
(1994) 09 SC CK 0068

In the Supreme Court Of India

Case No : Civil Appeal No's. 550-52 of 1986

Kamaluddin

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 30-09-1994

Acts Referred:

Citation : AIR 1995 SC 223 : (1994) 6 JT 356 : (1994) 4 SCALE 354 : (1994) 3 SCC 511 Supp : (1994) 2 UJ 609 : (1995) 1 UPLBEC 103

Hon'ble Judges : S. C. Agrawal, J;R.M. Sahai, J

Bench : Division Bench

Final Decision : dismissed

Judgement

S.C. Agrawal, J.—These appeals by special leave are directed against the judgment of Rajasthan High Court dated August 25, 1984 in Special Appeals Nos. 288/80, 96/81 and 300/80 whereby the Division Bench of the High Court has affirmed the order of learned single Judge dated April 30, 1980 allowing Writ Petitions (Civil) Nos. 1888/73, 253/74 and 1047/74 and setting aside the award of the Judge, Labour Court, Rajasthan dated February 24, 1972.

2. The facts, briefly stated, are as follows:

3. The appellant was appointed as a Caner in the Public Works Department of the Government of Rajasthan with effect from February 13, 1953. In the said department there are two posts of Supervisors -one is Supervisor, Workshop, Furniture Store and the other is Supervisor Workshop, Mechanical Sub-Division. One Bhairon Bux, who was working as Supervisor, Workshop, Furniture Store, retired on July 1, 1967 and on his retirement Tarachand, L.D.C., was promoted as officiating Supervisor with effect from May 29, 1968, on ad hoc basis for a period of three months. Tarachand was working as Store Keeper in the Furniture Store. The appellant represented against the appointment of Tarachand on the ground that he was not a technical person and could not be appointed as Supervisor and that the appellant was the senior most person eligible for

promotion to the post of Supervisor. Since the appellant was not able to get his grievance redressed an industrial dispute was raised by the Rashtriya P.W.D. Mazdoor Union on behalf of the appellant and by order dated March 12, 1969 the Government of Rajasthan referred for adjudication to the Labour Court, Rajasthan, Jaipur the following dispute :

Whether the claim of Shri Kamaluddin, who is represented by the Rashtriya P.W.D. Mazdoor Union, Jaipur that the action of P.W.D. in not promoting him to the post of Supervisor, was unjustified and invalid and to what relief was he entitled.

4. While the matter was pending adjudication before the Labour Court one Kanhaiyalal, who was Supervisor, Workshop, Mechanical Sub-Division, retired from service on September 24, 1969 and in his place Manna Lal, respondent No. 4, was appointed as the Supervisor, Workshop, Mechanical Sub-Division, for a period of three months in the first instance. During the pendency of the matter before the Labour Court Tarachand ceased to be the Supervisor, Workshop, Furniture Store and at the time of final arguments before the Labour Court respondent No. 4 was temporarily looking after the work of Supervisor, Workshop, Furniture Store.

5. The Labour Court gave its award on February 24, 1972 wherein it was held that the appellant was entitled to be promoted to the post of Supervisor which fell vacant on the retirement of Bhairon Bux and the Department was not justified in refusing to promote the appellant and the temporary appointment of respondent No. 4 against the post of Supervisor Workshop was set aside. The Department was directed to promote the appellant to the said post with effect from April 27, 1967. The Labour Court found that the appellant was in the pay scale of Rs. 75-175 in 1967 and he did not belong to Class IV service because the employees of Class IV service did not have the said pay scale.

