
(2010) 02 RAJ CK 0053
In the Rajasthan High Court

Smt. Vijay Laxmi Agnihorti

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 17-02-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2010) 02 RAJ CK 0053

Hon'ble Judges : Ajay Rastogi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ajay Rastogi, J.—Through instant petition, petitioner has prayed for that being a Senior Most Asstt. Commissioner (Devasthan) may be considered for promotion to the post of Dy. Commissioner (Devasthan) which is highest post included in Rajasthan Devasthan State & Subordinate Service Rules, 2000 (?Rules, 2000?).

2. Petitioner was initially appointed as Inspector Gr.II on 15/09/1980 and further appointed as Inspector Gr.I on 09/12/1989, and was promoted as Inspector Gr.I against vacancy year of 1990-91 on the recommendations of the Review DPC vide order dt.10/08/2004 (Ann.R/4) and further promoted as Asstt. Commissioner (Devasthan) against vacancy of the year 1995-96 vide order dt.25/08/2006 (Ann.R/7); and as per seniority list of Assistant Commissioners (Devasthan), she is the senior most officer in the department. Indisputably, there is only one sanctioned post of Dy. Commissioner (Devasthan) in the Department which is appended under Rules, 2000.

3. Counsel submits that post of Dy. Commissioner despite being the cadre post included in Schedule to the Rules, 2000 from the very inception of its creation, is being filled from among members of Rajasthan Administrative Service while members of Rules, 2000 are deprived from consideration despite the fact that it is to be filled 100% by promotion, from eligible officer having five years" experience as Assistant Commissioner (Devasthan). The petitioner being

promoted against vacancy of year (1995-96) became eligible for promotion to the post of Deputy Commissioner (Devasthan), against vacancy determined as on 01/04/2000, which has resulted in seriously jeopardizing her right of fair consideration and denial thereof is arbitrary and in violation of Article 14 & 16 of the constitution.

4. In reply to writ petition, the respondents have not controverted that petitioner became eligible for promotion to the post of Deputy Commissioner under Rules, 2000; however it has been averred that whenever the departmental promotion committee meeting is convened for promotion to the post of Deputy Commissioner, her candidature will also be considered but since there is only one sanctioned post of Deputy Commissioner (Devasthan) and presently being occupied by member of Rajasthan Administrative Service, in such circumstances, she cannot be considered for promotion to the post of Deputy Commissioner.

5. This Court has considered contentions of the Counsel for the parties and with their assistance, examined material on record. This fact remained undisputed that there is only one sanctioned post of Deputy Commissioner (Devasthan) and as per Schedules, appended to the Rules, 2000, the petitioner is senior most officer holding the post of Assistant Commissioner (Devasthan) on being promoted against vacancy of 1995-96, became eligible against vacancy of Deputy Commissioner (Devasthan) determined in the year 2000-01 as on 01/04/2000 after having rendered five years' service as Assistant Commissioner. However, since Rules, 2000 came into force immediately after its publication in Rajasthan Rajpatra on 23/09/2000, only thereafter petitioner became eligible on the post of Deputy Commissioner being included in Schedule-I.

6. However, after Rules, 2000 came into force, posts included in Schedule-I (State Service) and Schedule-II (subordinate service), as the case may be, are to be filled in accordance with Part-IV & V of Rules, 2000. However, as per Schedule-I appended to Rules, 2000, post of Deputy Commissioner (Devasthan) is to be filled 100% by promotion from officer working in the cadre of Assistant Commissioner having five years's service. However, under remarks column, there is a mention that 50% cadre post will be filled from among RAS (Senior Scale) Officers.

7. Rule 6(1), its proviso (i), (ii) & (iv) and Schedule-I of Rules, 2000 read ad infra:

6. Methods of Recruitment.

(1) Recruitment to post(s) in the service after the commencement of these Rules shall be made by the following methods in proportion as indicated in column 3 and 4 of Schedule I and Schedule II as the case may be;

(a) by direct recruitment in accordance with the procedure prescribed in part-IV of these Rules;

(b) by promotion in accordance with the procedure prescribed in part-V of these

Rules;

Provided that

(i) post of Assistant Commissioner and inspector Grade II shall be filled by direct recruitment through combined competitive examination to be conducted by the Commission in accordance with the provisions of the Rajasthan State and Subordinate Services (Direct Recruitment by Combined Competitive Examinations) Rules, 1999.

(ii) if the appointing authority is satisfied in consultation with the Commission where necessary, that suitable persons are not available for appointment by either method of recruitment in a particular year, appointment by the other method in relaxation of the prescribed proportion may be made in the same manner as specified in these rules.

(iv) 50% of total cadre post of Deputy Commissioner shall be filled from amongst the members of Senior Scale Rajasthan Administrative Service Officers.

Schedule-I

(Post in State Service)

-- S. No. Name Methods of Promotion Qualific Post from Qualification & Remarks
of recruitment ation & which experience for Post with Experience promotion
promotion percentage for direct is to be Direct recruitment made recruitment
Promotion -----

----- 1. Deputy - - Assistant 5 years 50% cadre commissioner
Commissioner experience post will on the post be filled mentioned up from in
Col. amongst No. 6 RAS (Senior Scale Officers)

100.00 % -----

8. Rule 6 lays down method of recruitment, as per which posts appended in Schedules of Rules, 2000 have to be filled by direct recruitment & by promotion in accordance with procedure provided in part-IV & V of Rules, 2000.

9. However, as per proviso (ii) to Rule 6(1) of Rules, 2000, if appointing authority is satisfied in consultation with the Commission where suitable persons are not available for appointment by either method of recruitment in a particular year, relaxation could be made by appointment through other method in proportion as specified in the Rules. At the same time, proviso (iv) contemplates about 50% of cadre post of Deputy commissioner for being filled from among members of Senior Scale RAS Officers.

10. If Rule 6 is read with Schedule-I (State Service) of Rules, 2000, it clearly emerges that post of Deputy Commissioner is to be filled by promotion and if sanctioned posts are more than one, 50% of cadre post will be filled from RAS

cadre but in case of one sanctioned post in the cadre of Deputy Commissioner, certainly it has to be first filled by way of promotion in accordance with procedure laid down under Part-V of Rules, 2000; and if members of Service are not found to be eligible/suitable, in that eventuality, the authority may consider for appointment from among Senior Scale RAS officer.

11. In the instant case, there being one sanctioned post of Deputy Commissioner (Devasthan) in State Service under Rules, 2000, members of Rajasthan Devasthan State & Subordinate Service will have first primary right of consideration for promotion to the post of Deputy Commissioner (Devasthan) and making appointment from RAS Senior Scale officers, in the opinion of this Court, cannot be held to be justified more so when members of service under Rules, 2000 are eligible and available awaiting for their consideration for promotion to cadre post of Deputy Commissioner (Devasthan).

12. Consequently, writ petition succeeds and is hereby allowed. Respondents are directed to first consider candidature of eligible officers for promotion after determination of vacancy to the post of Deputy Commissioner (Devasthan) in terms of procedure laid down under part-V of Rules, 2000 and if members of Devasthan service are found suitable, may be promoted as Deputy Commissioner (Devasthan) with consequential benefits as admissible under law. All exercise to comply with directions (supra) be completed within three months. No costs.