

(1991) 11 RAJ CK 0030
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1577 of 1981

Madhav Lal

APPELLANT

Vs

Municipal Board and Another

RESPONDENT

Date of Decision : 19-11-1991

Acts Referred:

Citation : (1991) 2 WLN 365

Hon'ble Judges : Rajesh Balia, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajesh Balia, J.—Petitioner challenges the order dated 21.7.1981 Annex. 5.

2. The undisputed facts which led to filing of this Writ Petition are as under:

Petitioner was initially appointed on 1.10.56 as Naka Guard at Municipal Board, Deogarh. He was recommended for promotion on the post of Nakedar which fell vacant on account of death of Shri Shambho Lal Dhabai vide order dated 16.12.63 subject to confirmation by the Board and was ordered to be so promoted on temporary basis. Thereafter by order Ex. 3 dated 16.5.66, the Chairman of the Board promoted the petitioner on the post of Sub-Nakedar instead-of Nakedar with effect from 1.4.66. This order was subject to confirmation by the Board. The Board in its meeting held on 22.5.66 unanimously confirmed the order dated 16.5.66 appointing the petitioner of Sub-Nakedar with effect from 1.4.66. This resolution has been placed on record as Annex. 4. It appears that petitioner was holding a certificate of Rashtra Bhasha Pravesh Pariksha from Rashtra Bhasha Prachar Samiti, Vardha of the year 1965. It further appears that the Promotion Board which met on 9.11.70 also confirmed the promotion of the petitioner with effect from 1.4.66 on the post of Sub-Nakedar but stated in its recommendation that the promotion is approved if the qualification, held by the petitioner is equivalent to middle examination. Thereafter vide impugned order Annex. 5, petitioner was informed that

recommendation of Board in making relaxation in educational qualification in his case has not been accepted vide letters dated 11.10.79 and 11.7.80 and, therefore, he would not work on the post of Sub-Nakedar and should be allowed to work for which he is found eligible.

3. Apprehending reversion in pursuance of order Ex. 5, petitioner has filed this Writ petition with the prayer that order 21.7.81 Ex. 5 may be declared to be invalid and the respondent Municipal Board may be restrained from effecting the reversion of the petitioner.

4. It has further been alleged by the petitioner that notwithstanding his appointment as Sub-Nakedar since 1966, he is not being paid the salary of Sub-Nakedar but is being continued to be paid the salary of Naka Guard in the pay scale prevailing at the time of appointment of the petitioner on the post. It has been prayed that a direction may be issued to the respondents. Board to pay the petitioner the salary of Sub-Nakedar with effect from the date of his appointment on the post up to date.

5. A return has been filed on behalf of the Municipal Board on 17.8.1991 in which issuance of order Ex. 3 and subsequent confirmation order Ex. 4 has not been disputed but it has been submitted that it was made clear in the recommendation of the Promotion Board in 1970 that petitioner's promotion on the post of Sub Nakedar, is subject to his being found to have possessed qualification equivalent to middle pass and since the petitioner's qualification of Rashtra Bhasha Pravesh Pariksha is not equivalent to middle examination according to Education Department, the petitioner is not eligible and entitled to hold the post. Allegations that petitioner is being paid salary applicable to Naka Guard only are not rebutted.

6. It has been contended on behalf of the petitioner that since the order of promotion on the post of Sub-Nakedar was confirmed by the Board unanimously vide Ex. 4 dated 22.5.66 and which fact has not been challenged by the Municipal Board, it was not open to Municipal Board to put any further condition in 1970 for continuing the petitioner on the post so as to effect the right that he has acquired vide order Ex. 3 as confirmed by order Ex. 4. It was also contended by the learned Counsel for the petitioner that the respondents have necessary powers for relaxing the qualification and when petitioner was allowed to continue on the post from 1966 to 1981...through-out, this...ground to exercise that power in favour of the petitioner by relaxing the condition of minimum qualification. The respondents having failed to exercise the discretion vested in them, which is arbitrary on the face of it, the order Ex. 5 ought not to be sustained. It was further submitted by the learned Counsel that the initial minimum educational qualification prescribed for a post is undoubtedly a factor to be reckoned with, but it is so at the time of initial entry into the service. Once the appointment is made and the incumbent is allowed to continue for a considerable length of time, it would be hard and harsh to deny him the confirmation in the said post on the ground that these incumbent lacks the

prescribed educational qualification. My attention was invited to the following observation made by their lordships of the Supreme Court in Bhagwati Prasad Vs. Delhi State Mineral Development Corporation,

6. The main controversy centers round the question whether some petitioners are possessed of the requisite qualifications to hold the posts so as to entitle them to be confirmed in the respective posts held by them. The indisputable facts are that the petitioners were appointed between the period 1983 and 1986 ever since, they have been working and have gained sufficient experience in the actual discharge of duties attached to the posts held by them. Practical experience would always aid the person to effectively discharge the duties and is a sure guide to assess the suitability. The initial minimum educational qualification prescribed for the different posts is undoubtedly a factor to be reckoned with, but it is so at the time of initial entry into service. Once the appointments were made as daily rated workers and they were made as daily rated workers and they were allowed to work for a considerable length of time, it would be hard and harsh to deny them the confirmation in the respective posts on the ground that they had the prescribed educational qualification. In our view, three years" experience, ignoring artificial break in service for short. period/ periods created by the respondent, in the circumstances, would be the sufficient for confirmation.

