
(1996) 08 RAJ CK 0046
In the Rajasthan High Court
Case No : Civil Special Appeal No. 75 of 1996

Shaitan Singh

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 12-08-1996

Acts Referred:

Rajasthan Subordinate Offices Ministerial Staff Service Rules, 1957 — Rule 29
Recruitment of Dependents of Government Servant dying while in service Rules, 1975
— Rule 8(2)

Citation : (1996) 3 RLW 492 : (1996) 2 WLC 94 : (1996) WLC 36 : (1996) 2
WLN 672

Hon'ble Judges : G.C. Verma, J;B.R. Arora, J

Bench : Division Bench

Final Decision : Allowed

Judgement

G.C. Verma, J.—The writ petitioner-Shaitan Singh, aggrieved against the judgment dated 6.12.1995 passed in Civil Writ Petition No. 778/94 by the learned Single Judge has filed the present civil special appeal wherein he had impugned the order of terminating his services, Anex.8, and being aggrieved by the judgment of the learned Single Judge has come up in the present appeal.

2. The admitted facts, as narrated in the writ petition, are that late Shri Narpat Singh, police constable, father of the petitioner, had died while in service. According to the petitioner he was entitled for the appointment in the Rajasthan State Police Service under the Rules i.e. Recruitment of Dependents of Government Servant dying while in service Rules, 1975 (Hereinafter for short called "the Rules of 1975"). Despite his having made the application, his request for appointment was not acceded to, with a result, that he filed S.B. Civil Writ Petition No. 1088/90 and the High Court ultimately allowed the civil writ petition on 15.11.90 and directed the respondents to appoint the petitioner on a suitable job as per his qualifications. Even after getting a favorable order from the High Court and applying for appropriate appointment for the post of L.D.C. for which he was having the minimum qualifications, the respondents did not implement

the judgment of the High Court, with the result, the petitioner had to file the contempt petition No. 195/91 for the implementation of the directions of the High Court. It was only after filing of the contempt petition that the petitioner was given appointment letter for the post of L.D.C. vide order dt.23.1.1992 attached as Annex. 1 and petitioner joined on the same day.

3. The petitioner submitted that he successfully participated in the training programme for the ministerial staff vide Annex. 2 and further seeing his interest, devotion and keenness towards his duties, he was awarded Rs. 21/- during the course of annual inspection of the Dy. Inspector General of Police.

4. It is submitted by the petitioner that even though it was not required but still in Annex. 1 i.e. appointment letter, a condition has been illegally imposed to the fact that the petitioner will have to pass typing test within six months. He was asked to appear in the typing test in the month of July and October but he could not be so, because of his ill health and because of his physical and mental agony, he was suffering, all through, on account of his family life and because of the illness of his wife who died on 15.12.1992. Vide Annex.7 dt. 20th May, 1993 the petitioner was told to appear in the examination of typing on 19.6.1993 and was further told in case he does not appear or qualify the test, his services would be deemed to be unsatisfactory and that he would be removed from the service. The petitioner had pointed out to the authorities that because of family difficulties, he could not learn the type writing and did ask for time. Ultimately, the test was scheduled to be held on 19.8.1993. The petitioner who was still not prepared to take the examination had written to the department, for postponing the test but the same was not agreed to, with the result the petitioner could not qualify the typing test which resulted in terminating the services of the petitioner vide Annex.8 dt. 20th August, 1993 i.e. after almost 2-3 days of holding the test.

