
(2015) 02 RAJ CK 0152
In the Rajasthan High Court
Case No : Civil Writ Petition No. 4547/2004

Roshan Ali

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 24-02-2015

Acts Referred:

Constitution of India, 1950 — Article 20, 311

Citation : (2015) LabIC 3192

Hon'ble Judges : Sandeep Mehta, J.

Bench : Single Bench

Advocate : Sanjeet Purohit, for the Appellant; Anil Bissa, Advocates for the Respondent

Final Decision : Allowed

Judgement

Sandeep Mehta, J.—Heard learned counsel for the parties.

2. By way of the instant writ petition, the petitioner has approached this Court with the following prayers:-

"I. The impugned order dated 9.12.2003 (Anx.9) may kindly be quashed and set-aside.

II. The respondents be directed to reinstate the petitioner back in service with all consequential benefits in accordance with law.

III. Any other appropriate writ, order or direction as may be deemed just and proper in the facts and circumstances of the case be granted.

IV. Costs of the petition be ordered to be awarded to the petitioner."

3. Facts in brief are that the Superintendent of Police, Bhilwara summoned the petitioner's name from the employment exchange and after procuring a non-availability certificate, he was offered appointment on the post of Class IV Employee (Carpenter) in the pay scale of Rs. 910-1520 for a period of two years

on probation basis vide order Annex.1 dated 7.2.1994. It was mentioned in the appointment order that the petitioner was a secondary failed person and his date of birth was 1.2.1967. It appears that later on, the authorities realized that the petitioner was not possessed of the requisite training certificate issued by the I.T.I. essential for being appointed as a carpenter and accordingly, a modification order Annex.2 dated 30.1.1995 was issued whereby the petitioner's pay scale was reduced to that of a Class-IV employee i.e. Rs. 800-1250. The petitioner was confirmed as a Class IV Employee vide order Annex.3 dated 27.2.1996.

4. An inquiry under Rule 16 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 (for short, referred to herein after as "the Rules of 1958") was instituted against the petitioner and a statement of allegations and memorandum of charges was served on him vide communication Annex.4 dated 9.12.1999. The first charge leveled against the petitioner was that he did not perform the duties of carpenter despite being directed by his superior officers when he was posted at Police Line, Bhilwara in the year 1998-99 and thereby, was guilty of non-performance of duties and disobeying the superior's orders. The charge No. 2 levelled against the petitioner was that while being appointed as a carpenter in the police department, the petitioner did not submit the certificate either of I.T.I. or any other recognized training center despite repeated reminders and thereby committed misconduct. The charge No. 3 levelled against the petitioner was that the petitioner was provided with a daily diary for entering his day to day work but he did not enter the quantum of work discharged by him between the period of 6.6.1999 to 31.7.1999 and thus, his action amounted to misconduct.

5. An Inquiry Officer was appointed to conduct the departmental inquiry. The petitioner was given an opportunity of appointing a defence nominee as well as of personal hearing. The Inquiry Officer conducted the inquiry and found all the charges proved. The inquiry officer's report was placed before the Disciplinary Authority.

6. The disciplinary authority summoned the record of inquiry and gave notice of personal hearing to the petitioner. The petitioner submitted a reply and controverted the findings of the inquiry report. A plea was raised in the reply that the inquiry officer's report was not supplied to the petitioner and various other defences were also raised. The disciplinary authority by its order Annex.5 dated 31.7.2000 concluded that the charges No. 1 and 3 were vague, non-specific and of general nature but despite that it expressed concurrence with the findings recorded in the inquiry report and imposed upon the petitioner penalty of censure for these two charges. However, regarding charge No. 2 i.e. non-submission of I.T.I. certificate, the disciplinary authority deferred the decision because a communication sent to the police headquarters for relaxing the norms of the petitioner's appointment as a carpenter was pending consideration.

7. Thereafter, the petitioner was served yet another notice Annex.6 dated 26.9.2001 issued under Article 311 of the Constitution of India. By way of the

notice, the petitioner was intimated that the Disciplinary Authority was satisfied with the conclusions drawn by the Inquiry Officer in his Inquiry Report regarding the charge No. 2. It was further mentioned in the notice that a letter dated 27.7.2001 was received from D.I.G., Headquarter Police, Jaipur directing that the petitioner was not holding the requisite qualification for being appointed as a carpenter and thus, his appointment was irregular and accordingly, it was proposed that he should be dismissed from service. By way of notice, the Disciplinary Authority intimated the petitioner that it was proposed to impose upon him penalty under Rule 14(4) to 14(7) of the CCA Rules, 1958. The petitioner was directed to submit a reply to the said notice. The charge No. 2 framed against the petitioner and the relevant portion of the notice Annexure-6 are quoted herein below for the sake of ready reference:-

