(2002) 05 RAJ CK 0119

In the Rajasthan High Court

Case No : Civil Writ Petition No. 3751 of 1998

Jeth Mal Purohit APPELLANT

Vs

R.H.C. and Others RESPONDENT

Date of Decision : 24-05-2002

Acts Referred:

Rajasthan High Court (Conditions of Service of Staff) Rules, 1953 — Rule 9

Citation : (2003) 4 RLW 2376 : (2003) 1 WLC 66 : (2002) 5 WLN 500

Hon'ble Judges : P.C. Tatia, J;M.R. Calla, J

Bench : Division Bench

Advocate : Sunil Joshi, for the Appellant; R.P. Dave and M.R. Singhvi, for the Respondent

Final Decision : Allowed

Judgement

Calla, J.—The petitioner herein came with the case that he was appointed as LDC on the establishment of the Rajasthan High Court vide order dated 20.7.1978. He was posted in the Accounts Section and also discharging his duties as an Accountant. By an order dated 26.2.1991, the petitioner was promoted as UDC wherein his name appears at serial No. 6. After his promotion as UDC, he appeared in the written examination held by Rajasthan High Court for the post of Junior Accountant and was declared successful in the said examination vide order dated 10.2.1992. The petitioner, thus became qualified Junior Accountant and vide order dated 1.10.92, he was promoted as Accountant in the pay scale of Rs. 1640-60-2600-75-2900. On 15.10.92, the High Court issued on order notifying the list of persons, confirmed on the post of Junior Accountant w.e.f. 2.10.92 and the name of the petitioner appears at Serial No. 2 in the said list. Thus, the petitioner is a confirmed Junior Accountant w.e.f. 2.10.92 in terms of the order dated 15.10.92. The petitioner claims that being a qualified Accountant, he was eligible to be considered for further promotion to the post of Chief Accountant cum Superintendent or Superintendent cum Chief Accountant. He has been agitating his cause for promotion to the post of Chief Accountant cum

Superintendent since 1994. The petitioner has stated that the post of Chief Accountant cum Superintendent or Superintendent cum Chief Accountant, as per rules, should go to a person, who is a qualified Accountant or who has been working as a Accountant or Civil Accountant in the Accounts Section of Rajasthan High Court. The petitioner as well as his fellow Accountant cum Superintendent is filled up from amongst the persons, who were neither qualified Accountant nor are the persons working in the Accounts Section. On the contrary, the post of Chief Accountant cum Superintendent is being filled up by the persons having experience either as Bench Reader, Translator or the persons who are being promoted as a Superintendent and the post of Chief Accountant cum Superintendent is not being filled up from amongst the persons who have worked as qualified Accountant. Whenever the post of Superintendent cum Chief Accountant became available, the process that was followed by the respondents was to promote as person as Superintendent and then post him as Superintendent cum Chief Accountant. This post, which is made to the filled up by the persons having special qualifications and knowledge in the specialized accounts is being filled by the persons who have no specilization in accounts. It is the specific case of the petitioner that the last person who was promoted as Superintendent cum Chief Accountant i.e. Shri R.R. Kumbhat was a Civil Accountant and after the appointment of Shri R.R. Kumbhat (Civil Accountant) as Superintendent cum Chief Accountant vide order dated 2.1.1980 (Annexure-5 with the petition) when the said post became available on account of Mr. Kumbhat''s further promotion as Assistant Registrar on 31.8.1984, one Shri Udai Karan who was a Translator working in the civil section was promoted as Chief Accountant cum Superintendent and thus after 31.8.1984 the post of Superintendent-cum-Chief Accountant has never been filled up by promotion from amongst the qualified accountants and throughout since 1984 the said post has been treated as if it is a post of plaint and simple Superintendent without any prefix or suffix and the same has been utilised for the purpose of granting promotion to the non-qualified candidates as Superintendent cum Chief Accountant and the practice has been going on. In other words, the right of consideration of the eligible candidates who are qualified accountants has been denied throughout for the said post and the same has been made use of for the persons promoted as Superintendent. It has also been submitted that one Shri Ratan Chand Arora who was again posted on the post of Superintendent cum Chief Accountant was promoted as Assistant Registrar on 23.5.1996 and thus the post of Superintendent cum Chief Accountant became available again. Yet the said post was not filled up till 28.2.1998 and by order dated 28.2.1998 one Shri B.L. Arora who was working as Senior Court Master was promoted as Superintendent and by the same order and the was given posting as Chief Accountant cum Superintendent. The petitioner had already submitted a representation on 12.8.97 raising grievance in this regard and on 31.10.98, the petitioner filed the present petition with the prayers as under:-

