

**(2011) 08 RAJ CK 0122**  
**In the Rajasthan High Court**  
**Case No : Civil Writ Petition No. 6596 of 2007**

|                               |    |            |
|-------------------------------|----|------------|
| Mohammed Islam Kureshi        | Vs | APPELLANT  |
| State of Rajasthan and Others |    | RESPONDENT |

**Date of Decision :** 17-08-2011

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227

**Citation :** (2012) 1 RLW 850

**Hon'ble Judges :** Gopal Krishan Vyas, J

**Bench :** Single Bench

**Advocate :** P.K. Lohra, for the Appellant; B.L. Bhati and R. Bhati, Dy. Govt. Counsel, for the Respondent

## Judgement

Gopal Krishan Vyas, J.—In this writ petition filed under Articles 226 and 227 of the Constitution of India, the petitioner is challenging impugned order dated 11.7.2005, passed by the Principal, Government Senior Secondary School, Udai Mandir, Jodhpur and order dated 25.7.2005, fixation order Annex. P/12 and prayed that both orders maybe quashed and set aside and respondents may be directed to allow the pay and other emoluments to the petitioner as if both the above orders were never passed and, further, it is prayed that impugned order passed by the Rajasthan Civil Services Appellate Tribunal dated 11.9.2006, Annex. P/3 may be quashed so far as it relates to granting relief to the petitioner up to the date he has forgone his promotion and prayer made in the appeal may be allowed with cost. As per facts of the case, the petitioner entered in the government service on being appointed as Teacher Grade III in Urdu subject vide order dated 18.6.1976. The petitioner acquired B.S.T.C. training course with due permission of the department and also prosecuted higher studies of Master's Degree in Urdu subject in the year 1988.

2. The State Government granted selection scale to the government employees vide notification dated 25.1.1992 and, in pursuance of that, the petitioner was allowed first selection scale with effect from 1985 vide order dated 23.9.1994

and second selection scale after completion of 18 years of service vide order dated 23.9.1994.

3. The petitioner was promoted as Teacher Grade-II (General) vide order dated 11.5.2000 but not as Teacher Grade-II (minority language) whereas the petitioner being appointed as Urdu teacher was aspirant for promotion as Teacher Grade-II in Urdu subject. For the said reason, the petitioner filed an application before the authorities that as per his appointment on the post of Teacher Grade-III in Urdu subject he is entitled to be promoted as Senior Teacher in Urdu subject, therefore, he will not join the promotional post as Grade-II and his legitimate claim of promotion is on the post of Senior Teacher in Urdu subject, therefore, he may be permitted to forgo the promotion opportunity under protest.

4. In the aforesaid circumstances, the petitioner did not join the promotion post and petitioner and two other incumbents preferred an appeal before the Rajasthan Civil Services Appellate Tribunal, Jaipur to promote them on the post of Teacher Grade-II in minority language. Said appeal was registered as Appeal No. 526/2000. The appeal so filed by the petitioner and two other incumbents for granting promotion on the post of Teacher Grade-II in minority language was however rejected vide order dated 27.8.2002; but, while rejecting the appeal, it was observed in the order dated 27.8.2002 that appellants are specialists of minority language, therefore, the respondents should take care to post them in any school where the minority language in which the appellants are experts are taught. But, unfortunately, despite representation filed as per observations made by the Tribunal no steps were taken by the respondents till 2005 to post the petitioner in an institution where the minority language was taught.

5. Thereafter, petitioner was allowed to draw salary which he was drawing after granting second selection-scale but, all of a sudden, an order was passed on 11.7.2005 by respondent No. 3 whereby the petitioner was informed that as per audit objection he has not availed the opportunity of promotion, therefore, in view of the Finance Department order dated 4.12.1996 the second selection-scale which is allowed after completion of 18 years of service is not permissible with effect from the date he has forgone the promotion, as such the second selection scale is to be withdrawn and recovery will be made from his salary.

6. In pursuance of the above order dated 11.7.2005, consequential order of fixation was also made on 25.7.2005 and both these orders were challenged by way of filing writ petition before this Court because without providing any opportunity of hearing both the above orders were passed.

7. The writ petition filed by the petitioner was registered as S.B. Civil Writ Petition No. 5787/2005 and, at the threshold, the writ petition was admitted and operation and effect of the orders impugned therein was stayed by this Court; but, when the matter came up for confirmation of the interim order granted by this Court, the petitioner was relegated to avail alternate remedy before the

Rajasthan Civil Services Appellate Tribunal, Jaipur vide order dated 21.4.2006. After dismissal of the writ petition for availing the alternate remedy the petitioner preferred appeal before the Rajasthan Civil Services Appellate Tribunal, Jaipur and petitioner's appeal was registered as Appeal No. 72/2006, in which, the petitioner assailed the impugned orders and questioned the legality of both the orders.

