

(2016) 04 RAJ CK 0002
In the Rajasthan High Court
Case No : Civil Writ Petition No. 53/2016

State of Rajasthan and Others	Vs	APPELLANT
Surendra Mertia and Others		RESPONDENT

Date of Decision : 07-04-2016

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2016) 2 RLW 1387 : (2016) 4 WLC 468 : (2016) 3 WLN 433

Hon'ble Judges : Sandeep Mehta, J.

Bench : Single Bench

Advocate : Sajjan Singh assistant to P.S. Bhati, AAG, for the Appellant;

Final Decision : Dismissed

Judgement

Sandeep Mehta, J.—1. Heard learned counsel for the petitioners and the respondent appearing in person and perused the material available on record.

2. The case at hand is yet another classic example of stubborn and obdurate government officials failing to perform the duty enjoined upon them by law and resultantly embroiling unwilling citizens into unwarranted litigation, adding to ever increasing number of cases pending in the Courts.

3. Succinctly stated facts in brief are that the respondent No. 1 Dr. Surendra Mertia was appointed as C.A.S. (Medical Officer) in the Medical & Health Department of the Government of Rajasthan on 31.12.1982. Two disciplinary inquiries came to be instituted against him. Inquiry under Rule 16 of the CCA Rules, 1958 was initiated against him vide order dated 30.6.1994. The said inquiry culminated with passing of an order dated 5.5.1997 whereby, the respondent was visited with punishment of withholding of 5 grade increments with cumulative effect and the absence period was treated as break in service. The second inquiry under Rule 17 of the CCA Rules culminated into a penalty of censure being imposed upon the respondent vide order dated 11.7.2000.

4. Case of the respondent for promotion to the post of Junior Specialist (General

Surgery) against the vacancies of the year 1995-96 was considered by the D.P.C. convened for this purpose in the year 1997. However, on account of the ongoing departmental inquiries, he was not afforded promotion and his name was kept in a sealed cover. However, long after the inquiries had culminated and the rider operating against the respondent for being promoted owing to the penalty orders was lifted, the authorities did not take any action in this direction. The respondent, being aggrieved of the indefinite unjustified ignorance of his claim for promotion, filed an appeal before the Rajasthan Civil Services Appellate Tribunal, Jodhpur Bench (for short, "the Tribunal") bearing Appeal No. 299/2011. Notice of the appeal was issued to the State which filed a reply and contested the appeal. The Tribunal decided the appeal vide order dated 31.1.2013 and directed the State to convene a review D.P.C. for the year 1995-96 as well as for the subsequent years and to consider the case of the respondent for promotion and upon being found suitable, to promote him. The Tribunal also directed that the respondent shall be entitled to consequential benefits. A cost of Rs. 5,000/- was also imposed upon the State of Rajasthan.

5. The order was neither challenged nor complied with upon which, the respondent was compelled to file a contempt petition in the Tribunal. Soon thereafter, the authorities took up the promotional exercise and vide order dated 1.10.2013, the respondent was promoted to the post of Junior Specialist (General Surgery) against the vacancies of the year 2001-02. However, the direction given by the Tribunal for extending consequential benefits to the respondent was not complied with. Upon this, the respondent continued to pursue the contempt petition before the Tribunal. The petitioners filed a reply to the contempt petition contesting that an ex-post facto promotion does not entitle the employee for consequential benefits and only notional benefits can be extended in such a situation. The contempt petition, however, came to be decided vide order dated 15.5.2015 and the State was directed to grant actual benefits of the promotional post to the respondent from the year 2001-02 till 31.12.2008. The State of Rajasthan has now approached this Court by way of the instant writ petition being aggrieved of the orders dated 31.1.2013 and 15.5.2015 passed by the learned Tribunal.

6. Learned counsel Shri Sajjan Singh associate to AAG Dr. P.S. Bhati representing the petitioners relied upon Rule 11A of the Rajasthan Medical & Health Service Rules, 1963 (for short, "the Rules of 1963") and vehemently contended that as per the said provision, an employee promoted retrospectively is not entitled to arrears of pay. Thus, as per him, the direction given by the Tribunal to the State Government vide the two impugned orders for making payment of consequential monetary benefits to the respondent is unjustified and illegal. He contended that as the respondent did not actually work on the promoted post, he is not entitled for monetary benefits on the principal of "no work no pay". He thus urged that the writ petition deserves to be accepted and the impugned orders should be set aside.

