

(2015) 04 RAJ CK 0121

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 453 of 2006

Narain Swarup Sharma

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 16-04-2015

Acts Referred:

Citation : (2015) LabIC 3896 : (2015) 2 RLW 1578

Hon'ble Judges : Sunil Ambwani, J;Veerender Singh Siradhana, J

Bench : Division Bench

Advocate : Rajendra Prasad Sharma, for the Appellant; Dharamveer Tholia, Additional Advocate General, Rajan Prajapati, Varun Choudhary, Sumit Teterwal and Himanshu Tholia, Advocates for the Respondent

Final Decision : Allowed

Judgement

1. We have heard learned counsel appearing for the appellant and Shri Dharamveer Tholia, Additional Advocate General for the State-respondents.
2. This Special Appeal arises out of the judgment of learned Single Judge dated 07.04.2006, in which a grievance raised with regard to counting the period of service, for grant of selection scale, held that 9 years" period for the first selection grade.
3. The representation filed by the appellant dated 18.03.2005 was disposed of on 07.03.2006, on the premise that he had not completed 9 years of service. Learned Single Judge was of the opinion that since during the pendency of the writ petition, the petitioner had completed 9 years of service, he will be free to make a fresh representation to the competent authority, who may consider and dispose of the same within two months.
4. It is admitted that the fresh representation was not filed, and that, this Special Appeal was preferred, on the ground that learned Single Judge ought to have decided the matter on merits, on the facts before him, as the petitioner"s claim was rejected on the earlier representation.

5. It is submitted that the fresh representation would not have served the purpose, as by order dated 07.03.2006, his earlier representation was disposed of, on the premise that he had not completed 9 years of service.

6. A writ petition filed by the petitioner being S.B. Civil Writ Petition No. 970/1996 (Narain Swarup Sharma v. State of Rajasthan and Ors.) was decided by this Court on 13.09.1996, with the following directions:--

"Consequently, the petition is allowed. The respondents are directed to provide appointment to the petitioner on the post of Printer Grade-II w.e.f.6.2.1996. However, the petitioner shall be given notional benefits and his seniority shall be counted from 6.2.1996 but the salary shall be paid from the date he joins. The respondents are directed to issue appointment order within three weeks from the date of certified copy of order is supplied to them. Costs of the petition is made easy in the facts and circumstances of the case."

7. The appointment order was issued, in compliance of the directions dated 13.09.1996, on 25.02.1997. The appointment order was thereafter modified by the Director, by an order dated 27.08.1998, with the stipulation that, in pursuance to the judgment of the Court dated 13.09.1996, the date of appointment is fixed 06.02.1996 for benefit of notional pay and seniority.

8. It is submitted that with the subsequent order dated 27.08.1998, the date of appointment of the petitioner was shifted back to 06.02.1996, in accordance with the directions of the Court, and thus, the denial of the selection grade, on completion of 9 years of service on 07.02.2005, was illegal and arbitrary. Learned Single Judge, on the facts placed before him, ought to have given relief to the petitioner, on the admitted facts, instead of asking him to make a fresh representation.

9. Para 2 and 3 of the order dated 25.01.1992 issued by the State Government, for calculating the period of 9, 18 and 27 years, for grant of selection scales, provide as follows:--

"2.(i) The first selection Grade shall be granted from the day following the day on which one completes service of nine years, provided that the employee has not got one promotion earlier as is available in his existing cadre.

(ii) The Second Selection Grade shall be granted from the day following the day on which one completes service of eighteen years, provided that the employee has not got two promotions earlier as might be available in his existing cadre and the first Selections grade granted to him was lower than the pay scale of Rs. 2200-4000.

(iii) The third Selection Grade shall be granted from the day on which one completes service of twenty seven years, provided that the employee has not got three promotions earlier as first or the second Selection Grade granted to him, as the case may be, was lower than the pay scales of Rs. 2200-4000.

3. The Service of nine, eighteen or twenty seven years, as the case may be shall be counted from the date of first appointment in the existing cadre/service in accordance with the provisions contained in the recruitment Rules.

