
(1995) 05 RAJ CK 0005

In the Rajasthan High Court

Case No : Civil Writ Petition No. 4720 of 1988

Rameshwar Prasad Sharma

APPELLANT

Vs

Rajasthan State Text Book Board

RESPONDENT

Date of Decision : 26-05-1995

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16, 226, 309

Citation : (1996) WLC 489 : (1995) 2 WLN 581

Hon'ble Judges : Arun Madan, J

Bench : Single Bench

Judgement

Arun Madan, J.—The petitioner who is an employee of the Rajasthan State Text Book Board, Jaipur, has filed this writ petition in the matter of violation of his fundamental rights under Articles 14 and 16 of the Constitution of India read with Rajasthan State Text Book Board Employees Service, (Discipline and Conduct) Rules, 1979.

2. The facts giving rise to the filing of this writ petition, briefly stated, are that the petitioner joined the service of the respondent Board i.e., the Rajasthan State Text Book Board (hereinafter referred to as the "Board"), on 8.1.1974 as Lower Division Clerk on temporary basis for a period of three months. He was subsequently confirmed as L.D.C. w.e.f. 22.12.78. The petitioner received ad-hoc promotion on the post of U.D.C. w.e.f. 22.5.1979. Subsequently the petitioner was confirmed on the post of U.D.C. prior to completion of one year's probationary period w.e.f. 1.4.1980. It has been further contended in the writ petition that the petitioner received ad-hoc promotion on the next promotional post of officer assistant with the respondent board w.e.f. 25.12.1982. It has been contended in the writ petition that the length of service required for determining the eligibility for the post of U.D.C. as per the rules, was five years of service for which the petitioner became eligible w.e.f. 7.1.1979 but since the D.P.C. was not convened in time, petitioner was promoted on ad-hoc basis as U.D.C. on 22.5.1979 though his Juniors were promoted on the post of U.D.C. on ad-hoc

basis earlier to the petitioner w.e.f. 4.5.78.

3. It has been further contended on behalf of the petitioner that in May, 1987 D.P.C. was convened for considering the cases of eligible candidates for regular promotion from the post of L.D.C. to that of U.D.C. and the petitioner was found eligible for promotion to the post of U.D.C. against the vacancies of 1979-80. Persons who were Junior to the petitioner received promotions earlier on ad-hoc basis and the D.P.C. placed them below the petitioner in the year 1979-80. In view of this the petitioner was promoted w.e.f. 1.4.1979 as U.D.C. on ad-hoc basis and was placed under one year's probation by deeming clause Under Rule 11(A) of the D.P.C. Rules. Admittedly the petitioner had been confirmed as U.D.C. w.e.f. 1.4.80 as stated above and this fact has not been disputed by the respondents in their reply. It has been further contended in the writ petition that as per the Rules governing the petitioner's appointment and promotion, i.e., Rajasthan State Text Book Board Employees Service, Discipline and Conduct Rules, 1979 (hereinafter referred to as the "Rules of 1979") the criteria which has been stipulated for promotion from L.D.C. to U.D.C. is two fold, i.e., (i) candidate should have two years length of service on the substantive post of L.D.C. and (ii) candidate should be secondary/high school passed and for promotion he should have 3 years' service experience with typing. Thus, the criteria which has to be adopted by the D.P.C. for determining the eligibility of the candidates for promotion from L.D.C. to U.D.C. is seniority of the candidate concerned as stated above and it is 100% promotional post. It has been further contended by the petitioner that for receiving further promotion from the post of U.D.C. to the post of office assistant, the criteria is provided in Rule 11(A) of the D.P.C. Rules as applicable to the petitioner and other employees of the respondent board. It has been further contended by the petitioner that there has been violation of Rule 11(A) of the D.P.C. Rules in not extending the benefit to the petitioner by promoting him as office assistant, since the petitioner was confirmed L.D.C. and had received ad-hoc promotion on the post of U.D.C. instead of giving him confirmation on the said post w.e.f. the date when persons junior to him were promoted, since the petitioner had been wrongly promoted on ad-hoc basis w.e.f. 22.5.79. instead of confirming him w.e.f. the said date. It has been further contended that on account of delay in confirmation of the petitioner on the post of U.D.C. w.e.f. 1.4.80, the persons who were junior to the petitioner had already been promoted prior to the confirmation of the petitioner as U.D.C. The candidature of the petitioner was lower in seniority as U.D.C. by the D.P.C. contrary to Rule 11(a), as a result of which instead of receiving regular promotion on the post of office assistant, the petitioner had been given ad-hoc promotion on the said post w.e.f. 25.12.82 while junior persons had been given ad-hoc promotion earlier to the petitioner on the post of office assistant. It has been further contended by the petitioner that Rule 11(A) of the D.P.C. Rules is a statutory rule framed under the provisions of Article 309 of the Constitution of India on authorisation of the State and hence is binding on the respondent-board. It has been further contended that the respondent-board is body

registered under the Societies Registration Act, 1958 and is instrumentality of the State of as envisaged under Article 12 of the Constitution of India and hence amenable to the writ jurisdiction of this Court under Article 226 of the Constitution of India. The Executive Council of the Board comprises of the members who are Govt. functionaries and the governing council of the Board is governed by Rule of 1979 which came into force w.e.f. 1.9.1979 and hence the respondent-board being an instrumentality of the State is under the pervasive control of the State Government and its primary function is in education department.

