(2008) 07 RAJ CK 0014

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1010 of 2005

Hakam Ali Khan APPELLANT

Vs

State and Others RESPONDENT

Date of Decision : 21-07-2008

Acts Referred:

Rajasthan Municipalities (Subordinate and Ministerial Service) Rules, 1963 — Rule 23, 25

Citation : (2008) 3 WLN 582

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 is challenging the impugned order dt. 08.02.2005 (Annex.8) as well as impugned order dt. 25.01.2005 (Annex.9) whereby the ad hoc promotion of the petitioner from the post of Assistant Revenue Inspector to the post of Revenue Inspector was cancelled by the Dy. Director (Zonal) Local Self Department, Government of Rajasthan, Ajmer and in consequence to the said order, the Commissioner, Municipal Board, Ladnu has passed an order for cancellation of the said order of promotion of the petitioner.

2. The brief facts of the case are that the petitioner was initially appointed as Sub Nakedar on 05.12.1975 and he was promoted to the post of Nakedar on 01.12.1981. Further, the petitioner was promoted on the post of Assistant Revenue Inspector vide order dt. 23.05.1989 by the orders of the Executive Officer, Municipal Board, Ladnu. According to the petitioner being a member of Subordinate Services, his services are governed by the provisions of Rajasthan Municipalities (Subordinate and Ministerial Service) Rules, 1963 (hereinafter for short, "the Act of 1963" only). All the Municipalities of State of Rajasthan constituted under the provisions of Rajasthan Municipalities Act, 1959 are autonomous bodies. The petitioner is entitled for all service benefits as a members of subordinate staff of Municipal Board, Ladnu and his services are governed under the Rules of 1963.

3. As per the petitioner, there was a sanctioned post of Revenue Inspector existing in the Municipal Board, Ladnu and for appointment on the post of Revenue Inspector, there is a provision under Rule 8 of the Rules of 1963 whereby the method of recruitment is provided. The post of Revenue Inspector is to be filled in the ratio of 50% by direct recruitment and 50% by way of promotion. Therefore, there being only one post of Revenue Inspector, the same was required to be filled in by way of promotion from amongst the eligible candidates. The petitioner was promoted in the year 1989 on the post of Assistant Revenue Inspector as such he was possessing more than five years'' experience on the post of Assistant Revenue Inspector, therefore, he was eligible to be promoted on the post of Revenue Inspector. Therefore, a resolution was passed in the meeting held on 27.04.2002 by the Municipal Board, Ladnu by which it was resolved to promote the petitioner on the post of Revenue Inspector on adhoc basis till his suitability is adjudged by the Departmental Promotion Committee. The petitioner has placed on record the resolution passed by the Municipal Board in its meeting dt. 27.04.2002 as Annex.2. As per the petitioner in pursuance of the said resolution passed by the respondent Board, the petitioner was granted promotion on ad hoc basis on the post of Revenue Inspector in the pay scale of Rs. 5000-150-8000 till his suitability is adjudged by the Department Promotion Committee and this promotion order was issued by the Chairman on 04.05.2002 (Annex.3).

4. In para?4 of the writ petition, it is stated by the petitioner that at the time of granting promotion on ad hoc basis to the post of Revenue Inspector, he was working as Assistant Revenue Inspector at Municipal Board, Sujangarh on the transfer from Municipal Board, Ladnu but his parent employer was Municipal Board, Ladnu, therefore, his case was considered for promotion on ad hoc basis by the Municipal Board, Ladnu according to his seniority and after granting promotion on ad hoc basis from the post of Assistant Revenue Inspector to the post of Revenue Inspector, an order dt. 22.05.2002 was issued by the Director, Local Bodies, Rajasthan, Jaipur while exercising its power under Rule 38 of the Rules of 1963 transferred the petitioner again to his parent Municipal Board, which is Municipal Board, Ladnu from the Municipal Board, Sujangarh and in pursuance of that, the petitioner joined his duties at Municipal Board, Ladnu on the post of Revenue Inspector.

