

(1976) 08 RAJ CK 0019
In the Rajasthan High Court
Case No : Civil Second Appeal No. 54 of 1968

State of Rajasthan

APPELLANT

Vs

Ram Charan Heda

RESPONDENT

Date of Decision : 02-08-1976

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Constitution of India, 1950 — Article 309

Citation : (1976) WLN 253

Hon'ble Judges : S.N. Modi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.N. Modi, J.—This second appeal by the defendant State of Rajasthan is directed against the appellate judgment of the Additional Civil Judge, Ajmer, dated July 5, 1968.

2. The relevant undisputed facts of the case are that on July 19 1960, the plaintiff-respondent was appointed by the competent authority as s lecturer in Commerce in the Teachers" Training College, Ajmer. Subsequently, the State of Rajasthan framed the Rajatsthan Educational Service Rules, 1960, which came into force on October 27, 1960. By order dated June 29, 1903 the Director, Primary and Secondary Education, reverted the plaintiff from the post of Lecturer in Commerce to the post of Senior Teacher in Commerce. The plaintiff thereupon after notice u/s 80 C.P.C. brought the suit out of which this appeal has arisen for declaration that the order of reversion being without jurisdiction and against the Education Service Rules, 1960, hereinafter referred as "the Rules", is void, illegal and inoperative, and the plaintiff continues in service as Lecturer in the Teachers" Training College, Ajmer. The plaintiff also claimed a sum of Rs. 1.199A as difference of the salary paid to him during the period from July 19, 1963 to the date of the suit i.e. January 8, 1965. The main ground on which order of reversion was challenged was that the impugned order was passed in violation of

Rules 7(b) and 7(c) of the Rules The defendant contested the suit on the ground, inter alia, that since the plaintiff was neither possessed of minimum qualifications required for the post of a Lecturer nor he was holding the post of a Held-Master or a Deputy Inspector at the time the Rules came into force, he was not entitled to be considered under Rule 7(b) of the Rules for the appointment to the post of a Lecturer.

3. The trial court, after evidence, held that the plaintiff's reversion was illegal. It therefore decreed the suit. On appeal, the Additional Civil Judge affirmed the decree passed by the trial court and dismissed the appeal. The defendant State of Rajasthan has now come up in second appeal before this Court.

4. Arguing the appeal, the Deputy Government Advocate has contended that the present case falls within the ambit of Rule 8(b) of the Rules and the courts below have committed grave error in applying Rule 7(b) of the Rules to the facts of the present case. I find no substance in the above contention. Rules 7 and 8 of the Rules read as under,-

7. Initial constitution of the Service. - The Service shall be constituted initially as follows:

(a) All persons holding substantively the selection posts, senior posts and junior posts as mentioned in the Schedule, before commencement of these rules, shall be deemed to have been appointed as such under the provisions of these rules.

(b) All posts on which persons not selected by the P.S.C. are working in a temporary or in an officiating capacity, shall be filled substantively up to 50% in the first instance by selection from amongst the holders of these posts, by the Government in consultation with the Commission. The persons so selected shall be deemed to have been appointed under these rules.

(c) The persons not found suitable for holding the posts substantively, as mentioned in Sub-clause (b) above, shall be liable to be reverted to their lower substantive post provided they hold a lien on such posts or their services terminated, if there be no such lien as soon as a suitable person is appointed either by direct recruitment or by promotion as provided under these rules.

8. Sources of Recruitment (a) Direct recruitment to the service after the commencement of these rules shall be made only to fill up 50% of the vacancies occurring in III junior posts ordinary grade as mentioned in the Schedule.

(b) The remaining 60% vacancies occurring in the junior posts ordinary grade shall be made by promotion on the basis of seniority-cum-merit from amongst persons substantively holding the posts of teachers in High Schools/Senior Teacher in Higher Secondary School provided they fulfill the other necessary qualifications prescribed under Rule 13. Every alternative vacancy will be filled by direct recruitment and by promotion.

(c) Recruitment to Selection grade posts under III Junior posts and II senior and

I selection posts shall be made by graded promotions within the Service on the basis of seniority-cum-merit:

Provided that the Government may decide to fill up the post of Director either by appointing thereto an I.A.S. Officer or any other person on contract.

It is apparent that Rule 7 deals with initial constitution of the service, i.e. the Rajasthan Educational Service, from amongst the existing staff, whereas, Rule 8 dealt with sources of recruitment to the Service in future. Rule 8 has, therefore, nothing to do with the initial constitution of the Service. In the present case, it is admitted that at the time of the coming into force of the Rules, the plaintiff was in an officiating capacity as a Lecturer in Commerce in the Teachers' Training College, Ajmer. The post, as per Rule 6, which relates to the strength of service, comes under III category of junior posts. Rule 7(b) provides that all posts on which person not selected by the Public Service Commission are working in a temporary or in an officiating capacity, shall be filled substantively up to 50 per cent in the first instance by selection from amongst the holders of these posts by the Government in consultation with the Public Service Commission, and the person so selected, shall be deemed to have been appointed under these Rules. Admittedly, the Government in consultation with the Public Service Commission did not consider the case of the plaintiff along with others for selection to the substantive appointment to the Service out of 60 per cent quota reserved for the persons actually holding the post included in the service. This is therefore a clear infringement of Rule 7(b) of the Rules, which squarely applies to the plaintiff. It may be mentioned here that since the Rules have been framed by the Governor of Rajasthan in exercise of the power conferred by the proviso to Article 309 of the Constitution, they have the force of law. The impugned order reverting the plaintiff having been passed without following the procedure laid down in Rule 7(b) was held, in my opinion, rightly to be illegal, void and inoperative by the courts below.

5. There is no force in this appeal and it is dismissed. Since the respondent was not called upon to reply, I pass no order as to costs.