

(2011) 09 SC CK 0043

In the Supreme Court Of India

Case No : Civil Appeal No. 8404 of 2011 (Arising out of S.L.P. (C) No. 30570 of 2010) , C.A. No. 8405 of 2011 (Arising out of SLP (C) No. 9847 of 2011) , C.A. No. 8406 of 2011 (Arising out of SLP (C) No. 17093 of 2011) , C.A. No. 8407 of 2011 (Arising out of SLP (C

State of Rajasthan and Others

APPELLANT

Vs

Shankar Lal Parmar

RESPONDENT

Date of Decision : 30-09-2011

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : AIR 2012 SC 1913 : (2012) AIRSCW 2370 : (2013) 1 AJR 613 : (2013) 1 AWC 135 : (2011) 131 FLR 944 : (2011) 4 KLT 93 SN : (2012) 2 MLJ 314 : (2011) 11 SCALE 360 : (2011) 11 SCR 762 : (2013) 1 WBLR 459

Hon'ble Judges : Deepak Verma, J; Dalveer Bhandari, J

Bench : Division Bench

Advocate : Manish Singhvi, AAG, Irshad Ahmad, Ranji Thomas and V.N. Raghupathy, for the Appellant; Rishabh Sancheti, T. Mahipal, Monika Gusain, Hariom Yaduvanshi, H.D. Thanvi, Rishi Motolia, Sarad Kumar Sinhanian and Puneet Jain for Pratibha Jain, for the Respondent

Final Decision : Disposed Of

Judgement

Deepak Verma, J.—Leave granted.

2. The solitary question that arises for our consideration in the instant and the connected appeals is whether an employee would be entitled for the grant of 'Selection Grade', automatically, at the first instance, after the completion of 9 years, at the second instance, after the completion of 18 years and at the third and last instance, after the completion of 27 years of service, even when he has earned censure in the past years of service.

3. In fact, on the strength of an Order pronounced by Division Bench on 12.12.2003 in the matter of Devi Singh v. State of Rajasthan and Ors. reported in 2004 (2) CDR 925 (Raj), several matters came to be filed in the High Court of

Judicature of Rajasthan both at the Principal Bench at Jodhpur and at the Bench at Jaipur claiming entitlement for the Selection Grade. Unfortunately, the learned Judges, either sitting in Single Bench hearing Writ Petitions of the employees or in Division Bench, hearing Writ Appeals of the State, without properly appreciating or advertent to the ratio decidendi of the case, in a stereotype manner, went on allowing the Writ Petitions filed by the employees and dismissing the appeals preferred by the State. The approach adopted by the High Court in all such cases would reflect that the judgment in Devi Singh's case has not only been misread but has also been misinterpreted by them. In fact, it was the duty of the learned Advocate for the Appellants, who had appeared in the High Court to have pointed out the distinction, but apparently it appears that he failed to do so which has led to erroneous judgments. The controversy has been pending before this Court for quite some time, therefore, we deem it fit to decide it, by a reasoned judgment to iron out the creases and clear the clouds.

4. It is relevant to mention here that a SLP filed by the State, against one Bheem Singh was dismissed by this Court on 06.01.2010 on the ground of delay. The Order reads as under:

Heard learned Counsel for the Petitioners.

The SLP is dismissed on the ground of delay as also on merits.

However, the question of law is kept open to be decided in an appropriate case.

Since the SLP was dismissed on the ground of delay and the question of law was clearly left open, thus there is no difficulty in deciding these appeals on merits, because the said SLP was not decided on merit.

5. Brief facts material for deciding the instant case are given herein below:

With a view to provide relief to employees, Class IV, Ministerial Subordinate Services and those holding isolated posts, Selection Grades were prescribed for the lowest posts in these services, so as to resolve the problem of stagnation. With this intention, first Office Order was issued by the State of Rajasthan on 25.01.1992. The salient and important features of the said Order, relevant for the purpose of these appeals are reproduced herein below:

2.(i) The first selection Grade shall be granted from the day on which one completes service of nine years, provided that the employee has not got one promotion earlier as is available in his existing cadre.

