
(2010) 05 RAJ CK 0016

In the Rajasthan High Court

Case No : Civil Writ Petition No. 9508 of 2006

Kajal Raj (Smt.)

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 26-05-2010

Acts Referred:

Constitution of India, 1950 — Article 309
Rajasthan Women and Child Development (State and Subordinate) Service Rules,
2009 — Rule 1(2)

Citation : (2011) 1 RLW 193

Hon'ble Judges : M.C. Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mahesh Chandra Sharma, J.—By filing instant writ petition the Petitioner has prayed that the Respondents be directed to grant the pay-scale of Assistant Child Development Project Officer (for short ACDPO") on completion of 9 years of service and of Child Development Project Officer (for short the CDPO") on completion of 18 years of service with all consequential benefits and interest at the rate of 12% per annum thereon as has already been paid to others similarly situated Women Supervisors in compliance of the judgment of Rajasthan Civil Services Administrative Tribunal dated 27.7.1998 in Appeal No. 33/.938.

2. Learned Counsel before raising arguments submits that the instant writ petition is squarely covered with the decision delivered in Smt. Maju Rani Nadheria and Ors. v. The State of Rajasthan and Ors., on 5.3.2010.

3. The Petitioner was appointed as Female Supervisor prior to Rajasthan Women & Child Development (State & Subordinate) Service Rules, 1998 ("Rules, 1998") came into force. Her grievance was that she has not been granted selection scales in terms of Finance Department's Circular dt. 25.1.1992- as per para 4 whereof, 1st selection scale of next promotional in same service/cadre shall be payable on completion of 9 years" service- in instant case, of Assistant Child

Development Project Officer ("ACDPO") in pay scale of Rs. 1640-2900/- (subsequently revised Rs. 5500-175-9000) being the first promotional post; and various Female Supervisors were promoted as ACDPO in pay scale of Rs. 1640-2900/- and ACDPOs were further promoted as Child Development Project Officers ("CDPOs") in pay scale of Rs. 2000-3200/-. Upon representations having been made by Female Supervisors, State Government fixed them in pay scale of Rs. 1400-2600/- which in fact was lower to pay scale of Rs. 1640-2900/- of the post of ACDPO, vide order dt. 20.4.1996, which was assailed by the similarly situated persons by way of appeal 83/1998 which was decided vide judgment dt. 27.7.1998, wherein the learned Tribunal observed that channel of promotion from the post of Female Supervisor was to the post of ACDPO; and on completion of nine years' service, she is entitled for first selection scale of pay scale of Rs. 164-2900/- and the order dt. 20.4.1996 was accordingly modified. However, it was made clear that what has been observed by learned tribunal while disposing of appeal will be subject to promotional channel to be provided under the Rules pending finalization.

4. It is relevant to mention that a week before the learned Tribunal passed the judgment, Rajasthan Women & Child Development (State & Subordinate) Service Rules, 1998 ("Rules, 1998") were notified in Rajasthan Gazette on 18.7.1998, which appears to have not been in the knowledge of either of the parties while the appeal was being disposed of on 27.7.1998.

5. As per Scheme of Rules, 1998, post of Supervisor is included in Schedule-II (Subordinate Service) and as per channel of promotion provided of Supervisor was considered to the post of Senior Supervisor (Female/Male); and 2nd promotion was to the post of ACDPO from the post of Senior Supervisor having five years experience. It has been specifically averred by Petitioner that post of Senior Supervisor has never been created nor sanctioned in the Department and persons are promoted even after Scheme of Rules, 1998 came into force, from the post of Supervisor to ACDPO which is the highest post in Subordinate Service, and further to the post of CDPO which is the lowest post in State Service under Rules, 1998. Aforesaid averment has not been denied by Respondents but pendent writ petition, upon Rules, 1998 having been amended vide notification dt. 13.10.2009, Rajasthan Women & Child Development (State & Subordinate) Service Rules, 2009 came into force with immediate effect but provisions of Column Nos. 6 & 7 against S. No. 1 of Schedule II (with which the dispute herein is concerned) duly amended by Rules, 2009 came into force w.e.f. 16.7.1998, from the very inception Rules, 1998 came into effect. According to amended Schedule II under Rules, 2009, as provided in S. No. 1, promotion to the post of ACDPO could be made from Senior Supervisors or from among Supervisors having ten years' experience for promotion to ACDPO. However, in the light of judgment dt. 27.7.98 of the Tribunal, benefit of 1st selection scale of the post of ACDPO was granted to Female Supervisors on their completion of nine years but after Rules, 1998 came into force, since the liberty was granted by learned Tribunal vide judgment dt. 27.7.98, the orders of 1st selection scale of pay scale