Charge No. 2

The relevant portion of notice Annexure-6

8. The petitioner submitted a detailed reply to the said notice pleading that he did not conceal any fact while seeking appointment. It was not claimed by him at the time of appointment that he was holding I.T.I. trade certificate in Carpentry. It was further submitted in the reply that the petitioner had already been punished in relation to the same charge earlier and thus, the second round of disciplinary proceedings was not permissible. It was further averred that the proceedings were against the mandatory provisions of the Rules of 1958 because the opinion to remove the petitioner from service had already been expressed by the DIG, Police Headquarter and, therefore, the subsequent opportunity to show cause was nothing but an empty formality. He further pleaded that for the reason of his not being trained from I.T.I., his pay scale had already been reduced from that of a Carpenter (Khathi) to that of a Class-IV Employee in the year 1995 itself and thereafter he had been confirmed in service from 7.2.1996 onwards and prayed that the proposed action be dropped. He further prayed that if at all, the charge-sheet was to be proceeded with, appropriate procedure should have been adopted.

9. The S.P., Bhilwara thereafter, proceeded to pass the order Annex.9 dated 9.12.2003 whereby the petitioner's appointment was cancelled for the reason that he was not having the requisite qualifications for being appointed as a Khathi (Carpenter) and as a consequence, his services were terminated. It was also mentioned in the termination order that the alteration of the employee's cadre from Khathi to Class IV employee was not permissible because the post of Khathi was governed by the subordinate services whereas the post of Class IV was governed by the Class IV Service Rules. Accordingly, treating the appointment of the petitioner on the post of Khathi to be irregular and illegal, he was terminated from service. The relevant portion of the order Annex.9 dated 9.12.2003 is quoted herein below for the sake of convenience:-

10. The petitioner has thus approached this Court by way of the instant writ

petition assailing the termination order Annex.9 dated 9.12.2003 and praying for setting aside the same and reinstating him back in service.

11. Learned counsel appearing for the petitioner vehemently contended that the order Annex.9 terminating the services of the petitioner amounts to double jeopardy. In the same inquiry, the petitioner had already been punished once vide order Annex.5 dated 31.7.2000. Thereafter another notice Annex.6 dated 26.9.2001 was served to the petitioner in relation to charge No. 2 of the earlier inquiry. It was proposed in the notice that the disciplinary authority had formed an opinion to dismiss the petitioner from service on the basis of said charge. He submitted that the petitioner was not provided any opportunity of hearing in pursuance of the notice Annex.6 and thus, the order Annex.9 dismissing the petitioner from service is *per se* bad in the eye of law having been passed in gross violation of principles of natural justice. He urged that the question whether the employee was possessed of the requisite qualification was relevant at the stage of induction in service and not at the stage of confirmation by which time the employee had gained long practical experience. He relied on the following judgments in support of his contentions:-

(I) Udai Lal Jat. Vs. State of Raj. and Ors. reported in 1997(2) RLR 646.

(II) Bhagwati Prasad Vs. Delhi State Mineral Development Corporation, .

(III) Buddhi Nath Chaudhary and Others Etc. Vs. Abahi Kumar and Others, .

(IV) Judgment dated 13.4.2001 passed by the Division Bench of this Court in the case of Rajendra Singh Rao. Vs. State of Rajasthan and Ors. (D.B. Civil Special Appeal No. 649/1999).

(V) Judgment dated 9.4.2002 passed by the Division Bench of this Court in the case of Girdhari Singh. Vs. State of Rajasthan and Ors. (D.B. Civil Special Appeal No. 7/2002).

He urged that in the case of Udai Lal Jat (*supra*), this Court was seized of the very same set of facts wherein the service of the employee, who was appointed on Class IV post after regular selection, was terminated on the ground that he was not having requisite educational qualifications prescribed under the Rules. The Court held that once the petitioner was given appointment, the principle of estoppel was attracted and it was not open to the employer to take a contrary stand at a belated stage. He submitted that during pendency of the instant writ petition, the petitioner has also procured the requisite trade certificate from I.T.I., Jodhpur. He thus, urged that the petitioner is entitled to the relief claimed for in the writ petition and the impugned order Annex.9 whereby the petitioner was removed from service deserves to be quashed.

