(2008) 07 RAJ CK 0086

In the Rajasthan High Court

Case No : Civil Writ Petition No. 6260 of 2006

Hajari Vishnu	APPELLANT
Vs	
State of Rajasthan and Others	RESPONDENT

Date of Decision : 11-07-2008

Acts Referred:

Rajasthan Municipalities Act, 1959 — Section 300

Citation : (2008) 3 WLN 377

Hon'ble Judges : Gopal Krishan Vyas, J

Bench : Single Bench

Judgement

Gopal Krishan Vyas, J.—By way of filing the present writ petition, the petitioner has challenged the reversion order dt. 31.08.2006 (Annex.P/8 passed by the Executive Officer, Municipal Board, Mount Abu and the order dt. 19.06.2006 (Annex.P/9) passed by the Dy. Director (Administration), Local Bodies, Govt. of Rajasthan, Jaipur.

2. In this case, the petitioner was promoted on the post of Revenue Inspector when he was working on the post of U.D.C. vide order dt. 18.09.1992 (Annex.P/2). The said order was purely on temporary basis till confirmation by the D.P.C. The said promotion order was declared illegal and thereafter, the petitioner was ordered to be reverted from the post of Revenue Inspector to the post of U.D.C. vide order dt. 17.09.1993, issued by the Executive Officer, Municipal Board, Mount Abu on the basis of the order issued by the Dy. Director, Local Bodies, Jodhpur dt. 25.08.1993. The petitioner challenged the order dt. 17.09.1993 by way of filing revision u/s 300 of the Rajasthan Municipalities Act, 1959 before the Director, Local Bodies, Govt. of Rajasthan, Jaipur. The Director, Local Bodies vide order dt. 20.01.1994 (Annex.P/6) has set aside the order dt. 17.09.1993 and it was specifically ordered that the Municipal Board, Mount Abu shall fill up the vacant posts by way of direct recruitment and promotion in accordance with the Rules after determination of the vacancies and till then status quo was ordered to be maintained.

3. The case of the petitioner is that he was working on the post of Revenue Inspector since 1992 but abruptly without making compliance of the order passed by the Director on 20.01.1994, the order impugned dt. 31.08.2006 was passed by the Commissioner, Municipal Board, Mount Abu whereby it was ordered that the petitioner''s promotion on the post of Revenue Inspector is illegal and there is no sanction, therefore, the petitioner is hereby reverted to the post of U.D.C. The order dt. 31.08.2006 has been passed on the basis of the order dt. 19.06.2006 passed by Dy. Director (Administration), Local Bodies, Jaipur wherein it was observed that the promotion of the petitioner on the post of Revenue Inspector was illegal.

4. The petitioner has challenged both the impugned orders on the ground that the petitioner is working since 1992 on the post of Revenue Inspector and without assigning any reasons and treating his promotion as illegal, he has been reverted without any notice. Further, it is submitted that according to the rules, the petitioner was eligible for promotion against the quota on the post of Revenue Inspector, therefore, the respondents were under obligation to comply with the directions issued by the Director vide order dt. 20.01.1994 and promotions were to be made after determination of the vacancies as ordered by Director but it has not been done, therefore, the respondents have illegally reverted the petitioner while treating his promotion as illegal.

5. Learned Counsel for the petitioner vehemently argued that initially the promotion order of the petitioner was challenged by one Kumar Singh by way of filing writ petition being S.B. Civil Writ Petition No. 466/1993 in which the learned Single Judge of this Court has held that the petitioner''s promotion cannot be questioned and the petitioner was very much entitled for promotion as Revenue Inspector from the cadre of UDC, which cannot be doubted or faulted with and further, it has been held that the promotion order cannot be challenged. Meaning thereby, the promotion of the petitioner though made on temporary basis was held to be valid by learned Single Judge of this Court in the aforesaid writ petition vide order dt. 27.04.2000. The relevant para of the aforesaid judgment reads as under:

Having heard the learned Counsel and having seen the Gazette Notification and the decisions cited, I am of the view that eligibility of respondent No. 3 to be promoted as Revenue Inspector from the cadre of UDC cannot be doubted or faulted. His promotion to be post of Revenue Inspector cannot, therefore, be challenged. Moreover, the petitioner has two hurdles to pass. First he will have to claim and get promotion to the post of Assistant Revenue Inspector and then only he becomes eligible for promotion to the post of Revenue Inspector. He, cannot, therefore, challenge the promotion of respondent No. 3 to the post of Revenue Inspector even before he gets promotion as Assistant Revenue Inspector.

6. In this view of the matter, once, the promotion of the petitioner was held to be legal and the petitioner was held to be eligible for promotion to the post of

Revenue Inspector, then, there was no occasion left with the respondents to pass an order contrary to the judgment rendered by this Court in the aforesaid writ petition. Therefore, it is prayed that the impugned reversion order dt. 31.08.2006 (Annex.P/8) and the order dt. 19.06.2006 (Annex.P/9) may kindly be quashed and set aside.

