
(2010) 04 RAJ CK 0066
In the Rajasthan High Court

State of Rajasthan and Others

APPELLANT

Vs

Ghanshyam Singh Saini

RESPONDENT

Date of Decision : 07-04-2010

Acts Referred:

Citation : (2010) 04 RAJ CK 0066

Hon'ble Judges : Jagdish Bhalla, J;Dinesh Maheshwari, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This intra-court appeal is directed against the order dated 05.01.2009 whereby the learned Single Judge of this Court has allowed the writ petition filed by the respondent (CWP No. 3555/2008) and, while quashing the impugned orders dated 01.02.2008 and 06.02.2008 relating to the recovery from the respondent of the amount paid towards retiral benefits, has directed the appellants to determine and pay the pension and all other post retiral benefits to the respondent by treating him a person retiring from the post of Lineman under the Rajasthan Municipalities(Ministerial & Subordinate Staff Service) Rules, 1963 ["the Rules of 1963"].

2. Briefly put, the relevant facts and backgrounds aspects of the matters are that by an order dated 25.06.1967 (Annex.1), as issued by the Chairman, Municipal Board, Suratgarh, the respondent (writ-petitioner) was given appointment as Pump Driver on temporary basis in the pay scale Rs. 40-2-60 with admissible allowances including D.A. In the year 1977, the writ-petitioner qualified the test for grant of permit as Wireman and a permit was issued in his favour by the competent authority. Thereafter, by the order dated 24.06.1981 (Annex.5), the Municipal Board proceeded to convert the appointment of the writ-petitioner as Lineman from the post of Pump Driver Grade-II; and such conversion was regularised by the office order dated 06.09.2006 (Annex.5/A) that was issued in compliance of the instructions given by the Deputy Director, Local Self Department, Bikaner Region, Bikaner on 11.07.2006. The writ-petitioner

continued to serve the appellants and ultimately, on attaining the age of superannuation, he stood retired from service on 31.05.2007. It is noticed from the amended orders dated 02.07.2007 (Annex.6) that the writ-petitioner was also allowed selection grades on completion of 9, 18 and 27 years of service. It is further borne out from the material placed on record that an amount of Rs. 2,50,635/- was paid to the writ-petitioner on 31.05.2007 towards gratuity.

3. It appears that after his retirement, certain objections were raised by the Directorate of Local Self Government regarding grant of pension to the writ-petitioner on the ground that he was not eligible to hold the post whether of Pump Driver or of Lineman and, therefore, his initial appointment itself was illegal. The Executive Officer, Municipal Board, Suratgarh, in his communication dated 03.10.2007 (Annex.8) made a request to the Director, Local Self Government, Jaipur to grant relaxation to the writ-petitioner in educational qualification and to regularise his appointment. However, for no such relaxation having been accorded and for the directions issued by the Deputy Director, Department of Local Self Government, Bikaner Region, Bikaner, the Executive Officer, Municipal Board, Suratgarh, by his order dated 01.02.2008 (Annex.13) proceeded to re-fix the pay of the writ petitioner and consequently issued another order dated 06.02.2008 (Annex.14) directing the writ-petitioner to deposit an amount of Rs. 1,16,985/-, said to have been paid in excess towards gratuity, so that his pension case could be processed.

4. Aggrieved of such recovery order and denial of pension, the respondent preferred the writ petition wherefrom has arisen his intra-court appeal. In their reply to the writ petition, the present appellants stated that the writ-petitioner was not possessing the requisite qualification, of Middle School certificate with ITI in the trade concerned, to hold the post of Pump Driver as also the post of Lineman and hence, for his appointment being illegal right from inception, he was not entitled for any retiral benefit.

5. The learned Single Judge, after having heard the learned Counsel for the parties and after having examined the record, found a clear case for issuance of necessary writ with the following observations and findings:

It is not in dispute that the petitioner entered in the services of the Municipal Board, Suratgarh much back in the year 1967. His appointment to the post of Pump Driver Grade-II was converted to the post of Lineman in the year 1981 and necessary sanction in this regard was also granted by the Department of Local Self Government through its Deputy Director, Bikaner Region, Bikaner. The respondents also allowed selection grades to the petitioner and ultimately, he retired from service on 31st May, 2007. It is really surprising that no action was taken by the respondents for years together to point out the deficiency in qualification of the petitioner to hold the post of Pump Driver Grade-II as well as the post of Lineman. It is only after his retirement the respondents choose to raise objections regarding grant of pension and other post retiral benefits. As a matter of fact, the approval granted for petitioner's appointment as Lineman by

the Local Self Government is conscious and positive act on the part of respondents to condone and relax the qualification required to hold the post concerned. It is relevant to note the Rajasthan Municipalities (Ministerial & Subordinate Staff Service) Rules, 1963 empowers the respondents to relax the eligibility for appointment in the service concerned, relating to age and experience. Once the petitioner has been allowed to continue in the service for about a period of 40 years, assumption is that the respondents have granted relaxation to the petitioner for the required eligibility to hold the post of Pump Driver and then the post of Lineman. In view of it, appointment of the petitioner on the posts concerned is valid and denial of pension and other post retiral benefits to him is bad.

6. Seeking to question the order aforesaid, the learned Counsel for the appellants submits that the writ-petitioner was not possessing the requisite qualifications, whether for the post of Lineman or for the post of Pump Driver and hence, has no right to claim pension. The learned Counsel submits that even if the writ-petitioner had discharged the duties of Lineman and had been paid therefor, these facts do not by themselves confer any right in him to get the benefit admissible to the substantive appointee. According to the learned Counsel, the learned Single Judge has erred in granting retiral benefits to the writ-petitioner.

7. We have given thoughtful consideration to the submission made and have perused the material placed on record. We are clearly of the view that the submissions made on behalf of the appellants remain bereft of substance.

8. It is apparent on the face of the record that ever since the year 1967 when he entered into the services and until the year 2007 when he reached the age of superannuation and retired, the writ-petitioner served the appellant Municipal Board for about 40 years. Though he entered the services on the post of Pump Driver, the writ-petitioner acquired the proficiency requisite for a Lineman and not only that the appellants proceeded to convert his employment as Lineman (vide order dated 24.06.1981), such conversion was in fact regularised by the order dated 06.09.2006 (Annex.5/A) that was issued pursuant to the order dated 11.07.2006 as passed by the Deputy Director, Local Self Department. We are in agreement with the learned Single Judge that the approval so granted for the writ-petitioner's appointment as Lineman had been a conscious and positive act on the part of the present appellants to condone and relax the requisite qualifications so far the writ-petitioner is concerned under the powers available in the Rules of 1963. It is not the case of the appellants that the writ-petitioner entered into or continued in the service with concealment of any material fact. Not only that the writ petitioner was continued in service by the appellants, he was consciously granted the benefit of selection grades too upon completion of 9, 18, and 27 years of service, of course with the amended orders issued after his retirement.

9. Gratuity and pension and other retiral benefits, being essentially the payments

for the services rendered by an employee, in our view, it would be a travesty of justice if the appellants are permitted to turn around after the writ-petitioner had retired after rendering 40 years of service to say that he was lacking in eligibility to hold the post of Pump Driver and then the post of Lineman. A clear case for interference by the writ Court was made out; and we find no error or illegality in the writ issued by the learned Single Judge.

10. Consequently, the appeal fails and is, therefore, dismissed summarily.