(ii) The Second Selection Grade shall be granted from the day following the day on which one completes service of eighteen years, provided that the employee has not got two promotions earlier as might be available on his existing cadre and the first selections grade granted to him was lower than the pay scale of Rs. 2200-4000.

(iii) The third Selection Grade shall be granted from the day on which one completes service of twenty seven years, provided that the employee has not got

three promotions earlier as first or the second Selection Grade granted to him, as the case may be was lower than the pay scale of Rs. 2200-4000.

6. Another important and relevant Clause in the said Order for our perusal is 7, which is also reproduced herein below:

7. Selection Grades in terms of this Order shall be granted only to those employees whose record service is satisfactory. The record of service which makes one eligible for promotion on the basis of seniority shall be considered to be satisfactory for the purpose of grant of the Selection Grade.

7. Clause 7 makes it clear that only those employees would be entitled for grant of Selection Grades, whose service record has been satisfactory and is otherwise eligible for promotion on the basis of seniority but is not able to get the same as there might not be any channel of promotion or for want of sanctioned posts in the cadre.

8. Another Department of the Appellant-State, Office of Director General of Police (Rajasthan) in its wisdom, deemed it fit to further clarify the position and issued another Circular dated 23.07.1992. The relevant portion of the said circular is reproduced herein below:

As far as there is question of censure, it shall be not taken into account as unsatisfactory service record for the purpose of grant of selection pay scale, and it shall not be obstructive in grant of selection pay-scale. The period of last seven years shall be counted from the year, for which he is to be given promotion.

On account of the first Office Order dated 25.01.1992 and the subsequent Circular dated 23.07.1992, as reproduced hereinabove, State started granting Selection Grades to all those employees, who had completed requisite number of years in service, even if they had earned censure in previous years but had not been promoted.

9. To remove the doubts which cropped up on account of the Circular dated 23.07.1992, which created confusion and doubts in the mind of the Heads of Department, as to whether an employee would be automatically entitled to receive the Selection Grades, after completion of 9 years, 18 years and 27 years of service, irrespective of his earning censure or other such remarks, another Office Order/letter dated 24.07.1995 was sent, by the Finance Department (Rules Division) to the Director General of Police, Rajasthan. The relevant portion thereof is reproduced herein below:

I am directed to refer to your letter No. F.15(10) P.F./Kani/90 dated 24.04.1995 on the above noted subject and to say that one of the conditions for grant of selection grade is that the service record of that employee should be satisfactory for the purpose of grant of Selection grade. The promotion of Government Servants, who have been awarded the penalty of censure, is postponed by one year. Since, penalty of censure effects promotion by one year, it effects grant of Selection Grade also by one year. In the second para of your Circular No. F.15

(10) P. Force/Const./90/3439 dated 23.07.1992 it has been clarified that penalty of censure shall have no effect for granting of selection grade. This is not in accordance with the rules/order.

This office order/ letter made it clear that if an employee has earned censure during his service, then his grant of Selection Grade would be deferred by one year. But this clarification was issued by the State after expiry of almost more than 3 years from the date of issuance of the first office order on 25.01.1992.

10. However, during the interregnum period between 25.01.1992 to 24.07.1995, certain employees were granted the benefit of the Selection Grades, despite having earned censure. But after issuance of the subsequent Office Order/ letter dated 24.07.1995, Appellant-State started the recovery of the amounts from those employees who were granted Selection Grades even though they had earned censure. This led to filing of several Writ Petitions in the High Court, the 1st being Devi Singh's case (supra) referred hereinabove. All the subsequent line of cases followed the same process.

11. To further clarify the Circular dated 23.07.1992 issued by Director General of Police, Rajasthan, relevant portion, reproduced at Para 8 hereinabove, another clarificatory Circular dated 24.08.1995 was issued. Thus, vide this subsequent Circular, the last paragraph containing the following words "as far as there is question of punishment of censure, it shall not be considered in service record as unsatisfactory in grant of selection grade and shall not be impediment in grant of selection grade" mentioned in last paragraphs of Circular No. v. 15 (10)P. Force/ Const./90/3439 dated 23.07.1992 issued by this office, being contrary to Rules, was withdrawn with immediate effect. This Circular alongwith the office order/ letter of Finance Department (Rules Division) dated 24.07.1995, clearly stipulates that for the purposes of grant of Selection Grade, in cases where an employee has earned a censure, the censure should not be treated either as an impediment or obstruction for consideration of his promotion but his case for such a grant would be deferred by one year.