5. The reason given in the impugned order, Annex.8, terminating services of the petitioner is that the petitioner had not utilized the chances given to him for qualifying the test and his work remained unsatisfactory and therefore he is discharged from service immediately under Rule 29 of the Rajasthan Subordinate Offices Ministerial Staff Rules, 1957 (hereinafter called "the Staff, Rules 1957). The petitioner did file an appeal (Annex.9) against Annex.8 wherein he specifically mentioned the fact that after joining as L.D.C. he had been given the work of despatch and bill clerk only which duties were discharged by him to the satisfaction of his officers. He had further mentioned in the appeal that he was awarded Rs. 21/- alongwith commendation certificate and his work was found very satisfactory at the time of inspection. He had further mentioned in the appeal that he was selected by the Superintendent of Police, Banswara to attend the training for ministerial staff and he was declared successful. He also narrated the fact in the appeal that because of ill-health of his wife who died ultimately on 15th December, 1992 he could not properly practice for learning the type writing. He had invited, attention to the instructions dt. 8.12.1986 mentioning therein that the persons who were appointed as dependents of deceased government

employee were not required to pass any test. This representation was rejected vide Annex. 10, hence the writ petition.

6. The petitioner, in the writ petition apart from narrating the facts, as mentioned above, had impugned the order of termination on the grounds; (i) that he was governed by the Rules of 1975 and, therefore, the condition imposed upon him in the appointment letter under the Staff Rules, 1957 is not attracted, (ii) that he could not have been appointed on probation. The incorporation of probation period in the appointment letter is against the very spirit of the Rules of 1975. (iii) that under Sub-rule 2 of Rule 8 of the Rules of 1975 it is nowhere laid down that services can be terminated on not passing the test and at best, the petitioner, could be put to training as to enable to acquire the requisite typing speed (iv) that the work and conduct of the petitioner was quite efficient as he had not only participated in ministerial staff training but also was awarded commendation certificate alongwith Rs. 21/- (v) that once the petitioner had been appointed as clerk after dispensing with the pre-conditions of recruitment as provided under Rule 8(2), the type test could not be provided in the appointment letter as it was not the essential qualification for the post against which he was appointed, (vi) that the very object of beneficial legislation of providing job to the dependent of the deceased is defeated; in case the authorities are allowed to terminate the services in the manner it has been done, (vii) that Rule and action is hit by arbitrariness as there are no guidelines as to provide that when the test is to be passed and when it is to be dispensed with.

7. The learned Single Judge vide his order dated 6.12.1995 dismissed the writ petition holding that Staff Rules, 1957 are also applicable to the persons appointed under the Rules of 1975 and in view of the condition in the appointment letter to the fact that in case he does not qualify the typing test, his services would be terminated, the order of termination was held to be justified and the writ petition was dismissed.

8. One of the questions, which arises in the present case is whether the persons who are appointed under the Rules of 1975 i.e. Rajasthan Recruitment of Dependents of Government Servant dying while in service Rules, 1975 are to be treated to have been recruited and fall under the ambit of Staff Rules, 1957. To know the scope of these two different set of Rules, it is necessary to know the real scope, aim, and purpose of both the set of Rules. The Rules of 1975 had been framed, primarily to give the employment to the dependent of the government servant who die in service and whereas 1957 rules are general recruitment rules where a candidate is selected after competing in the examination. Rules of 1975 apply to dependents who are class in themselves.

9. Some of the provisions of the Rules of 1975 are required to be reproduced for proper understanding. Rule 3 is the application clause for recruitment of dependents of deceased government servants to public services and posts, Rule 4 has overriding effect on any other rule or regulation in force at the commencement of the rules; Rule 5 prescribes the procedure for recruitment i.e.

dependent of the government servant is to make an application for suitable employment without any delay. In relaxation of the normal recruitment rules, provided such person fulfills the educational qualification prescribed for the post and is otherwise qualified in the government service. It is specifically mentioned in Rule 5 that in the event of non-availability of the vacancy or any other members of the family being unqualified or minor and is not found suitable or eligible for the minimum employment, such as case would be considered immediately on the availability of the post or when any one of them becomes qualified. Rule 8 provides for relaxation with regards to age and other requirements even mentioning that there shall be no upper age limit if the wife of the deceased government servant is the only candidate. Sub-clause 2 of Rule 8 further provides that procedural requirement for selection such as written test, typing test or interview by selection committee or any other authority shall be dispensed with but in order to satisfy the appointing authority may interview the candidate etc. etc. Rule 3, 4, 5 and 8 are as follows:

"Rule 3 Application of the Rules--These rules shall be applicable for recruitment of dependents of the deceased Government Servant to public services and posts, in connection with the affairs of the State except posts in major State Services i.e. the Rajasthan Administrative Service, the Rajasthan Judicial Service, Rajasthan Accounts Service."