8. The appeal preferred by the petitioner before the Tribunal came up for admission on 24.5.2006 and the Tribunal admitted the appeal for hearing but rejected the prayer of interim relief. Feeling aggrieved by order dated 24.5.2006 the petitioner again filed S.B. Civil Writ Petition No. 3151/2006 before this Court and co-ordinate Bench of this Court disposed of the said writ petition vide order dated 12.7.2006 granting interim relief to the petitioner during the pendency of the appeal. The petitioner thereafter perused his appeal before the Tribunal and during pendency of the appeal the stay order passed by this Court remained in existence.

9. Before the Tribunal, no reply was filed by respondent No. 2 to 5, therefore, obviously the allegations contained by the petitioner were never refuted on behalf of the respondents; but, ultimately the Tribunal vide judgment dated 11.9.2006 partly allowed the appeal filed by the petitioner and while quashing the recovery pursuant to the impugned order till the petitioner has foregone his promotion but no relief was granted to the petitioner by the Tribunal for subsequent order of recovery from the salary of the petitioner.

10. The petitioner, in this writ petition, is challenging validity of order dated 11.9.2006 passed by the Tribunal and prayed for quashing the same.

11. Learned counsel for the petitioner, first of all, submits that purpose of granting selection scale is to remove financial stagnation of the employees. Admittedly, till promotion order was passed for the first time in the year 2000 no promotion was made by the respondents since 1976. According to learned counsel for the petitioner, when the petitioner was appointed as Teacher Grade-III in minority language, then, obviously he was to be promoted as teacher Grade-II in Urdu minority language but, instead of providing promotion to the petitioner on the post of Teacher Grade-11 in Urdu language the petitioner was promoted as General II-Grade Teacher. The petitioner however, under protest refused to join on the promotional post and, thereafter, when in appeal filed by the petitioner certain observations were made by the Tribunal to post him in a school where Urdu subject is available, then too, no orders were passed by the respondents and abruptly, on the basis of objection raised by the audit, the impugned order was passed by the head Master, Government Upper Primary School, Udai mandir (Jodhpur). As per petitioner, till today, there is no order of cancellation of the order of promotion but only assertion was made in the promotion order that in the event of foregoing promotion re-fixation may be made in accordance with order dated 4.12.1996.

12. Learned counsel for the petitioner submits that the petitioner enjoyed the benefit of second selection scale up to the year 2005 and, in the year 2005, vide the impugned order dated 11.7.2005 the respondents passed an order to rescind the benefit of second selection-scale which is not permissible under law because up to July 2005 the respondents allowed the petitioner to draw salary which he was drawing after being granted second selection scale. Learned counsel for the petitioner submits that in whole of the service tenure since 1976 the petitioner was not granted promotion and for the first time, the petitioner was granted promotion in the year 2000 as Teacher Grade-II (General) and, for cogent and valid reasons, the petitioner did not avail the promotion, therefore, rescinding the selection-scale is not justified.

13. Learned counsel for the petitioner further submits that as per rules if any person foregoes the promotion, then, he is required to be considered again for promotion after one year; but, in the case of the petitioner, his candidature was not considered after one year, therefore, it cannot be said that petitioner has purposefully not availed the promotional post. Therefore, it is prayed that order dated 11.7.2005 passed by the Principal, Government Senior Secondary School, Udai Mandir, Jodhpur and consequent fixation order may be quashed and order of Tribunal dated 11.9.2006, Annex. P/3 may also be quashed and set aside so far as it relates to granting relief to the petitioner up to the date he has foregone the promotion and respondents may be directed to allow the benefit of second selection-scale to the petitioner till attaining the age of superannuation.

14. In support of above, claim, learned counsel for the petitioner has invited my attention towards judgment rendered by the Division Bench of this Court in D.B. Civil Special Appeal No. 588/2011, decided on 8.12.2009.

15. Learned Government Counsel vehemently opposed the prayer of the petitioner in view of the fact that Finance Department, Government of Rajasthan issued order dated 4.12.1996, in which, it is provided that tendency of foregoing the promotion is growing on various personal consideration of the respective employees and difficulties are being experienced by the various appointing authorities in filling the promotion post from the competent and qualified persons and consequently the performance of the Government work is being adversely affected. Therefore, it is decided by the Government that in the event of foregoing promotion by the employee selection-scale granted to him shall be withdrawn. As such there is no error in the action taken by the respondent department because admittedly the petitioner did not join the promotional post, therefore, no interference is required in this writ petition.