12. Per contra, the learned Dy. Govt. counsel contended that the action taken by the respondents in dismissing the petitioner from service was justified because the petitioner did not possess the requisite qualifications for being appointed to the post of Carpenter. He referred to the order Annex.R/1 dated 12.1.1995 in

support of this contention and urged that the police headquarters intimated to all the S.Ps./Departmental Heads in the State of Rajasthan to alter the pay scales of the persons who despite not holding I.T.I. certificate had been given appointment on the posts of Khati after 1.9.1988. The departmental officers were directed to alter the pay scale and to recover the excess amount paid to the respective employees. He tried to justify the impugned order on strength of the said circular and prayed that the writ petition deserved to be dismissed.

13. Heard and considered the arguments advanced at the bar and perused the material available on record.

14. The petitioner's appointment order Annex.1 dated 7.2.1994 has a material bearing on the controversy involved in the writ petition and is reproduced here under for ready reference:-

The language of appointment order clearly reflects that the petitioner had been given appointment on the post of Class-IV employee. Thereafter in a bracket, word "Carpenter" was mentioned. It is also mentioned in the order that the applicant was Secondary failed. The appointment was given after summoning the petitioner's name from the employment exchange. Thus, it is evident that the petitioner did not conceal any fact while seeking appointment. However, it appears that the petitioner's services were to be utilized as a carpenter and thus, the term carpenter was introduced in a caption in the appointment order. He was initially paid salary in the pay scale of carpenter. Thereafter, the respondents effected a rectification in pursuance of the circular Annex.R/1 dated 12.1.1995 and reduced the pay scale of the petitioner from that of Khati to that of a Class IV employee. This action of the authorities in altering and reducing the pay scale of the petitioner from that of Khati to that of Class IV employee was as a matter of fact nothing but a penalty of reduction of rank. Apparently, the petitioner was visited with the said penalty for the reason that he was not holding the requisite qualification for being appointed in the pay scale of Khati. Evidently, while taking the said step, the respondent authorities were aware that the petitioner was not having the requisite eligibility for being appointed as a Khati. Thus, had there been an iota of doubt that the petitioner's act in getting an appointment vide order Annex.1 was tainted with concealment, his services should have been discontinued during the probation period itself. Rather than doing so, first the petitioner's pay scale was reduced and thereafter, the appointing authority confirmed the petitioner in the pay scale of Class-IV employee vide order Annex.3 dated 27.2.1996. It being an admitted position that the petitioner did not gain employment by making any misstatement or concealment, the respondents were not entitled to penalize him in the high-handed manner, which has been done in this case. Be that as it may, the inquiry was initiated against the petitioner under Rule 16 of the Rules of 1958 wherein, charge No. 2 was framed against him to the effect that he did not submit the certificate of I.T.I. or any other recognized training institute despite being so directed. This responsibility was fixed on the petitioner's head without any

justification. As a matter of fact, the respondents should have taken disciplinary action against the officer who gave appointment to the petitioner in the pay scale of Khati without the I.T.I. certificate. Rather than taking action against the senior officer, the petitioner, a lowly paid employee, has been victimized and oppressed without any justification whatsoever. Nonetheless the inquiry was culminated vide order Annex.5 dated 31.7.2000 holding the petitioner guilty of charges No. 1 and 3. The petitioner was punished by censure for the charges No. 1 and 3 despite the Disciplinary Authority holding that the charges were vague and general in nature. Thereafter, the notice Annex.6 dated 26.9.2001 was issued to the petitioner on the basis of a communication dated 27.7.2001 sent by the D.I.G., Headquarters, Jaipur directing that the petitioner be removed from service. As a matter of fact, once such a communication was received from the superior officer, the discretion vested in the disciplinary authority stood superseded and it was left with no option but to terminate the petitioner's services. In pursuance of the aforesaid directions, the impugned order Annex.9 came to be passed whereby the petitioner was removed from service.

15. The fact remains that the petitioner was nowhere to blame for the incongruities which arose in the matter. The appointment order Annex.1 is in itself uncertain as to the cadre in which the petitioner had been given appointment. The order refers to Class-IV employee as well as Carpenter. However, at the time of appointment, the grade pay of carpenter's post was actually paid to the petitioner. Thereafter, the appointing authority passed an order Annex.2 relegating the petitioner in the pay scale of Class-IV employee in compliance of the circular/order Annex.R/1 dated 12.1.1995. This as a matter of fact amounted to a penalty of reversion in rank and was undertaken without following the procedure established in law. The authorities even thereafter, continued to utilize the petitioner's services as a carpenter. The petitioner was confirmed in the pay scale of a Class-IV employee and continued on the post incessantly for a period of 9 years before his termination vide order Annex.9. The circular/order Annex.R/1, which is relied upon by the respondents, was issued by the police headquarters directing all the Superintendents of Police that the persons, who had been given appointment in the pay scale of Khati though not possessing an I.T.I. certificate, were to be refixed in the lower pay scale of Class-IV employee and recovery of the excess payment was to be effected from them. Thus, reduction of the petitioner's services to the post of Class-IV employee was effected in compliance of the above circular which not only approved of but rather mandated such an action.