of ACDPO (Rs. 1640-2900/- revised to Rs. 5500-9000) stood revised by granting 1st selection scale in pay scale of Senior Supervisor (Rs. 1400-2600/- duly revised to Rs. 5000-8000/-) vide order dt. 24.2.2007. After revising 1st selection scale from the date Rules, 1998 came into force, the Respondents passed orders of re-fixation and for making recovery from salary; at this stage, Petitioner has approached this Court praying therein to grant the pay-scale of Assistant Child Development Project Officer (for short ACDPO") on completion of 9 years of service and of Child Development Project Officer (for short the CDPO") on completion of 18 years of service with all consequential benefits and interest at the rate of 12% per annum thereon as has already been paid to others similarly situated Women Supervisors in compliance of the judgment of Rajasthan Civil Services Administrative Tribunal dated 27.7.1998 in Appeal No. 3/1998.

6. Counsel for Petitioner submits that after Rules, 1998 stood amended vide Rules, 2009 and the Schedule relating to the dispute raised herein was made with retrospective effective from 16.7.98 which is the date of very inception of Rules, 1998 having come into force by virtue thereof, Supervisors with 10 years" experience became eligible for the post of ACDPO; as such the Petitioner became entitled for grant of 1st selection scale of the post of ACDPO and so also of 2nd selection scale of the post of CDPO under Rules, 1998 in terms of FD Circular dt. 25.1.92. Counsel further submit that upon the orders having been passed by Respondents for revising her selection scale which was earlier granted in terms of judgment dt. 27.7.98 of the Tribunal, on the premise that first promotional post is of Senior Supervisor and only after being promoted as Senior Supervisor, one can be considered for promotion to the post of ACDPO in view of amendment having come into force from 16.7.98 vide notification dt. 13.10.2009; such fixation being made by Respondents in the scale of Senior Supervisor does not hold good and the recovery having been made in consequence thereof deserves to be quashed.

7. Respondents have filed their reply on 2.4.2007 apparently before the Rules, 2009 having been notified on 13.10.2009. However, taking note of the scheme of Rules, 2009, Government Counsel submits that even Rules, 2009, to which the present controversy relates, was made with retrospective effect from 16.7.98, still first promotional post is of Senior Supervisor and by virtue of amendment in promotional channel, Senior Supervisor & Supervisor both are made eligible, but first promotional post is still of Senior Supervisor; and Petitioner even after the amendment having come into effect, is rightly fixed for grant of 1st selection scale of the post of Senior Supervisor and so also of 2nd selection scale of the post of ACDPO, and no error has been committed by Respondent in revising selection scale of the Petitioner; at the same time, what has been prayed for by Petitioner; at the same time, what has been prayed for by Petitioner for her fixation in 1st selection scale of the post of ACDPO and 2nd selection scale of CDPO, is contrary to the scheme of Rules, 1998/2009 and what has been urged on her behalf is without any merit.

8. In support of his case Mr. Khaspuria, learned Addl. Govt. Council, has placed reliance upon the case of State of Rajasthan and Ors. v. Jagdish Narain Chaturvedi 2009 (5) S 387 : 2009 (2) RLW 1481 (SC) , Supreme Court Cases, in which it has been held that the period spent in ad-hoc capacity would not count for any benefit.

9. This Court has considered rival contentions made by Counsel for parties and with their assistance, examined material on record. Rules, 2009 were came into force vide notification dt. 13.10.2009 duly published in official gazette dt. 20.10.2009 whereby in exercise of powers conferred by the proviso to Article 309 of the Constitution of India, the Governor made the Rules further to amend Rajasthan Women & Child Development (State & Subordinate) Service Rules, 1998; namely:

1. Short title & commencement.-

(1) These rules may be called the Rajasthan Women & Child Development (State & Subordinate) Service (Amendment) Rules, 2009.

(2) They shall come into force with immediate effect except the provisions of Column numbers 6 & 7 against Serial Number 1 of Schedule II, as amended by these Rules, which shall be deemed to have come into force with effect from 16.7.1998.

