(1974) 07 RAJ CK 0005

In the Rajasthan High Court

Mahavir Prasad Pancholi APPELLANT

Vs

State of Rajasthan and Others RESPONDENT

Date of Decision : 23-07-1974

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (1975) 1 LLJ 140

Hon'ble Judges : Kan Singh, J

Bench : Single Bench

Judgement

Kan Singh, J.—This is a writ petition under Article 226 of the Constitution by one Shri Mahavir Prasad Pancholi challenging his fixation in the Municipal Service constituted under the Rajasthan Municipal Service Rules 1963, vide order Ex. 4 dated 15-5-69.

2. The petitioner entered service in the Municipal Board, Kota as a Taxation Officer in the grade of Rs. 100-5-150-EB-10-200 on 28.6-51. In 1953, the post of Taxation Officer was re-designated as Revenue Officer. The grade allowed to the petitioner with effect from 1-4-53 was Rs. 120-5-150-15/2-240 vide order of the State Government dated 23-4-57. The Kota Municipal Board was raised to the status of the Municipal Council from 17-10-59 and the petitioner''s post was designated as Revenue Officer, Municipal Council, Kota. The question of integration of Revenue Officers in the Municipal Service was taken up. The petitioner submits that on 31-3-60, which is the crucial date for purposes of fixation in the integrated set up, he was holding the post of a Revenue Officer in A Class Municipality and consequently he was entitled to be considered for appointment to the post of Revenue Officer, Grade I in the Municipal Service. The petitioner submits that on 15-1-66 a provisional seniority list of officers of the Rajasthan Municipal Service was published under Rule 43(1) of the Rajasthan Municipal Service Rules, 1963 and in it he was shown as a Revenue Officer, Grade I. It was also mentioned therein that his appointment was effective from 1-4-53, that his existing class was No. 1 and likewise the class allotted to him

was also No. 1 Municipality. The same position was restated in another seniority list published in the Rajasthan Rajpatra dated 18-8-66 (Ex. 2) under the heading " Technical Officers", but when the final list Ex. 4 was published the petitioner was shown as a Class II Revenue Officer. The petitioner''s grievance is that he was eligible for appointment as Revenue Officer Class I, but has been considered only for the post of a Revenue Officer Class II in the integrated set up and there had been denial of equality to him. The petitioner had irapleaded a number of respondents. Respondent No. 3, Shri Khushmizazi Lal, respondent No. 5, Shri D.C. Sharma, respondent No. 7, Shri Shanker Singh and respondent No. 8, Shri Sudha Chand Ojha were represented by Shri C.L. Agarwal and today at the time of hearing learned Counsel for the petitioner submitted that he was not pressing the writ petition against these respondents. Respondents No. 4, Shri V.D. Vyas, respondent No. 6, Shri Bachna Ram, respondent No. 9, Shri Laxman Singh Shekha-wat respondent No. 10, Shri P.C. Gupta, respondent No. 11, Shri Ramsharan Joshi. and respondent No. 12, Shri Manzoor Ahmed Azizi were sailing in the same boat as the respondents represented by Shri Agarwal. All these respondents were Executive or Administrative Officers and were not integrated as Revenue Officers. The petitioner has no legal right to question their integration. The only respondents who were Revenue Officers at the time of integration were Shri Mohanlal Sharma, respondent No. 14 and Shri Chaitanya Giri, who is said to be officiating as Executive Officer Class I. Thus, the matter falls to be considered vis-a-vis these respondents,

3. The writ petition has been opposed by the State of Rajasthan. Respondent Shri Mohanlal Sharma has not chosen to appear.

4. The short question that falls for consideration is whether the petitioner was eligible for the post of Grade I Revenue Officer in the Municipal Service and whether his case had been considered for the post of Revenue Officer Grade I. The petitioner had been integrated as Revenue Officer Grade II. I had examined the Municipal Service Rules in a recent case decided by me on 9-7-74, S.B. Civil Writ Petition No. 745 of 1969, Prakash Chandra v. State of Rajasthan and Ors. Rule 39 of the Rajasthan Municipal Service Rules, 1963 was examined and it was held that a person holding a post corresponding to a post cadre (sic) in the service on 31-3-60 shall be eligible for the post specified against it in the table, provided he held that post in a substantive capacity. I had also referred to Rules 40, 41, 42 and 43 and had observed that after examining the eligibility, of a person for a post the Director of Local Bodies was to include the name of such person in the list of all the eligible persons in each category in the order of seniority. Further it was incumbent upon him to place the list of seniority before the Selection Committee, Then the Selection Committee was bound to consider the cases of all the candidates included in the list. The Selection Committee was to interview such of them as it deemed necessary and select suitable candidates and then prepare a list in order of seniority according to the criteria laid down and then publish the list in the gazette so as to provide an opportunity to any person aggrieved to make his representation to the Selection Committee.

Thereafter the Selection Committee was to submit its recommendations to the Government with a final list and the Government were to appoint the persons in order of seniority, I had also observed that according to the scheme of the rules the eligibility for appointment of a person to a particular class or category of posts arose on account of his being the holder of the corresponding post according to the table in substantive capacity. Further it was not open to the Selection Committee to ignore this statutory classification or categorisation and evolve a different criteria based on the pay scale of a person.

