
(2008) 07 RAJ CK 0107
In the Rajasthan High Court

T.S. Kapoor and Others

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 18-07-2008

Acts Referred:

Citation : (2009) 1 RLW 282 : (2009) 3 SLJ 105

Hon'ble Judges : Gopal Krishan Vyas, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Gopal Krishan Vyas, J.—By way of filing the present writ petition, the petitioner has prayed for quashing of order dated 28.2.2007 Annexure-1 and to direct the respondents to consider his case for promotion on the post of Director under the Rajasthan Police Forensic Science Service Rules, 1979 (hereinafter for short, the Rules of 1979 only) after relaxing the requirement of experience. It is also prayed that if the petitioner is found suitable, he may be provided promotion to the post of Director from the date of order impugned Annexure-1 with all consequential benefits.

2. Initially, the instant writ petition was filed by two persons namely T.S. Kapoor (present petitioner) and V.N. Mathur. Both the persons are working on the post of Additional Director of Regional Forensic Science Laboratory, Udaipur and Jodhpur respectively. Later on, upon objection raised by the respondents, the petitioner No. 2 has made a request to withdraw the writ petition with a liberty to file a fresh writ petition, if so advised. The Coordinate Bench of this Court vide order dated 30.10.2007 granted the permission to the petitioner No. 2 to withdraw the writ petition with a liberty to file fresh writ petition, if occasion so arise and if so required. Thereafter, amended cause title was filed by the present petitioner.

3. According to the brief facts of the case, the petitioner is claiming his promotion on the post of Director upon which the non-petitioner No. 3 was granted extension/re-employment after his date of superannuation. The

petitioner was promoted on the post of Dy. Director vide order Annexure-2 dated 8.7.2003. Later on the petitioner was promoted further to the post of Additional Director along with one V.N. Mathur vide order dated 30.8.2005. The services of the petitioner is governed by the Rules of 1979. According to the said rules, the persons holding the post of Additional Director is entitled for promotion to the post of Director. The petitioner has stated in the writ petition that earlier the post of Additional Director was not in existence in the Rules of 1979 but in the year 1995, two posts of Additional Director was created by the respondent No. 1 and the Rules of 1979 was amended by notification dated 24.8.1998. The petitioner was first promoted on the post of Dy. Director vide order dated 8.7.2003 and further to the post of Additional Director vide order dated 30.8.2005 after creation of post.

4. The respondent No. 3 was promoted on the post of Director vide order dated 4.3.1997 and at that time he was working on the post of Dy. Director but in the year 1997 the post of Director was to be filled in from the feeder post of Dy. Director because the post of Additional Director was not in existence but vide notification dated 24.8.1998 the post of Additional Director was created and inserted in the Rules of 1979, therefore, the petitioner who was promoted on the post of Dy. Director along with one V.N. Mathur on 8.7.2003 was further promoted on the post of Additional Director, newly created post under the Rules of 1979. The respondent No. 3 was continuing on the post of Director and his date of retirement was 28.2.2007 but on that date he was not superannuated and further he was granted re-employment vide order Annexure-1 dated 28.2.2007 for a period of two years while observing in the order Annexure-1 that no candidate is eligible to be promoted on the post of Director, therefore, Mr. B.B. Arora who is going to be retired on 27.2.2007 is hereby appointed for two years in accordance with Rule 152 of the Rajasthan Civil Services (Pension) Rules, 1996 (hereinafter for short, the Rules of 1996 only). Further, it is also stated in the order that this re-employment is with the sanction of Department of Personnel and Finance Department dated 24.2.2007 and 27.2.2007 respectively.

5. The petitioner is challenging the validity of order Annexure-1 on so many grounds including the ground that the respondent No. 3 was illegally provided re-employment which is not in consonance with the provisions of law. Further, it is submitted that the case of the petitioner was to be considered for granting promotion on the post of Director by the Departmental Promotion Committee in accordance with the Rules of 1979 because the petitioner is senior most Additional Director.