5. The Dy. Secretary, Local Bodies, Govt. of Rajasthan, Jaipur while exercising power under Rule 38 of the Rules of 1963 further passed an order dt. 02.07.2004 transferring as many as 30 employees working on different posts in different Municipal Boards. By that order, the petitioner was ordered to be transferred from Municipal Board Ladnu to Municipal Board, Mount Abu. The said order has been placed on record as Annex.5. The case of the petitioner is that he was transferred by the orders of Director from Municipal Board Ladnu to Municipal Board, Mount Abu and he was relieved vide order dt. 01.01.2005 but the said order was stayed by the Election Registration Officers, Ladnu because election of Panchayati Raj institutions were commenced, therefore, the order of relieving the

petitioner dt. 01.01.2005 passed by the Commissioner, Municipal Board, Ladnu was stayed. Meaning thereby, the petitioner was allowed to work at Municipal Board, Ladnu and relieving order was stayed.

6. The petitioner is challenging mainly the order dt. 25.01.2005 issued by Dy. Director (Regional), Local Self Government Department, Ajmer on the ground that the petitioner was promoted on the post of Revenue Inspector on ad hoc basis after due resolution by the Municipal Board and his eligibility was to be adjudged by the Departmental Promotion Committee till then he is entitled to work on the post of Revenue Inspector, therefore, without considering his case by the Departmental Promotion Committee for regular promotion, there is no question of cancelling the order of promotion. Therefore, as per the petitioner, the Dy. Director has exercised its jurisdiction illegally while quashing the promotion order, which is made on ad hoc basis to the post of Revenue Inspector by the Municipal Board, Ladnu. Further, the petitioner is also challenging the compliance order passed by the Commissioner, Municipal Board, Ladnu dt. 08.02.2005 is also illegal on the ground that according to the rules the petitioner is entitled for regular promotion being eligible candidate for promotion on the post of Revenue Inspector and his case is to be considered by Departmental Promotion Committee for regular promotion till then he was to be allowed to work as Revenue Inspector but without assigning any reasons and without any notice to the petitioner straightaway the promotion order has been cancelled, which is not permissible under the law.

7. Learned Counsel for the petitioner vehemently argued that although the petitioner was promoted on adhoc basis but it was in pursuance of the resolution passed by the Municipal Board, Ladnu and there is no error in the resolution passed by the Municipal Board till adjudging his suitability by the Departmental Promotion Committee. Therefore, the Dy. Director has exceeded his jurisdiction while cancelling the order of promotion made by the respondent Board on adhoc basis to the post of Revenue Inspector.

8. Learned Counsel for the petitioner argued that cancellation of promotion order is outcome of a compliant made by B.J.P. Mahila Morcha, Ladnu District Nagaur, therefore, there was no occasion for Dy. Director to cancel the order of promotion passed by the Municipal Board, Ladnu. Learned Counsel for the petitioner vehemently argued that it is evident from Annex.13 dt. 17.01.2005, which is notice given by the Dy. Director to the President, B.J.P. Mahila Morcha, Ladnu whereby he has called the President, B.J.P. Mahila Morcha, Ladnu in pursuance of the compliant filed by her against the promotion of the petitioner. Meaning thereby, the order of cancellation of promotion is outcome of a compliant made by the political party, which is not permissible under the law. Therefore, the impugned order dt. 25.01.2005 passed by Dy. Director, Local Self Bodies, Ajmer deserves to be quashed. Similarly, the compliance order dt. 08.02.2005 (Annex.8) also deserves to be quashed because both the orders are totally without jurisdiction and have been passed upon a complaint made by the

political party. Further, it is argued that according to the rules once ad hoc promotion is made after taking decision by way of resolution by the Municipal Board, then the respondent Municipal Board is required to follow the terms and conditions of the promotion order as well as the resolution order passed by the Municipal Board. As per the petitioner, in the resolution passed by the Municipal Board, Ladnu it was specifically decided to promote the petitioner on ad hoc basis to the post of Revenue Inspector till duly selected candidate is made available. Therefore, there was no occasion for the Dy. Director to even entertain the compliant made by the political party but not only he has entertained the compliant made by the President, B.J.P. Mahila Morcha, Ladnu but he has exceeded his jurisdiction to cancel the promotion order dt. 04.05.2002 retrospectively, which is not permissible under the law.

