
(2012) 10 RAJ CK 0002
In the Rajasthan High Court
Case No : Civil Writ Petition No. 2747 of 2009

Prithvi Singh Ranawat

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 01-10-2012

Acts Referred:

Rajasthan Subordinate Offices Ministerial Staff Service Rules, 1957 — Rule 25(5)

Citation : (2013) LabIC 1060

Hon'ble Judges : Govind Mathur, J

Bench : Single Bench

Advocate : R.S. Saluja, for the Appellant; Mukesh Rajpurohit and Gaurav Audichya, for the Respondent

Judgement

Govind Mathur, J.—This petition for writ is preferred to question correctness, validity and propriety of the judgment dated 5-2-2009 passed by learned Rajasthan Civil Services Appellate Tribunal, Jaipur (Camp-Jodhpur) in Appeal No. 74/2001 preferred by the petitioner for determination of his seniority in the cadre of Lower Division Clerk, vis-a-vis respondent No. 4. The factual matrix necessary to be noticed is that the petitioner entered in the services of the respondent Rajasthan State Institution of Public Administration, Udaipur being employed as Lower Division Clerk on ad hoc basis. As per Rule 25(5) of the Rajasthan Subordinate Offices Ministerial Staff Service Rules, 1957 (hereinafter referred to as "the Rules of 1957") the petitioner qualified screening and a written test on 1-9-1981 for the purpose of regularisation of his service as Lower Division Clerk, accordingly his service stood regularised. An order of confirmation was passed by the competent authority on 24-7-1987. The petitioner prior to confirmation in service was promoted as Upper Division Clerk on ad hoc basis vide an order dated 30-8-1986.

2. Respondent No. 4 Smt. Usha Kewaliya was employed as Lower Division Clerk on 15-11-1976 and she too faced screening and typing test for the purpose of regularisation of her services and qualified the same on 18-11-1980. An order of

confirmation in her favour was passed on 20-2-1981. She sought voluntary transfer from Collectorate, Udaipur to the Rajasthan State Institution of Public Administration, Udaipur and her transfer was made under an order dated 1-8-1984 subject to placement of her seniority below the substantive appointees in the transferred office.

3. A seniority list of the Lower Division Clerks working with the Rajasthan State Institution of Public Administration, Udaipur was notified on 4-10-1993. In the list aforesaid the petitioner was placed on higher pedestal vis-a-vis the respondent No. 4. By acting upon a representation submitted by the respondent No. 4, seniority was assigned to her above the petitioner vide order dated 18-12-2000. She was placed at serial No. 2 and the petitioner was kept at serial No. 3 in the seniority list. Being aggrieved by the same the petitioner preferred a petition for writ before this Court but that came to be dismissed on 23.1.2001 on the count of availability of alternative remedy under the Rajasthan Civil Services (Service Matter) Appellate Tribunal Act, 1976. The petitioner, thus, agitated his cause before the Tribunal by way of filing an appeal, that came to be rejected on 5-2-2009.

4. The submission of counsel for the petitioner is that as per Rule 25(5) of the Rules of 1957 the petitioner qualified screening test on 1-9-1981, therefore, he became a substantive Lower Division Clerk from that day and as such he is to be treated as a permanent employee of the respondent department from the date aforesaid. The respondent No. 4 was transferred to the respondent office on 21-8-1984, therefore, in terms of Rule 27(xi-a) of the Rules of 1957 she is required to be placed at lower pedestal in the seniority list of Lower Division Clerks, who were working in permanent capacity in the office concerned.

5. While meeting with the argument advanced, the submission of counsel for the respondent No. 4 is that the petitioner was confirmed as Lower Division Clerk on 24-7-1987, therefore, as per Rule 27 of the Rules of 1957 his seniority was to be determined from that day only, as such, the seniority was rightly assigned to him by keeping below the respondent No. 4.

6. Heard counsel for the parties.

7. The petitioner at first instance was employed as Lower Division Clerk on ad hoc basis, however, he came to be regularised in service on 1-9-1981 after qualifying the screening test as per Rule 25(5) of the Rules of 1957. On getting regularised, the petitioner was occupying a substantive post by getting employed in accordance with the rules. The Rules of 1957 nowhere prescribes for a period of probation and confirmation in service pertaining to the Lower Division clerks recruited by way of regularisation as a consequent to the screening under Rule 25(5) of the Rules aforesaid. Such regularised employees are required to be treated as confirmed on the post held by them from the date of qualifying the screening and written test. The concept of confirmation under the Rules of 1957 is applicable for direct recruits and not for the Lower Division Clerks employed on

ad hoc basis and got regularised in service as per provisions of Rule 25(5) of the Rules aforesaid. The petitioner being a person recruited to the ministerial service" as a consequent to regularisation as per Rule 25(5) of the Rules of 1957 is a confirmed employee from the date he qualified screening test i.e. 1-9-1981. As such, his confirmation in the cadre of Lower Division clerk was made prior to the confirmation of the respondent No. 4, and on the date of transfer of respondent No. 4 from Collectorate to Rajasthan State Institution of Public Administration he was a confirmed employee, in view of Rule 27 of the Rules of 1957 the petitioner, therefore, is certainly senior than the respondent No. 4 in the cadre of Lower Division Clerks. The Tribunal failed to appreciate this position of the rules and, thus, erred while affirming the seniority list impugned.

8. An argument is also advanced on behalf of the petitioner that the confirmation, in view of the judgment of Hon'ble Supreme Court in the case of Baleshwar Dass and Others Vs. State of Uttar Pradesh and Others, is not a valid criteria for determination of service, but I am not examining the same in view of the finding already arrived.

9. Accordingly, this petition for writ deserves acceptance, hence is allowed. The judgment dated 5-2-2009 passed by Rajasthan Civil Services Appellate Tribunal, Jaipur (Camp-Jodhpur) is quashed. The inter se seniority of the petitioner and the respondent No. 4 is required to be redetermined by the respondents by taking into consideration 1-9-1981 as the date of confirmation of the petitioner in the cadre of Lower Division Clerks. Necessary order in terms of the direction above is required to be passed by the respondents within a period of three months from today. The petitioner shall be entitled for all consequential reliefs. No order to costs.