
(2008) 05 RAJ CK 0034
In the Rajasthan High Court

Sampat Lal

APPELLANT

Vs

RHC and Others

RESPONDENT

Date of Decision : 21-05-2008

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (2008) 05 RAJ CK 0034

Hon'ble Judges : N.P. Gupta, J;Kishan Swaroop Chaudhari, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

N.P. Gupta, J.—This appeal has been filed, seeking to challenge the order of learned Single Judge dated 07.09.1995, dismissing the petitioner's writ petition.

2. Brief facts are, that the petitioner was initially appointed on temporary basis vide order dated 05.06.1992, however, while working, a notification came to be issued, being dated 15.12.1994, advertising vacancies of LDC. In response thereto, the petitioner applied, and on being found eligible, he was allowed to appear in the written test, wherein he remained successful. Thereafter, the successful candidates were called for typing test, but in the typing test petitioner was declared unsuccessful, result whereof was declared on 28.02.1995. Consequently, the petitioner's services were terminated vide order dated 28.02.1995. With these facts, it is alleged by the petitioner, that State Government had issued a circular dated 21.05.1971, inter-alia providing, that SC/ST candidates, who qualified the written test, and could not qualify the typing test, should be given six months' time, to qualify the typing test. The copy of the circular is produced as Annex.5. It is contended, that in view of this circular, the dispensation of the services of the petitioner was illegal, and he should have been given appointment, and at the same time, should have been given six months' time to clear the typing test. Inter-alia, with this, it was prayed, that respondents may be directed to appoint the petitioner as LDC with effect from 28.02.1995, give him six months time to qualify the typing test, and regularize

his services from the date of his initial appointment, with all consequential benefits, so also quash the termination order dated 28.02.1995, and allow him other consequential reliefs.

3. It may be observed that other various pleadings have also been taken, and grounds have been raised, but since at the time of arguing the appeal, they have not been pressed into service, we need not to dilate upon them.

4. Reply to the writ petition was filed, contending inter-alia, that petitioner was appointed on temporary basis, and since he failed to qualify the typing test, his services were dispensed with. Regarding circular Annex.5, it was contended, that this circular does not apply to the services of Ministerial Staff in Subordinate Courts in Rajasthan, and hence it is of no help. Then, it is pleaded that the provisions of Rule 4(a) [sic. Rule 4(h)] of the Rajasthan Subordinate Offices Ministerial Staff Establishment Rules 1957, hereafter to be referred to as Rules of 57, excludes their applicability to High Court, and its Subordinate Courts, and since circular Annex.5 has been issued with reference to the Rules of 1957 only, it has no application, rather all the recruitments and services of the ministerial staff, in the subordinate courts in Rajasthan, are governed by the Rajasthan Subordinate Courts Ministerial Establishment Rules, 1986, hereafter to be referred to as Rules of 86, whereunder qualifying the typing test is necessary requirement, as such, the petitioner is not entitled to any relief.

5. Learned Single Judge, dismissed the writ petition, finding, that admittedly, one cannot be appointed as LDC in the respondent establishment, unless one clears the written test, as well as typing test, as per 1986 Rules, which in the present case, the petitioner has not cleared. Then, regarding circular Annex.5, it has been held, that it is not applicable in the respondent establishment, as it has its separate set of rules, and any circular, or instruction of the State Government, cannot be made applicable, unless the same is adopted by the competent body. In this regard, reliance has been placed on the judgment of this Court in Rohitash Singh v. District & Sessions Judge, Dungarpur reported in 1994 (3) WLC 545, and since it is not shown, that circular Annex.5 has been adopted by the establishment, it was concluded that the petitioner cannot take advantage of it. As such, no illegality was found, in not granting six months" time to the petitioner, to qualify the typing test. Thus, the writ petition was dismissed.

6. Assailing the impugned order, it is contended, that the learned Single Judge has proceeded with basic wrong assumption, about the circular having not been adopted by the High Court, while there is no power with the High Court, to adopt, or decline to adopt, the circular, inasmuch as, the service rules regarding subordinate ministerial service staff of the subordinate courts, are framed by His Excellency the Governor, in exercise of the powers conferred by proviso to Article 309 of the Constitution of India, and the Rules can be amended in consultation with the High Court by His Excellency the Governor, and there is no question of adoption, or non-adoption, of any circular. Then, referring to Rule 7 of 1986 Rules, it was contended, that it provides, that the reservation of vacancies of

Scheduled Castes and Scheduled Tribes shall be in accordance with the orders of the Government for such reservations, in force at the time of recruitment, i.e. by direct recruitment and by promotion, and therefore, since circular Annex.5 is an order of the State Government for reservation, in the matter of appointment of aboriginal tribes, per force the language of Rule 7, the circular is very much applicable, and was required to be followed, and in that view of the matter, the petitioner was required to be appointed, and given six months" time to clear the typing test, as provided vide circular Annex.5.

