
(2016) 08 RAJ CK 0079
In the Rajasthan High Court
Case No : Civil Writ Petition No. 12610 of 2013

Smt. Laxmi Beniwal

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 12-08-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 4 RLW 3331 : (2016) 4 WLC 651

Hon'ble Judges : Mr. Sandeep Mehta, J.

Bench : Single Bench

Advocate : Mr. N.L. Joshi and Mr. H.S. Sidhu, Advocates, for the Petitioners; Mr. Anil Bissa, AGC, for the Respondents

Final Decision : Disposed Off

Judgement

Mr. Sandeep Mehta, J. - These two writ petitions involve common questions of law and facts and are thus being decided together by this single order.

2. The petitioners herein were both working as Constables in the respondent police department. The challenge which has been laid by the petitioners by way of these instant writ petitions is to the action of the respondent authorities in subjecting them to repeated deferment of selection grades by the effect of notification dated 31.12.2009 issued by the Finance Department, Government of Rajasthan.

3. The petitioner Smt. Laxmi Beniwal was inflicted two penalties of Censure by orders dated 1.12.1997 and 30.4.2001 respectively and under the effect thereof, the first selection grade was sanctioned to her with deferment of two years from 20.2.2004 to 20.2.2006. When the petitioner Laxmi Devi had completed 18 years of service, she claimed the benefit of second selection grade upon which she was communicated an order dated 8.8.2013 intimating that owing to two punishments of Censure, she would be entitled to second A.C.P. (selection scale) w.e.f. 20.2.2015.

4. The petitioner Roop Giri was inflicted penalty of withholding of three grade increments without cumulative effect by order dated 23.10.1997. Accordingly, though the first selection grade on completing 9 years of service fell due to him on 16.1.1995 but the same was deferred and was afforded to him from 16.1.1998. However, second selection grade was given to Roop Giri w.e.f. 15.1.2004 upon completing 18 years of service without any deferment. On 22.6.2005 another penalty of Censure was imposed upon him. It is asserted that petitioner Roop Giri had completed 27 years of service on 16.1.2013. For considering grant of third selection only previous seven years? service record between 16.1.2006 to 16.1.2013 was to be seen during which period no penalty was inflicted upon the petitioner. Thus, it has been claimed that having completed 27 years of service in reference to his initial date of appointment being 16.1.1986 the petitioner Roop Giri became entitled to third selection grade on 16.1.2013. However, the respondents passed the order Annexure P-6 dated 26.2.2013, as per which it has been intimated that he would be entitled to third selection grade only upon completing 31 years of service.

5. The said orders have been passed in reference to the Finance Department notification dated 31.12.2009, the relevant clause whereof is reproduced herein below for the sake of ready reference:-

"If a financial up gradation under the ACPS is deferred and not allowed due to the reason of the employee being unfit or due to departmental proceedings, etc. this would have consequential effect on the subsequent financial up gradation which would also get deferred to the extent of delay in grant of previous financial up gradation."

6. The petitioners, on the other hand, have relied upon the circulars dated 19.8.2009 and 21.8.2009 issued by the police headquarters, as per which, while assessing the entitlement of the employee for grant of selection grades only the previous seven years service record is to be seen and considered.

7. The respondents, in reply to the writ petition have taken recourse to the above referred circular/memorandum dated 31.12.2009 issued by the Finance Department, Government of Rajasthan wherein it has been provided that the deferment of ACP/Selection Grade on account of departmental proceedings would have consequential effects on the subsequent financial up gradation.

8. Sarva Shri N.L. Joshi and H.S. Sidhu, learned counsel for the petitioners vehemently contended that the action of the respondents in giving recurring effect to orders imposing penalty and the consequent repeated deferment of selection grades otherwise admissible to the petitioner employees is grossly illegal and violative of right against double jeopardy enshrined under Article 20 of the Constitution of India. They urged that the impugned action is also illegal for the reason that the Service Rules clearly provide that whenever the case of the employee for promotion is to be considered, only the previous seven years service record is to be seen. If the employee meets the standards in these

previous seven years, the due benefit/promotion has to be afforded and cannot be deferred for any reason whatsoever. The criterion for grant of ACPs and promotion is the same because financial up gradation through ACPs was introduced as an alternative to the employees who are not having any promotional avenue in the cadre or are working on isolated posts. They urged that giving repeated effect to the departmental penalties has the consequence of dual punishment which is in total violation of the guarantee against double jeopardy enshrined under Article 20 of the Constitution of India. They thus urged that while accepting the writ petition, the respondents be directed to extend benefit of second/third selection grades to the petitioners by ignoring the penalties imposed upon them which have already been given effect to by deferring the first selection grade for the corresponding period.

