

(2003) 03 RAJ CK 0032
In the Rajasthan High Court
Case No : Civil Writ Petition No. 214 of 1991

Santosh Kumar Sharma

APPELLANT

Vs

Raj. State Agriculture Mrktg. Board and Others

RESPONDENT

Date of Decision : 06-03-2003

Acts Referred:

Rajasthan State Agriculture Marketing Board (Service) Bye-Laws, 1977 — Rule 23, 25

Citation : (2003) 2 RLW 908 : (2003) 2 WLC 709

Hon'ble Judges : Asok Parihar, J

Bench : Single Bench

Advocate : S.P. Sharma, for the Appellant; V.D. Gathala, for the Respondent

Final Decision : Dismissed

Judgement

Parihar, J.—The petitioner was initially appointed on the post of LDC purely on temporary basis for six months vide order dated 11.9.1981. The services of the petitioner were further extended from time to time with the condition of passing the type test. The petitioner was ultimately confirmed on the post of LDC after having passed the type test vide order dated 21.4.1988 w.e.f. 1.4.1988. A provisional seniority list of LDCs was published by the respondent Board on 21.4.1988 and after considering the representations, made by the concerned employees, a final seniority list was published on 29.11.1988. Name of the petitioner finds place at No. 94 whereas names of respondent Nos. 4 and 5 have been included at No. 81 and 85 respectively.

2. There is no dispute that respondent Nos. 4 and 5 were also given temporary appointment alongwith the petitioner. However, since they had passed the type test earlier, they had been confirmed w.e.f. 5.3.1986. Subsequently, as per recommendations of the DPC, promotions were made to the post of UDC. Respondent Nos. 4 and 5 have been promoted to the post of UDC vide order dated 31.3.1990. The present writ petition has been filed challenging the seniority list dated 29.11.1988 as also the promotion order dated 31.3.1990.

3. The services of the respondent Board are governed by the Raj. State Agriculture Marketing Board (Service) Bye-Laws, 1977. As per schedule appended to the above Bye-laws of 1977, the post of LDC is to be filled up 85% by direct recruitment and 15% by promotion. The requisite qualification for the post has been prescribed as High School/Secondary and must possess Hindi qualification equivalent to that of Matric and the candidates must also possess typing speed of 30 w.p.m. in English and 25 w.p.m. in Hindi. Appointment to the post in service by direct recruitment or by promotion, as the case may be, shall be made by the appointing authority on occurrence of the vacancies from the candidates selected under the Bye-laws in the order of merit. Seniority in each category of the service shall be determined by the year of substantive appointment to a post in the particular category. All persons appointed to the service by direct recruitment shall be placed against a substantive vacancy on probation for a period of two years and those appointed by promotion against such a vacancy shall be on probation for a period of one year subject to further proviso as provided under Rule 25 of the Bye-laws of 1977.

4. The person appointed on probation shall further be confirmed in his appointment at the end of his period of probation subject to certain conditions. There is also a provision for making urgent temporary appointment under the above Bye-laws of 1977. Rule 23 in this regard is quoted here as under:

"A vacancy in the service which cannot be filled in immediately either by direct recruitment or by promotion under the byelaws may be filled in by the Appointing Authority by appointing in an officiating capacity thereto an employee eligible for appointment to the post by promotion or by appointing temporarily, thereto a person eligible for direct recruitment to the service, where such direct recruitment has been provided under the provision of these Bye-laws.

Provided that such an appointment will not be continued beyond a period of six months without referring the case to the Selection Committee for concurrence, where such concurrence is necessary, and shall be terminated immediately on its refusal to concur."

5. There is no dispute that the petitioner was given temporary appointment initially for six months and the same was continued from time to time subject to passing of the typing test. The appointment, given to the petitioner, cannot be treated as substantive appointment since before giving appointment, he had never cleared any type test which is the minimum requisite qualification for appointment to the post of LDC. Further, the substantive appointment could be given only on probation initially for two years, which is not the case here so far as the petitioner is concerned.

6. Since the temporary appointment of the persons appointment alongwith the petitioner were confirmed only after their passing the typing test from the respective dates, the seniority can in no circumstances be counted from the date of initial appointment. Furthermore, the petitioner was confirmed or declared

permanent w.e.f. 1.4.1988 vide order dated 21.4.1988. However, the same has not been challenged by the petitioner so far. It has also been informed by the learned counsel for the parties that the petitioner had also been promoted on the post of UDC on ad-hoc temporary basis vide order dated 15.6.1990 and subsequently he has also been confirmed on the said post from the above date.

7. After having considered the entire facts and circumstances of the present case, in my opinion, the petitioner has not been able to make out any case for any interference of this court in the present matter. The writ petition is dismissed accordingly as having no merits.