7. On the other hand, learned Counsel for the respondents supported the impugned order, and also contended, that the circular Annex.5 was issued under the Rules of 1957, Rule 4(h) whereof clearly excludes the applicability of those Rules to the ministerial staff appointed in the High Court or subordinate courts, and since the services of the ministerial staff of subordinate courts is a matter covered by 1986 Rules, and earlier it was covered by 1958 Rules, the circular Annex.5 has no application. Learned Counsel reiterated reliance on Rohitash Singh"s case.

8. We have considered submissions.

9. In our view, a look at the provisions of Rule 4 (h) of 1957 Rules, shows, that it clearly defines "subordinate office" which means any office under the control of Government, other than Secretariat, or office of State Legislature, or High Court, and the courts subordinate thereto, or Public Service Commission. Since the Rules of 1957 do not apply to the employees appointed in the High Court, and the courts subordinate thereto, no assistance can be sought from the Rules of 1957.

10. In this background, a look at circular Annex.5 would show, it specifically purports to be issued with reference to the Rules of 1957, by recapitulating, that the appointments to the post of LDC in the ministerial cadre of various departments is made in accordance with Rule 7(b) Part II of Schedule I of the Rules of 1957, and then it refers to Note 2 u/s B of Part II of Schedule I, which enjoins, that candidates, who passed typewriting test in English or Hindi, or both, may be given priority in the matter of appointment in the departments, which require typists, and then, it provides for relaxation too, by directing to give six months" time to acquire eligibility of typewriting.

11. Thus, firstly, since the circular is issued under the Rules of 1957, it cannot apply to the ministerial staff of the High Court, or the courts subordinate to it. Then secondly this circular has been issued in the situation, prevailing at the relevant time in the year 1971, at which time, the requirement of passing of typing test was not sine-qua-non, for being entitled to get appointment as LDC, and the Rules only contemplated that, if the person had passed typewriting test in Hindi or English, or both, was entitled to be given priority, and in that background, it was contemplated, that under the garb of this priority, the persons belonging to aboriginal tribes stand deprived of the opportunity of

employment, and therefore, six months" time was directed to be given, for acquiring requisite knowledge.

12. As against this, what is significant to note is, that even in 1957 Rules, in the year 1993, amendment has been made, providing, that passing in typing test would be necessary, for being entitled to get appointment. Obviously, with the amendment of the Rules of 1957, the circular, by necessary implication, loses its efficacy.

13. Thirdly, it is significant to note, that it is after this circular Annex.5, that the Rules of 1986 have been enacted, in consultation with the High Court, by His Excellency the Governor. Obviously, it has to be presumed, that at the time of enacting the Rules of 1986, the circular of 1971 was very much within the knowledge, and notwithstanding that, a provision has been made, providing the requirement of passing of typing test, to be necessary criteria, for eligibility to get appointment, making it an integral part of the examination for recruitment.

14. At this place, we may refer to the provisions of 1986 Rules, which specifically provide, in proviso to Rule 16, that no candidate, who failed to secure 40% of the total marks, with at least 30% marks in each paper, at the competitive examination, shall be selected. This competitive examination includes the typing test also.

15. Fourthly, so far as Rule 7 of 1986 Rules is concerned, it only provides for applicability of the Government orders. Rule 7, ofcourse, provides for applicability of the orders of the Government, but then, significantly, it only relates to the matter of reservation of vacancies, for Scheduled Castes and Scheduled Tribes, this, obviously relates to the percentage of reservation, in favour of Scheduled Castes & Scheduled Tribes, or may be roster, or the like, as may be in force from time to time, but it nowhere comprehends the applicability of any such circular like Annex.5, providing for any relaxation in the selection process, for appointment.

16. Thus, in view of the above, though for different reasons, we are not inclined to interfere in the impugned order.

17. The appeal, thus, has no force and is dismissed.