"Rule 4 Overriding effect of these rules--These rules and any orders issued thereunder shall have effect notwithstanding anything to the contrary contained in any rule, regulations or orders in force at the commencement of these rules."

"Rule 5 Recruitment of a member of the family of the deceased"--in case of "deceased Government servants" one member of his family who is not already employed under the Central/State Government or Statutory Board/Organisations/Corporations owned or controlled by the Central/State Government shall, on making an application for the purpose, be given a suitable employment in government service without delay only against an existing vacancy, which is not within the purview of the State Public Service Commission, in relaxation of the normal recruitment rules, provided such member fulfills the educational qualification prescribed for the post and is also otherwise qualified for Government service. In the event of non-availability of a vacancy or any of the members of the family, being unqualified or minor is not found suitable or eligible for immediate employment, then such cases should be considered immediately on the availability of the post or any one of them becomes qualified or eligible for such employment under these Rules.

Provided that recruitment may be made on posts which are within the purview of the Rajasthan Public Service Commission, except the major State Services mentioned in Rule 3, where the Appointing Authority is satisfied in consultation with the Department of Personnel and the Rajasthan Public Service Commission that a dependent of a deceased Government servant is qualified and suitable for appointment to such post."

"Rule 8. Relaxation for age and other requirements--(1) The candidates seeking appointment under these rules must not be less than 16 years at the time of appointment. In the cases in which the wife of the deceased government servant being the only candidate found qualified and eligible for such employment there shall be no maximum upper age limit.

(2) The procedural requirements for selection, such as written test, typing test or interview by a Selection Committee or any other Authority, shall be dispensed with, but it shall be open to the Appointing Authority to interview the candidate in order to satisfy that the candidate will be able to maintain the minimum standard of work and efficiency expected on the post or to prescribe any condition, if considered necessary, for acquiring any training or proficiency e.g. typing speed or any other qualifications etc. within a reasonable period, after such employment under these Rules."

Rule 10 gives power to remove the difficulties by issuing instructions etc.

10. As compared to the recruitment of 1975 Rules, the Staff Rules, 1957 are meant for recruitment by way of direct recruitment wherein the procedure for selection has been prescribed. Rule 7 provides for method of recruitment. Rule 7(1) sub-clause B provides for recruitment of L.D.Cs. from amongst those who pass or have passed the junior diploma course. The remaining vacancies, if any, is to be filled in by a Competitive Examination.

11. Rule 7(c) provides for filling the post of U.D.C. by 100% promotion and similarly methods have been prescribed for making recruitment to number of other categories, cadres or post. Rule 11 prescribes the minimum and maximum age, whereas Rule 12 prescribes the academic qualifications and Rule 12 sub-clause 2 provides qualification for L.D.C. category as high school or secondary examination etc. etc. Rules 13 & 14 prescribe the character verification and physical fitness. There is a schedule attached under Rule 20 wherein the syllabus has been prescribed for competitive examination including the typing test for those persons who are to be recruited by direct recruitment by way of competition.

12. Rule 28 provides probation of two years to the persons appointed to the service whereas Rule 28-A provides confirmation and Rule 29 provides for termination of services in case, the work is unsatisfactory or to extend the probation period. Rule 30 provides for confirmation of probationer in case he has passed the departmental test of proficiency in Hindi.

