
(2009) 12 RAJ CK 0011
In the Rajasthan High Court

The State of Rajasthan and Others

APPELLANT

Vs

Usman Gani

RESPONDENT

Date of Decision : 08-12-2009

Acts Referred:

Citation : (2010) 1 WLN 305

Hon'ble Judges : Jagdish Bhalla, C.J.;P.C. Tatia, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Jagdish Bhalla, C.J.—The respondent Usman Gani preferred S.B. Civil Writ Petition No. 3237/1998 seeking relief for quashing order dated 22.11.1997 (Annex. 4), by which the benefit of second selection grade granted to the writ petitioner/after completing of service of 18 years, has been withdrawn. The writ petition of the petitioner was allowed by the learned Single Judge vide judgment dated 16.5.2001 and order passed by the State Government dated 22.11.1997 withdrawing the selection grade of the petitioner was quashed. The respondent State preferred D.B. Civil Special Appeal No. 588/2001 to challenge the judgment passed by the learned Single Judge dated 16.5.2001. The said special appeal was allowed by the Division Bench of this Court vide Judgment dated 19.4.2002 in absence of the respondent and respondent's counsel. Therefore, the respondent submitted Review Petition No. 30/2002 which was allowed by the Division Bench of this Court vide order dated 27.3.2008 on the ground that there was reasonable cause for the respondent's counsel for his non-appearance on the relevant date and, therefore, the judgment of this Court allowing the said Special Appeal vide Order dated 19.4.2002 was set aside and the D.B. Special Appeal No. 588/2001 was restored to its original number.

2. Heard learned Counsel for the parties.

3. The learned Counsel for the appellant-State submitted that the learned Single Judge committed error of law in interpreting the Government Circular dated

4.12.1996. According to the learned Counsel for the appellant-State, it was provided by the Government order dated 25.1.1992 to grant selection grade to the employees who are not provided promotion to the higher post and in this sequence the person who continues on one post and is not promoted to higher post in nine years, then he becomes entitled to first selection grade, and such person on completion of 18 years without promotion, he becomes entitled to second selection grade and on completion of 27 years, he becomes entitled to third selection grade. However, this benefit became counter productive inasmuch as that the employees started refusing promotion on pretext of various considerations, as by refusing promotion they would not put to any loss. This situation was considered by the Government and then new order dated 4.12.1996 was issued wherein it has been provided that if the employee will not accept the offered promotion then his already granted selection grade will be withdrawn. In this case also, the petitioner-respondent refused to accept the promotion, therefore, the State has withdrawn his selection grade vide impugned order dated 22.11.1997, according to the learned Counsel for the State, the learned Single Judge misinterpreted the Government order dated 4.12.1996.

4. The learned Counsel for the respondent submitted that respondent was appointed on the post of LDC and he could have been promoted once and that is to the post of UDC. Admittedly, the petitioner was offered promotion once by order dated 3.11.1997 which he did not accept. Thereafter, he has neither been offered promotion second time nor has been promoted to the higher post, therefore; as per Clause (2) of the Government Circular dated 4.12.1996, his case falls in second category. As he has been offered one promotion in the year 1997 and no second promotion has been offered to him and the provisions of the Government order dated 4.12.1996 provides that if employee forgoes second and third promotional post, then the Government may withdraw second and third selection grade, as the case may be from the date he forgoes promotion and his pay shall be fixed either in pay scale of first promotional post or in the first selection grade or in pay scale of second promotional post at the stage he would have drawn and had he not been granted second and third selection grade, as the case may be.

5. We considered the submissions of the learned Counsel for the parties and perused the above Government orders. Relevant portion of the Government order dated 4.12.1996 is as under:

As a result of these provisions the tendency of forgoing the -promotion is growing on various personal considerations of the respective employees. Difficulties are being experienced by the various appointing authorities in filling the promotion posts from the competent and qualified persons and consequently the performance of the Government work is being adversely affected.

6. Then it has been provided in the order dated 4.12.1996, which reads as under:

To resolve this problem, the matter has been considered in detail and in partial

modification of the aforesaid order the Governor is pleased to order that Government servant who is drawing pay in second or third selection grade if on his actual promotion to second/third promotion post forgoes the promotion the benefit of second and/third selection grade, as the case may be, shall be withdrawn from the date he forgoes the promotion the pay of such an employee shall be refixed either in pay scale of the first promotion post or in the first selection grade or in pay scale of second promotion post, at the stage he would have drawn had he not been granted second and/third selection grade(s), as the case may be.

2. The Governor is further pleased to order that the Government servant who had foregone the second or third promotion before issue of this order and is drawing pay either in the second or third selection grade the benefit of second and/third selection grade, as the case may be shall not be withdrawn, and in case such a Government servant is again offered promotion after issue of this order, the benefit of second and/third selection grade shall be withdrawn from the date he refuses to accept the promotion. The pay of such an employees shall be refixed either in pay scale of the first promotion post or in the first selection grade or in pay scale of the second promotion post, at the stage he would have drawn had he not been granted second and/third selection grade(s) as the case may be.

7. This fact is not in dispute that the writ petitioner was offered promotion only once and that is, in the year 1997 and no second promotion has been offered to him then the petitioner's case falls in Clause 2 of Circular dated 4.12.1996 and the petitioner's grant of selection grade could not have been withdrawn.

8. In view of the above, the learned Single Judge rightly quashed the order dated 22.11.1997. Hence, we do not find any merit in this appeal and the same is hereby dismissed.