(i) The practice of posting the persons who are not qualified Account-ants as

Chief Accountant cum Supdt. may kindly be deprecated and respondents may be directed to accept the claim of the petition in consonance with Rule 9 of the Rules of 1953 and also in consonance with the statement dated 6.11.1970 showing strength of various cadres which reveals that the feeder cadre for the post of Chief Accountant cum Supdt. is qualified Accountant;

(ii) The respondents be directed to promote the petitioner on the post of Chief Accountant cum Suptd. which became due to him since 23.5.1996 with all consequential benefits.

(iii) The orders dated 28.2.98 and 13.7.98 by which the persons viz. Shri Babulal Arora and Shri Gordhan Mohnot were posted as Chief Accountant cum Supdt. may kindly be quashed and set aside and be declared Null 7 Void and further respondents may kindly be directed to restrain Shri Gordhan Mohnot from discharging his duties as Chief Accountant Cum Superintendent and further it may be directed that the post of Chief Accountant cum Superintendent be filed from amongst the qualified Accountants only in accordance with Rule 9 of the Rules of 1953 and not from the persons who are either Bench Readers and or Court Masters of other staff of Rajasthan High Court.

2. He had also submitted a representation dated 6.3.1998 against the order dated 28.2.1998. Yet an order was passed on 2.7.98 promoting the respondent No. 3 Senior Court Master as Superintendent and by another order dated 30.7.98, he was posted as Chief Accountant cum Superintendent vice Shri B.L Arora who had been promoted as Superintendent and posted as Superintendent cum Chief Accountant on 28.2.98.

3. On 5.11.98, the notice was issued by this Court in the writ petition and in response to the notice, a reply to the notice was filed on behalf of respondents No. 1 and 2 on 14.5.99. Alongwith this reply, certain orders dated 3.8.90, 24.4.91, 7.3.92 and 31.8.84 have been enclosed, which also show that the posting was accorded to the Superintendent as Superintendent Cum Chief Accountant or the promotion was accorded to the Translator of Senior Bench to that of Chief Accountant Cum Superintendent. The reliance has been placed in the order dated 15.10.90 issued by the order of Hon''ble Chief Justice providing for the appointments by promotion to the post of Superintendent (other then paper book section) and further that the appointment/promotions to these posts shall be made by selections from amongst the senior Bench Reader and Office Assistants in the ratio of 3:1 by rotation in the following order:

1. Senior Bench Reader,

2. Senior Bench Reader,

3. Senior Bench Reader,

4. Office Assistant and so on.

4. The writ petition was admitted after hearing both the sides on 19.9.2001 i.e.

respondents No. 1 and 2 and no appearance was entered on behalf of respondent No. 3. The respondent No, 3 then filed a separate reply dated 9.10.2001 seeking to traverse the claim of the petitioner No. 3 then filed a separate reply dated 9.10.2001 seeking to traverse the claim of the petitioner and nor during the course of hearing of the petition, the respondent No. 3 has filed an additional affidavit dated 22.5.2002 on 23.5.2002 which has been taken on record.

5. The Rajasthan High Court (Condition of Service Staff) Rules, 1953, Schedule-I i.e. the strength of staff as on 1.6.1991 under Rule 2 show at item No. 15, the post of Superintendent in the pay scale of 2000-60-2300-75-3200 and total number of the posts of Superintendent is 13. At item No. 17, the post of chief Account cum Superintendent is there and it is only one post in the cadre strength in the same pay scale i.e. 2000-60-2300-75-3200. At item No. 18 the post of Assistant Account Officer is there and this schedule shows that there are 3 posts in all in the pay scale of 2000-60-2300-75-3200. Under the heading of non gazetted posts under this Schedule at item No. 11 there is a post of Junior Account and there are 11 posts of Junior Accountants in they pay scale of 1400-40-1800-50-2300-60-2360.