7. Per contra, the respondent Dr. Surendra Mertia appearing in person urged that the case reflects extreme highhanded and arbitrary approach of the State authorities. He relied upon the minutes of the D.P.C. convened way back in the year 2006 wherein, it is recorded that the inquiries against Dr. Surendra Mertia had been completed and the effect of the penalty orders had also been washed off with efflux of time and thus, a review D.P.C. was required to be convened for considering his claim for promotion again for the vacancies falling between the years 1995-96 to 2001-02. Despite this noting, no further action was taken by the authorities who kept indefinitely sleeping over the matter. The respondent submitted numerous representations to the competent authority who totally ignored such representations and did not respond thereto. He was thus compelled to take recourse to legal proceedings by way of filing an appeal before the Tribunal. He submitted that the appeal before the Tribunal was also bitterly contested even though the authorities were well aware that the effect of the departmental penalties had been washed off long back and the respondent was entitled to be promoted. Despite receiving the notice of the appeal, no appropriate action was taken. Because of the failure of the State authorities to timely take up and consider the respondent's case for promotion as per his entitlement, he retired from service without being promoted. He controverted the argument advanced by Shri Sajjan Singh and submitted that Rule 11A of the Rules has no application to the controversy at hand. Thus, he urged that it is a fit case wherein the writ petition should be dismissed with exemplary cost and the petitioner State be directed to comply with the Tribunal's directions and to extend consequential benefits to him forthwith.

8. Learned counsel Shri Sajjan Singh at the outset did not contest the entitlement of the respondent to be promoted as soon as the effect of the two penalty orders was washed off in the year 2001-2002. However as per him, the delay was bonafide. Time was consumed in collecting the relevant record and as soon as the record was complete, the authorities convened the review DPC and promoted the respondent vide order dated 1.10.2013 extending him notional benefits from an anterior date. Nonetheless, upon a pertinent query being put regarding the minutes recorded by the D.P.C. on 19.6.2006 placed on record by the respondent, Shri Sajjan Singh candidly conceded that no action was taken by the authorities concerned to convene a timely DPC despite being cognizant of the respondent's entitlement to be promoted as soon as the effect of penalty orders had come to an end. He was unable to justify as to why, even after receiving notice of the appeal filed by the respondent before the Tribunal, prompt action in this direction was not taken. Shri Sajjan Singh had no option but to agree to the specific assertion made by the respondent in the reply that a decision was taken by the authorities not to challenge the Tribunal's initial order dated 31.1.2013 allowing the respondent's appeal with consequential benefits. The Tribunal's order dated 31.1.2013 which had attained finality long back was challenged at a highly belated stage when the stubborn State Government officials were faced with contempt proceedings. Thus, it is evident that the concerned officers of the

Medical and Health Department of the State Government acted with extreme highhandedness and in gross dereliction of the duties assigned to them while dealing with the case of the respondent. Despite being aware of the fact that the respondent was entitled to be promoted way back in the year 2001-02, the matter was deliberately kept pending. The height of obduracy of the Government officials is reflected from the circumstance that despite receiving notice of the appeal filed by the respondent before the Tribunal, his case was not taken up for consideration. The appeal was contested tooth and nail without any justification. The Tribunal allowed the appeal by order dated 31.1.2013. The order of promotion was issued long thereafter i.e. on 1.10.2013.

9. The respondent has placed on record copy of the review DPC proceedings undertaken in the case of one Dr. M.K. Soni reflecting that the State authorities have extended all consequential and financial benefits to the concerned incumbent pursuant to his appeal being allowed by the Tribunal in almost similar circumstances. The apparent discrimination made in the cases of Dr. M.K. Soni and the respondent herein reflects the biased and arbitrary approach of the State authorities and is clearly violative of the fundamental right of equality guaranteed under Article 14 of the Constitution of India. So far as Rule 11A of the Rules on which heavy reliance was placed by Shri Sajjan Singh is concerned, the said provision also does not in any manner come to the aid of the State. The Rule reads as below:--

"11A. If in any subsequent year after promulgation of these rules, vacancies relating to any earlier year are determined under sub-rule (2) of rule relating to determination of vacancies which were required to be filled by promotion, the Departmental Promotion Committee shall consider the cases of all such persons who would have been eligible in the year to which the vacancies relate irrespective of the year in which the meeting of the Departmental Promotion Committee is held and such promotions shall be governed by the criteria and procedure for promotion as was applicable in the particular year to which the vacancies relate, and the service/experience of an incumbent who has been so promoted, for promotion to higher post for any period during which he has not actually performed the duties of the post to which he would have been promoted, shall be counted. The pay of a person who has been so promoted shall be re-fixed at the pay which he would have derived at the time of his promotion but no arrears of pay shall be allowed to him."

10. From a bare perusal of the language of the Rule, it is evident that it lays down the procedure to be adopted when a review DPC is to be convened pursuant to fresh determination of vacancies of earlier years. Thus, the Rule only deals with a situation wherein, the vacancies of the earlier years are determined in a later year and review D.P.C. is held. In such a situation, the incumbent would be entitled to be promoted with the determination of the vacancies. The rationale behind this Rule that a person retrospectively promoted by adopting the exercise provided under the Rule will not be entitled to consequential benefits is

logical. However, in the case at hand, the vacancies were determined way back in the year 1995-96. The respondent's case was also taken up but since he was facing departmental inquiries, his case was kept in a sealed cover. The inquiries were completed and the rider barring promotion operating against the respondent was washed off way back in the year 2001-2002, the State authorities were under an obligation of law to consider the case of the respondent for promotion no sooner the effect of the penalty orders came to an end. Deliberate inaction of the competent authorities aimed at frustrating the rightful entitlement of an employee for being promoted is not a situation envisaged under Rule 11A so as to deny the employee, consequential benefits upon being extended ex-post facto promotion. The Hon'ble Supreme Court in the case of Ramesh Kumar. v. Union of India & Ors. reported in , AIR 2015 SC 2904 considered almost an identical controversy and held as below:--

