
(2012) 04 CAL CK 0017
In the Calcutta High Court
Case No : W.P.S.T. No. 40 of 2009

Jahar Lal Das

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 19-04-2012

Acts Referred:

Citation : (2012) 2 CALLT 502 : (2012) 3 CHN 432

Hon'ble Judges : Nishita Mhatre, J;Anindita Roy Saraswati, J

Bench : Division Bench

Advocate : P.S. Bhattacharyya and Mr. Raja Bhattacharyya, for the Appellant;Pinaki Dhole, for the State, for the Respondent

Final Decision : Allowed

Judgement

1. The petitioner's grievance is against the decision of the West Bengal Administrative Tribunal in Original Application No. 2058 of 2005. The petitioner's case that, he was not required to appear any Departmental Examination for availing of increment for the Post of Assistant Evaluation Officer has been rejected by the Tribunal. The petitioner was appointed in service as a Statistical Assistant in the Agriculture Department. He was confirmed in the combined cadre of Supervisor. Field Supervisor, Statistical Supervisor and Statistical Assistant under the same Department with effect from 4th March, 1983 in terms of the West Bengal Services (Appointment, Probation and Confirmation) Rules, 1979.

2. By an order of 18th December, 1992 the petitioner was "appointed temporarily on promotion" to the post in the combined cadre of Assistant Statistical Officer/ Assistant Superintendent Operations/Assistant Economic Research Officer under the Socio-Economic and Evaluation Branch of the Directorate of Agriculture, West Bengal.

3. Immediately thereafter on 31st December, 1992, a Notification was issued by the Government designating posts in the Evaluation Wing by a different

nomenclature in order to constitute the Agricultural Services (Evaluation) under the Department of Agriculture, Government of West Bengal. Accordingly, the new terminology of the petitioner's post was Assistant Evaluation Officer.

4. On the same day, a Notification was issued prescribing Rules to regulate recruitment to the posts in the Evaluation Wing of the Agricultural Services under the Department of Agriculture, Government of West Bengal.

5. The method of recruitment to the posts in the Agricultural Services was either by selection, i.e. direct recruitment or by promotion. While experience was required for those who were to be promoted, it was necessary for the direct recruits to achieve certain educational qualifications for being eligible for recruitment.

6. On 17th May, 1995, a Memorandum was issued by the Finance Department indicating that confirmation of an employee in service would be made at the entry post/service/cadre. However, such confirmation would be required if there was a fresh entry subsequently in any other post or service or cadre by way of direct recruitment or otherwise. The Notification further provided that an Officer promoted on a regular basis would be entitled to benefits of the permissible post provided the Recruitment Rules do not prescribe any probation. If the Recruitment Rules provided for probationary period, then the Officer would be entitled to a regular pay scale provided he had completed the period prescribed of probation.

7. The Government of West Bengal issued a Notification on 26th December, 1995. directing that the Departmental Examination Rules contained in Part 7 of Chapter II of the West Bengal Services (Training and Examination) Rules, would apply to the West Bengal Higher Agriculture Service (Evaluation) Grade I and Grade II, West Bengal Agriculture Service (Evaluation) including West Bengal Junior Agriculture Service (Evaluation).

8. Admittedly, the petitioner has not appeared for any Examination nor was he called upon to appear for any Examination when these Rules were made applicable to the West Bengal Agriculture Service. It was for the first time that in the year 2002, when the gradation list dated 20th March, 2002 was published, that the petitioner was informed that he would be required to pass the Departmental Examination. By this time, the petitioner had completed more than fifty years of age. According to him even assuming the aforesaid Training and Examination Rules were applicable, he was not liable to appear for any Examination as he had crossed the age of fifty. In fact, the Officers of the State Government were unsure as to whether the petitioner was required to appear for the Departmental Examination. Correspondence ensued between the Officers of the State Government and ultimately on 13th. April, 2005. the Deputy Secretary of the Government of West Bengal informed the Public Service Commission that the petitioner's case should be considered as a special case and in relaxation of the West Bengal Service (Training and Examination) Rules so that he would not

have to appear for the Departmental Examination.