4. It has been further contended that prior to framing of these Rules the service conditions of the employees were governed by relevant rules regarding recruitment etc. applicable to the government servants on corresponding course. In the present case Rajasthan Subordinate Offices Ministerial Staff Rules, 1957 (for short as the "Rules of 1957"), are relevant for consideration of the petitioner's case. Rule 9 of the Rules of 1957 provides for yearwise determination of the vacancies. As per this Rule an L.D.C. in order to be promoted as U.D.C. ought to have three years' working experience in case of graduates and five years' experience in case of non-graduates. Both for next promotional post of office assistant, office superintendent etc. the same period of experience is required both for graduates and non graduates. However, under the Conduct Rules of 1979, for the purpose of promotion to the post of U.D.C, the requisite experience is two years' for a graduate and three years for non-graduate. For the purpose of promotion to next higher post, i.e., office assistant different experience between graduates (2 years) and non-graduates (3 years) has been prescribed under the Rules. Next promotional post from office assistant is that of Depot Manager Grade I for which there is no distinction between graduate and non-graduate. As per Rule 12 of the Rules of 1979, the procedure for recruitment for regular appointments is provided in Schedule "DH-2". As per the schedule, Rules for seniority and promotion are framed by the State Government for the employees of the board which will be applicable to the employees of the board and as amended from time to time.

5. Being aggrieved by the conduct of the Board in not considering the candidature of the petitioner for promotion to the post of office assistant with reference to the vacancies of the year 1982-83 for which the petitioner was eligible to be considered by the D.P.C., the petitioner has been constrained to file the present writ petition. This Court vide its order, dated 12.12.1988 passed an interim order to the following effect:

The D.P.C. shall consider the candidature of the petitioner in respect of the vacancies for the year 1982-83 for the post of office assistant, but his result shall be kept in a sealed cover and shall be subject to outcome of the writ petition.

6. It has been further contended by the petitioner that once having extended the benefit of Rule 11(A) of the D.P.C. Rules to the petitioner while giving him promotion to the post of U.D.C. vide Annexure 1, it was not open to the

respondent-board to later on contend that since the petitioner had not completed three years of service as U.D.C. as on 1.4.82, he was not eligible for promotion to the post of office assistant w.e.f. 1.4.82. Reliance was placed by the learned Counsel for the petitioner in support of this contention in the matter of C.L. Shivi v. State of Raj. 1989 (1) R.L.R. 574. The question which has arisen in this case for consideration of the Division Bench of this Court was concerning the interpretation of Rajasthan Animal Husbandry Service Rules, 1963. The petitioner who was a member of Scheduled caste had "entered the government service in the year 1370 as Fisheries Inspector which is a subordinate service post and at the relevant time there were no Subordinate Service Rules governing the employees of Fisheries Department and the recruitment and conditions of service of Fisheries Inspector were being governed by the Rajasthan Subordinate Service (Recruitment and other Conditions of Service) Rules, 1060. The petitioner was thereafter promoted as Assistant Fisheries Development Officer in the year 1973 which was a subordinate post. Later on he was selected by the R.P.S.C. for the post of Assistant Fisheries Development Officer but had to be reverted back to the substantive post of A.F.D.O. in 1981. In pursuance of some order of the Tribunal later on he was again posted as F.D.O. on 2.8.1983 and then he was promoted as F.D.O. against the promotion quota of the year 1981. A seniority list was issued on 23.4.1986 showing the position of F.D.Os as on 1.12.1985. The case of the petitioner was that since he was promotee against the quota of the year 1981-82 by virtue of Rule 23A, the petitioner was entitled to have his service/experience counted from 1.4.1981 and he would be deemed to have completed five years of service as on 31.3.1986. The petitioner had come out with a case that the promotion of persons vide impugned departmental order was made by ignoring the case of the petitioner who was a member of Scheduled Caste and the action of the respondent was a clear example of the executive trying to over-reach the process of the court. The petitioner further contended that even if the three vacancies were to be filled by promotion on ad-hoc basis, the petitioner is entitled to be promoted because his name falls within the zone of consideration and he had all the requisite qualifications for promotion, while he was totally ignored in the matter of promotion. This Court while allowing the writ petition, directed the respondents to determine yearwise vacancies with a further direction that the D.P.C. should be convened as soon as possible, but in no case later than 3 months to consider the candidature of the petitioner in accordance with the roster system and the rules for promotion to the post of Asst. Director or equivalent post shall be considered by the D.P.C. and if the petitioner is found suitable for promotion against one of the post of Asst. Director or equivalent post, he shall be entitled to all consequential benefits from the date he is found suitable and appointed.

