
(2009) 12 RAJ CK 0031
In the Rajasthan High Court

Mahendra Kumar Sharma

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision : 03-12-2009

Acts Referred:

Constitution of India, 1950 — Article 14

Rajasthan Subordinate Offices Ministerial Staff Service Rules, 1957 — Rule 25(10)

Citation : (2010) 1 WLN 192

Hon'ble Judges : Ajay Rastogi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ajay Rastogi, J.—Instant petition has been filed by petitioner assailing order Ann. 6 Date 9.02.1996 whereby services of the petitioner were terminated from the post of LDC which he was holding on daily wages basis.

2. This case has slightly chequered history and this is a second round of litigation of the writ petitioner as per material which has come on record. The petitioner was initially appointed as LDC on daily wages basis on 15th November, 1985. However, his services were terminated in the Month of October, 1987 and this was assailed by filing CWP No. 726/88 before the Main Seat at Jodhpur which was decided on 5th February, 1993 in the light of judgment of Hon'ble Supreme Court in Surendra Kumar Gyani Vs. State of Rajasthan and Another, . Hon'ble Supreme Court observed as under:

In our view, it is only just and proper if a pragmatic and sympathetic consideration is made in respect of the appellant and the other petitioners in the Special Leave Petitions so that if they have got the requisite qualifications like similarly circumstanced persons being eligible for appointment and/or regularisation they also should be considered for appointment and for regularisation against the available vacancies so that useful service rendered by them in past may get a proper recognition. It is reasonably expected that State Government should give an anxious and sympathetic consideration to the

appellant and the petitioners in the Special Leave Petitions in the matter of appointment in the available vacancies according to the seniority and the length of service rendered by such persons as Daily Rated Lower Division Clerks in the said State Insurance and Provident Fund Department by making appropriate provisions.

3. In the light of judgment referred to supra, this Court disposed of the writ petition preferred by petitioner - in pursuance thereof, he was reinstated in service vide order Ann. 2 Date: 8.07.1993, but by later order Date 19.02.1996 [Ann.6], his services were terminated on the premise that persons regularly selected through RPSC as LDC are made available. It will be relevant to mention that one Shri Anil Kumar Sharma, who too was terminated along with petitioner and his name finds place at Serial No. 20 in the order impugned date 19.02.1996. After long litigation, matter went up to the Apex Court and it is reported in Anil K. Sharma Vs. State Insurance and GPF Deptt. and Another, in pursuance thereof, it has been informed that Anil Kumar Sharma has been reinstated in service.

4. Counsel for petitioner submits that respondent-State has failed to take note of amended provision of Sub-rule (10) of Rule 25 of Rajasthan Subordinate Offices Ministerial Staff Service Rules, 1957. According to which, those who are working for the period from 1st January, 1985 to 31st March, 1990 as Junior Clerk on ad hoc or daily wages basis, were entitled to be appointed on regular basis provided they pass efficiency examination within three years to be conducted by Head of the Department concerned according to syllabus prescribed in Para IV of Schedule I. Counsel further submits that once petitioner stood reinstated in service vide order Ann. 2 date 08.07.1993, he was entitled to seek protection of amended provision of Sub-rule (10) of Rule 25 of the Rules and in such circumstances, terminating his services without affording opportunity to qualify the efficiency examination, is arbitrary & violative of Article 14 of the Constitution of India.

5. Respondents have filed reply to the writ petition. However, facts are not in dispute. Counsel for respondents in support thereof, further submits that effective date was the date of notification which is 12th October, 1992 and indisputably, the petitioner was not in service. As such, he was not entitled to seek any protection of amended provision of Sub-rule (10) of Rule 25 of the Rules. Counsel further submits that petitioner being working on daily wages basis, is otherwise not entitled to be regularized and this practice has been deprecated by Hon"ble Supreme Court Consistently in catena of decisions.

6. I have heard Counsel for parties and perused the material on record.

7. The controversy raised in the instant petition has been dealt with by Hon"ble Supreme Court in Anil K. Sharma v. State Insurance & GPF Deptt. [supra]. Relevant Para 4 whereof is reproduced as under:

In view of the rival submissions, the only question that arises for consideration

is, whether in the facts and circumstances of the present case, the appellant was entitled to the benefit of being considered under the amended provisions of Sub-rule (10) of Rule 25? As has been stated earlier, the amended provisions conferred a right of consideration for regularisation of ad hoc or daily wage junior employees who had been appointed between 01.01.1985 and 31.03.1990, it is undoubtedly true that the amended provision applies to all those who were in service on the date the amendment came into force i.e. 12th of October, 1992 and on that date the appellant was obviously not in service. But by virtue of the judgment of the learned Single Judge of the Rajasthan High Court, he having been deemed to be in service w.e.f. 1988, the right flowing from the statutory provisions as amended cannot be denied to the appellant notwithstanding the fact that the High Court itself had indicated that he could be terminated the moment candidates duly selected by the Rajasthan Public Service Commission are available. It is obvious that the High Court passed the impugned direction earlier not being aware of the fact that the rules have been amended in the meantime. At any rate, the status of the appellant pursuant to the order of the High Court would not be altered in any way and, therefore, the so-called deemed in service from 1988 would entitle him for being considered for regularisation under the amended provisions of statutory rules.

8. What has been submitted by Counsel for respondent-State is of no substance for the reason that once his termination was set aside and was reinstated, certainly by legal fiction he was treated to be in service on the date when amendment was made vide notification dated 2.10.1992 and in opinion of this Court, he too was entitled to be considered in terms of amended provisions of Sub-rule (10) of Rule 25 of the Rules.

9. Consequently, in the light of judgment of apex court referred to supra, writ petition stands allowed. Order date. 19.02.1996 [Ann. 6], so far as it relates to the petitioner is concerned, is hereby quashed and set aside. Respondents are directed to reinstate the petitioner in service and may be considered in terms of Rule 25(10) of Rules, 1957. However, he will be entitled for notional fixation of pay and other benefits to which he is entitled for under law, but, would not be entitled for any back wages for the intervening period during which he had not worked. Respondents are directed to ensure compliance of the order within three months. No costs.