12. This earning of censure would be a bar for the employee to be granted Selection Grade for one year only. This is how it should have been interpreted, and the first office Order dated 25.01.1992 was to be understood. However, with regard to issuance of Office Orders from time to time and clarificatory Circular issued by the State, the things became much more complicated and confusing, leading to filing of many Writ Petitions and passing of several orders by Single Benches and Division Benches of the High Court. We are thus called upon to set the controversy at rest.

13. In the light of the aforesaid, we have heard Dr. Manish Singhvi, learned AAG and Mr. V.N. Raghupathy, Advocates for the Appellants and Mr. Puneet Jain, Mr. H.D. Thanvi, Dr. Monika Gusain and Mr. Rishabh Sancheti, Advocates for the Respondents at length and have also perused the records.

14. As mentioned hereinabove, the first judgment that came for the benefit of

the Respondent-employee was rendered on 12.12.2003, i.e., Devi Singh's case (supra). However, in the said case, what has been decided was that an employee who has already been granted the benefit of Selection Grade, such benefits could not be taken back by the Appellant-State, without issuance of a Show Cause Notice to him in this regard. Thus, primarily and basically, it was decided in favour of Devi Singh on the ground of violation of Principles of Natural Justice. However, the cases filed subsequently either before the Single Bench or Division Bench were not same, but on account of casual and general approach of learned Counsel appearing on behalf of the parties who argued and showed that the matters were squarely covered by Devi Singh's case and hence prayed that these matters were to be disposed of accordingly, the courts in their wisdom proceeded to do so. It is relevant to further mention that the said case of Devi Singh was also followed in the matter of Bheem Singh v. State of Rajasthan (SBCWP No. 3284/2005) decided on 17.01.2007.

15. There is no doubt that an employee, who has completed 9 years of service, would be entitled for the grant of first Selection Grade and would further be entitled for the grant of second Selection Grade after the completion of 18 years of service and third Selection Grade would be granted to him after completion of 27 years of service, provided that during the interregnum period, he has not earned promotion as may be available in his existing cadre and has also not earned censure in the past years. This appears to be the main theme and the purpose for which the first office order was issued.

16. Clause 7 further makes it clear that only those/such employees would be entitled to be granted Selection Grade whose service record has been satisfactory. This implicitly shows that the person who has an untainted, unblemished, clean and unpolluted record in service would be treated on a higher pedestal than those who have either tainted, blemished, unclean or polluted record. This obviously appears to be a reasonable classification and is under the ambit and touchstone of Article 14 of the Constitution. There is neither any ambiguity nor any doubt in the same.

17. However, with an intention to clarify the controversy, a subsequent office order/letter dated 24.07.1995 was sent by Finance Department (Rules Division) to Director General of Police, Rajasthan wherein it was provided that the record of service which made an employee eligible for promotion on the basis of seniority was also to be considered to be satisfactory for the purpose of granting 'Selection Grade'. It further laid down that if an employee has earned censure, then his case for grant of Selection Grade would be deferred by one year. In other words, he would be entitled to get it but after 1 year, i.e. to say on completion of 10 years of service as compared to others, who would get it on completion of 9 years of service.

18. It has not been disputed before us that censure is a minor penalty and has a minimum penalty as prescribed under the Rules of Rajasthan. Thus, it cannot be said that an employee who has earned censure would automatically be entitled

for promotion or respective Selection Grade after the completion of 9, 18 or 27 years of service.

