
(1972) 08 RAJ CK 0005
In the Rajasthan High Court
Case No : Civil Writ Petition No. 175 of 1968

Pyarelal Premi

APPELLANT

Vs

Director of Education (Primary and Secondary) and Others

RESPONDENT

Date of Decision : 28-08-1972

Acts Referred:

Citation : (1972) WLN 618

Hon'ble Judges : P.N. Shinghal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

P.N. Shinghal, J.—The petitioner was appointed as a Senior Teacher in English for Multi-purpose and Higher Secondary Schools, by order Ex. 3 dated July 22, 1957. along with several others. It was an appointment on one year's probation. He was thereafter appointed by promotion as Head Master of High School/ Deputy Inspector of Schools by order Ex. 4 dated June 17, 1960 He continued to serve as Head Master Junior Higher Secondary School, or a Deputy Inspector of Schools, until 1966, when he proceeded on leave to Agra for the purpose of obtaining the degree of Master of Education. While he was in Agra in June 1967, after completing the M.Ed. course, he received telegraphic order Ex 7 dated June 25, 1967, from the Directorate of Education, by which he was informed that he had been promoted and posted" as Head Master. Higher Secondary School, Dabri, and should join there on the forenoon of July 1. That telegraphic order was confirmed by post, and the Additional Director of Primary and Secondary Education issued formal order Ex. 9 dated June 26, 1967, regarding the petitioner's appointment as Head Master of the Higher Secondary School at Dabri. It was, however, stated in the order that the appointment was for a period of six months or "till a candidate selected by the D P.C. joins" whichever was earlier. It was further stated that the promotion had been granted temporarily on the basis of seniority, in pursuance of Rule 27 of the Rajasthan Education Service Rules, 1966, hereinafter referred to as "the Routes". It appears that the

petitioner wrote back in reply on June 19, 1967, and the Additional Director issued order Ex. 10, dated June 27, 1967 cancelling his appointment as Head Master, Dabri, The petitioner felt aggrieved and made a representation (Ex 12) on August 6, 1967, and pressed it by his reminder Ex 14 dated October 1, 1967. The Additional Director then sent memorandum Ex. 15, dated November 4, 1967, to the petitioner, informing him that his promotion was not possible because he had not been selected by the Departmental Promotion Committee for the post of Head Master Higher Secondary School/ BSTC Training School. The petitioner could not therefore secure his promotion and has filed the present writ petition to challenge the cancellation of the aforesaid order Ex 9 dated June 26, 1967 by the order dated June 27, 1967, referred to above. A number of grounds have been taken in the petition but I shall refer to those of the grounds which have been selected by the petitioner's learned Counsel for my consideration.

2. It may be mentioned that the State of Rajasthan and the Director of Education have traversed the petitioner's claim altogether, and I shall refer to these portions of their joint reply which bear on the controversy before me. It may be mentioned at the outset, however, that although the petitioner challenged the vires of the Rule 25A of the Rules in the writ petition, his learned Counsel has expressly stated that he would not like to press that point at all.

3. It has been pointed out by the learned Counsel for the petitioner that the petitioner was duly qualified for appointment as Head Master of the Higher Secondary School, Dabri, for this has been admitted by the respondents in their reply and the aforesaid order of appointment Ex 9 dated June 26, 1967. The learned Counsel has further pointed out that the petitioner was informed under the endorsement at the foot of order Ex, 9 that while he might join his new posting on the forenoon of July 1, 1967, he should not do so if his annual grade increment fell due within two months of the issue of that order. It has been urged that rider was added in view of Rule 26A of the Rajasthan Service Rules, and that as the petitioner's annual grade increment was to fall due on July 9, 1967, it did not matter if he did not join at Dabri on the forenoon of July 1, 1967 and intimated the correct position to the Directorate. On these premises, the learned Counsel has argued that there was no reason or justification for the cancellation of the order (Ex. 9) of the petitioner's temporary promotion, and that the cancellation was illegal and should be set aside by this Court.

