
(2010) 01 RAJ CK 0020
In the Rajasthan High Court

Shyam Sunder Gupta

APPELLANT

Vs

The State of Rajasthan and Another

RESPONDENT

Date of Decision : 19-01-2010

Acts Referred:

Citation : (2010) 1 WLN 610

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mohammad Rifiq, J.—This writ petition has been filed by petitioner Shyam Sunder Gupta, who was initially appointed as Stenographer with the Labour Court, Jaipur on 02.12.1981, with the prayer that the respondents be directed to upgrade the post of Personal Assistant held by him to that of Senior Personal Assistant in the Labour Court, Jaipur, with effect from 21.01.1989 and promote him on that post from 01.06.1992, the date on which he completed three years of service on the post of Personal Assistant.

2. Petitioner was appointed as Stenographer Gr.II with the Labour Court on 02.12.1981; he was thereafter promoted to the post of Personal Assistant on ad-hoc basis vide order dated 12.01.1990. The petitioner submitted a representation to the respondents that in all the Courts of District & Sessions Judge the post of Senior Personal Assistants has been sanctioned and, therefore, the post of Stenographer Gr.II held by him be upgraded to the post of Personal Assistant with effect from 01.03.1990 and the petitioner was confirmed on that post with effect from 02.12.1991. vide order dated 21.01.1989 the State Government decided to upgrade 39 posts of Personal Assistant to that of Senior Personal Assistant. Out of these posts, 27 posts were with the District Courts whereas 12 posts were with the Special Courts, the Presiding Officer where of wereof the cadre of District Judge from the Rajasthan Higher Judicial Services. The petitioner submitted number of representations that since the Labour Court is also presided over by an Officer of the rank of District Judge and the petitioner is

providing him all the services which are given by a Senior Personal Assistant, the post of Personal Assistant held by him should be upgraded to the rank of Senior Personal Assistant. In the meantime, the Government decided to establish an Industrial Tribunal-cum-Labour Court at Bhilwara where a post of Senior Personal Assistant was sanctioned in the staffing pattern of that Court. Copy of the sanction order dated 03.12.1990 is available on the record. Apart from the post of Senior Personal Assistant, the post of 1 Reader, 1 Junior Accountant and 1 Process Server each were created whereas 3 posts of L.D.C. and 4 posts of Class IV were created. The petitioner thereafter again submitted a representation to the respondents in order to do justice with him, on 14.01.1991 praying that the post of Personal Assistant in the Labour Court, Jaipur be upgraded to the rank of Senior Personal Assistant. Many of his representations were forwarded by the Presiding Officer of the Labour Court who, on their own also, wrote to the Government that the post of Personal Assistant available with the Labour Court be upgraded to the rank of Senior Personal Assistant on the same pattern on which the post of Senior Personal Assistant is provided in all the District Courts as also in many of the Labour Courts/Industrial Tribunals.

3. Shri Arun Sharma, learned Counsel for the petitioner, argued that this Court in similar circumstances, vide order dated 17.10.1995, allowed the writ petition of one Smt. Asha Bakhtiani, being S.B. Civil Writ Petition No. 3769/1993, relying on the earlier judgment dated 23.10.1992 of this Court rendered in S.B. Civil Writ Petition No. 840/1990, wherein also a direction was given to the respondents to upgrade the post of Personal Assistant to that of Senior Personal Assistant. Reliance was also placed on the judgment dated 27.08.2002 of this Court in S.B. Civil Writ petition No. 6184/1994 Shri Shaukat Ali Chaudhary v. State of Rajasthan and Ors.; the facts of that case were that the petitioner was working on the post of Office Superintendent Gr. I. the pay and allowances whereof were not equal to that of the Munsrim in the Court of District & Sessions Judge. The said Writ Petition was allowed and the Special Appeal, being D.B. Civil Special Appeal (Writ) No. 465/2003, filed against the said judgment, was dismissed by the Division Bench of this Court vide judgment dated 09.10.2003. Special Appeal No. 615/1994, decided on 05.07.1995, filed by the State of Rajasthan against the judgment of Single Bench in the case of Barkat Ali (Supra), was also dismissed.

4. Learned Counsel for the petitioner submitted that the petitioner, who was promoted on the post of Personal Assistant, has been continuously working thereon since 01.03.1990 and he was confirmed thereon on 02.12.1991; and that ever since 1990, he has been facing stagnation inasmuch as there is no promotional avenue; he is even though required to discharge the duties of Senior Personal Assistant, but salary and other benefits of the post of Personal Assistant are being paid to him.