6. There Writ Petitions were filed in the High Court to challenge the said award of the Labour Court. Writ Petition No. 1888/73 was filed by the Superintending Engineer, P.W.D. (B&R), Jaipur Circle-I, Jaipur, Writ Petition No. 253/74 was filed by respondent No. 4 and Writ Petition No. 1047 was filed by respondent No. 5. All the three Writ Petitions were decided by a learned single Judge by judgment dated April 30, 1980. As against the Writ Petition filed by the Superintending Engineer, P.W.D. the appellant raised an objection that the writ petition was liable to be dismissed on the ground of laches in as much as it was filed after the expiry of one year from the date of the publication of the award. Although the learned single Judge found merit in the said contention but felt that since the other two Writ Petitions filed by respondents Nos. 4 and 5 could not be dismissed merely on the ground of delay because neither of them was made a party to the proceedings before the Labour Court it would not be proper to dismiss the Writ Petition filed by the Superintending Engineer, P.W.D. on the ground of delay. Dealing with the case on merits the learned single Judge found that the post of Caner held by the appellant was a Class IV service post and that the appellant

continued to hold the same post when the post of Supervisor Workshop fell vacant on the retirement of Bhairon Bux. The learned single Judge also held that the post of Supervisor Workshop had fallen vacant only with effect from July 1, 1967 when Bhairon Bux retired and it could not be directed that the appellant be promoted on the said post with effect from April 27, 1967. Dealing with the question whether the appointment of respondent No. 4 to the post of Supervisor could be set aside the learned single Judge observed that respondent No. 4 was promoted as officiating Supervisor in the grade of Rs. 170-400 on ad hoc basis against the vacancy caused on account of the retirement of Kanhaialal and that the learned Counsel for the appellant has conceded that the appointment of respondent No. 4 as Supervisor Workshop Mechanical Sub-Division was not and could not have been challenged by the appellant before the Labour Court but that was challenged by the appellant before the Labour Court was the giving of the additional charge given to respondent No. 4 of the post of Supervisor Workshop Furniture Store. The learned single Judge, therefore, held that Labour Court was not justified in holding that respondent No. 4 was not eligible for appointment to the post of Supervisor Workshop. The learned single Judge allowed all the three Writ Petitions and set aside the award made by the labour Court and held that respondent No. 4 was senior to the appellant and was eligible for promotion to the post of Supervisor Workshop and he was rightly promoted to that post. The learned single Judge also directed the Superintending Engineer, P.W.D. (B&R), Jaipur to consider and decide the question of seniority and eligibility of the appellant and all other persons similarly situated including respondent No. 5 as on the date on which respondent No. 4 was given additional charges of the post of Supervisor Workshop Furniture Store for promotion to the remaining post of Supervisor and thereafter proceed to make the appointment on the post of Supervisor within six months. Special Appeals filed by the appellant against the said judgment of the learned single Judge were dismissed by Division Bench of the High Court. Hence these appeals.

7. The Labour Court has found that the appellant was appointed on the post of Caner mistri with effect from February 13, 1953. The learned single Judge as well as the Division Bench have after examining the record held that the appellant was appointed temporarily on the post of "Caner" by the Establishment Officer, P.W.D., Jaipur for a period of three months in the first instance on February 14, 1953 and that the said appointment on the post of Caner was affirmed by the Superintending Engineer, P.W.D., Jaipur, by his letter dated April 20, 1953 and that the appellant continued to hold the post of Caner in the Workshop Furniture Store since 1953,

8. It is not disputed that at the time of appellant's appointment on the said post of Caner in 1953 the pay scale for the said post was Rs. 40-50. The pay scale was revised with effect from March 1, 1957 to Rs. 50-SO EB-100. With effect from September 1, 1961 the pay scale for the post was revised to Rs. 75- 160 and with effect from April 1, 1966 it was revised to Rs. 75-175. In other words, on the date when the post of Supervisor Workshop fell vacant due to the

retirement of Bhairon Bux on July 1, 1967 the appellant was holding the post of Caner in the pay scale of Rs. 75-175. The question whether the said post of Caner held by the appellant at that time was a Class IV service has to be considered on that basis.

9. Sub-rule (4A) of Rule 7 of Rajasthan Service Rules at the relevant time, i.e., in July 1967, defined Class IV service in the following terms:

(4A) Class IV Service. - means service in respect of posts enumerated in Schedule IV (Class IV services) of Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 and all service on posts whose pay (if fixed) or maximum pay (if graded or on time scale) does not exceed Rs. 55 and which are not mentioned in Appendix XII - Part II of these rules. (Appendix XII, Part I, Class IV service).