6. According to Rules, Part V of the Rules of 1979 deals with the procedure for recruitment by promotion. Proviso to the Sub Rule (5) of Rule 24 clearly empowers the respondent No. 1 to promote the petitioner even if he does not possess the requisite experience while granting relaxation of experience. Therefore, without considering his candidature for promotion on the post of Director as per Proviso to Sub-rule (5) of Rule 24 of the Rules of 1979, the

respondents No. 3 was illegally granted re-employment and the opportunity of promotion on the post of Director has been denied to the petitioner.

7. The petitioner has also invited attention of this Court towards second proviso to Sub-rule (8) of Rule 24 of the Rules of 1979 under which the competent authority can recommend for promotion by relaxing the experience in case of non suitability of the eligible candidates. It is also brought to the notice of this Court that the Department of Personnel has passed an order dated 7.11.1975 whereby the direction was given for the purpose of making ad-hoc/urgent/temporary appointment of persons, who do not fulfill the conditions of eligibility of promotion. Therefore, in view of the fact that there are two posts of Additional Director in the entire State of Rajasthan and in the Department, the petitioner who was holding the post of Additional Director was hopeful that Departmental Promotion Committee will consider his case for promotion to the post of Director while relaxing the requisite experience as is permissible under the Rules of 1979. But contrary to the provisions of law, the respondent No. 3 was given special indulgence by the Government and contrary to the rules, he was provided re-employment for two years from the date of his retirement while observing in the order that none of the eligible and suitable candidates are available in the Department, therefore, Dr. B.B. Arora, who has been retired from service from the post of Director on 28.2.2005 is hereby granted re-employment for two years. As per the petitioner, this order has been passed in gross violation of the Rules of 1979. Therefore, the petitioner was very much entitled for considering his case for promotion as per his seniority and was entitled to get relaxation in the experience as provided under Rule 24 of the Rules of 1979 but without placing his case for promotion before the Departmental Promotion Committee for consideration, his candidature has been refused and straightaway by observing in the order impugned that no eligible candidate is available for promotion on the post of Director, respondent No. 3 has been reemployed for two years, therefore, Dr. B.B. Arora who was to be superannuated has been re-employed for two years. As per the petitioner, this re-employment is patently Illegal and have no foundation to stand before eye of law. Moreover, it affects the future rights of the petitioner as such, re-employment of the non-petitioner No. 3 is totally unconstitutional, arbitrary and contrary to the Rules of 1979, therefore, the order impugned Annexure-1 may kindly be quashed.

8. Learned Counsel for the petitioner argued that in fact the post of Additional Director was created in the year 1995 and amendment was to be made in the Rules in the year 1995 itself and the post of Additional Director was to be enumerated in between the post of Dy. Director and Director but for three years the post of Additional Director was not inserted though created in the year 1995 and after promotion of the respondent No. 3 from the post of Dy. Director to the post of Director in the year 1997 by way of issuing notification dated 24.8.1998, the post of Additional Director was enumerated and inserted in the Schedule of Rules of 1979. This delay was practiced only to grant benefit to the respondent No. 3 because after insertion in time there was no occasion left with the

Government to promote the respondent No. 3 to the post of Director and he was to be promoted first to the post of Addl. Director but after his promotion on the post of Director in the year 1997, the post of Additional Director was created in the year 1998. Meaning thereby, right from the date of promotion to the post of Director, the respondent No. 3 was given special benefit illegally even post of Addl. Director which was created in the year 1995 was not inserted till 1998 and before amending rules for creation of the post Addl. Director, respondent No. 3 was considered for promotion and was provided promotion on the post of Director and in case of the petitioner, first of all, the post of Additional Director was created and experience of three years on the post of Additional Director was made necessary for promotion on the post of Director and due to insertion of that post and promotion of the petitioner on the post of Additional Director on 30.8.2005 on the date of retirement of the respondent No. 3 the petitioner did not acquire the requisite experience for promotion to the said post. As per petitioner, it is obvious from the above facts that special indulgence was given to the respondent No. 3 while granting re-employment on the post of Director after retirement and while ignoring the claim of the petitioner for promotion on the post of Director treating him ineligible for promotion.