7. Mr. Lodha, learned Counsel appearing on behalf of Municipal Council has contended that the aforesaid decision of their lordships of the Supreme Court is distinguishable on the ground that because petitioner"s promotion was made subject to condition of confirming his. qualification as equivalent to middle pass, the principle laid down in the aforesaid, decision is not applicable to the facts of the present case.

8. It has also been contended during the course of arguments that petitioner has not challenged the condition incorporated in Ex. 2 at any time, therefore, he is now estopped from challenging the same.

9. Having considered rival contentions made before me, I am of the opinion that the contentions raised on behalf of the petitioner merit acceptance. The undisputed fact which emerges from the pleadings of the parties are that the petitioner was promoted on the post of Sub-Nakedar on 16.5.66 after allowing him on the post of Nakedar for a period of three years on temporary basis vide order Ex. 1 Only-condition which was mentioned in the order Ex. 3 was that the order is subject to confirmation by the Board. The Board in fact confirmed the aforesaid appointment of petitioner on the post of Sub-Nakedar in its meeting held on 22.5.1966. Once, the petitioner was permanently appointed by the unanimous resolution of the Board, it could not have been subjected to any. further condition vide resolution dated 9.11.70. Even assuming that this could be done, the condition put in Annex. 2 would not effect the applicability of the principle laid down by their lordships of the Supreme Court, in Bhagwati Prasad"s case (supra). It is fully applicable to the facts of the present case. The petitioner

has been allowed to continue on the post of Sub-Nakedar with effect from 1.4.86. until communication of impugned order Ex. 5 dated 21.7.81 uninterruptedly for a period of over 15 years notwithstanding the fact that the respondents have come to know about the fact that the qualification, held by the petitioner may not be equivalent to middle pass as far back as on 9.11.70. It is also not disputed that it lies within the powers of the respondents to relax the condition of educational qualification. In this view of the matter, it would be hard and harsh to deny the petitioner the benefit of continuance and confirmation on the post of Sub-Nakedar after continuously serving on the post for over 15 years for which he has acquired sufficient experience merely on the ground that he lacked the prescribed educational qualification when he was so appointed.

10. It also does not stand to reason as to why the respondents have not exercised their power to relax in the minimum eligibility criteria in the present case. It is true that the exercise of power to relax minimum qualification is discretionary but discretion has to be exercised in a reasonable manner. Whenever a discretionary power is vested in an authority, it is always coupled with the duty to exercise such power where circumstances for exercise of such power are shown to exist, that is to say exercise of discretion always to satisfy the test of reasonableness in the given facts and circumstances of the case. In U.P. State Road Transport Corporation and another Vs. Mohd. Ismail and others, , their lordships of the Supreme Court observed:

The discretion allowed by the statute to the holder of an office is intended to be exercised "according to the rules of reason and justice, not according to private opinion...according to law and not humour. It is to be, nor arbitrary, vague and fanciful, but legal and regular. And it must be exercised within the limit, to which an honest man competent to the discharge of his office ought to confine himself. Every discretion conferred by statute on a holder of public office must be exercised In furtherance of accomplishment of purpose of the power.

11. Applying the aforesaid principles to the facts of the present case, I am clearly of the opinion that the respondents have refused to exercise powers vested in them in the matter of granting relaxation in the minimum educational qualification arbitrarily in the case of the petitioner.

12. In this view of the matter, I hold that Annex. 5 is not sustainable and the same is hereby quashed.

13. Petitioner has alleged in his writ petition that notwithstanding his appointment on the post of Sub Nakedar, he is continued to be paid salary of the post of Naka Guard only and that too, in the pay scale prevailing at the time of the appointment of the petitioner. This fact has not been denied by the respondents in their return. The proposition admits of no exception that if the petitioner has been appointed on the post of Sub-Nakedar and he is continuously discharging the functions as Sub-Nakedar, he is entitled to the salary and emoluments of the post of Sub-Nakedar and the same cannot be denied to him

on any ground whatsoever. This is apart from the well established principle of equal pay for equal work.

14. I, therefore allow this petition, quash the order Annex. 5 and direct the respondents to continue the petitioner on the post of Sub Nakerdar and further direct the respondents to release all consequential benefits to the petitioner including the salary of the post which the petitioner is holding since 1.4.66 as applicable to it from time to time. The arrears of the salary, if any, should be paid to the petitioner within a period of six months from today. No order as to costs.