
(1992) 01 RAJ CK 0048
In the Rajasthan High Court
Case No : Civil Writ Petition No. 4501 of 1990

Naga Ram Choudhary

APPELLANT

Vs

State of Raj. and Others

RESPONDENT

Date of Decision : 16-01-1992

Acts Referred:

Citation : (1992) 1 WLN 193

Hon'ble Judges : Rajesh Balia, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajesh Balia, J.—On being sponsored by the Employment Exchange, Barmer, petitioner was interviewed & appointed vide order dated 3-9-85 on daily wages of Rs. 11/-per day by Executive Engineer, PHED Circle I, Barmer. This was stated to be fixed term appointment for one month only. But petitioner's services were continued and he is still in service. Further case of the petitioner is that he thereafter has acquired qualification of higher secondary in 1989 and knows typing, he is, therefore, eligible for being appointed as LDC while originally services of the petitioner were utilised as a Helper Gr. II and for some time as Pump Driver, ultimately from 1986 petitioner was in the office of the A.En. PHED Circle II and since then, he is working in the said office and discharging the duties of LDC/Cashier. Annex. 5 dated 3-9-1990 has been produced according to which Addl. Chief Engineer, PHED Jaipur has issued direction in pursuance of the Govt. Notification No. F. 3 (1) DOP/A/22/89 dated 18-12-1989 by which a further proviso to Clause (b) of Sub-rule [1] of Rule 7 of Raj. Subordinate Offices Ministerial Staff Rules, 1957 was added as under-

Notwithstanding anything to the contrary contained in these rules, persons employed on work-charged basis in Public Works Department/Irrigation (Indira Gandhi Nahar Board including Indira Gandhi Nahar Board (Command Area Development) Department/Public Health Engineering Department/Ayurved Department and have put in at least two years continuous service as on 1-4-88

and have passed High School/or Secondary/Praveshika Examination of Board of Secondary Education, Rajasthan or of a Board recognised by the Government may be absorbed once only on the post of LDC on regular basis against the vacant posts of LDC in their respective department to the extent of 50% of the total vacant posts of LDC on 1st April, 1988 after adjudging their suitability by the committee consisting of the following:

(1) Head of the Department or his nominee not below the rank of Additional Chief Engineer/Addl. Head of the Department.

(2) One senior officer not below the rank of Superintending Engineer nominated by the Chief Engineer.

(3) Chief Accounts Officer/Senior Accounts Officer of the concerned department.

The work charged employees who are appointed as LDC shall be made regular after passing the typing test to be held by the Appointing Authority at a speed prescribed in these rules within the period of one year from the date of such appointment.

2. In pursuance of above, information from various departments was sought about such work charged employees from whom work of LDC is being taken and to examine the case for regularisation. By letter Ex. 3 dated 27-6-90 the Assistant Engineer reported that the petitioner is fully eligible and competent to be regularised on the post of LDC who is "presently discharging the functions of LDC and Cashier in the office. On these averments, petitioner has claimed that respondents be directed to regularise petitioner's services on the post of LDC and to fix him in the prescribed pay scale of LDC with consequential benefits of arrears and other service conditions flowing therefrom.

3. Respondents have filed their return in which the facts about the appointment of the petitioner and issuance of Annexs. 2, 3, and 5 dated 10-5-90, 27-6-90 and 3-9-1990 respectively, have not been disputed. However, it has been contended that the petitioner was not appointed as a LDC and unless the petitioner clears the examination of Raj. Public Service Commission, he cannot be appointed as LDC while the current status about discharge of duties of LDC is not disputed. It has been stated by the respondents in their return that petitioner was not discharging independently the work of LDC but he was assisting LDC in discharge of his duties and, therefore, it cannot be said that he was discharging duties of LDC. On these averments, claim of the petitioner has been contested.

4. While it is not disputed that the petitioner was initially appointed as a Helper, it cannot be denied on the face of Annex. 3 that the petitioner is discharging duties of LDC in the office of the A.En. even from the return, it is not apparent that the petitioner is discharging any other duties but that of LDC. To say that the petitioner is not discharging independently the duties of LDC but he is discharging the work assigned to LDC as an Assistant, does not make the work of the petitioner in any manner less than the work of the LDC. Therefore, it is

apparent that while appointment of the petitioner was made on the post of Helper, he has been made to discharge duties of LDC, though exact date from which he was required to discharge the duties of LDC has not come on record. It is true that ordinarily for regular appointment on the post of LDC one has to go through the process of the examination conducted by the Raj. Public Service Commission. However, it is apparent that in relaxation of general criteria, the Govt. has adopted the policy of regularisation for those employees who have worked on work charged and muster roll establishment atleast for a period of two year or more as on 1- 4-88 by absorbing them against 50% vacancies of LDC available in various departments provided they are otherwise eligible to be appointed on the post without going through the regular examination of Rajasthan Public Service Commission. In view of their own decision, petitioner cannot be denied, benefit of it. It is clear that petitioner fulfils all the qualifications, required for the post of LDC and post is also available. The conditions for availing benefit of amendment in Rules by Notification dt. 18-12-1989 are existing in the case of the petitioner as is apparent from Ex.3.

5. My attention has been drawn to two decisions of this Court in Smt. Gulab and Ors. v. State of Raj. and Ors. 1990 (1) RLR 523 and Sunny v. Municipal Board, Sirohi and Anr. reported in 199 WLR (UC) 528 which support petitioner's claim for regularisation and grant of pay in the regular pay scale of LDC.

6. In the aforesaid circumstance, the writ, petition is allowed. The respondents are directed to regularise the petitioner's services on the post of LDC in pursuance of rules as amended by notification dt. 18-12-89 as he fulfils all the conditions laid down therein within a period of three months from today. The petitioner will be placed in the regular pay scale with effect from the date his services are regularised. There will be no order as to costs.