16. The order Annex.9 dated 9.12.2003 was passed in pursuance of the communication dated 27.7.2001 received from the Police Headquarters, Jaipur to remove the petitioner from service and without providing him any opportunity of hearing. Thus, the order is vitiated as having been passed in violation of the principles of natural justice. As the decision was founded on the direction of the police headquarters, obviously challenging the same by a departmental appeal would be an exercise in futility. Furthermore, the order tentamounts to implied

quashment of the order Annex.2 dated 30.1.1995 whereby the petitioner was reverted to the post of Class-IV employee in pursuance of a policy decision Annex.R/1 dated 12.1.1995. Virtually, the disciplinary authority exceeded its jurisdiction in as much as, while passing the impugned order, the disciplinary authority impliedly reversed the earlier decision Annex.2 which was passed in pursuance of a policy decision Annex.R/1 dated 12.1.1995 taken by the police headquarters.

17. A similar set of facts was examined by this Court in the case of Udai Lal Jat (supra) and the Court held that the educational qualifications could be examined at the stage of initial induction in service and not at a belated stage. This Court held that the respondents by their own conduct, act and acquiescence permitted the relaxation of the minimum academic qualifications and once having relaxed the same, the principle of estoppel was fully attracted.

18. The Hon''ble Supreme Court in the case of Buddhi Nath Chaudhary (supra) held that where selected candidates were not fulfilling the requirement of experience, however, they have been in employment for over a decade, in such cases, they could be said to have acquired the requisite experience.

19. In the case at hand, after the petitioner''s induction in service, his services were continuously utilized as a carpenter, even after relegating him to the pay scale of Class-IV employee. Thus, even if the petitioner was not holding an I.T.I. certificate at the time of appointment, that by itself could not have been any reason for the respondents to terminate him from service.

The arguments raised by the learned counsel for the petitioner are fortified by the two judgments referred to supra.

20. That apart, the impugned order dated 9.12.2003 cannot stand to scrutiny on the face of it. The order was passed as if it was an order purported to be one under Rule 16 read with Rule 14 of the Rules of 1958. The charge No. 2 in relation whereto the petitioner''s services were terminated reads that while being appointed on the post of Carpenter in the police department and even thereafter, the petitioner did not submit the I.T.I. certificate or the certificate of any other recognized training centers despite repeated reminders. The said act was alleged to be an act of delinquency and insubordination. Upon a bare reading of the order Annex.2 whereby the petitioner was confirmed in the pay scale of Class-IV employee, it is evident that the entire charge-sheet issued to the petitioner was on the face of the record baseless and unfounded. The petitioner was placed in the pay scale of a Class-IV employee, after reverting him from the pay scale of Carpenter. Thus, issuing a charge-sheet to the petitioner, a Class-IV employee, projecting him to be a Carpenter (subordinate service) is indicative of total non-application of mind by the Disciplinary Authority. As has been discussed above, it is not even the case of the respondents that the petitioner procured appointment by making any concealment or misstatement of fact. In the backdrop of the aforestated factual scenario, this Court has no hesitation in holding that none of

the acts allegedly attributed to the petitioner in the charge-sheet amounted to misconduct as defined in the Rules of 1958. Furthermore, for the very reasoning reflected in the charge No. 2, the disciplinary authority had altered and reduced the petitioner's pay scale from carpenter to Class-IV employee. The action virtually amounted to imposition of penalty of reversion in rank which is a major penalty. Thus, the authorities were estopped from imposing a second penalty against the petitioner on the very same set of facts and allegations. This action is clearly violative of the fundamental right against double jeopardy as enshrined in Article 20 of the Constitution of India.

21. As a result of the aforesaid discussion, the instant writ petition deserves to be and is hereby allowed. The order dated 9.12.2003 [Annex.9] is hereby quashed and the respondents are directed to reinstate the petitioner in service forthwith with full continuity. Considering the fact that this Court has concluded that the termination of the petitioner's services was wrongful, unjust and arbitrary and also amounts oppression of a lowly paid employee who had put in 9 years of service and keeping in view the ratio of judgments rendered by the Hon"ble Supreme Court in the cases of (1) Anil Kumar Mahajan Vs. Union of India (UOI) and Others, and (2) Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D. Ed.) and Others, , the petitioner shall be entitled to all consequential benefits including back wages. Compliance of this order shall be effected within a period of three months from the date of this order, failing which the entire accrued amount shall carry interest at the rate of 6% p.a.

22. No order as to costs.