9. Per contra, by way of filing reply it is stated by the respondents that vide Annex.2, it is clear that it was resolved by the Municipal Board to promote the petitioner on adhoc basis on the post of Revenue Inspector subject to suitability adjudged by the Departmental Promotion Committee. Meaning thereby, it amounts to temporary and ad hoc promotion, therefore, no rights are created in favour of the petitioner for his substantive appointment. According to the respondents under Rule 27 of the Rules of 1963, promotion can be made on ad hoc basis but it is not permissible under the rules to continue beyond the period of one year, therefore, the petitioner cannot claim promotion on the post of Revenue Inspector as a matter of right because his suitability is not adjudged by the Departmental Promotion Committee.

10. In reply, it is specifically stated that procedure for selection, promotion etc. has been prescribed in Rules 23 to 25 of the Rules of 1963 and all promotions are to be made by following such rules. Further, it is provided under Rule 27 that in emergent situation a vacancy in the service can be filled in and after one years'' concurrence of the Commission, which is mandatory, the Appointing Authority by appointing thereto a person eligible for appointment to the post by promotion or by temporary appointment a person holding a next below such post and possessing the requisite qualification. Therefore, in this case, the ad hoc promotion was made under Rule 27 of the Rules of 1963 and it is specifically provided under Rule 27 of the Rules of 1963 that no such appointment shall be allowed to continue beyond a period of one year without referring to the Commission in case of promotion and to the Commission in case of direct recruitment for their concurrence and on their refusal to concur, such appointment shall be terminated. Meaning thereby, as per the rules even if the promotion was made on ad hoc basis, it cannot continue beyond the period of one year, therefore, the petitioner cannot claim his promotion as a matter of right on the post of Revenue Inspector because admittedly he was promoted on ad hoc basis under Rule 27 and such promotion can continue till one year as per Rule 27 of the Rules of 1963, therefore, there is no illegality in the order passed by Dy. Director to cancel the order of promotion made by the Municipal Board.

11. In reply while protecting the order impugned Annex.9 passed by the Dy. Director, it is stated that the respondent No. 2 is Regional Officer of the area and he is the officer of the State Government as such he has jurisdiction to pass such cancellation order. In reply to ground (b), it is admitted by the respondents that in fact on complaint made by Smt. Sumitra Arya, the Dy. Director after application of mind passed an order, which is perfectly legal order in which no interference is warranted. Further, it is submitted that even if it is admitted that the promotion order was made on ad hoc basis in pursuance of the resolution passed by the Municipal Board, Ladnu then too it cannot continue after one year as provided under Rule 27 of the Rules of 1963. Therefore, the order impugned has rightly been passed for cancellation of the ad hoc promotion which does not warrant any interference by this Court. In these circumstances, it is submitted that this writ petition may kindly be dismissed and the petitioner the not entitled to any relief because as per Rule 27 even if it is assumed that the petitioner was promoted on ad hoc basis then also he is not entitled for continuance on the post of Revenue Inspector because till today his suitability is not adjudged by the Departmental Promotion Committee.

12. After perusing the entire record of the case, it is emerging from the facts that admittedly the petitioner was promoted on ad hoc basis on the post of Revenue Inspector and such promotion can be made under Rule 27 of the Rules of 1963. The relevant Rule 27 of the Rules of 1963 is as follows:

27. Temporary or officiating appointments.-(1) A vacancy in the service may be temporarily filled by the Appointing Authority by appointing thereto in an officiating capacity an officer whose name is included in the list prepared under Rule 21 or in the lists under Rule 25:

Provided that till the preparation of the first list or in case the list is exhausted, a vacant post may be filled by the Appointing Authority by appointing thereto a person eligible for appointment to the post by promotion or by appointing thereto temporarily a person eligible for appointment by direct recruitment to the service under the provisions of these Rules:

Provided further that if all the officers in the grade or category from which appointment by promotion can be made under these rules, have already been promoted and no Officer is available from that grade of category the appointing authority may fill such vacancy by promotion from the grade or category next below such grade.

(2) No appointment made under Sub-rule (1) shall be continued beyond a period of one year without referring it to the Commission for their concurrence and shall be terminated immediately on their refusal to concur.