9. The Public Service Commission in its turn has denied any exemption to the petitioner in passing the Departmental Examination.

10. Aggrieved by the decision the petitioner approached the Administrative Tribunal, which has held that the petitioner was liable to pass the Departmental Examination. It has further held that till he passed the Examination in terms of the existing Rules, he was not entitled to more than one increment. The Tribunal has held that although the letters issued by the Personnel and Administrative Reforms Department of the State are in conflict with each other, a harmonious construction of the Rules and orders of the Finance Department make it clear that the petitioner was liable to pass the Examination without which he was not entitled to more than one increment.

11. We have heard the learned Counsel for the petitioner and the State respondents, at length. Although the Public Service Commission has been served, nobody appears for them.

12. When the petitioner was promoted as Assistant Evaluation Officer on 18.12.1992, the Rules governing his employment were the West Bengal Services (Appointment, Probation and Confirmation) Rules, 1979. The Training and Examination Rules were not applicable to the West Bengal Agriculture Services, till 26.12.1995. Neither the Rules nor the Notification making the Rules applicable to the West Bengal Higher and Junior Agriculture Service (Evaluation) prescribe that the Rules have retrospective effect and that those employees in the West Bengal Agriculture Service (Evaluation) who had already been promoted would be required to undergo any Examination.

13. In our opinion, the Training and Examination Rules which make it mandatory for an employee, who seeks promotion to a higher post, to appear for the Departmental Examination, cannot be made applicable to the petitioner. He was in service in any event prior to these Rules being made applicable to the Agriculture Service. He would be therefore, governed till December 25, 1995 by the rules then existing, that is. The West Bengal Services (Appointment, Probation and Confirmation) Rules. These Rules do not require a person to pass any Departmental Examination for the purposes of promotion. Moreover, when the petitioner was promoted to the Post of Assistant Statistical Officer, which was redesignated as Assistant Evaluation Officer in the Agriculture Services, there was no indication in the order of promotion that he would be required to pass any Departmental Examination.

14. It has been argued, on behalf of the State, that the petitioner's initial appointment was in one service whereas after redesignation of his post, he came under the West Bengal Junior Agriculture Service (Evaluation), and therefore, he would be required to undergo an Examination for being confirmed in the post. It is submitted that without such confirmation, the petitioner would not be entitled to increments attached to that post.

15. In our opinion, this submission is untenable. The post was merely redesignated on 31st December, 1992. It cannot amount to the petitioner entering into Government service afresh. Therefore, the question of his being promoted temporarily does not arise. From 18.12.1992 when the petitioner was promoted, there was no indication whatsoever that he was required to be confirmed in the post to which he was promoted and that such confirmation was subject to him passing any Departmental Examination.

16. The learned Advocate for the petitioner has argued that he learnt that the Departmental Examination is required for the first time when the gradation list was published on 20.03.2002, and, therefore, the petitioner would not be liable to pass the Examination. If, indeed, the Training and Examination Rules were in existence and had been made applicable to the petitioner since 1995, he should have known of them. However, as we have noted earlier the Training and Examination Rules have not been made applicable retrospectively. This would indicate that only those who were in service and had not been promoted were required to pass such Departmental Examination before being promoted. The petitioner had already been promoted on 18th December, 1992 whereas the Training and Examination Rules were made applicable in 1995 and therefore it was not necessary for the petitioner to pass the Departmental Examination.

17. In these circumstances, the impugned order of the Tribunal is quashed and set aside. The petitioner is not required to pass any Departmental Examination for obtaining the benefits of the post to which he was promoted, i.e. Assistant Evaluation Officer in the West Bengal Agriculture Service (Evaluation). All consequential benefits to which the petitioner is entitled for the aforesaid post shall be paid to him within six months from today. The writ petition is allowed accordingly.

There shall, however, be no order as to costs.