
(2015) 12 RAJ CK 0031

In the Rajasthan High Court

Case No : Civil Writ Petition Nos. 3515, 2421, 3465 and 2993/2001

Mahendra Singh and Others

APPELLANT

Vs

State of Raj. and Others

RESPONDENT

Date of Decision : 15-12-2015

Acts Referred:

Citation : (2015) 12 RAJ CK 0031

Hon'ble Judges : Arun Bhansali, J.

Bench : Single Bench

Advocate : Trilok Joshi and Mukesh Rajpurohit, for the Appellant; Mukesh Dave, Addl. Govt. Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Arun Bhansali, J.—These writ petitions have been filed by the petitioners aggrieved against order dated 02.03.2001 passed by Rajasthan Civil Services Appellate Tribunal, Rajasthan Jaipur ("the Tribunal"), whereby, the appeals filed by the petitioners have been dismissed.

2. The petitioners, who were working on various posts, were promoted from time to time and were also accorded selection grade pursuant to the Circular dated 25.01.1992; whereafter when the petitioners were offered promotion on the next higher post, they chose to forgo the said promotion; on account of forgoing the promotion, the respondents based on the Circular dated 04.12.1996, which dealt with the aspect of forgoing of promotion by the persons, who had been granted selection grade on account of stagnation under Circular dated 25.01.1992, the selection scale granted to the petitioners were withdrawn.

3. The Tribunal after hearing the parties and on consideration of the Circular dated 04.12.1996 came to the conclusion that in terms of the Circular, the order was rightly passed and the same did not call for any interference and dismissed the appeals.

4. It is submitted by learned counsel for the petitioners that the present writ

petitions are squarely covered by order of this Court in *Usman Gani v. State of Raj. & Ors.*: S.B. Civil Writ Petition No. 3237/1998, decided on May 16, 2001, which order has been upheld in *The State of Rajasthan & Ors. v. Usman Gani*: D.B. Civil Special Appeal No. 588/2001, decided on December 08, 2009.

5. Learned counsel for the respondents submits that the judgment in the case of *Usman Gani (supra)*, though deals with the same Circular, the same has no application to the facts of the present cases and, therefore, the writ petitions deserve to be dismissed.

6. I have considered the submissions made on either side and have perused the material placed on record.

7. It would be appropriate to notice that the posts, on which, the petitioners were granted appointment and were promoted/offered promotion from time to time:--

8. From the above table it is apparent that the petitioners were granted 2-3 promotions from time to time and when the 3-4 promotion was offered, they chose to forgo the same; the petitioners were already accorded the second/third selection grade in terms of Circular dated 25.01.1992. The relevant part of the Circular dated 04.12.1996, which was brought in to check the tendency of forgoing the promotions, reads as under:--

"As a result of these provisions the tendency of forgoing the promotions is growing on various personal consideration of the respective employees. Difficulties are being experienced by the various appointing authorities in filling the promotion posts from the competent and qualified persons and consequently the performance of the Government work is being adversely affected."

"To resolve this problem, the matter has been considered in detail and in partial modification of the aforesaid order the Governor is pleased to order that Government servant who is drawing pay in second or third selection grade if on his actual promotion to second/third promotion post forgoes the promotion the benefit of second and/third selection grade, as the case may be, shall be withdrawn from the date he forgoes the promotion. The pay of such an employee shall be refixed either in pay scale of the first promotion post or in the first selection grade or in pay scale of second promotion post, at this stage he would have drawn had he not been granted second and/third selection grade(s), as the case may be.

2. The Governor is further pleased to order that the Government servant who had foregone the second or third promotion before issue of this order and is drawing pay either in the second or third selection grade the benefit of second and/third selection grade, as the case may be shall not be withdrawn, and in case such a Government servant is again offered promotion after issue of this order, the benefit of second and/third selection grade shall be withdrawn from the date he refuses to accept the promotion. The pay of such an employee shall

be refixed either in pay scale of the first promotion post or in the first selection grade or in pay scale of the second promotion post, at the stage he would have drawn had he not been granted second and/third selection grade(s) as the case may be."

9. From the above Circular, it is apparent that Government servant who is drawing pay in second or third selection grade, if on his actual promotion to second/third promotion post, forgoes the promotion the benefit of second and/third selection grade, as the case may be, shall be withdrawn from the date he forgoes the promotion.

10. The stipulation of the Circular is thus clear, wherein, if in case of grant of second or third promotion, the government servant forgoes the promotion after having availed the second/third selection grade, his second/third selection grade is liable to be withdrawn.

11. Admittedly, in the present case all the four petitioners were offered second/third promotion post and they all chose to forgo the said promotion post and, therefore, in terms of the said Circular, it cannot be said that the said benefit was wrongly withdrawn from the petitioners and they were not covered under the said provision.

12. In so far as the case of Usman Gani (supra) is concerned, a bare look at the orders clearly reveal that he was appointed on the post of LDC and was offered promotion as UDC, which was his first promotion only and, as such, in view of the stipulation noted hereinbefore, i.e. applicability of Circular dated 04.12.1996 only in case of forgoing second and third promotional post, it was held by the learned Single Judge and the Division Bench that the Circular was not applicable.

13. The relevant part of the Division Bench judgment reads as under:--

"This fact is not in dispute that the writ petitioner was offered promotion only once and that is, in the year 1997 and no second promotion has been offered to him, then the petitioner's case falls in clause 2 of Circular dated 4.12.1996 and the petitioner's grant of selection grade could not have been withdrawn."

14. In view of totally different fact scenario in the case of Usman Gani (supra) compared to the case of the petitioners, the said judgment has no application to the facts of the present case.

15. As already noticed hereinbefore, the Circular dated 04.12.1996 clearly applied to the case of the petitioners and under the said Circular, the benefit was rightly withdrawn by the respondents and, therefore, no case for interference is made out in the present writ petitions.

16. Consequently, the writ petitions are dismissed. No order as to costs.