10. Provisions of Column Nos. 6 & 7 against serial No. 1 of Schedule II of Rules, 2009 being relevant for the dispute raised herein.

11. Serial No. 1 of Schedule of Rules, 2009 relates to the post of ACDPO and Column numbers 6 & 7 relate to the post from which promotion is to be made laying down qualification & experience for promotion while column No. 8 relates to remarks, which provides that the entry at Column No. 6 & 7 shall be deemed to have come into force w.e.f. 16.7.98. The dispute raised herein relates to the post of ACDPO mentioned at S. No. 1 of Schedule-II and after Rules, 2009 being made with retrospective effect from 16.7.98 as regards Serial No. 1 (supra), as per Col. Nos. 6 & 7 of Schedule-II (Subordinate Service posts), persons holding posts of Senior Supervisor with five years" service and other holding post of Supervisor with Ten years" service became eligible for promotion to the post of ACDPO.

12. From what has been taken note out of scheme of Rules, 2009 (supra) it clearly emerges that despite there being a post of Senior Supervisor included in Schedule-II under Rules, 1998; no person indisputably was ever promoted as Senior Supervisor, which appears to be the reason prevailed upon the Rule making authority while making amendment in the scheme vide Rules, 2009 relating to Schedule-II for being amended with retrospective effect from the very inception of Rules, 1998 having come into force from 16.7.1998, as is evident from Rule 1(2) of Rules, 2009 (supra); with the object that those holding post of Supervisor with 10 years" experience could be considered for promotion to the

post of ACDPO; and it has not been controverted that neither the post of Senior Supervisor was ever created nor sanctioned and no promotion to the post of Senior Supervisor was made under Rules, 1998 hence this fact cannot be ruled out that first promotional post being available for all practical purpose under Scheme of Rules, 1998 was of ACDPO from the post of Supervisor; and 2nd promotional post is of CDPO being lowest in State Service for those holding post of ACDPO in subordinate service under Rules, 1998. However, a question arises that one becomes eligible for grant of 1st selection scale of 1st promotional post of ACDPO on completion of nine years service; while 2nd selection scale becomes due of 2nd promotional post of CDPO, on completion of 18 years" service in terms of FD Circular dt. 25.1.1992, which was introduced with an object behind it that despite an employee becomes eligible for promotion but stands stagnated for one or the other reason, to meet out such exigency, scheme of selection scale was introduced; but after present amendment having been made vide Rules, 2009 Under Rule 1(2) thereof, w.e.f. 16.7.98, persons holding post of Supervisor became eligible for promotion to the post of ACDPO on completion of ten years" service under Schedule II of Rules, 2009 and if statutory Rules having been framed in exercise of powers conferred by provision to Article 309 of the Constitution, contemplates 10 years" experience as a pre-requisite for a Supervisor to become eligible for first promotion to the post of ACDPO, at least administrative circulars for grant of selection scale introduced by State Government vide FD Circular dt. 25.1.92 in lieu of promotion, cannot be held entitled for 1st selection of next promotional post on completion of nine years of service and is to be read in harmony of statutory Rules; and in this view whereof, in the opinion of this Court, those holding post of Supervisor will be entitled for 1st selection scale of 1st promotional post of ACDPO on completion of ten years" service under scheme of statutory Rules; and of 2nd selection scale of 2nd promotional post of CDPO on completion of further nine years" service in terms of FD Circular dt. 25.1.1992. That being so, writ Petitioner can be considered for grant of 1st selection of the post of ACDPO on completion of ten years" service and not prior thereto, and 2nd selection scale of the post of CDPO on further completion of nine years" service (viz. 10+9=19 years) in terms of FD Circular dt. 25.1.92.

13. Consequently, the writ petition succeeds and is hereby allowed and the Respondents are directed to consider the case of Petitioner for grant of 1st selection scale of the post of ACDPO on completion of ten years" service and 2nd selection scale of the post of CDPO on completion of further nine years" service (viz. total 19 years (10+9) service); and if found suitable for grant of selection scales (supra), her fixation be accordingly made along with consequential benefits and after adjustment of payment already made, arrears if any payable, be paid to her, as has already been directed by the Co-ordinate Bench in Smt. Maju Rani Nadheria and Ors. (supra). All exercise to comply with directions (supra) be made within four months from today. No order as to costs.