6. It is very clear that the post of Junior Account is there as a non gazetted post in the Schedule and in this very Schedule the post of Superintendent as also that of Chief Accounts cum Superintendent and Assistant Accounts Officer are there under the heading of Gazetted post.

7. Rule 9 of the these rules of 1953 provides for the promotion to post carrying special responsibilities or require special qualifications and this Rule 9 reads as under: -

"9. Promotion to posts carrying special responsibility or requiring special qualifications:

(1) Notwithstanding anything to the contrary contained in these Rules, promotions of the following posts carrying special responsibility or requiring special qualifications shall be made by selections:-

1. Dy. Registrar (Administration)

2. Registrar Cum Principal Secretary to the Chief Justice.

3. Assistant Registrar.

4. Senior Librarian.

5. Court Officer.

6. Superintendent-cum-Chief-Account.

(2). In case of non-availability of a suitable person for promotion to the post of Registrar cum Principal Secretary to Chief Justice & (or Court Officer), recruitment may be made in such other manner as may be specified by the Chief Justice.

8. Thus, Rule 9 contains only those posts which are carrying special responsibility and require special qualifications and Superintendent Cum Chief Accountant is the post which has been included in Rule 9 as the post on which promotion is required to be accorded as a post carrying special responsibility and requiring special qualifications. Under Sub-rule (2) of Rule 9, it has been provided in case of non-availability of suitable person for promotion to the post of Registrar-cum-Principal Secretary to Chief Justice (Court Officer), the recruitment has to be made in such other manner, as may be specified by the Chief Justice.

9. The order dated 15.10.92 on which strong reliance has been placed by the respondents is an order covering the case of appointments of Superintendents (other ten paper book section). On the basis of this order, it was sought to be justified before us that the Senior Bench Readers and Office Assistance are to be promoted as Superintendent. It was contended on behalf of the respondents that for the purpose of promotion to the post of Superintendent cum Chief Account, the post of Junior Accountant is not post in the Channel of promotion and, therefore, the petitioner has no locus standi to be considered for promotion to the post of Superintendent cum Chief Accountant and that in number of case, the candidates who are promoted as Superintendent were given posting as Superintendent cum Chief Accountant and the repeated reference was made to such orders filed on the record.

10. Through the additional affidavit which was filed on 23.5.2002, it appears that in fact one Shri Chandan mal Mathur who was holding the post of Superintendent and upon his promotion to the post of Assistant Registrar the post of Superintendent became available in 1998 and it is that post of Superintendent which was being held by Shri Amritlal Daiya, who passed away on 18.3.98. The posts remained lying vacant and the same were filled by the High Court by promoting the respondent No. 3 vide Ex. 14 dated 2.7.98 and one Shri Mangilal Rajpurohit vide order dated 4.7.98. In case of respondent No. 3 it is argued that, he has been promoted as Superintendent in his own rights and merely because by was given a posting a Superintendent cum Chief Accountant, no grievance can be raised by the petitioner, against his promotion more particularly when the post of Junior Accountant is not there as the next lower post in the channel of promotion as a feeder post of promotion to the post of Superintendent cum Chief Accountant. This position has again been sought to be contested by the learned counsel Shri Sunil Joshi appearing for the petitioner, who has invited our attention to the document Annexure-6 i.e. the statement showing the strength of the various grades for the purpose of budget and in this document at item No. 6, the post of Chief Accountant cum Superintendent is there. It has been clearly mentioned that this post should be filled form Accountant (qualified). Mr. Joshi learned counsel for the petitioner has also taken us through the pleadings of the High Court in the reply to the writ petition, which has been filed by the High Court in SBCWP No. 509/82. He has made a pointed reference of the High Court''s reply as was given in that petition in para 21. The contents of para 21 of the reply to SBCWP No. 509/82 are reproduced as under:-

In reply to para 30 of the writ petition, it is submitted that the allegations levelled in this para are denied as they are incorrect. The post of Civil Accountant has been filled in by promotion of an Upper Division Clerk. Shri Devendra Dunawat was U.D.C. and was promoted as Civil Accountant. Shri Rikhab Raj Kumbhat who was substantive U.D.C. and officiating Translator was promoted as Civil Accountant, Shri Prahlad Das Lohiya was U.D.C. and promoted as Civil Accountant.