4. The respondents have filed a reply stating that order Ex. 9 was cancelled on the very next day as the petitioner had been busy with the course of Master of Education and was on leave and the Department was not certain about the resumption of duties by him on July 1, 1967. This does not appear to be a satisfactory reason for cancelling order Ex. 9 but then paragraph 13 of the reply is much more important and has a direct bearing on the question of the justification for the cancellation of order Ex. 9. In that paragraph the respondents have stated that after the issue of telegram Ex 7 dated June 26, 1937, regarding the petitioner's ad-hoc or officiating promotion the Department was informed

that the Departmental Promotion Committee had met in accordance with Rule 25 of the Rules for the purpose of making regular appointments by promotion to the posts of Head Master of the Higher Secondary Schools, and that as the petitioner was found by that Committee to be unsuitable, it was not possible to continue him on any ad hoc or officiating promotion under the aforesaid order dated June 26, 1967. Learned Deputy Government Advocate has placed before the Court the record relating to the deliberations of the Departmental Promotion Committee which shows that the Committee met on May 29, 1967, May 30, 1967 and JUNE 29, 1967. It examined the case of the petitioner for promotion, but found him unsuitable. As the Department learnt about the soon after the issue of telegram Ex. 7 dated June 26, 1967 and order Ex 9 dated June 26, 1967, it cannot be blamed if it cancelled the petitioner's temporary promotion and rejected his representation against that cancellation. As a matter of fact the petitioner's temporary promotion under order Ex 9 was clearly fortuitous and cannot form the basis of any claim for relief by this Court.

5. The petitioner's learned Counsel has made an ancillary argument that the plea regarding the rejection of the petitioner's candidature for promotion to the post of Head Master, Higher Secondary School, by the Departmental Promotion Committee, is not factually tenable because as the Department promoted him on June 26, 1967 and issued order Ex, 9 dated June 26, 1967, the Departmental Promotion Committee could not have met within a period of three days on June 29, 1967 and that its decision could not have been made available within that short period. It has further been urged that even if it were assumed that this was so, the Departmental Promotion Committee merely acted as a "rubber stamp" to approve the decision which had been taken already by the Department to cancel the petitioner's appointment. But this argument is not tenable because even though the reply of the respondents was filed on March 21, 1972, the petitioner has not ventured to take any such plea by way of a rejoinder. As it is, there is no plea on his behalf that the Departmental Promotion Committee did not meet or that it could not have taken a decision in respect of a large number of employees within the short period at its disposal. Moreover, it has to be remembered that the Departmental Promotion Committee started meeting on May 29, 1967 and met on the three dates mentioned above. There is therefore no justification for the argument that it did not have enough time to consider the case of the petitioner on the merits, or that it did not apply itself to the selections for which it was constituted, or that its decision could not have been conveyed to the Department.

6. It has next been argued that although no adverse entry in the petitioner's confidential reports was conveyed to him and he was not given an opportunity to explain any such entry or to have it expunged, some adverse entries were taken into consideration against him, and his rejection by the Departmental Promotion Committee was therefore illegal. The learned Counsel (1) has made a reference to *Nareshwar Lal Joshi v. State of Rajasthan and Ors.* ILR(1970) 20 Raj. 985 P.V. *Munavalli v. State of Mysore and Ors.* AIR 1987 Mys 249 *State of Raj. v. Guman*

Singh and Ors. 1971 SLR 360 and Guman Singh v. State of Rajasthan and Ors. 1971 SLR 799 to support his argument. He has also argued that the contention in paragraph 34 of the reply that there were adverse entries in the annual confidential reports of the petitioner for the years 1956, 1960, 1961 and 1963-64 cannot be correct in the facts and circumstances of his case. Thus it has been pointed out that as the petitioner was initially appointed as Assistant Teacher by order Ex. 2 dated November 1, 1956, there could be no question of any adverse entry in that year. Then it has been stated that there could be no adverse entry in 1960 also because, if that had been so, the petitioner would not have been given an officiating appointment to a higher post vide order Ex. 4 dated June 17, 1960. As regards the report of 1961, the learned Counsel, has argued that as the petitioner was allowed to look after the work of the Inspector by order Ex. 5 dated April 11, 1962, it is not possible that there was any adverse entry against him in 1961. As regards the entries for the year, 1963-64, the learned Counsel has argued that there could be no such adverse entry because the Director's appreciation for the good result shown by him, was conveyed to him by letter Ex 6 dated November 29, 1963.