10. From the aforesaid definition it would be clear that a post could be regarded as a post in Class IV service if either of the following requirements was satisfied:

(i) it was mentioned in Schedule IV (Class IV services) of Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958; or

(ii) the pay for the post (if fixed) or maximum pay (if graded or on time scale) did not exceed Rs. 55 and it was not mentioned in Appendix XII- Part II of the Rajasthan Service Rules.

11. In the present case the second requirement was not satisfied because the pay scale for the post of Caner was Rs. 75-175 exceeding the limit of Rs. 55/- provided in the Rule. The only question is whether the first requirement was satisfied. In this regard it may be stated that at the relevant time the post of Caner held by the appellant was not specifically mentioned in Schedule IV (Class IV service) of Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958. The High Court has referred to the Notification dated July 25, 1963, whereby the Rajasthan Civil Service (Revised Pay) Rules, 1961 were amended and the post of "Caner" was added with the posted of "Polisher, Carpenter, Tailor, Parades and Tracer in Farrashkhana" appearing in Section 'D' of Schedule No. I under the heading "Public Works (Irrigation) & (B&R)" to show that the post of Caner was in the same grade as the posts of the artisans employed in the Farrashkhana and that in Schedule IV appended to the Rajasthan Civil Service (Classification, Control and Appeal) Rules, 1958, item 1 relates to artisans such as "Blacksmiths, Carpenters, Welders, Turners, Painters, etc." According to the High Court the expression "etc." used in item No. 1 of Schedule IV is significant and that the said entry included all the employees who are described as artisans by whatever name they might have been known, like polishers, carpenters, tailors, upholsters, caners and all other artisans doing similar jobs in the Farrashkhana and that they are all included in the category of Class IV employees. We are in agreement with that view. On that view conditions (i) for a post being treated as a post in Class IV service under Rule 7(4A) of the Rajasthan Service Rules has to be treated as satisfied and it must be held that at

the relevant time in July 1967 the appellant was holding a post in Class IV service.

12. There is one other hurdle in the path of the appellant. The post of Workshop Supervisor is a Subordinate Service post mentioned in Schedule II of the Rajasthan Civil Service (Classification, Control and Appeal) Rule, 1958 and the other subordinate service posts mentioned in the said Schedule are Workshop Foreman and Mistrics. As pointed out by the High Court at the relevant time when pay scale of Caner was Rs. 75-175, the posts of Mistry Grade II and Workshop Foreman were placed in the grade of Rs. 105-200, the post of Mistri Grade I was placed in the grade of Rs. 115-335 and Workshop Supervisor was placed in the grade of Rs. 170-400. Even if it be held that the post of Caner held by the appellant was not a post in Class IV service, the appellant could not claim to be promoted directly from the post of Caner to the post of Workshop Supervisor without first being promoted as Mistri or Workshop Foreman.

13. The Labour Court has proceeded on the basis that since the post of "tracer" was mentioned in Schedule II of the Rajasthan Civil Service (Classification, Control and Appeal) Rules and was a subordinate service post and by Notification dated July 25, 1963 the post of "Caner" was placed in the same grade as that of "tracer", the post of "Caner" must be deemed to have been upgraded as a subordinate service post. As pointed out by the High Court the subordinate service posts have been specifically mentioned in Schedule II and a post which has not been so included in Schedule II cannot be brought into the category of Subordinate Service post merely by analogy. According to the High Court deemed inclusion of a post not included in the Schedules annexed to the Rajasthan Civil Service (Classification, Control and Appeal) Rules was impermissible except when the word "etc." or the expression "other similar posts" have been used.

14. The Labour Court gave relief to the appellant on the view that he was appointed as Caner Mistri and further that the post of Caner must be deemed to be included in Schedule II of the Rajasthan Civil Service (Classification, Control and Appeal) Rules and was a subordinate service post. As pointed out by the High Court both these findings cannot be sustained. The appellant could not, therefore, claim to be promoted to the post of Workshop Supervisor in July 1967. The said claim of the appellant has been rightly negated by the High Court.

15. For the reasons aforementioned we find no merit in these appeals and the same are accordingly dismissed. The parties are left to bear their own costs.