
(2010) 02 RAJ CK 0083
In the Rajasthan High Court

Prem Narain Sharma

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 19-02-2010

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (2010) 4 SLR 779

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mohammad Rafiq, J.—This writ petition has been filed by petitioner aggrieved of his supersession by many of his juniors in the matter of promotion to the post of Inspector of Police. Petitioner though was working on the post of Sub Inspector and was posted at Finger Print Bureau, Jaipur. Petitioner was required to appear in departmental examination/qualifying test for promotion to the post of Inspector in terms of Rules 9 and 10 of the Rajasthan Police Subordinate Service Rules, 1989 (for short, "the Rules of 1989"). According to Para 10 of writ petition, he requested the authorities that he be exempted from appearing in such departmental examination by virtue of Rule 18 of the Rajasthan Civil Services (Departmental Examination) Rules, 1959 (for short, "the Rules of 1959"). In view of the fact that he has completed 56 years of age and was shortly due to retirement, he cannot be required to appear in such qualifying examination especially when Rule 18 of the Rules of 1959 makes a provision for exemption from Departmental Examination for those employees who have attained 45 years of age.

2. Petitioner initially approached the Rajasthan Civil Service Appellate Tribunal, Jaipur (for short, "the Tribunal") challenging the syllabus of qualifying test for promotion, but the Tribunal dismissed the appeal by its order dated 08.04.1996 holding that it has no jurisdiction to go into the correctness of the Rules because Rule 29 of the Rules of 1989 empowers the Director General of Police to

prescribe the syllabus. Aggrieved thereby the petitioner approached this Court.

3. In this writ petition, petitioner has taken additional ground that Rule 18 of the Rules of 1959 provides an exemption from appearing in such examination to those employees who have attained the age of 45 years. This writ petition was filed in the year 1997 and during pendency thereof the petitioner has retired on attaining the age of superannuation.

4. Shri Yogesh Gupta, learned Counsel for petitioner, has cited judgment dated 08.02.2006 of a Coordinate Bench of this Court in S.B. Civil Writ Petition No. 6486/2003 Sualal Yadav v. State of Rajasthan and Ors., and submitted that this Court in aforesaid judgment while interpreting Rule 18 of the Rules of 1959 in the context of promotion from the post of Sub Inspector to that of Inspector of Police, where petitioner was reinstated back after his dismissal was set aside by this Court, was examined, and it was held that petitioner could not be required to appear in the examination as he had already crossed the age of 45 years and by virtue of Rule 18 of the Rules of 1959 he was entitled to exemption. Although he was ordered to be granted promotion but the court directed that he shall be only granted notional fixation of seniority for all other purpose but he would not be entitled to actual benefits for the intervening period. His retiral benefits would accordingly be computed.

5. Learned Counsel cited another judgment dated 22.01.2001 of this Court in S.B. Civil Writ Petition No. 2569/1997 Ajay Kumar Sharma v. The Additional Chief Secretary and Ors. in which the dispute was with regard to promotion from the post of Constable to that of Head Constable in the Police Department wherein similar direction was issued because the petitioner therein also had crossed the age of 45 years.

6. Shri S.D. Khaspuria, learned Additional Government Counsel, opposed writ petition and submitted that mere fact that juniors of petitioner were promoted, would not be a justification for this Court to interfere in the matter of promotion because petitioner was also free to appear in qualifying test/ departmental examination. If he failed to appear in such examination, he cannot now complain that he has been superseded by his juniors. Learned Counsel submitted that petitioner was given opportunity but he failed to avail the same. It is contended that the Rules of 1959 cannot be taken to be applicable to the members of police subordinate service which is separately governed by the Rules of 1989. Learned Counsel in this connection referred to Rule 2 of the Rules of 1959 and argued that unless the State Government by specifies by notification about applicability of the Rules of 1959 to those who are governed by the Rules of 1989, the Rules of 1959 could not be applied to the present case by mere analogy. This aspect of the matter has not been examined by the Court in earlier two judgments.

7. Shri Yogesh Gupta, learned Counsel for petitioner, has rejoined and submitted that Sub-rule (14) of Rule 43 of the Rules of 1989 clearly provides that the general conditions of service of member of police service shall be regulated by

any other Rules prescribing such conditions made by the appropriate authority under the proviso to Article 309 of the Constitution of India, and for the time being in force. Since the Rules of 1959 have been promulgated by the Governor of the State in exercise of his powers under proviso to Article 309 of the Constitution of India, the said Rules were rightly applied to the members of the subordinate police service governed by the Rules of 1989 in the decided cases by this Court.

8. Upon hearing learned Counsel for parties and perusing the record, I find that this Court has indeed held Rule 18 of the Rules of 1959 applicable to the members of the police subordinate service governed by the Rules of 1989. Rule 18 inter-alia provides that Government employees who have attained the age of 45 years on the date of appointment to the service for which, the departmental examination is to be conducted are exempted from appearing in the departmental examination.

9. In view of the aforesaid Rules, the petitioner, who was 56 years of age at the time when departmental examination/proficiency test was held, he could not be required to appear in such examination because he was entitled to exemption therefrom. It is not in dispute that he was superseded by his juniors only because he could not qualify the departmental examination which was attributable to the fact that he did not appear in the examination and was claiming exemption therefrom. Action of the respondent requiring the petitioner to appear in the departmental examination cannot therefore be justified.

10. I am therefore inclined to uphold the contention of learned Counsel for petitioner that since Rules of 1959 have also been promulgated by virtue of the powers conferred upon the Governor under Proviso to Article 309 of the Constitution of India, the same would be applicable to the members of the Police Subordinate Service because in Sub-rule (14) of Rule 43 of the Rules of 1989 clearly provides that general conditions of service of the members of police service under the Rules of 1989 shall be regulated by any other Rules prescribing general conditions of service, made by the appropriate authority, under proviso to Article 309 of the Constitution of India, and for the time being in force.

11. In the result, this writ petition is allowed. The petitioner is held entitled to promotion to the post of Inspector of Police with effect from the date his immediate juniors were given promotion thereon. He shall however be entitled to only notional benefits for the intervening period and his retiral/pensionary benefits accordingly be computed and be paid to him with interest at the rate of 6% per annum.

12. Compliance of this judgment be made within a period of three months from the date its copy is produced before the respondents.