
(2015) 07 RAJ CK 0202

In the Rajasthan High Court

Case No : Special Appeal (Writ) No. 1548/2012

Kailash Chand Gurjar

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 17-07-2015

Acts Referred:

Citation : (2015) 4 WLN 82

Hon'ble Judges : Ajit Singh and Anupinder Singh Grewal, JJ.

Bench : Division Bench

Advocate : Dinesh Sharma, Advocate, for the Appellant; Rajendra Prasad, A.A.G., for the Respondent

Final Decision : Dismissed

Judgement

Anupinder Singh Grewal, J.—This intra Court appeal is directed against the order of the Single Bench dt. 18.09.2012, whereby the writ petition preferred by the petitioner (appellant herein) for regularization of his services, was dismissed. However, it was observed by the Single Bench that this order shall not come in the way of the family of the appellant seeking legal recourse for any benefits, to which they would be entitled. The appellant was appointed as LDC in the Law Commission vide order dt. 28.04.1993 (Annexure-1) on temporary (ad hoc) basis for a period of two months. Later this period had been extended periodically. Vide order dt. 12.01.1994 (Annexure-2), it was extended till 28.02.1994. The appellant was transferred to the office of Administrator General & Official Trustee, State of Rajasthan vide order dt. 21.03.1994 on his application dt. 19.03.1994 (Annexure-R/1). Vide order dt. 17.12.1999, the services of the appellant were extended upto 31.12.1999 on the condition that his services will be terminated immediately after 31.12.1999, in case he will not pass the examination conducted by the Rajasthan Public Service Commission. The appellant could not pass the aforesaid examination and filed S.B. Civil Writ Petition No. 514/2000, wherein the Single Bench, vide order dt. 11.02.2000, had directed to maintain status quo regarding his services.

2. Learned counsel appearing for the appellant has contended that as the appellant had continued in service for a period of 17 years, he was entitled to regularization. It is also contended that the appellant had expired during the pendency of the writ petition and his legal representatives were impleaded in his place. In support of the aforesaid submission, learned counsel has relied upon judgments in the case of Executive Engineer, I & P.H. Division Padhar, District Mandi, H.P. vs. Smt. Judhya Devi w/o. late Shri Shesh Ram, H.P. 2013 (1) SLR 13 (H.P.), Smt. Maina Devi vs. Commissioner (Personnel), Jaipur Nagar Nigam & Ors., 2012(2) WLC (Raj.) 195 , Gaurav Pachaury Vs. State of U. P. and others, , Ashok Kumar Ratilal Patel Vs. Union of India (UOI) and Another, , Sucha Singh Vs. State of Punjab, , Pawan Kumar Sharma vs. State of Rajasthan & Ors., 2011 WLC (Raj.) UC 434, and State of Haryana & Ors. vs. Dalel Singh, 2012 (3) SLR 326 (Pb. & Hry.).

3. Learned Additional Advocate General appearing for the State-respondents has submitted that the appellant had been appointed only on temporary basis in the Law Commission and upon dissolution of the Law Commission, the post of LDC stood abolished. He had continued subsequently till the regular appointment as a stopgap arrangement and hence could not claim regularization.

4. We have heard learned counsel appearing for the parties and perused the record.

5. It is evident that the appellant had been appointed purely on temporary basis vide order dt. 28.04.1993. His services were subsequently extended by various orders, but there is no order which would indicate that the appellant had been appointed against a substantive post in accordance with the Rules. It is also borne out from the record that the appellant had himself submitted an application for transfer to the office of the Administrator General & Official Trustee, Jaipur on 19.03.1994, and he was transferred vide order dt. 21.03.1994. It is, thus, a transfer at his own request and it is not open to the appellant to maintain that he had been absorbed on a permanent post vide this order dt. 21.03.1994.

6. A perusal of copies of the extension orders dt. 15.11.1996 & 07.07.1997 (Annexures-R/5 & R/6 respectively) indicates that his services were extended only on the condition that he will pass the LDC Examination conducted by the Rajasthan Public Service Commission. In the reply filed by the State-respondents, it is also stated that the Department of Finance had been continuously raising objections to the extension of the services of the appellant. Vide order dt. 17.12.1999 (Annexure-R/8), his services were extended upto 31.12.1999 subject to condition that his services will be terminated immediately after 31.12.1999 and the post will be filled with a candidate duly selected by the Rajasthan Public Service Commission. As the appellant himself had absented from duty, this order could not be served upon him. He had joined duty after order, directing status quo, was passed by the Single Bench. He continued to work till 10.11.2010 whereon he expired.

7. It is, thus, obvious that several opportunities were given to the appellant to pass the LDC examination conducted by the Rajasthan Public Service Commission, but he could not do so. Therefore, the appellant has not been able to set out any case for regularization of his services.

8. The judgments, relied upon by the learned counsel for the appellant, are distinguishable on facts and not applicable to the instant case. In *Executive Engineer, I & P.H. Division Padhar, District Mandi, H.P. vs. Smt. Judhya Devi (supra)*, the employee therein was regularized as per notification dt. 08.07.1999 issued by the State of Himachal Pradesh, wherein it was stated that any person, who had completed eight years as on 31.03.1999, was eligible to be regularized. In the instant case, no such notification of the State of Rajasthan has been brought to our notice.

9. In the case of *Smt. Maina Devi vs. Commissioner (Personnel), Jaipur Nagar Nigam (supra)*, the petitioner was widow of the deceased employee, who was working on a substantive post of Driver. He had died as he met with an accident while performing his duty, and the respondents therein had sought to recover the amount of compensation awarded by the MACT from his widow. In such circumstances, it was held that no recovery is to be effect from his widow, who was also held entitled to retiral benefits and family pension as per the Rules.

10. In *Gaurav Pachaury vs. State of U.P. (supra)*, the matter pertained to compassionate appointment and not regularization as is the question in the instant case. The judgment delivered by the Hon''ble Supreme Court in *Ashok Kumar Ratilal Patel vs. Union of India (supra)* also has no application to the instant case as it pertains to transfer or appointment on deputation.

11. In the Judgment relied upon by the learned counsel for the appellant in *Sucha Singh vs. State of Punjab (supra)*, the name of the petitioner therein had been sponsored by the Employment Exchange and he had retired from service upon superannuation after rendering 25 years of service.

12. In the case of *Pawan Kumar Sharma vs. State of Rajasthan (supra)*, the issue involved was about grant of regular pay scale to the petitioner therein and not regularization. In *State of Haryana & Ors. vs. Dalel Singh (supra)*, the petitioner therein had been appointed as Patwari against a vacant post and had worked for over 25 years, and was held entitled to pensionary benefits while relying upon the policy instructions dt. 05.11.1999, which provided that employees who had rendered 15 years of service could be regularized. In the result, we do not find any ground to interfere with the judgment of the Single Bench. However, as observed by the Single Bench, this order will not come in the way of the appellants, who are family members of the deceased employee, to seek legal recourse for any benefits which are permissible to them.

Resultantly, the intra Court appeal is dismissed.