
(2019) 05 RAJ CK 0112
In the Rajasthan High Court
Case No : Civil Writ Petition No. 2755 Of 2018

Ravibala Singh

APPELLANT

Vs

Rajasthan High Court And Ors

RESPONDENT

Date of Decision : 14-05-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2019) 05 RAJ CK 0112

Hon'ble Judges : Sandeep Mehta, J;Vinit Kumar Mathur, J

Bench : Division Bench

Advocate : Mukesh Rajpurohit, Vipul Dharania, Manoj Bhandari

Final Decision : Allowed

Judgement

Brief facts relevant and essential for disposal of the writ petition are noted hereinbelow.

The petitioner was selected as a Civil Judge (Junior Division) - cum - Judicial Magistrate in the Rajasthan Judicial Services on 24.01.2005. The Registrar General, Rajasthan High Court conveyed the ACR of the year 2010 to the petitioner wherein, the following remarks were made against her:

2010 Part-I: "Below Average"; and

2010 Part-II: "Must improve the knowledge of Average". law, Below

The petitioner filed a representation dated 02.07.2012 against the adverse ACR of the year 2010 in which, she mentioned that for the entire period of 2010 Part-I i.e. from 01.01.2010 to 15.06.2010, she was on maternity leave sanctioned by the High Court. For the period 2010 Part-II i.e. from 16.06.2010 to 31.12.2010, the petitioner claimed that she was transferred as the Metropolitan Magistrate No.5, Jaipur Metro, where she was handling only the old cases which were transferred from the other Courts and in that period, the work output of the petitioner was 118%. She prayed that the adverse remarks entered in his ACR

be expunged. The representation so submitted by the petitioner was rejected vide Communication dated 04.01.2014. The petitioner filed an application for inspection of her service record, which was rejected on 20.03.2014. The petitioner filed a review petition and prayed for upgradation of the adverse entries. However, the representation so submitted by the petitioner was turned down vide Communication dated 20.05.2014 (Annex.8). Soon thereafter, the promotion process of the petitioner's batch was undertaken, wherein, the candidature of the petitioner was not considered owing to the adverse entries referred supra. Further promotions were made from the petitioner's batch on 01.05.2015 wherein, also the petitioner's candidature was ignored. When the petitioner's candidature was ignored in two successive promotion processes, she filed a fresh application seeking inspection of her ACRs and for the first time, on 06.08.2015, the petitioner was permitted by the High Court to inspect her ACR. After inspecting the ACR, the petitioner filed two separate representations dated 19.09.2015 requesting for reconsideration of the adverse remarks recorded in the ACR of the year 2010 Part-I and Part-II and to be considered for promotion on the post of Senior Civil Judge cum Additional Chief Judicial Magistrate on the date, on which her juniors were so promoted. By a Communication dated 19.10.2015, the petitioner was intimated that her representation against the adverse remarks recorded in the ACR for the year 2010 Part-I and II had been considered and rejected. The officers in the Batch of 2005 were accorded regular promotion on the post of Senior Civil Judge cum Additional Chief Judicial Magistrate by Full Court Resolution dated 16.02.2016. Thereafter by order dated 18.07.2016, the petitioner too was promoted to the same post. However, the petitioner has raised a grievance in the writ petition that she has not been accorded appropriate seniority on the promotional post and thus, she filed yet another representation dated 27.01.2017 for being offered appropriate seniority on the promotional post with effect from the date on which, persons immediately junior to her were granted regular promotions on the post of Senior Civil Judge cum Additional Chief Judicial Magistrate. Such representation submitted by the petitioner was rejected by a Communication dated 07.11.2017 (Annex.17). Thereafter, the officers from the petitioner's batch earlier promoted to the post of Senior Civil Judge cum Additional Chief Judicial Magistrate have been further promoted as Chief Judicial Magistrates but the petitioner's case was not considered because she was lacking in seniority.

In these circumstances, the petitioner has approached this Court by way of instant writ petition filed under Article 226 of the Constitution Of India for assailing the impugned action with the following two principle prayers.

"B] by an appropriate writ, order or direction, impugned adverse remarks recorded in the Annual Confidential Reports of the petitioner for the year 2010-I & II may kindly be declared illegal and accordingly, impugned Communications dated 04.01.2014 (Annex.4), 20.05.2014 (Annex.8), 19.10.2015 (Annex.13), 16.02.2016 (Annex.14) & 07.11.2017 (Annex.17) may kindly be quashed and set aside and the said adverse remarks in her ACRs for the year 2010-I & II may

kindly be ordered to be expunged forthwith.