7. While placing reliance upon the relevant Rules as referred to above, particularly Rule 11(A) of the Rules of 1979 it has been contended by the petitioner that he is entitled to be promoted on the post of office assistant w.e.f. 1.4.82 with all consequential benefits against the vacancies of office assistant for

the year 1982-83 and since the D.P.C. in pursuance of the direction of this Court dated 12.12.88 has already found the petitioner suitable for promotion, the writ petition deserves to be allowed with costs and consequential benefits.

8. In the reply filed on behalf of the respondents to show cause notice, the respondent-board has contended that the petitioner was promoted on the post of U.D.C. on ad-hoc basis under Schedule of the Rules of 1979 and the respondent has admitted in the reply that the meeting of the D.P.C. for considering the candidature of the petitioner for promotion to the post of office assistant was considered and the order of selection was issued on 1.2.1989 and one post of office assistant has been kept vacant in compliance with the direction of this Court.

9. On merits the respondent-board has contended in the reply that Rule 11(A) of the Rules of 1979 has no application to the case of the petitioner and is untenable and also the Regulations of 1979 provide the criteria for seniority and promotion will be applicable as per Schedule DHA-2, item Kha-1. It has been further contended that the Regulations of 1979 do not provide any procedure for counting the seniority as well as for conducting the D.P.C. and as such Rule 11(A) is not applicable to the Board employees. It has been further contended that the respondent-board is not a State within the definition of Article 12 and not amenable to the jurisdiction of this Court under Article 226 of the Constitution of India. It has been further contended that the petitioner Joined as U.D.C. w.e.f. 24.5.79 and he completed 3 years of service on 23.5.82 and, therefore, he cannot claim his promotion on the post of office assistant w.e.f. 1.4.82 and the petitioner has no locus-standi to claim the vacancy of 1.4.82 for promotion as office assistant.

10. I have heard learned Counsel for the parties and examined their rival claims and contentions as well as the relevant documents placed on the record and the Rules of 1979 as referred to above.

11. I am of the considered opinion that Rule 11(A) of the Rules of 1979 governing the employees of the respondent-board is fully applicable to the case of the petitioner, since the said rule clearly envisages the criteria and procedure for promotion as applicable in the particular year to which the vacancy relates and also the service/ experience of the incumbent who has been so promoted to the higher post for any period during which he has not actually performed the duties of the post to which he would have been promoted, was also to be counted. In my considered opinion, the respondent-board has failed to apply the criteria as laid down in Rule 11(A) of the Rules of 1979 for determining the eligibility of the petitioner for promotion to the post of office assistant from U.D.C. I am further of the opinion that the petitioner is entitled, to be promoted on the post of office assistant w.e.f. the due date, i.e., 1.4.82, since he was confirmed on the substantive post of U.D.C. w.e.f. 1.4.80 and since the D.P.C. had failed to determine the yearwise vacancies of the candidates/ employees who were due for promotion for the post of office assistant for the year 1982-83. The

petitioner should be considered for promotion on the post of office assistant for the vacancies against the year 1982-89. I am further of the opinion that since the respondent Board had applied Rule 11(A) while giving promotion to the petitioner on the post of U.D.C. vide Annexure 1, it is not open to them now to plead to the contrary.

12. Consequently the petitioner is entitled to succeed and the writ petition is allowed with a direction to the respondent-board to determine the candidature of the petitioner for promotion to the post of office assistant against the vacancy for the year 1982-83 by virtue of Rule 11(A) of the Rules of 1079 and the petitioner is entitled to have his service experience to be counted from the date he was confirmed on the substantive post of U.D.C. w.e.f. 1.4.1980 and the petitioner should be treated as a regular promotee on the post of office assistant instead of being treated as ad-hoc promotee on the said post, since he should have been considered against the vacancies for the year 1982-83, i.e., when he became eligible for promotion on the post of office assistant. D.P.C. may be convened afresh within a period of three months from the date of filing the certified copy of the order for doing needful and if the petitioner comes within the zone of consideration as per his eligibility for promotion to the post of office assistant in accordance with Rules, then he shall be deemed to have been promoted on the post of office assistant w.e.f. the date his juniors were promoted against the vacancies of the year 1982-83. The petitioner shall also be entitled to consequential benefits. The parties are left to bear their own costs.