13. From the reading of above two set of Rules and method of recruitment it is very clear that scope of recruitment in both the set of rules, are quite different. In the recruitment under the Rules of 1975, the financial need of the dependents, is to be looked into by providing the employment to the dependents. All the procedure of test, written test or interview are to be dispensed with, which is not the scope of the 1957 staff rules. 1975 Rules are applicable to only one class of persons i.e. dependents of deceased government servants, whereas

staff Rules 1957 are applicable to public in general who are eligible and qualified for applying for recruitment for selection through a competitive test. In the Rules of 1975, there is no pre-condition of passing any competitive test but in the Rules of 1957 the typing test and competition is pre-condition for selection. Both the rules have different scope and different applicability and therefore, Rules of 1975 specifically over ride any other provision of rules, orders or notifications under Rule 4 of the said rules in offering employment to the dependent of the deceased government servant.

14. The language of Rule 5 of the Rules of 1975 is very significant providing that the only criteria to be seen at the time of recruitment is whether dependent fulfils the educational qualification or not and if he is in possession of the educational qualification, he can apply straight-way under Rule 6. Rule 8 relaxes all the formal pre-requisites i.e. test and interview including the typing test but it only enables the appointing authority to interview the person to know his ability or efficiency if so considered necessary and then to offer the employment. The appointing authority may prescribe any condition in view of the nature of the work of the post to which the dependent employee is to be posted. For example, if a person is to be recruited as Steno-typist, for which typing may be the essential qualification, the condition can definitely be prescribed that he will have to pass minimum proficiency, in the near future within the reasonable time. Similarly, if a dependent is to be recruited for the post of police officer, it is the duty of the appointing authority to see that the person is bodily fit for performing the duties and for that purpose, he can hold the interview etc. or put any condition for possessing such a qualification.

15. In nutshell, for harmonious applicability of both the set of Rules, which has been dispensed with in the Rules of 1975, is the method/procedure of recruitment including relaxation of age, interview, typing test but once the method of recruitment is over and an employee is offered the job and he joins in response to the offer, and in that situation, the remaining part of 1957 Rules i.e. service conditions after having been selected and appointed shall come into play, equally to the dependent employees who has been recruited under the Rules of 1975 i.e. both sets of employees after having been recruited, either under 1957 rules or dependents employee having been recruited under the rules of 1975, shall be governed and shall be bound by other conditions of service after joining the service. To make it more clear, recruitment in the case of dependent services rules, 1975 shall be equal to the recruitment stage when a person joins after having been selected after competing and appearing in the test under the Staff Rules, 1957. Both the set of employees then, be on probation as per 1957 Rules, the educational qualification are only prescribed in the 1957 Rules and that shall be applicable to the Rules of 1975 as well. This is the only harmonious construction and which can be made applicable to the candidates recruited under 1975 rules.

16. Once recruitment/selection of the dependents who are offered jobs under

Rules 1975 on the compassionate grounds, is made equal to the stage of the recruitment/selection, it shall amount to as if, the dependents appointed under Rules, 1975 have qualified all necessary pre-requisites, which were so required if they had been recruited or selected under Rules, 1957. After the selection, once has been made, no pre-conditions which were mandatory for the selection under the Rules, 1957 could be made applicable to the dependents who are appointed on compassionate grounds under the Rules, 1975.