Shri Rikhab Raj Kumbhat vide his application dated 3.4.78 had applied for consideration of his case for appointment as Civil Accountant as this post was lying vacant due to the retirement of Shri Dalpat Singh. The Additional Registrar, High Court, Jaipur Bench, Jaipur vide his letter No. 579 dated 14.478 forwarded the application of Shri Kumbhat to the Registrar, Rajasthan High Court jodhpur (Annexure R. 1 & 2/ 6 to 8). After considering the cases of others and through scrutiny of the matter, the respondent No. 11 was appointed as Civil Accountant vide order dated 27.10.79. He was confirmed w.e.f. 17.5.80 on the post of Civil Accountant.

The promotion to the post of Chief Accountant-cum- Superintendent is ordinarily made from the Civil Accountant. Shri Heeralal Mathur was Civil Accountant and was promoted as Chief Accountant cum-Superintendent. Shri Devendra Loonawat was Civil Accountant and was promoted as Chief Accountant-cum-Superintendent. When Shri Loonawat was promoted as Assistant Registrar, the post of Chief Accountant-cum-Superintendent again fall vacant and Shri Rikhab Raj Kumbhat respondent No. 11 who was Civil Accountant was promoted as Chief Accountant-Cum- Superintendent vide order dated 2.1.88. He was confirmed on this post with effect from 2.7.80.

The petitioner was neither U.D.C. when Shri Kumbhat was promoted as Civil Accountant nor he was Civil Accountant. When Shri Kumbhat was promoted as Chief Accountant-cm-Superintendent and therefore, he did not come within the Normal Zone of consideration. This the allegations levelled by the petitioner are false and after thought.

11. We have considered the pleadings of the parties and the relevant rules. We find that so far as the post of Superintendent-cum-Chief Accountant is concerned, it is a separate and distinct post other than the post of Superintendent as provided in the Schedule appended to the Rules. Mr. Deve has pointed out that at present the cadre strength of the Superintendent is 23 in number in all and the lone post is that of a Superintendent cum Chief Accountant. On the basis of the pleadings of the parties, we find that against all these posts of Superintendents, the promotion has been accorded form amounts the persons who were to be considered for promotion to the post of Superintendent but so far as the post of Superintendent cum Chief Accountant is concerned, after the promotion of Mr. R.R. Kumbhat who was a qualified Accountant and who was promoted as Assistant Registrar in the year 1984 no officer from the accounts Section working as a qualified Accountant has been

promoted as Superintendent cum Chief Accountant and throughout this post of Superintendent cum Chief Accountant has been made use of as if it was a post of Superintendent as if there are 23 posts of Superintendent and every time when the post of Superintendent cum Chief Accountant became available on account of the promotion of any incumbent who was essentially a Superintendent and who was posted as Superintendent cum Chief Accountant was further promoted or retired or died, the another person working as a Superintendent cum Chief Accountant and at no point of time after 1994 any person working in the Accounts Section as qualified Accountant, was considered for promotion to the post of Superintendent cum Chief Accountant.