C] by an appropriate writ, order or direction, the respondent authorities may also kindly be directed to assign proper seniority to the petitioner on the post of Senior Civil Judge- cum-Additional Chief Judicial Magistrate and accordingly, consider her candidature for promotion to the next promotional post in the cadre i.e. Chief Judicial Magistrate as well w.e.f. the date persons junior to her were promoted on the said post and accordingly, promote her also on the said post from the date when her juniors have been promoted on the said post with all consequential benefits."

In the reply to the writ petition, the respondents have given detailed reasons for justifying the adverse remarks recorded in the ACR of the petitioner for the year 2010. The averments made in the reply in this regard need a brief reference and are reproduced hereinbelow for the sake of convenience:-

"It is further submitted that while the petitioner was posted as Additional Civil Judge (JD) & JM Ist Class, Sawai Madhopur from the period i.e. 01.01.2010 to 15.06.2010, following remarks were recorded in her ACRs by the authorities:-

2010 Part I-

Remarks given by the Hon'ble Chief Justice "Overall - below average"

While the petitioner was posted as Additional Civil Judge Metropolitan Magistrate, Jaipur No.5, Jaipur Metropolitan, Jaipur for the period from 16.06.2010 to 31.12.2010, following remarks were recorded in her ACRs:-

2010 Part II -

Remarks recorded by the Reporting Officer (District and Sessions Judge, Jaipur Metropolitan, Jaipur) are as under:-

(i) Control over the file "Not proper control."

(ii) Disposal of old cases "Poor"

(iii) Control over the office and administrative capacity and tact - "Poor"

(iv) Capacity to control the proceedings in court with firmness and follow the procedure prescribed by law- "Poor. She shows reluctance in working during vacation/holidays on remand duty. During winter vacation 2010, when she was assigned remand duty, she was not able to handle the work and therefore, CMM and Senior Munsrim had to rush to the court to control the situation."

(v) Performance in implementation of alternative dispute resolution - "Average."

(vi) General assessment - "Poor".

(vii) Grading - "Below Average".

Remarks given by the Hon'ble Administrative Judge are as under"-

"Having perused the remarks and assessment of Mrs. Ravibala Singh posted as ACJ (JD) & Metropolitan Magistrate No.5, Jaipur Metropolitan made by the District Judge as reporting authority who has rated her Below Average and after taking into account the record and work done by Mrs. Ravibala Singh, I find myself in agreement with the Reporting Authority. Hence, I approve the same and rate Mrs. Ravibala Singh as Below Average".

Remarks recorded by the Hon'ble Chief Justice are as under:-

"Must improve knowledge of Law. I agree".

The petitioner has filed a detailed rejoinder to the reply submitted by the respondents.

Learned counsel Shri Mukesh Rajpurohit, representing the petitioner vehemently and fervently urged that the adverse remarks recorded in the petitioner's ACR for the Part-I of the Year 2010 are absolutely unfounded because for this entire period, the petitioner was on maternity leave sanctioned by the High Court and thus, there was no reason to record the remark "Below Average" in the petitioner's ACR for the first half of the Year 2010. Regarding the adverse remarks "Must improve the knowledge of law and Below Average" recorded in the petitioner's ACR for the year 2010 Part-II, the contention of Shri Rajpurohit was that the petitioner was assigned only old cases, which were transferred to her Court and thus the disposal rate of 118% achieved by the petitioner was sufficient to grade her performance as very good, if not outstanding. Thus, as per Shri Rajpurohit the adverse remarks attributed to the petitioner in the ACR for both parts of year 2010 are absolutely unjustified and the petitioner deserves the relief prayed for in the writ petition.

After the arguments had been concluded, the oral submissions were supplemented by written submissions.

Per contra, Shri Manoj Bhandari, Advocate representing the respondent-Rajasthan High Court vehemently and fervently opposed the submissions advanced by the petitioner's counsel. He presented the petitioner's original service record for the court's perusal and urged that for the adverse remarks of the year 2010 Part-II, the reporting officer being the District & Sessions Judge, Jaipur Metro, assigned detailed reasons at point No.11 of the ACR of the petitioner in the following terms:-

"11. Capacity to control the proceedings in court with firmness and follow the procedure prescribed by law: Poor, she shows reluctance in working during vacation/holidays on remand duty. During winter vacation 2010 when she was assigned remand duty she was not able to handle the work and therefore, C.J.M. and Senior Munsrim had to rush to the Court to control the situation."

