated 8.3.2000 passed by the learned Single Judge of this Court, whereby the writ petition preferred by the appellant assailing the order dated 27.12.96 issued by Officer on Special Duty (Rules) Department of Finance (Rules Division), Government of Rajasthan, under the orders of the Governor of Rajasthan and seeking directions for fixation of his pension treating his actual pay on the date of retirement as Rs. 2,950/-, stands dismissed.

2. The appellant was appointed as Assistant Teacher in the Department of Education , Government of Rajasthan on 4.5.58. and was later promoted to the post of Senior Teacher. He retired from the service on attaining the age of superannuation as Senior Teacher on 31.1.97.

3. The Government of Rajasthan issued an order dt. 25.1.92 prescribing selection grades for employees in Class IV, Ministerial and Subordinate Services & those holding isolated posts . On completion of 27 years of service, vide order dated 9.5.94, the appellant was granted third selection grade in the pay scale 2000-3500 in terms of said order dated 25.1.92 and was fixed at Rs. 3255/-. Thereafter, the appellant was offered promotion to the post of Lecturer by an order dt. 20.12.96 but since, he was bound to retire w.e.f. 31.1.97 and was likely to be displaced from the place he was posted as Senior Teacher at the relevant

time therefore, he forgone the promotion offered.

4. As per the Government order dated 25.1.92, whereby the selection grades were introduced for the employees referred supra in case a government servant forgoes the chance of promotion, he is not allowed second and/third selection grade but, in respect of government servant who is offered promotion after grant of second and/third selection grade if he forgoes the chance of promotion, he was entitled to continue to draw pay in the selection grade. However, keeping in view the tendency amongst the Government servants of forgoing the promotions on various personal consideration so also considering the difficulties experienced by the various appointing authorities in filling the promotion posts from the competent and qualified persons and the adverse effect thereof in performance of the Government work, the Government of Rajasthan issues an order dated 4.12.96 modifying the aforesaid order dated 25.1.92, whereby it was provided that government servant who is drawing pay in second or third selection grade, if on his actual promotion to second/third promotion post forgoes the promotion the benefit of second and/third Selection grade , as the case may be, shall be withdrawn from the date he forgoes the promotion and the pay of such an employee shall be refixed either in the first promotion post or in the first selection grade or in pay scale of second promotion post, at the stage he would have drawn had he not been granted second and/third selection grade(s), as the case may be. But, it was clarified that the government servant who had forgone the second or third promotion before issue of the aforesaid order dated 4.12.96 and he is drawing pay either in the second or third selection grade, as the case may be, shall not be withdrawn and in case, such a government servant is again offered promotion after issue of the said order, the benefit of second and third selection grade shall be withdrawn from the date he refused the promotion. It is relevant to mention here that aforesaid order dated 4.12.96 was issued under the signature of Officer on Special Duty(Rules), Department of Finance(Rules Division), Government of Rajasthan under the orders of the Governor vide order No. EDB/RECORD/5912/1/96 dated 27.12.96.

5. As noticed above, the appellant had forgone the second promotion to the post of Lecturer offered to him on 20.12.96 therefore, in view of the aforesaid government order dated 4.12.96, the third selection grade granted to him vide order dated 9.5.94 was withdrawn vide order dated 22.3.97 and for the purpose of grant of pension , he was fixed at Rs. 2750/- as on 7.4.96 in the pay scale 2000-3200. In these circumstances, aggrieved by the order dated 27.12.96 and the refutation made as aforesaid , the appellant preferred writ petition before this Court, which has been dismissed by the learned Single Judge by the order under appeal on the ground at availability alternative remedy of appeal under the provisions of Rajasthan Civil Services (Service Matters Appellate Tribunal) Act, 1976 (in short "the Act of 1976" hereinafter).

6. It is submitted by the learned Counsel for the appellant that the order withdrawing the selection grade granted to the appellant has been passed by the

authority concerned in illegal and arbitrary manner without affording an opportunity of hearing to the appellant, therefore, notwithstanding the availability of alternative remedy of appeal, the appellant was entitled to assail the validity of the order withdrawing the selection grade by way of writ petition before this Court. It is submitted by the learned Counsel that in the first instance, the notices were issued by the writ court for final disposal of the writ petition at the admission stage and thereafter, reply to the writ petition was filed on behalf of the respondents wherein no objection as to the availability of the alternative remedy was raised. The learned Counsel submitted that the pleadings were complete therefore, in view of the earlier order passed by the writ court, the writ petition should have been decided on merits. The learned Counsel submitted that the government order dated 4.12.96 was admittedly published on 27.12.96 therefore, in view of the provision contained therein since the appellant had already forgone the promotion on, 20.12.96 i.e. before coming into force of the order dated 4.12.96, the selection grade granted to him could not have been withdrawn in terms of the order dated 25.1.92 as modified vide order dated 4.12.96 and the appellant was entitled to draw his salary in the pay scale of third selection grade. The learned Counsel submitted that the order dated 4.12.96 providing for withdrawal of second and third selection grade on a government servant forgoing the promotion is not applicable to the appellant therefore, the order impugned passed by the respondent authority withdrawing the third selection grade granted to the appellant is ex facie without jurisdiction.

