

(2013) 07 RAJ CK 0212
In the Rajasthan High Court
Case No : Civil Writ Petition No. 9774 of 2011

Nitesh Kumar

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 30-07-2013

Acts Referred:

Citation : (2014) 1 WLN 353

Hon'ble Judges : Vijay Bishnoi, J

Bench : Single Bench

Advocate : Rajesh Shah, for the Appellant; Jamvant Gurjar, for the Respondent

Final Decision : Allowed

Judgement

Vijay Bishnoi, J.—The petitioner has preferred this writ petition while claiming the following reliefs:

(a) by an appropriate writ, order or direction, this petition may kindly be allowed with costs and the respondents may kindly be directed to give appointment to the petitioner to the post of L.D.C. on compassionate grounds under the Rules of 1996 with all consequential benefits from the date of completion of 45 days of submitting the application seeking compassionate appointment with the further direction to the respondents to not to consider the amended qualification as amended in the year 2010 in the case of the petitioner.

(b) Any other appropriate order or direction, which this Hon"ble Court deem just and proper be passed in favour of the petitioner.

(c) Costs of this writ petition may kindly be allowed to the petitioner.

Brief facts of the case are that father of the petitioner Shri Suresh Kumar Singhi, who was working as Veterinary Assistant in the Office of Deputy Director, Animal Husbandry Department, Sirohi, has died on 04.02.2009 in a road accident. After the death of Suresh Kumar Singhi, mother of the petitioner moved an application on 18.02.2009 under the Rajasthan Compassionate Appointment of Dependents

of Deceased Government Servants Rules, 1996 (for short "the Rules of 1996" hereinafter) and made a prayer to appoint the petitioner on the post of Lower Division Clerk. It is to be noted that on 18.02.2009, under the relevant rules, the requisite qualification for appointment on the post of LDC was Secondary pass and the petitioner is possessing the same. The application so made, was forwarded by the Deputy Director, Animal Husbandry Department, Sirohi to the Director, Animal Husbandry Department, Jaipur on 08.04.2009. The Directorate returned the said application along with certain objections, and the said objections were clarified/removed by the Deputy Director, Animal Husbandry Department, Sirohi and the application of the mother of the petitioner for appointing the petitioner on the post of LDC on compassionate ground was again forwarded on 13.07.2009. Thereafter, the mother of the petitioner moved representations on 30.07.2009 and 28.08.2009 and requested the respondents to provide appointment to the petitioner on the post of LDC on compassionate ground. However, nothing had been done by the respondents till the petitioner had received a letter dt. 01.11.2010 from the Deputy Director, Animal Husbandry Department, Sirohi, whereby the petitioner was informed that as the minimum qualification for appointment on the post of LDC has been raised from Secondary to Senior Secondary and other equivalent qualifications and, therefore, the petitioner should apply for the post for which he is eligible. Then the petitioner had submitted a certificate of 12th pass, which is equivalent to Senior Secondary, issued by Jamiya Urdu Aligarh, however, the respondents informed the petitioner that the said qualification is not recognized and, therefore, the petitioner could not be provided appointment on the post of LDC. Thereafter, the petitioner filed an application and requested for appointment on the post of Class-IV Employee in the Animal Husbandry Department. The Deputy Director, Animal Husbandry Department, Sirohi forwarded the said application of the petitioner to the Directorate, Animal Husbandry Department while stating that no post of Class-IV Employee is vacant in the said office. Thereafter on 28.06.2011, the Deputy Director wrote a letter to the petitioner and informed him that the Joint Director, Animal Husbandry Department, Jodhpur gave a direction that since no post of Class-IV Employee is vacant in Jodhpur Division, the petitioner be appointed on the post of Jaldhari/Safaikarta and, therefore, the petitioner should submit his consent for appointment on the post of Jaldhari. It is claimed by the petitioner that under compulsion, he gave the consent in writing to the respondents for appointment on the post of Jaldhari. The Joint Director, Animal Husbandry Department, Jodhpur therefore, issued a letter dt. 12.07.2011 and directed the Deputy Director, Animal Husbandry Department, Pali to provide the appointment to the petitioner on the post of Jaldhari in any of the Veterinary Hospital, names of which are mentioned in the letter dt. 12.07.2011.

2. The petitioner, thereafter, moved a representation on 25.07.2011 and withdrew his consent for providing appointment to him as Jaldhari and claimed that when the petitioner applied for the post of LDC, he was possessing the requisite qualification and, therefore, he may be provided appointment on the

post of LDC only. The said representation of the petitioner was forwarded by the Deputy Director, Animal Husbandry Department, Sirohi to the Directorate, Animal Husbandry, Jaipur on 27.07.2011, however, no relief has been granted to the petitioner. Hence, the petitioner has preferred this writ petition.

