
(1990) 03 RAJ CK 0001

In the Rajasthan High Court

Case No : Civil Writ Petition No. 3355 of 1938

Narayan Singh

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 06-03-1990

Acts Referred:

Citation : (1990) 1 RLW 140 : (1990) 1 WLN 370

Hon'ble Judges : Milap Chand Jain, Acting C.J.; R.S. Verma, J

Bench : Division Bench

Final Decision : Allowed

Judgement

M.C. Jain, Actg. C.J.

1. By this writ petition the petitioner seeks a declaration that the termination of his services is illegal and that the respondents be directed to reinstate the petitioner with all consequential benefits.

2. The petitioner's case is that the petitioner was given appointment on the post of Forest Guard vide order dated 17-11-1988 in pursuance of his selection by the Selection Board. The petitioner's name was forwarded by the Employment Exchange, Chittorgarh in pursuance of the advertisement dated November 24, 1987. The petitioner's appointment was made after regular selection in Famine Relief Work. The petitioner was posted vide order Anx. 2 dated November 23, 1988 in the Office of the Assistant Conservator of Forests Patrolling Party, Pratapgarh. Subsequently, the Government created permanent posts of Forest Guards and out of the list which was prepared by the Selection Board, on the basis of which appointment orders were issued, appointments were made vide order Anx. 3 dated May 26, 1988. The petitioner was not given appointment.

3. The respondent's case is that the petitioner was not given appointment as he was over age at that time.

4. The question that arises for consideration is as to whether appointment could

be validly refused to the petitioner on the ground that he has become over age. It may be stated that appointments were given out of the select list and in that list, Anx. I, the petitioner's name stands at SI. No. 1. Admittedly, when the applications were invited, he was eligible, fulfilling the requisite age limit. When appointments were to be given against the sanctioned permanent posts out of the selected list, the petitioner's candidature could not be rejected on the ground that he has become over age. The petitioner was a regularly selected candidate. It was a substantive appointment against a temporary post. The petitioner would be entitled to get himself substantively appointed against the permanent post as and when the same is created and his services could not have been terminated.

5. In SBCWP No. 891/84 Madan Lal v. State, decided on November 29, 1984 a select list was prepared and out of the select list subsequently appointments were made. It was observed that out of the same list, the appointments continued to be made, in subsequent years. When the list survived then one, out of the list, could not, be refused appointment. In that case the order is based on survival of the list for subsequent year and it was observed that it was not the case of the respondents that the list was prepared only for the year 1983-84.

6. In the present case it is significant to note that the petitioner was appointed on a temporary post after regular selection. Such appointment could be considered to be a substantive appointment against temporary post and as and when temporary post is converted to permanent post, he would be entitled to be appointed on a permanent post and his services at that stage could not be terminated on the ground that he has become over age. Refusal of the petitioner for being appointed on a permanent post was bad. Others have been appointed on permanent posts who were selected along with the petitioner. The petitioner should have also been treated accordingly and should not have been refused appointment on a permanent post solely on the ground that he became over age at that point of time.

7. Counsel for the petitioner also submitted that the maximum age limit prescribed Under Rule 10 of the Rajasthan Forest Subordinate Service Rules 1963, for Forest Guard as 28 is discriminatory and for other services in the same Rules the prescribed maximum age is 31 years. So the age limit prescribed for Forest Guard Under Rule 10 is discriminatory. The age limit 28 years for Forest Guard and 31 years for others was substituted w.e.f. 28th of September 1984 in Rule 10 of the Rajasthan Forest Subordinate Service Rules 1963. To this extent the rule is bad when it provides two different age limits for Forest Guard and for other services. This age limit of 28 years for Forest Guard is liable to be read down as 31 years. In this view of the matter as well, the petitioner could not have been denied appointment on the post of Forest Guard.

8. For the aforesaid reason, this writ petition deserves to be allowed and we direct the respondents to appoint the petitioner against the permanent post of Forest Guard w.e.f. the date when others were appointed, vide order Anx. 3

dated May 26, 1988 without break in service and the petitioner will also be entitled to all backwages and other consequential benefits.