

(1990) 09 RAJ CK 0002

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1232 of 1988

Kishan Dutt Sharma

APPELLANT

Vs

Rajasthan State Agricultural Market Board and Another

RESPONDENT

Date of Decision : 20-09-1990

Acts Referred:

Citation : (1990) WLN 287

Hon'ble Judges : Jasraj Chopra, J

Bench : Single Bench

Final Decision : Allowed

Judgement

J.R. Chopra, J.—The contention of the petitioner is that he was appointed as Lower Division Clerk (Store Munshi) way back on 2-12-1985. He worked on that post as work-charge employee up to 30-4-1986, and thereafter, his services were terminated. He was again appointed as L.D.C. (Store Munshi) with effect from 23-6-1986 and worked upto 26-6-1986. He was further appointed as L.D.C. (Store Munshi) on 23-8-1986 and his services were terminated on 7-5-1988. It is contended that the respondent Board held its meeting on 21st March, 1988, in which it took a decision that all those work-charge employees who have worked more than 180 days in service then their services should be regularised and all those work-charge employees who have not completed 180 days of services, their services should be terminated. It is the admitted case of the parties that the petitioner worked for more than 180 days and, therefore, his case deserves regularisation rather than termination but unfortunately, vide order Annexure-8 dated 7-5-1988, his services were terminated and, therefore, he has filed this writ petition not only for quashing of the termination order Annexure-8 dated 7-5-1988 but he has also prayed for regularisation of his services. The petitioner has submitted that he is M.A. in political science. He also knows typing as also Hindi Short-hand. He had passed the examinations conducted by the RPSC for the post of L.D.C. by securing 61% of marks. He has, therefore, prayed that his termination be set aside and his services be regularised.

2. A return has been filed on behalf of the respondents. The writ petition has also been amended and reply to the amended writ petition has been filed. The contention of the respondents is that the petitioner was never appointed as L.D.C. He was only appointed as work-charge Store-Munshi. He was not appointed against a substantive vacancy of L.D.C. It has been admitted by Mr. Purohit that although a resolution was passed in the respondent Board's meeting dated 21-3-1988 that all those work-charge employees who have worked more than 180 days, their services should be regularised and, therefore, the services of the petitioner should not have been terminated. He has submitted that the petitioner deserves to be reinstated in service but he does not deserve to be regularised against the post of L.D.C.

3. I have heard Mr. M. Mridul, the learned counsel appearing for the petitioner and Mr. R.G. Purohit, the learned counsel appearing for the respondents and have carefully gone through the record of the case.

4. It was contended by Mr. M. Mridul, the learned counsel appearing for the petitioner that although, no initial order of appointment was passed when the petitioner was appointed as Store-Munshi but from the record, it is clear that the work of L.D.C. was being taken from him. In this respect, he has drawn my attention to the letter Annexure-3 dated 20-10-1986 wherein it has been stated that the petitioner is a Post Graduate in Political Science. He knows Hindi typing very well. He is having good experience of Office work and, therefore, his services should be regularised on the post of L.D.C. My attention was also drawn to the letter Annexure-4A wherein it has been certified by the Assistant Accounts Officer that the petitioner is working for the post about six months in his Office with the Junior Accountant. Rather, he is discharging the functions of the Junior Accountant in the position of a regular L.D.C. Mr. Mridul invited my attention to the letter Annexure-5 dated 25-2-1988 wherein it has been mentioned that the petitioner is working as work-charge employee since 2-12-1985 and since 22-8-1986, by his working as L.D.C in the Office of the Assistant Accounts Officer and, therefore, looking to his services and his qualifications, his pay has been fixed at Rs. 567. 40P. It has been recommended that he be fixed on the consolidated salary of Rs. 750/- PM. My attention was next drawn to letter Annexure-6A dated 4-3-1987. Item No. 8, under the head Important Workcharge Staff, of the Schedule annexed to Annexure-6A relates to the petitioner. He has been described as Store Munshi. Lastly, my attention has been drawn to the letter Annexure-23. In the Schedule annexed to this letter Annexure-23, it has been stated that the petitioner is working as work-charge L.D.C. since December 1985. It may be stated that Annexure-23 is the reply submitted by the Department to the State Assembly.

5. Mr. M. Mridul, learned counsel appearing for the petitioner has, therefore, contended that the respondents cannot now turn round and say that the petitioner is only a work-charge Store Munshi and the work of L.D.C. has never been taken from him. He has submitted that the reply Annexure 23 has been

submitted by the respondents and therefore, they are bound by what has been stated in Annexure-23 on the floor of the assembly, and so, the petitioners has to be treated as L.D.C whether the work of Store Munshi or the work of Accounts section was taken from him.

6. Mr. M. Mridul, the learned counsel appearing for the petitioner has submitted that this case is squarely covered by a decision of this Court in Mahesh Chandra Mishra v. State of Rajasthan (S.B. Civil Writ Petition No. 3615 of 1988, decided on May 2, 1990 at Jaipur Bench), whereby the services of the petitioners who were working as workcharge L.D.C. were ordered to be regularised. The contention of Mr. R.G. Purbhit, the learned counsel appearing for the respondents is that the decision in Mahesh Chandra Mishra's case (supra) is distinguishable on facts so far as the case of the petitioner in this case is concerned.

7. I have considered the rival submissions made at the bar. It is true that the petitioner has not been appointed against a substantive vacancy of L.D.C. He was appointed as a work-charge employee and was treated as L.D.C. as is clear from the schedule annexed to letter Annexure-23 from December 1985. As the petitioner has worked for more than 180 days, his services deserves to be regularised. To this extent, the case of the petitioner is similar to the case of the petitioners in Mahesh Chandra Mishra's case (supra).

8. Consequently, this writ petition is allowed and the order Annexure-8 dated 7-3-1988 is quashed. The respondents are directed to reinstate the petitioner in service with all consequential benefits flowing therefrom. In other words, the petitioner will be entitled to his back wages which were last paid to him alongwith increments, if any, to which, he is entitled according to Rules. The respondents are further directed to regularise his services against the substantive vacancy of L.D.C, which has fallen vacant after filing of this writ petition i.e. after 21-5-1988. It is further directed that the Petitioner shall be paid minimum basic salary of the post of L.D.C. from the date, his services are regularised in terms of this order. The arrears of the salary and back wages be paid to him within a period of four months from today and his case for regularisation be also decided within the aforesaid Period. He be taken on duty forthwith, after taking into consideration the vacancy position.

9. In the facts and circumstances of this case, the parties are left to bear their own costs of this writ petition.