3. A reply to the writ petition has been filed on behalf of the respondents. It is claimed that in the case of compassionate appointment, eligibility of a person is to be seen on the date of appointment and not on the date when the application for compassionate appointment was preferred. It is contended that since the petitioner is not possessing the requisite qualification for appointment on the post of LDC, he cannot be provided appointment on the said post. It is further claimed that the appointment was provided to the petitioner on the post of Jaldhari/Safaikarta but the petitioner had withdrawn his consent for appointment on the post of said post and, therefore, now the appointment cannot be provided to the petitioner on any post.

4. It is to be noted that in reply, it has nowhere been stated that at the time when the application was moved for appointment of the petitioner on the post of LDC, no vacant post of LDC was available with the respondents.

5. The learned counsel for the petitioner has argued that at the time when the petitioner had applied for appointment on the post of LDC on compassionate ground, he was possessing the requisite qualification but as the respondents had not acted diligently in accordance with the spirit of the Rules of 1996, the petitioner was deprived from the appointment on compassionate ground on the post of LDC. It is further argued that the amendment in the requisite Rules were introduced only on 05.07.2010, whereas the application for compassionate appointment was moved on behalf of the petitioner on 18.02.2009, but the same remained pending with the respondents for about one year and four months and, therefore, the action of the respondents in not providing appointment to the petitioner on the post of LDC is not in accordance with law.

6. The learned counsel for the petitioner has placed reliance on the decision of this Court in Pappa Ram vs. State of Rajasthan & Ors. (SBCWP No. 1923/2011) decided on 22.08.2012 and has prayed that the case of the petitioner is squarely covered by the said decision and, therefore, the writ petition of the petitioner may be allowed. It is informed by the learned counsel for the petitioner that against the order dt. 22.08.2012, a special appeal (D.B. Civil Special Appeal (Writ) No. 869/2012, State of Rajasthan & Ors. vs. Pappa Ram) was preferred on behalf of the State Government, which came to be dismissed vide order dt. 04.07.2013.

7. The learned counsel for the respondent has fairly conceded that the issue involved in this writ petition is squarely covered by the decisions of this Court in Pappa Ram vs. State of Rajasthan & Ors. (SBCWP No. 1923/2011) and State of Rajasthan & Ors. vs. Pappa Ram (D.B. Civil Special Appeal (Writ) No. 869/2012).

8. In Pappa Ram vs. State of Rajasthan & Ors. (supra), this Court has observed

as under:

The Rules of 1996 were framed with an intention to provide adequate assistance and help to the family of a government servant died untimely. The hand of help in such harness plays a very vital role to rehabilitate and settle the family after death of the sole bread-earner. In the instant matter the respondents instead of acting expeditiously as per the intention and thrust of the Rules of 1996, kept the matter pending for more than a year for no just and valid reason. If the respondents would have acted with required pace then the petitioner would have been employed as Lower Division Clerk in the year 2009 itself or at least prior to 05.07.2010 while possessing the requisite eligibility for appointment on the post concerned.

9. In the case in hand also, the application preferred by the mother of the petitioner for providing appointment to the petitioner on the post of LDC was kept pending with the respondents for no just and valid reasons and, therefore, the aforesaid decision of this Court in Pappa Ram vs. State of Rajasthan & Ors. (supra) fully applies in the case of the petitioner, thus, it is fit case wherein a direction can be issued to the respondents to provide appointment to the petitioner on the post of LDC.

10. As pointed out earlier, the respondents have not come out with the case in reply that the post of LDC is not available with the respondents and during the course of arguments also, the counsel for the respondents has claimed that no post of LDC is available with them, therefore, it can be presumed that post of LDC is available with the respondents but now the question remains that from which date, the petitioner can be appointed on the said post. It is observed that though the petitioner had given his consent for appointment on the post of Jaldhari on 30.06.2011 and he was directed to appoint on the said post by the Joint Director, Animal Husbandry Department, Jodhpur vide order dt. 12.07.2011 but the petitioner had withdrawn his consent on 25.07.2011 through a representation and, therefore, in such circumstances it is appropriate that the appointment should be provided to the petitioner from the date of the said representation i.e. 25.07.2011. Accordingly, the writ petition is allowed and the respondents are directed to provide appointment to the petitioner on the post of LDC in accordance with Rules of 1996 from 25.07.2011. However, it is made clear that the petitioner shall be entitled for all consequential benefits except the payment of actual wages.