19. However, we need to clarify that during the interregnum period between the first Office Order, issued on 25.01.1992 and the subsequent clarificatory office order/ letter dated 24.07.1995, some of the employees were granted the benefit of Selection Grade. The Appellant - State would not be entitled to claim refund from such employees who have already been granted benefit in this period. The subsequent office Order/ letter further makes it clear that all those employees who have earned censure in service shall also be entitled for the selection grade but the grant of Selection Grade to them would be deferred by one year. This appears to be an absolutely reasonable and perfect classification as otherwise every employee who has a clean image and another employee, who has earned censure would be treated at par. This is not permissible in the service jurisprudence and is also violative of Article 14 of the Constitution.

20. It is settled principle of law that "like should be treated alike". This is the mandate and command of Article 14 of the Constitution, which we are required to follow. In any case, those who have earned censure cannot be treated at par with those who have had a clean service record. As mentioned hereinabove, an employee with blemished, polluted, tainted, unclean service record cannot be equated with other employee who has enjoyed clean, unblemished, unpolluted, untainted and impeccable service record. Such differentiation would not be violative of Article 14 while dealing with the principles of equality.

21. Since the appeals are to be decided on the touch-stone of Article 14 of the Constitution, in short we would like to deal with it. This Article has two essential ingredients.

(i) Equality before Law

(ii) Equal protection of Law

The forefathers of our Constitution in their wisdom incorporated the provision of Equality before Law to attain justice: social, economic and political. While Equal protection of Law was incorporated so that amongst equals, the law could be equally administered and similarly placed persons could be placed in a similar manner. But this has a caveat. State still has the power to differentiate amongst different classes of people. That is to say, it can positively discriminate on the basis of reasonable classification and distinction but this must be based upon an intelligible differentia, which inherently separates such persons from the others.

22. In the case in hand, it is a question of grant of Selection Grade. A Selection Grade has higher pay but in the same post. A promotion post is a higher post with higher pay. A Selection Grade is intended to ensure that capable employees who may not be able to get a chance of promotion on account of limited outlets of promotion, should at least be placed in the Selection Grade to prevent stagnation at the maximum of the scale. Selection Grade was created to remove

stagnation in service and consequently leading to greater efficiency. State has permitted grant of Selection Grade to those who had good service record but for those who had earned censure, the same has been deferred by one year. Thus, according to us, it would clearly fall in the category of reasonable classification which is permissible in accordance with the mandate of the Constitution and also on account of various judgments pronounced by this Court on this topic from time to time.

23. Thus, in our opinion, there is a basic and fundamental difference between the two categories of the employees. Appellant-State was fully justified in issuing the subsequent Office Order/ letter dated 24.07.1995, putting all controversies at rest. We do not find that any case of discrimination has been made out against the Respondents/ Employees. Subsequent Office Order/ letter cannot be said to be illegal, arbitrary, unconstitutional or without authority of law. We find merit in the arguments advanced by Dr. Manish Singhvi, Advocate for the Appellants and thus, have no hesitation in allowing these Appeals. It is also pertinent to mention here that Respondents/Employees had not challenged the subsequent Office Order/ letter dated 24.07.1995, as being illegal, unconstitutional, arbitrary or without jurisdiction. As long as this Office Order/ letter holds good, it is to be implemented in the same manner and spirit in which it was issued.

24. In the light of the foregoing discussion, we are of the considered opinion that the impugned orders passed by the learned Judges of the Division Benches cannot be sustained in law. Hence, the same are hereby set aside and quashed. However, looking into the controversies which have been there in the State of Rajasthan since 1992, we deem it fit and proper to pass the following orders:

(i) The Appellant-State would not be entitled to recover financial benefits already extended to the employees, pursuant to the first office order issued by Appellant on 25.01.1992.

(ii) The Appellant would not also be entitled to recover any amount which might have been paid to the employees even after issuance of the second clarificatory office Order/ letter dated 24.07.1995 as according to us, recovery of such amount would cause great hardships to the employees.

(iii) The employees who have earned censure in the past years for their service record will not be entitled to be granted 'Selection Grade' alongwith those who have a clean and unblemished record. They would be granted 'Selection Grade' only one year thereafter.

(iv) Any employee who has been promoted before the said period would not be entitled for the grant of 'Selection Grade'.

25. With the aforesaid direction, this and the connected appeals are allowed. Impugned orders as mentioned hereinabove are set aside. Parties to bear their respective costs.