"Exception"- The admissibility of Selection Grade to Junior Engineer would be on completion of nine, eighteen or twenty seven years of continuous service on the post of Junior Engineer"

Proviso-1. Provided that if an employee subsequent to his appointment to a post in cadre/service, as a result of direct recruitment, is appointed to some other post in the same cadre or any other cadre, service from the date of latter appointment shall be taken into consideration for the purpose of grant of selection Grade.

Proviso-2. Provided further that if an employee subsequent to his first appointment to a post in a cadre/service in accordance with provisions contained in the relevant service rules; is promoted to a post in some other cadre, service from the date of such promotion shall be taken into consideration for the purpose of grant of the selection grade.

Proviso-3. Provided further that in the case of an employee who has been/is declared surplus and absorbed against a new post either in the same or another department excluding absorption on higher post, the service of nine, eighteen or twenty seven years, as the case may be shall be counted for the purpose of grant of selection grade from the date of initial appointment in the Government service in accordance with the provisions contained in the relevant recruitment rules. As a result of counting of service rendered prior to absorption for grant of selection grade, if the pay of a junior Government servant happens to be more than the pay of his senior, no stepping up of pay of senior Government servant shall be permissible.

Provided further that in case of an employee who has been transferred from one department to another department or from one appointing authority to another appointment authority within the same department in public interest or at his own request or while serving in one department of the State Government is recruited directly in other department on the same post, the service of nine, eighteen or twenty seven years, as the case may be, shall be counted for the purpose of grant of selection grade from the date of initial appointment on the same post in accordance with the provisions contained in the relevant recruitment rules. As a result of counting of service rendered in previous department/under previous appointing authority for grant of selection grade, if the pay of a junior Government Servant becomes more than the pay of his senior, no stepping up of pay of senior Government servant shall be permissible."

10. It is submitted by the Additional Advocate General appearing for the State-respondents, that 9, 18 and 27 years, as the case may be, under para 3 of the order, will be counted from the date of first appointment in the existing cadre/service, in accordance with the provisions of the recruitment Rules. The date of

first appointment, according to the State, of the petitioner, was 25.02.1997, and not 06.02.1996. The modification was made only in compliance of the order of the Court, giving notional pay and seniority. According to the Additional Advocate General, the date of first appointment will mean the date, on which a Government servant joins, and not the date, which is mentioned in the appointment order, and certainly not the date with effect from which the notional benefits have been given.

11. In the present case, the petitioner was already in service, when a direction was issued by the Court to give him appointment order. The judgment dated 13.09.1996, provided for giving him notional benefits and seniority from 06.02.1996, but the salary was to be paid from the date he joins. The direction of the High Court was clear in its terms, that the appointment shall be given to the petitioner on the post of Printer Grade-II with effect from 06.02.1996.

12. Para 3 of the Government Order dated 25.01.1992, speaks of counting the service of 9, 18 and 27 years, from the date of first appointment in the existing cadre/service, in accordance with the provisions contained in the recruitment Rules. There is no mention of the date of joining. In our view, the first appointment would mean the issuance of the appointment order, and not the joining, as explained by the Additional Advocate General.

13. In the legal parlance, there is a difference between the terms "appointment" and "joining". A person may be appointed, with a date given for joining, or that, he may join, under certain circumstances, on a later date. The date of joining will however, not shift his date of appointment. Even if the pay and allowances are to be paid from the date of joining, the first appointment will be treated to be the date, given in the appointment letter. The clarification issued by the State Government, for counting the period of 9, 18 and 27 years, for the purposes of selection grades, is from the date of first appointment, and not the date, on which the Government servant joins.

14. In view of the above, the Special Appeal is allowed. The judgment of learned Single Judge is set aside. The respondents are directed to count the period of selection grade, for the purposes of 9 years, from the date of the first appointment i.e. 06.02.1996. All the consequential benefits will be given to the petitioner, by counting the date for grant of selection grade, w.e.f. 06.02.1996.