17. Applying the above dictum and in the facts and circumstances of the present writ petition, the petitioner is deemed to have been selected after fulfilling the necessary qualifications as Lower Division Clerk. Rule 8 Sub-clause 2, specifically provides for dispensing with, even the typing test, and therefore, putting a condition in the appointment letter for passing a typing test was not proper because of the reason that for the post of Lower Division Clerk, which is essentially a clerical post, typing test was not that essential qualification attached to the post for the purpose of 1975 Rules. Viewing from other side, if the petitioner is to be deemed equal to the person recruited under the Rules of 1957, upto the time of joining, no further condition can be put on the petitioner unless that condition is so essential as to invite to maintain the minimum standard of work and efficiency expected on the post. In the present case, it is not the case of the respondents that typing test was prescribed for obtaining any proficiency and rightly so as the petitioner was recruited as Clerk only and not as Stenographer/Steno-typist. It has also been brought to our notice that some instructions have also been issued giving wide discretion to appointing authority to put a condition of typing test or to dispense with the condition of passing typing test. Even otherwise, this is so clear from the bare reading of Clause 2 of Rule 8 of the Rules of 1975 that wherein again, an option has been given to appointing authority to dispense with this very test. It is not detailed anywhere as to in which circumstances, the written test, interview or typing test shall be dispensed with and in which circumstances, these tests will be incorporated as conditions of appointment in the appointment letter. There being no guidelines provided whatsoever, the action of the respondents in incorporating, such condition in the case of the petitioner is also hit by hostile discrimination. To our considered opinion, the only criteria for putting such a condition under Rule 8(2) is where the dependent is recruited for a definite post of some proficiency i.e. Stenographer/Steno-typist.

18. Learned Counsel for the petitioner has also argued that in case probation clause of 1957 Staff Rules is made applicable, then in no case, the petitioner could have been removed within two years. It has been held by the Apex Court in *The Management of the Express Newspapers (Private) Ltd. Madurai Vs. The Presiding Officer, Labour Court, Madurai and Another*, that if an employee is appointed on probation, he can only be terminated after period of probation is over. In the present case, it is clear from the various documents placed on record that the petitioner was told that in case, he does not pass typing test, it would be deemed that he is inefficient. There cannot be deeming clause for the purpose of

classifying an employee efficient or inefficient.

19. In the present case, the petitioner was appointed on 23rd January, 1992 and terminated in the month of August, 1993. In any case, If the appointing authority was of the opinion that 1957 Rules are applicable and the probation period of the petitioner is two years, and in that situation, there is a force in the argument of the learned Counsel for the petitioner that reasonable time for passing the typing test could not be less than two years, that is same as that of the probation period, but in the present case, this question does not arise as we have held that putting a condition of typing test itself was discriminatory in nature as no guidelines are provided under Rule 8(2) as to in whose cases the test and formalities shall be dispensed with and what would be those cases where a condition shall be put in.

20. To sum up, it is held as under:

(i) The Rajasthan Recruitment of Dependents of Government Servants dying while in Service Rules, 1975 are applicable to only those class of employees, who are dependents of the Government servants dying while in service, and are appointed in service under these Rules. At the time of appointment, the essential qualification are the minimum educational qualification and all other formalities including the age factor, can be relaxed as per the provisions of the said Rules.

(ii) Under the Rajasthan Subordinate Offices Ministerial Staff Rules, 1957 the recruitment/selection is to be made, of the candidates who possess the minimum educational qualification and also pass competitive test as per the method of selection provided under the said Rules of 1957.

(iii) After having been appointed in the service, under either of the Rules aforesaid (i) & (ii) above, the status of the employee in the service becomes equal and all other conditions in regard to probation period, termination, confirmation etc. etc. as provided under 1957 Rules are also made applicable to the dependents appointed under the Rules of 1975.

(iv) Under Sub-clause (2) of Rule 8 of the Rules of 1975, while offering the job to the dependent to over-come his financial difficulties, the written test, interview and typing test are dispensed with but the appointing authority can put any such condition if the nature/requirement of the job so requires, which is clear from the reading of the Section itself i.e. for maintaining proficiency in the specialised, job, the condition can be put on the appointee, to achieve that level as is required out of that profession, but in no case, by putting undesired condition, the very purpose of the Rules of 1975, of providing jobs on compassionate grounds to the dependents of the deceased Government servant shall be defeated.

21. For the reasons and above discussions, the appeal is allowed and the judgment passed by the learned Single Judge is set aside and writ petition is accepted by quashing the order of termination Annex. 8 with all consequential

benefits. No order as to costs.