7. I shall take up the factual aspect first. The argument that there could be no adverse entry for the year 1956 because the petitioner was appointed as Assistant Teacher by order Ex. 2 dated November 1, 1956, is quite untenable and misconceived. The petitioner was an employee of the former Ajmer State and order Ex. 2 merely recognised his position as an Assistant Teacher in the integrated set-up of the Rajasthan State. In fact a perusal of order Ex. 1 dated December 13, 1955 shows that the petitioner joined the service of the Ajmer State as far back as December 2, 1950, and there is no justification for the argument that he entered service on November 1, 1956 and that there could be no adverse entry against him for that year. There is also no force in the argument that because the petitioner was given an officiating appointment as Head Master by order Ex. 4 dated June 17 1960, there could be no adverse entry against him during that year. As is obvious, an officiating appointment could have been given to the petitioner even though there was an adverse entry in his confidential report for the year 1960. The other argument that as the petitioner was allowed to look-after the work of the Inspector by order Ex 5 dated April 11, 1962, it should be concluded that there could be no adverse entry against him during the year 1961 is also quite mis-conceived. A perusal of the order (Ex. 5) shows that the petitioner was posted as Deputy Inspector of Schools, Jalore, and he was asked to look after the work of Inspector in addition to his own duties. Nothing could therefore turn on that order. I have also considered letter Ex. 6 of the Director dated November 20, 1963. By that letter he conveyed his appreciation to the petitioner for the good result shown by him and his colleagues during the year 1963. That letter could not therefore justify the arguments that the petitioner's confidential report for the year 1963 could not be adverse. On the facts, therefore, there is no justification for the argument that the adverse reports in question could not have been in existence at all, or

that they were made up some how.

8. As regards the question of the alleged prejudice to the petitioner because the adverse reports were not conveyed to him and he was not given a chance to have them expunged before the meeting of the Departmental Promotion Committee in May and June, 1967, it is necessary to refer to paragraph 24 of the reply of the respondents. They have stated that the adverse reports were communicated to the petitioner after the Departmental Promotion Committee had considered and rejected his case, and that the representations made by the petitioner against those reports were rejected and he was informed accordingly on June 19, 1970. It has further been stated that the representations were rejected for the reason that there was "no ground for expunging the adverse remarks". This is therefore a case in which the question whether the petitioner was prejudiced by the failure to communicate the adverse entries to him before the consideration of his case for promotion by the Departmental Promotion Committee, has to be examined with reference to the facts of the case, for the question of prejudice is essentially a question of fact. And the facts, as has been stated, make it quite clear that the authority concerned took the view that there was no ground for expunging the adverse remarks against the petitioner. It follows therefore that the entries have been allowed to stand as they were, and it is futile to argue that the deliberations of the Departmental Promotion Committee were rendered illegal merely because the adverse entries were not communicated to the petitioner in time for him to make his representation or representations. I am thus satisfied that there is no question of any prejudice to the petitioner at all, in the facts and circumstances of his case, and it would not matter if the adverse entries were communicated to him after his case had been considered and rejected by the Departmental Promotion Committee. There is in fact a decision of their Lordships of the Supreme Court in *R.L. Butah Vs. Union of India (UOI) and Others*, which has been given in circumstances which were quite similar. There the confidential report of R.L. Butail, who was Director of the Central Water and Power Commission (Power Wing), for the year 1964, was before the Promotion Committee without his representation against it, as that report was conveyed to him in September 1965. Their Lordships held that as the subsequent representation of Butail, against that confidential report was rejected, with the result that the report remained unchanged, there was "no question of any injustice having been done to the appellant despite the fact that the Committee had before it the confidential report without there being along with it any representation made by the appellant." I have gone through the cases which have been cited by the learned Counsel for the petitioner, but they cannot be of any avail in view of their Lordship's decision in *R.L. Butah Vs. Union of India (UOI) and Others*, . Even so, it may be mentioned that *Nareswar Lal Joshi v. State of Rajasthan and Ors.* ILR(1970) 20 Raj. 985 was a different case for these it was held that looking to the nature of the adverse entries, it was possible for the petitioner to convince the authorities that they were not correct. So is the case with *P.V. Munavalli v. State of Mysore and Ors.* 1971 SLR 360, for

there it was held on the facts, that the report for the year 1961 was not relevant, and that the statement of the Government that the confidential report for 1963 was unsatisfactory was not supported by the documents which was placed before their Lordships of the Mysore High Court. The decision in State of Rajasthan v. Guman Singh and Ors. 1971 SLR 360 went up in appeal before their Lordships of the Supreme Court in Guman Singh v. State of Rajasthan and Ors. 1971 SLR 799. I have gone through the later decision, and I find that their Lordships of the Supreme Court have not expressed any opinion on the question regarding the adverse reports. On the other hand, their Lordships' decision in R.L. Butail's case (6) is directly in point and is quite sufficient to show that there is no justification for the grievance which has been made by the petitioner.

9. No other point has been argued, and as I find no force in this writ petition, it is dismissed with costs.