7. Per contra, the learned Government Counsel submitted that the appellant was promoted vide order dated 20.12.96 and admittedly, he declined to avail the promotion therefore, he has to face the consequences and the order withdrawing the selection grade passed by the competent authority in terms of government order dated 4.12.96 cannot be faulted with. It is submitted by the learned Counsel that the order dated 4.12.96 shall be treated to have come in force on the date on which it has been issued. The learned Counsel submitted that the appellant cannot claim non-applicability of the said in his case on the ground that he had no knowledge about the order dated 4.12.96 issued by the State Government at the time when he declined to avail the promotion.

8. We have considered the rival submissions and perused the material on record.

9. Admittedly, by way of writ petition the appellant has inter alia assailed validity of order dated 4.12.96 issued under the orders of the Governor vide order dated 27.12.96 whereby the government order dated 25.1.92 prescribing the selection grades for employees in Class IV, Ministerial & Subordinate Services and those holding isolated posts, stands amended. As per the provisions of Section 4 of the Act of 1976, the Tribunal has jurisdiction to hear an appeal against the order passed by any officer or authority on any service matter or matters affecting a government servant in his personal capacity. It is not in dispute that the order dated 4.12.96 issued by the government is not an order affecting the appellant in his personal capacity but it is a general order affecting all the employees who

are beneficiary of government order dated 25.1.92 therefore, in our considered opinion, the appellant could not have assailed the validity of the said order by way of an appeal before the Tribunal. In this view of the matter, as a matter of fact, as against the order dated 4.12.96 published vide order dated 27.12.96 , the remedy of appeal was not available to the appellant under the provisions of the Act of 1976. Moreover the question involved in the matter is very short and if ultimately, it is found that the order dated 4.12.98 shall come into force from the date of its issuance/publication then, obviously, the same cannot prejudicially affect the rights of the appellant to continue to draw his pay in third selection grade inasmuch as he had forgone the promotion on 20.12.96. Therefore, with utmost respect, in our considered opinion, on the facts and in the circumstances of the case, the learned Single Judge should have decided the writ petition on merit instead of dismissing it on the ground of availability of alternative remedy of appeal under the Act of 1976. Moreover, this appeal was admitted by this Court on 20.9.2000 and after a lapse of about more than 8 years, we do not consider it appropriate to relegate the appellant, a retired employee litigating for proper fixation of his pension to the remedy of appeal under the Act of 1976.

10. Coming to the merits of the case, it is to be noticed that order dated 4.12.96 was admittedly, issued vide Order dated 27.12.96 under the signature of the Officer on Special Duty (Rules), Department of Finance, Government of Rajasthan for information of the persons concerned. There is nothing on record to show that the said order was made available to the persons affected by any means of publication prior to 27.12.96 . It is settled law that if an order is kept on the file and not communicated or published for information to the persons affected thereby by way of recognised mode of publication, the same Cannot be said to have been duly communicated/published. There cannot be any presumption that all the government employees must be knowing about the orders passed by the State Government affecting their rights even before the promulgation or publication thereof. Admittedly, while exercising the option of forgoing the promotion, the appellant was not aware of the order dated 4.12.96 passed by the State Government therefore, the same cannot operate so as to affect his rights adversely. On the facts and in the circumstances of the case, we are of the considered opinion that the said government order dated 4.12.96 shall come into force w.e.f. 27.12.96 when it was issued by the competent authority for the information of one and all concerned and not before it.

11. Admittedly, under the order dated 4.12.96 the selection grade granted to the government servants prior to the issuance of the said order shall not be withdrawn on the ground that he has forgone the promotion after the grant of second and/third. selection grade in terms of government order dated 25.1.92. It is not in dispute that after grant of selection grade the appellant declined to avail the promotion offered to him on the post of Lecturer on 20.12.96 i.e. before the coming into force of order dated 4.12.96. In this view of the matter, in terms of the order dated 4.12.96, the selection grade granted to the appellant was not liable to be withdrawn on account of his forgoing the promotion offered.

12. For the aforementioned reasons, in bur considered opinion, the order impugned in the writ petition withdrawing the selection grade granted in favour of the appellant runs contrary to the order dated 4.12.96 published vide order dated 27.12.96 and deserves to be. quashed and set aside. In view of the finding arrived at as aforesaid, other grounds raised by the learned Counsel for the appellant assailing the validity of the order impugned are not required to be gone into.

13. In the result, the special appeal succeeds, it is hereby allowed. The order tinder appeal is set aside. The writ petition is allowed. The order dated 22.3.97 withdrawing the third selection grade granted to the appellants quashed. The third selection grade granted to the appellant vide order Annexure 1 in terms of government order dated 25.1.92 is restored. The respondents are directed to extend all consequential benefits to the appellant including the fixation of his pension accordingly. No order as to costs.