5. The eligibility of the petitioner will arise on the basis of the post held by him on 31-3-60. He was a Revenue Officer in the Municipality of Kota and before 31-3-60 the Kota Muncipality came to be classified as a Class I Municipality, that is, the Municipal Council. There was some debate whether the petitioner was substantive Revenue Officer On 31-3-60. In para 2 of the petition the petitioner stated thathe entered service when he was first appointed as a Taxation Officer in the grade of Rs. 100-5-150-EB-10-200 in the Municipal Board, Kota on 28-6-51. This paragraph has been admitted by the State. In para 3 of his petition the petitioner stated that in the year 1953 the post of Taxation Officer was designated as Revenue Officer and further the petitioner was even the grade of a Revenne Officer, i.e, Rs. 120-5-150-15/2-240 with effect from 1-4-53 on that post vide order of the State Government dated 23-4-57. In reply to this the Officer-in-charge stated that para 3 of the writ petition was not admitted, that there was no order of the State Government whereby the petitioner was appointed or designated as Revenue Officer. However, it was not denied by the State that the grade mentioned was allowed to be given to the petitioner by the Director of Local Bodies, but not by the State Government. The petitioner has produced the copy of the order of the Director (Ex, 8) which I may read:

^^eoy rgjhj ua0 ch- ;w- Mh @ ch @ 1811 @ Mh- ,sy- ch- 56 fnukad 23&4&57 vkSj ls funsZ''kd LFkkuh; fudk;] jktLFkku t;iqj okLrs v/;{k uxjikfydk] dksVk A

fo"k; %& Lohd`fr xzsM Jh egkohj nqlkn jsosU;q vkihlj

iqlax %& vkidk i= ua0 48 fnukad 5&4&57

Jh egkohj izlkn jsosU;q vkihlj dks 120? #0 ?,sd lks chl #i;s? ,soa egxkbZ ij 120&5&150 bZ- ch- 15@2&240 dh xzsM es 1&4&53 ls fu/kkZfjr djus dh iz''kklfud Lohd`fr iznku dh tkrh gS A**

The order of the Director clearly recites that the grade was being allowed to Shri Mahavir Prasad, Revenue Officer. What was being accorded was the administrativ sanction. I am not told how the Director was dealing with the matter, but the powers of the State Government could be delegated to the Director of Local Bodies under the Rajasthan Town Municipalities Act, 1951 or under the Rajasthan Municipalities Act. 1959 for that matter. Neither learned Counsel for the petitioner, nor the learned Additional Government Advocate have been able to clarify this position whether powers in this regard were delegated to the Director or not and as to how he was dealing with such matters. Since no light could be thrown I have to presume the regularity of the official act of the Director for the purposes of this case. This order of the Director does not leave any doubt In my mind that the petitioner was a Revenue Officer on 23-4-56. Apart from this in Ex. 1, the petitioner''s name occurs at serial number: 1 under the heading "Revenue Officers Grade I". It is repeated in the Gazette Notification Ex.2. The Officer-in-charge has not clarified how while finalising the list Ex. 4, the petitioner''s name was excluded, or that he was not eligible for the post of Grade I Revenue Officer. It is remarkable that in the State''s reply it is not mentioned that the petitioner''s case was considered for appointment as Grade I Revenue Officer. Looking to the scheme of the rules, however, I have my own suspicion that the petitioner was considered eligible for the post of Grade I Revenue Officer and his suitablity too might have been examined, because in the very nature of things the Selection Committee first examines the cases of all eligible candidates category-wise and includes them in various categories, if they are found suitable and it is then that the provisional list is published for inviting objections and then in the light of the objections or representations, if any, that the list is finalised. Be that as it may when the Government themselves have not stated in their reply that the petitioner''s case was considered for the post of Revenue Officer Grade I, it is hazardous to hold that the petitioner''s case was so considered. Indeed the burden of the reply was that the petitioner was not eligible for appointment as Revenue Officer Grade I, as he was not holding the post of Revenue Officer Grade I substantively on 31-3-60. I have already dealt with the question as to what was the substantive rank of the petitioner on 31-3-60 and that alone is the basis for determination of the question of eligibility. It is only two factors that enter the consideration of one''s eligibility ; the first one is the post held by him, and the second is the status of the municipality. Pay scales are foreign to consideration of eligibility. The status of the Kota Municipality on 31-1-60 was that it was a Class I Municipality being a Municipal counsel. Therefore, I have no manner of doubt that the petitioner was eligible for consideration for the post of a Revenue Officer Grade I in the Municipal Service.

6. In the result, therefore, I hold that the order Ex 4 is bad visa-vis the petitioner. I may observe here that of the three persons included as Revenue Officer Grade I, Shri Ganga Dass is not a party and he had also retired. The other two persons are, as mentioned above, Shri Chaitanya Giri and Shri Mohanlal Sharma. Learned Additional Government Advocate submits that the petitioner too has been promoted as Revenue Officer Grade I, but that is only in officiating capacity. Therefore, the question of his fixation in Grade I as a result of integration has yet to be dealt with.

7. I, therefore, allow the writ petition in part. It is dismissed against respondents Nos. 3 to 12, but it is allowed against the remaining respondents and it is ordered that the case of the petitioner shall be considered for appointed as Grade I Revenue Officer in the Municipal Service along with those of respondents Nos. 13 and 14. Servashri Chaitanya Giri and Mohanlal Sharma, respectively.

8. The parties are left to bear their own costs.