9. Per contra Mr. Anil Bissa, learned A.G.C. vehemently opposed the submissions advanced by the petitioners' counsel and contended that the Finance Department's notification dated 31.12.2009 particularly clause 11 thereof clearly mandates that departmental punishments have to be given recurring effect while conferring selection grades to the concerned employee. Therefore, he urged that the petitioners are not entitled to the relief claimed in these writ petitions.

10. I have considered the arguments advanced by the learned counsel for the parties and have gone through the material available on record.

11. The undisputed factual scenario in cases of both the petitioners is that the respondents deferred the grant of second/third selection grade otherwise admissible to them on account of penalty orders which were inflicted at the time when respective petitioner was considered for grant of first selection grade. It is admitted that under the effect of penalties imposed on the respective petitioners, consequential deferment in the first selection grade was effected. Thus, the question which falls for the Court's consideration as to whether the orders imposing penalty, can be given a cascading/recurring effect while considering the grant of subsequent selection grade/A.C.Ps. to the petitioners. The memorandums dated 19.8.2009 and 21.8.2009 issued from the office of Director General of Police clearly provide that while assessing the entitlement for selection grades/ACP regarding the employee, the service record for the previous seven years shall be taken into account. Selection grade or A.C.P. scheme as the case may be was introduced by the State Government to stop stagnation amongst the employees who did not have any avenue of promotion in the cadre or are working on isolated posts. Financial up gradation is virtually an alternate to promotion. Thus, the criterion for grant of selection grade and promotion should be identical. The DPC Rules and notification issued thereunder governing the promotion exercise of State Govt. employees provide that while considering the entitlement of an employee to be promoted, the previous seven years service record shall be seen. Any adverse factor in the service record which is beyond 7 years cannot be used to the detriment of the employee concerned. The circular/memorandum dated 31.12.2009 issued by the Finance Department, Government

of Rajasthan particularly Clause 11 thereof which provides that the penalty imposed earlier shall be given effect to while considering the grant of selection grades in the subsequent periods as well clearly runs contrary to the guarantee against double jeopardy enshrined under the Constitution of India. No person can be penalised twice for the same violation. Repeated use of an order of punishment against an employee definitely amounts to violation of the above fundamental right against double jeopardy. Thus, I am of the firm opinion that Clause no. 11 of the memorandum issued by the Finance Department which provides that a departmental punishment would have a recurring effect on the subsequent ACPs admissible to the employee concerned is clearly repugnant to the statutory rules and also runs contrary to the fundamental right against the double jeopardy guaranteed by the Constitution of India.

12. Hon'ble Division Bench of this Court, examined the very same controversy in the case of State of Rajasthan v. Kuldeep Singh Chauhan reported in RLW 1998(2) Raj.-816. The relevant notifications issued by the State Government regarding grant of selection scales to the employees were examined and the Hon'ble Division Bench went on to held as below:-

"(11) Consequently, we hold that for judging suitability for grant of first, second and third Selection Grades the dates when an employee completes 9, 18 and 27 years of this service and APARS preceding 7 years of his entitlement would be relevant."

13. Thus, the said condition of the Finance Department notification Annexure P-6 dated 31.12.2009 is clearly illegal and arbitrary and also runs contrary to ratio of the above Division Bench judgment and is hereby struck down.

14. As a consequence of the above discussion, the petitioners are entitled to the benefit of second/ third selection grade as the case may be by ignoring the order/s of penalty imposed upon them earlier and the effect whereof has already been applied while granting the earlier selection grade to them. The petitioners shall be granted benefit of subsequent selection grades in light of the above directions ignoring the effect of penalties imposed upon them in the earlier period.

15. No order as to costs.