5. Learned Counsel for the petitioner further submitted that this Court also decided the writ petition of the petitioner vide judgment dated 03.12.2001 with a

direction to the petitioner to make a representation to the respondents; the respondents were required to consider and decide such representation in the light of earlier judgments of this Court. A liberty, however, was given to the petitioner that in the event of his representation being dismissed, he would be entitled, on his application, to revive his writ petition. The representation was rejected by the respondents by order dated 28.12.2002 and thereafter this writ petition was revived pursuant to the order dated 14.02.2003 of this Court.

6. Shri S.D. Khaspuria, learned Additional Government Counsel, appearing on behalf of respondents, opposed the writ petition and submitted that this Court cannot direct the Government to upgrade the post held by the petitioner. It is submitted that since there is no post of Senior Personal Assistant, the petitioner cannot be promoted to the that post. It is not necessary that in every court there should be a post of Senior Personal Assistant, even if the court is presided over by an Officer of the rank of District Judge. There cannot be any similarity between the court of District Judge and Labour Court/Industrial Tribunal. The learned Counsel appearing on behalf of the respondents, in support of his arguments, relied on the judgment of the Hon'ble Supreme Court in State of Mysore Vs. C.R. Sheshadri and Others,

7. Having heard learned Counsel for the parties and perused the material available on the record, I find that this Court earlier by its order dated 03.12.2001 decided the present writ petition. In that order, the aforesaid judgments earlier passed by this Court in the writ petitions of Barkat Ali, Shaukat Ali Chaudhary and Smt. Asha Bakhtiani were referred and it was left to the wisdom of the State Government to follow the suit. What was expected was that the post shall be upgraded on the pattern on the basis of which such upgradation was made in other cases. It was observed that in the event the post is upgraded, case of the petitioner should be placed before the Departmental Promotion Committee (for short, "DPC") and in the event DPC adjudged him suitable, he should be promoted. The respondents, after considering the same, rejected the representation of the petitioner on 28.10.2002. In the order rejecting the representation of the petitioner, it is stated that five posts of Personal Assistant were proposed to be upgraded to the level of Senior Personal Assistant by the Budget Finalization Committee of the year 1999-2000 and 2001-2002 but the Government as a measure of austerity decided not to upgrade such posts. That order was passed on 28.10.2002 and that was in relation to the Financial Year 1999-2000 and 2001-2002. Almost eight years have elapsed since then. Even now the situation continues to be the same. Although normally this Court does not entertain such a matter and direct up-gradation of a post but here in the instant case what is evident is that the petitioner is facing stagnation for last two decades and the post of Senior Personal Assistant has been made available not only in every Court of District & Sessions Judge throughout the State of Rajasthan but also in most of the Labour Courts/Industrial Tribunals. On the same pattern, in the writ petitions filed by Smt. Asha Bakhtiani and Barkat Ali, who too like the petitioner were working on the post of Personal Assistant and

were facing stagnation on account of non-availability of the post of Senior Personal Assistant, were allowed by this Court directing the respondents to upgrade the post of Personal Assistant held by them to that of Senior Personal Assistant. In the case of Barkat Ali, it was directed that he shall be appointed on the post of Senior Personal Assistant with effect from 21.01.1989 and on the same pattern it was directed in the case of Smt. Asha Bakhtiani too that she shall be given benefits of Senior Personal Assistant with effect from 21.01.1992. In the present case, however, since earlier judgment of this Court required the respondents to place the case of the petitioner before the DPC and if the DPC adjudged him suitable, then grant him promotion on the post of Senior Personal Assistant with all consequential benefits from that date and that judgment was passed on 03.12.2001, it would be unjust if the petitioner is not granted the benefit of that judgment at-least from the date of the earlier judgment passed by this Court on 03.12.2001. Even otherwise, on identical facts and circumstances when two Coordinate Benches of this Court have taken a particular view and judgment of the Single Bench has been upheld by the Division Bench of this Court, I am bound to follow the ratio of those judgments.

8. Apart from that, there was no reason for the respondents not to upgrade the post of Personal Assistant to the level of Senior Personal Assistant when they have, in the sanctioned staffing pattern of different Labour Courts/Industrial Tribunals of the State, created such post and when similar post is provided also to the other District Courts. This Court can take judicial cognizance of the workload in different Labour Courts/Industrial Tribunals, especially at Jaipur where reference cases are answered after a considerable length of time.

9. In the result of the aforesaid discussion, this writ petition is allowed. The respondents are directed to upgrade the post of Personal Assistant to that of Senior Personal Assistant and place the case of the petitioner before the Departmental Promotion Committee to be considered and, in case the petitioner's case is adjudged suitable for promotion, to grant him actual benefits of such promotion from 03.12.2001.

10. Compliance of this judgment be made within a period of three months from the date its copy is produced before the respondents.