12. The arguments which have been advanced before us that the Junior Accountant is not a post available in the next lower post in the channel of promotion as a feeder post for the purpose of promotion in not at all tenable. Provisions of Rule 9 specifically deals with the promotion to the post carrying special responsibility or requiring special qualifications and Superintendent cum Chief Accountant is the post which has been included in this Rule. Therefore, by way of posting of Superintendent as Superintendent cum Chief Accountant, the right of consideration of the persons having special qualifications in accounts could not be defeated. Annexure 6 which has been placed on record read with the pleadings of the parties and the reply of the High Court as quoted above in the earlier part of this order show that the appointments by promotion on the post of Superintendent cum Chief Accountant is to be made only from those candidates who are having special qualifications because the post of Superintendent cum Chief Accountant is a post carrying special responsibility relating to accounts, the practice which has been going on the post the Superintendent as Superintendent cum Chief Accountant and thereby defeating the provisions of Rule 9 read with Annexure-6 has to be stopped. We are also satisfied that the argument that Junior Accountant is not a post in the channel of Promotion, is wholly misconceived. Accounts Section is a separate section. The matter of accounts are to be dealt with by the persons who are having special qualifications and who have been working as Civil Accountants or Junior Accountant or Accountants and and we find that by flouting the rules and following wrong procedure the non-qualified persons have been given posting as Superintendent cum Chief Accountant as against the right of consideration of those who were there and were working as qualified persons in the accounts section. The Schedule appended to these rules includes the post of Junior Accountant at item No. 11 as a non-gazetted post. At item No. 17 the post of Chief Accountant cum Superintendent is a gazetted post. It has been pointed out by Mr. Dave, appearing for respondents No. 1 and 2 that the post of Assistant Accounts officer became available only in the year 1984 and prior to the no selection for the post of Assistant Accounts officer was made. It has been pointed out that in the year 2000, the present petitioner was also considered for promotion to the post of Assistant Accounts Officer, and he was promoted as Assistant Accounts Officer on 23.5.2000 in the same pay scale of Superintendent

cum Chief Accountant.

13. It has also been pointed out that since the present petitioner was promoted on the post of Assistant Accounts officer, his claim for promotion to the post of Superintendent cum Chief Accountant should not be entertained as the pay scale of Assistant Accounts Officer is the same as that of Superintendent Cum Chief Accountant. That may be so, the petitioner''s case is that as and when the post of Superintendent cum Chief Accountant became available after his being qualified for promotion to the post of Superintendent cum Chief Accountant, his case should have been considered for the said post of Superintendent Cum Chief Accountant.

14. In the fact-situation of this case, we do not find any necessity to interfere with the question of promotion of respondent No. 3 to the post of Superintendent but so far as the post of Superintendent cum Chief Accountant is concerned, we find that this post could not have been made use of by posting the Superintendent and therefore, it is clear that the rights of those persons who were working as qualified accountants in the Accounts Section were denied time and again. As and when the post of Superintendent cum chief Accountant became available it is a matter of record and even as per rules, only one post of Superintendent cum Chief Accountant is there and after the petitioner''s confirmation to the post of Junior Accountant he could be certainly considered for promotion on the post of Superintendent cum Chief Accountant at the earliest available opportunity, when the post became available. So far as the question junior Accountant is concerned, it may be conserved that even for the post of Assistant Accounts officer there is no channel of promotion and the post of Junior Accountant is also not included in the channel of promotion for the purpose of promotion to the post of Assistant Accounts Officer. Yet the petitioner who was working as a Junior Accountant was considered for the post of Assistant Accounts Officer and rightly so on the strength of the provisions of Rule 9, which provides for special qualifications and special requirements. He was considered for the post of Superintendent in the year 2000. Had the case of the petitioner been considered for promotion to the post of Superintendent cum Chief Accountant on account of his holding the post of qualified Junior Accountant and substantive appointment as was given to him in the year 1992 i.e. 2.10.1992, he could not have been promoted as Superintendent cum Chief Accountant could have been given to him. It is also a matter of record that the petitioner has been raising this grievance since 1996 when this post of Superintendent cum Chief Accountant had become available which was lying vacant for a period of 2 years and the above post was again filled up by according promotion as Superintendent and the posting Superintendent cum Chief Accountant.

15. Therefore, this writ petition succeeds and the answering respondents No. 1 and 2 and directed to consider the petitioner''s case for promotion to the post of Superintendent cum Chief Accountant when it first became available after his regular appointment as Junior Accountant in the earliest year in which he could

be so considered or promoted and in case as a result of such consideration he is found to be suitable to the post of Superintendent cum Chief Accountant, Such promotion may be accorded to him with all consequential benefits till the date when he was promoted as Assistant Accounts officer, ofcourse without disturbing the promotion, which was accorded to the respondent No. 3 as Superintendent. In this regard, if any rules are required to be framed to avoid any confusion or ambiguity for future, the same may be considered in accordance with law.