7. Per contra, learned Counsel for the respondents submits that the petitioner was wrongly promoted to the post of Revenue Inspector and he was not eligible for the said post, therefore, there is no question of regularization of the petitioner on the post of Revenue Inspector, so also, according to the rules, the petitioner was not eligible for promotion on the post of Revenue Inspector and he was illegally promoted, therefore, the order has already been passed by the Commissioner, Municipal Board, Mount Abu in which no interference is required and this writ petition deserved to be dismissed.

8. I have perused the entire record of the case. First of all, the promotion of the petitioner vide order dt. 18.09.1992 was held to be valid by Coordinate Bench of this Court in the year 2000 in the writ petition filed by one Kumar Singh, challenging the validity of the promotion of the petitioner. Therefore, now it is not open for the Municipal Board to say that the petitioner was not eligible for promotion on the post of Revenue Inspector from the post of U.D.C. Further, when in the year 1994, directions was issued by Director for determination of the vacancies and for filling upon the vacant posts, then, those directions were required to be complied with by the Municipal Board, Mount Abu but admittedly till 2006, the directions issued by the Director, Local Bodies vide order dt. 20.01.1994 was not complied with and abruptly the petitioner was reverted while saying that the promotion order of the petitioner was illegal. In my opinion, after the order passed by learned Single Judge in the aforesaid writ petition filed by one Kumar Singh, initially the promotion of the petitioner on the post of Revenue Inspector cannot be question. More so, when the petitioner was allowed to work on the post of Revenue Inspector since 1992-93 till 2006 then such promotion cannot be treated as illegal in view of the order passed by learned Single Judge in case of Kumar Singh (supra). It is also required to be observed that the directions issued by the Director in the order dt. 20.01.1994 passed in revision was also not complied with and in pursuance of those directions, the petitioner was allowed to work on the post of Revenue Inspector and he worked as such till reversion order was passed. Therefore, in my opinion, in view of the judgment rendered by Hon''ble Supreme Court in case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, the petitioner was allowed to work on the post of Revenue Inspector for more than 14 years then, the respondents are under obligation to consider the case of the petitioner for regular promotion in view of paras 53 and 55 of the judgment rendered by Hon''ble Supreme Court in case of Uma Devi (supra), which reads as under:

53. One aspect needs to be clarified. There may be cases of irregular appointments (not illegal appointments) as explained in S.V. Narayanappa, R.N.

Nanjundappa and B.N. Nagarajan and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the Courts or of Tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the Courts or of Tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within a six months from this date. We also clarify that regularization, if any already made, but no sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.

55. In cases relating to service in the commercial taxes department, the High Court has directed that those engaged on daily wages, be paid wages equal to the salary and allowances that are being paid to the regular employees of their cadre in Government service, with effect from the dates from which they were respectively appointed. The objection taken was to the direction for payment from the dates of engagement. We find that the High Court had clearly gone wrong in directing that these employees be paid salary equal to the salary and allowances that are being paid to the regular employees of their cadre in government service, with effect from the dates from which they were respectively engaged or appointed. It was not open to the High Court to impose such an obligation on the State when the very question before the High Court in the case was whether these employees were entitled to have equal pay for equal work so called and were entitled to any other benefit. They had also been engaged in the teeth of directions not to do so. We are, therefore, of the view that, at best, the Division Bench of the High Court should have directed that wages equal to the salary that are being paid to regular employees be paid to these daily wage employees with effect from the date of its judgment. Hence, that part of the direction of the Division Bench is modified and it is directed that these daily wage earners be paid wages equal to the salary at the lowest grade of employees of their cadre in the Commercial Taxes Department in government service, from the date of the judgment of the Division Bench of the High Court. Since, they are only daily wage earners, there would be no question of other allowances being paid to them. In view of our conclusion, that Courts are not expected to issue directions for making such persons permanent in service, we set aside that part of the direction of the High Court directing the Government to consider their cases for regularization. We also notice that the High Court has not

adverted to the aspect as to whether it was regularization or it was giving permanency that was being directed by the High Court. In such a situation, the direction in that regard will stand deleted and the appeals filed by the State would stand allowed to that extent. If sanctioned posts are vacant (they are said to be vacant) the State will take immediate steps for filling those posts by a regular process of selection. But when regular recruitment is undertaken, the respondents in C.A. No. 3595-3612 and those in the Commercial Taxes Department similarly situated, will be allowed to compete, waiving the age restriction imposed for the recruitment and giving some weightage for their having been engaged for work in the Department for a significant period of time. That would be the extent of the exercise of power by this Court under Article 142 of the Constitution to do justice to them.

9. In this view of the matter, while quashing the order of reversion dt. 31.8.2006 passed by the Commissioner, Municipal Board, Mount Abu and the order dt. 19.06.2006 passed by Dy. Director (Administration), Local Bodies, Govt. of Rajasthan, Jaipur, the respondents are directed to grant all consequential benefits to the petitioner and consider the case of the petitioner for regularization on the post of Revenue Inspector as per law laid down by Apex Court in Uma Devi''s case (supra) because his promotion was found to be legal by Coordinate Bench of this Court in the year 2000 in case of Kumar Singh (supra) and in view of the fact that the petitioner has worked on the post of Revenue Inspector for more than 14 years.

10. With the above directions, this writ petition is allowed.