13. Upon perusal of above Rule 27 of the Rules of 1963, it is clear that no ad hoc promotion can continue after expiry of period of one year without referring the matter to the State Government. Further as per promotion order itself, it is clear that the petitioner was promoted on the post of Revenue Inspector on ad hoc

basis and his eligibility and suitability was to be adjudged by the Departmental Promotion Committee for regular promotion but it is very strange that no regular promotions are made since 2002, so also even after cancellation of the promotion order of the petitioner by the Dy. Director, his case has not been considered by the Departmental Promotion Committee and he has been allowed to work on ad hoc basis to the post of Revenue Inspector. It is also very strange that earlier the Dy. Secretary, Local Bodies, Govt. of Rajasthan has passed an order for transfer of the petitioner from Municipal Board, Ladnu to Municipal Board, Mount Abu knowingly well that the petitioner was working on the post of Revenue Inspector on ad hoc basis. Therefore, there was no occasion for passing the order dt. 02.07.2002 for transferring the petitioner from Municipal Board, Ladnu to Municipal Board, Mount Abu. In my opinion, this order is patently illegal order because an employee who was working on ad hoc basis contrary to Rule 27 of the Rules of 1963 was transferred from one Municipal Board to another Municipal Board. In my opinion although the Dy. Director has committed an error while cancelling the order of promotion vide order dt. 25.01.2005 upon complaint made by the office bearer of political party but the petitioner is also not entitled for continuance on the post of Revenue Inspector after completion of one year as provided under Rule 27 (2) of the Rules of 1963. In this case, it is admitted position of the respondents that the promotion order dt. 04.05.2002 was cancelled by the Dy. Director on the basis of the compliant made by one Sumitra Sharma, President, BJP Mahila Morcha and an application filed by her was entertained by Dy. Director, which is evident from Annex.13?the notice issued by the Dy. Director. Meaning thereby, it is obvious that the order has been passed on the basis of the compliant made by the political party, which is not permissible under the law. I am also of the opinion that the assertion made by the respondents in the reply is totally false because in sub-para (b) of the grounds, it is stated that "In fact on the complaint made by Smt. Sumitra Arya, mind was applied by the respondent No. 2, as such, this order was rightly passed"

14. Upon perusal of the impugned order, it will reveal that the Dy. Director has not applied its mind because he has cancelled the order of promotion even without perusing Rule 27 of the Rules of 1963 in which there is a provision for promotion on ad hoc basis for one year and the Municipal Board has jurisdiction to promote its employees on ad hoc basis but only for one year. Therefore, only illegality committed by the Municipal Board, Ladnu is to allow the petitioner beyond the period of one year and without adjudging suitability of the petitioner for the post of Revenue Inspector as per rules. In this view of the matter, the order Annex.8 and 9 are illegal and have no foundation to stand before eye of law because both the orders are contrary to rules, so also, have been passed by the Dy. Director (Zonal), Local Self Bodies on the basis of a compliant made by the political party as admitted by the respondents, which is not permissible under the law. Therefore, the order dt. 25.01.2005 passed by Dy. Director (Regional), Local Self Government Department, Ajmer is hereby set aside and consequently the order passed by Commissioner is also set aside.

15. However, in my opinion, the petitioner is also not entitled to remain on the post of Revenue Inspector as he has been allowed to work illegally beyond the period of one year because after one year, the concurrence of the Commission for continuance to work on the post of Revenue Inspector has not been obtained and the petitioner was allowed to work even after one year on the post of Revenue Inspector, therefore, the Municipal Board, Ladnu is directed to follow the Rules of 1963 strictly and not to allow the petitioner to work on the post of Revenue Inspector without considering his candidature by the Departmental Promotion Committee on regular basis and for the said purpose, the Municipal Board, Ladnu is directed to convene the meeting of D.P.C. and refer the matter to the Departmental Promotion Committee for considering the case of the petitioner for regular promotion, within a period of fifteen days from the date of receipt of certified copy of this order. The Municipal Board, Ladnu is directed to finalize the case of the petitioner for regular promotion on the post of Revenue Inspector through Departmental Promotion Committee within a period of three months from the date of receipt of certified copy of this order and the petitioner shall not be allowed to work on the post of Revenue Inspector till his suitability is adjudged by the Departmental Promotion Committee for regular promotion.

16. With the aforesaid observation/directions, the writ petition is disposed of with no order as to costs.