"11. The respondents have advanced the argument that the denial of pay and allowances is on the principle of "no work no pay" and no injustice has been done to the appellant since he has not actually worked in the promotional post of Naib Subedar during the aforesaid period. It was submitted that the benefit of pay and allowances was rightly awarded w.e.f. 13.11.2000, the date on which the appellant actually assumed the rank of Naib Subedar but his seniority was maintained so as to protect his interest in his further promotions.

12. In normal circumstances when retrospective promotions are effected, all benefits flowing therefrom, including monetary benefits, must be extended to an employee who has been denied promotion earlier. So far as monetary benefits with regard to retrospective promotion is concerned that depends upon case to case. In State of Kerala & Ors. v. E.K. Bhaskaran Pillai, , (2007) 6 SCC 524, this Court held that the principle of "no work no pay" cannot be accepted as a rule of thumb and the matter will have to be considered on a case to case basis and in para (4), it was held as under:--

"... We have considered the decisions cited on behalf of both the sides. So far as the situation with regard to monetary benefits with retrospective promotion is concerned, that depends upon case to case. There are various facets which have to be considered. Sometimes in a case of departmental enquiry or in criminal case it depends on the authorities to grant full back wages or 50 per cent of back wages looking to the nature of delinquency involved in the matter or in criminal cases where the incumbent has been acquitted by giving benefit of doubt or full acquittal. Sometimes in the matter when the person is superseded and he has challenged the same before court or tribunal and he succeeds in that and direction is given for reconsideration of his case from the date persons junior to him were appointed, in that case the court may grant sometimes full benefits with retrospective effect and sometimes it may not. Particularly when the administration has wrongly denied his due then in that case he should be given full benefits including monetary benefit subject to there being any change in law or some other supervening factors. However, it is very difficult to set down any

hard-and-fast rule. The principle "no work no pay" cannot be accepted as a rule of thumb. There are exceptions where courts have granted monetary benefits also."

13. We are conscious that even in the absence of statutory provision, normal rule is "no work no pay". In appropriate cases, a court of law may take into account all the facts in their entirety and pass an appropriate order in consonance with law. The principle of "no work no pay" would not be attracted where the respondents were in fault in not considering the case of the appellant for promotion and not allowing the appellant to work on a post of Naib Subedar carrying higher pay scale. In the facts of the present case when the appellant was granted promotion w.e.f. 01.01.2000 with the ante-dated seniority from 01.08.1997 and maintaining his seniority alongwith his batchmates, it would be unjust to deny him higher pay and allowances in the promotional position of Naib Subedar."

(Emphasis supplied)

11. Viewed in light of the ratio of the above Supreme Court judgment, the stance adopted by the petitioner State that the respondent employee is not entitled to consequential benefits upon his promotion as a Junior Specialist (GS) from an anterior date is absolutely unfounded and baseless. It is a fit case wherein the State of Rajasthan, rather than challenging the Tribunal's orders by way of the instant writ petition and indulging into unwarranted litigation, should have forthwith complied with the directions given by the Tribunal and simultaneously initiated appropriate disciplinary action against the erring officers who failed to perform the duties assigned to them as per law. The respondent has clearly mentioned at para No. 2 of the reply that the Government took a decision of no appeal/writ against the order dated 31.1.2013 passed by the Tribunal. This specific averment made in the reply is uncontroverted. Thus, the belated challenge to the Tribunal's orders by filing the instant writ petition is indeed surprising and clearly appears to have been stage managed by the highhanded Government officials who appear to have made it a prestige issue to somehow or the other deny the respondent of his due entitlements. The orders passed by the Tribunal are perfectly just and legal and call for no interference whatsoever. Thus, it is a fit case wherein, whilst dismissing the writ petition and upholding the orders passed by the Tribunal and directing the petitioner State to forthwith make payment of consequential benefits to the respondent with interest as admissible in law, heavy costs deserve to be imposed upon the writ petitioner State of Rajasthan.

12. Resultantly, the instant writ petition being devoid of any merits is liable to be and is hereby dismissed. An exemplary cost of Rs. 50,000/- is imposed upon the State Government for filing this frivolous and vexatious writ petition. The State of Rajasthan shall be entitled to recover the cost as well as interest paid to the respondent on the belated payment from the concerned responsible officers.

13. The amount of cost as well all consequential benefits along with interest shall be paid to the respondent within a period of four weeks from today.
14. Stay petition also stands dismissed.