16. After hearing both the parties, I have perused entire record of the case and also perused judgment rendered by the Division Bench of this Court in D.B. Civil Special Appeal (W) No. 588/2001, dated 8.12.2009.

17. It is admitted position of the case that petitioner was appointed as Urdu Teacher on the basis of his qualification in the year 1976 and, after obtaining

permission while in service from the respondent Department the petitioner acquired qualification up to Post Graduate in Urdu subject; meaning thereby, the petitioner was possessing qualification of Urdu subject, therefore, obviously, in the event of promotion as Teacher Grade-II (General) under protest he showed his inability to work as Teacher Grade-II (General) and made prayer for promoting him as Teacher Grade-II in minority language (Urdu) subject. Admittedly, the prayer of the petitioner was not accepted by the Department knowing it well that the petitioner was initially appointed as Teacher Grade-III in Urdu language subject as minority language teacher . It is also admitted position of the case that in pursuance of order dated 25.1.1992 the petitioner was granted selection scales upon completion of 9 and 18 years of service. The petitioner was drawing his salary after being allowed the second selection-scale since 1949; but, abruptly when he refused to go on promotion upon just and fair reason, the impugned order was passed after five years from the date of foregoing promotion. It is also worthwhile to observe that in whole service tenure only once the petitioner was offered promotion. In the judgment rendered by the Division Bench in D.B. Civil Special Appeal (Writ) No. 588/2001, decided on 8.12.2009, following adjudication has been made:

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

In view of the above, the learned Single Judge rightly quashed the order dated 22.11.1997. Hence, we do not find any merit in this appeal and the same is hereby dismissed.

18. Admittedly, in this case, only once the petitioner was offered the promotion on the post of Teacher Grade-II (General) and the same was not availed by the petitioner or the reason that he was initially appointed as Teacher Grade-III in Urdu subject, therefore, if a person is appointed in the minority language school on the basis of his qualification in the minority language subject, then, it is expected from the welfare State to post the petitioner in a school where the said minority language subject is taught. In this case, although in the judgment dated 27.8.2002 the Tribunal made observations in appeal No. 525/2000 filed by the petitioner for posting the petitioner in an institution where his subject of teaching is taught but no order for posting the petitioner in any minority language school was passed by the respondents; meaning thereby, without making compliance of order of the Tribunal the respondents strictly complied with the notification dated 4.12.1996, in which, it was provided that in the event of foregoing promotion the selection scale granted already may be withdrawn. But, at the time of taking action no other facts and circumstances were taken into consideration for which the petitioner refused to join duty on the promotional post. In appeal No. 525/2000 decided on 27.8.2002 by the Rajasthan Civil Services Appellate Tribunal, following order was passed:

19. In this view of the matter, as per the Division Bench judgment rendered in Usman Gani's case, I am of the opinion that order of rescinding the benefit of second selection scale from the petitioner is not proper, Therefore, while following the adjudication made by the Division Bench of this Court upon the fact that the petitioner was also offered promotion once, I deem it just and proper to quash impugned orders dated 11.7.2005 passed by the Principal, Government Senior Secondary School, Udai Mandir, Jodhpur and subsequent order of fixation and, so also, judgment of the Rajasthan Civil Services Appellate Tribunal, Jaipur dated 11.9.2006 is also quashed to the extent of not granting the benefit to the petitioner in toto. 20. Accordingly, this writ petition is allowed. Order impugned dated 11.7.2005 passed by the respondent No. 4 and subsequent order dated 25.7.2005 of fixation are quashed and aside. Consequently, order dated 11.9.2006 passed by the RCS Appellate Tribunal, Jaipur in petitioner's appeal is quashed and set aside to the extent of not maintaining benefit of the second selection scale to the petitioner in toto. It is ordered that second selection scale granted to the petitioner shall not be rescinded and petitioner shall be allowed to draw his salary in the second selection-scale till his superannuation which has come abut during the pendency of this writ petition with effect from 30.9.2010. Further, the respondents are directed to make all fixations of the petitioner's salary as if second selection scale was not at all withdrawn and, thereafter, grant all retrial benefits with arrears to the petitioner within a period of three months from the date of receipt of certified copy of this order.

No order as to costs.