These comments of the reporting officer were thoroughly considered by the Hon'ble Administrative Judge who accepted the same and approved the "Below Average" grading for the corresponding year.

However, having objectively considered the record, we find that neither in the reply nor in the original record, is there any dispute regarding the fact that the petitioner had availed maternity leave for the first half of the year 2010 i.e. from 01.01.2010 to 15.06.2010 upon being sanctioned by the High Court. Thus, we fail to comprehend the reasons which prevailed with the reporting authority as well as the Hon'ble Administrative Judge for grading the petitioner as "Below Average" for the said half of the year, when she was on maternity leave sanctioned by the High Court. In this background, we are of the firm view that the adverse entry recorded in the petitioner's ACR for the first half of the year 2010 as "Below Average" cannot be sustained and the same has to be considered as neutral because she was on maternity leave. However, regarding the second half of the year 2010, adequate reasons are writ large on the record for the remarks "Must improve the knowledge of law and Below Average" attributed to the petitioner in her performance grading for the period beginning from 16.06.2010 to 31.12.2010. The reporting officer, the Hon'ble Administrative Judge as well as Hon'ble the Chief Justice have objectively considered the petitioner's ACR while recording and approving the adverse entry in ACR of the petitioner for the second half of year 2010. The petitioner made a representation against such entry which has been turned down by the Administrative Committee of the High Court by assigning cogent reasons so far as the adverse entry for the Part-II of the year 2010 is concerned, and thus, we are not inclined to interfere therein while exercising extra ordinary writ jurisdiction so as to expunge the adverse remarks attributed to the petitioner in the second half of the year 2010.

The second prayer of the petitioner is to be assigned proper seniority and promotion and to consider her candidature for promotion with effect from the corresponding dates on which, persons junior to her were promoted on the post of Senior Civil Judge cum Additional Chief Judicial Magistrate is also not tenable considering the fact that the above adverse entry exists in her service record. The judgment in the case of S.K. Bansal Vs. The Rajasthan High Court reported in 2003 (1) WLC 623 is of no help to the petitioner because what has been observed by the Hon'ble Division Bench of this court in the said judgment is that in case any defect is noted with regard to the work, conduct and performance of an officer/employee, the Reporting Officer may immediately bring it to the notice of the concerned officer/employee to take care of such defect and if the defect yet persists, then only, the Reporting Officer should proceed to record adverse remarks.

In the present case, the defect in functioning in judicial work of the petitioner was noted by the reporting officer. There is no ground in the writ petition that the defective performance was not brought to the notice of the petitioner. It is quite evident that the fact regarding the petitioner not being able to handle the remand duty assigned to her for the winter break of the year 2010 was indisputably brought to her notice and then, the reporting officer, being the Sessions Judge, Jaipur Metropolitan was compelled to send the C.M.M. and Senior Munsrim to control the complications prevailing in her court. Thus, the

petitioner can be deemed to be aware of the reasons for which the adverse entry was recorded in her ACR for the second part of the year 2010. These adverse entries made in the petitioner's ACR are based on an objective assessment of the facts and the perception of the reporting officer with regard to the over all performance and conduct of the reportee officer, i.e. the petitioner herein. In this background, the principles laid down in the said judgment are of no help to the petitioner. Since the said adverse entry exists in the petitioner's service record for the Second Part of the year 2010, manifestly, her case could not have been taken up for consideration for promotion on the post of Senior Civil Judge cum Additional Chief Judicial Magistrate because such consideration would require 7 years of ACRs having no adverse remarks. Thus, the petitioner was rightly denied promotion in the corresponding year when her batch-mates were promoted.

In view of the discussion made hereinabove, the adverse remarks made in the petitioner's ACR for the year 2010 Part-I grading her performance as "Below Average" are hereby expunged and the same shall be considered as neutral. However, we find no justification to interfere in the adverse entry recorded in the petitioner's ACR for the Second Part of the year 2010 and affirm the same. Since the petitioner carries adverse entry for the said year, manifestly, the action of the respondent Rajasthan High Court in denying her promotion alongwith her peers to the next post, i.e. Senior Civil Judge cum Additional Chief Judicial Magistrate, is absolutely justified because the right of being promoted has to be deferred in light of the adverse service record. The remaining prayers of the petitioner are not tenable and are as such turned down. The writ petition is allowed in part in the above terms.