9. Learned Counsel for the petitioner has invited attention of this Court towards Rule 151 of the Rules of 1996 and submitted that this rule empowers the State Government to re-employ the retired person or to grant extension beyond period of retirement and from bare perusal of Rule 151 of the Rules of 1996, it is abundantly clear that the rule is completely silent as to on what ground the extension can be granted to the candidate for re-employment. Only in public interest, the extension can be granted but in this case it is nowhere observed in the order impugned that in the public interest, it is necessary to provide re-employment to the respondent No. 3, therefore, the order Annexure-1 is totally in contravention of Rule 151 of the Rules of 1996.

Learned counsel for the petitioner while attacking upon the order Annexure-1, submitted that as per the scheme of Rule 24 of the Rules of 1979, the respondents should have sent the requisition to convene the meeting of DPC to consider the case of the eligible candidates for the purpose of promotion to the post of Director which became available on account of retirement of the respondent No. 3 and after consideration the promotion committee should have opined that no one is suitable for the purpose of promotion then only on the ground of public interest any extension of service or re-employment was permissible but with a view to grant illegal benefit to the respondent No. 3 straightaway the order of reemployment/ extension has been passed without considering the case of the petitioner for promotion after granting relaxation by the respondents. Therefore, the order Annexure-1 is totally in contravention of the Rules. As per the petitioner, Rule 24 of the Rules of 1979 empowers the State and the Promotion Committee to relax the eligibility of experience if the suitable candidates are not available for the purpose of promotion. The petitioner is working on the post of Additional Director since 2005 and was very much entitled

as per his academic qualification for promotion to the post of Director and he was to be given relaxation in requisite experience but without referring the case of the petitioner to the DPC, straightaway, the order of extension/re-employment to the post of Director has been passed illegally in favour of the respondent No. 3, presuming that the petitioner is not entitled for promotion on the post of Director, therefore, gross illegality has been committed by the respondents by granting extension/re-employment to the respondent No. 3 after his retirement w.e.f. 28.2.2007, therefore, such order which is in contravention of Rule 151 of the Pension Rules, 1963 deserves to be quashed because re-employment can be granted by the Administration Department where in the present case, the extension has been granted by the respondent No. 1, which is absolutely without jurisdiction and cannot be sustained on any grounds, therefore, as per the petitioner when specific direction was issued by the Department of Personnel for granting relaxation in experience for the purpose of promotion then obviously the petitioner's case was to be referred to the Departmental Promotion Committee but without considering the case of the petitioner for promotion on the post of Director by the D.P.C., straightaway upon presumption the order Annexure-1 has been issued, which is contrary to the Rules, hence, deserves to be quashed.

10. Per contra by way of filing reply, all the allegations levelled by the petitioner are refuted by the respondents and it is stated in the reply that the respondent No. 3 was re-employed on the post of Director, Police Forensic Science Laboratory as per Rule 151 of the Rules of 1996. It is stated in the reply that the petitioner is working on the post of Additional Director since 30.8.2005, therefore, against the vacancies of the year 2007-08, the petitioner should have possessed three years experience on the post of Addl. Director to fulfill the condition of eligibility. Even for the post of Additional Director, the eligibility condition for promotion is three years experience on the post of Dy. Director was relaxed and the petitioner was promoted on the post of Addl. Director on 30.8.2005. Admittedly the petitioner was working on the post of Dy. Director since 8.7.2003. However, since the post of Additional Director was to be filled 100% by promotion by seniority, the petitioner was promoted on the said post by giving relaxation in experience by one year to make him eligible for the post of Additional Director when he was working on the post of Dy. Director. Therefore, the petitioner is holding the post of Additional Director w.e.f. 30.8.2005. Again the petitioner is claiming further relaxation in the experience for considering his candidature for promotion on the post of Director, which is not permissible under the law.

11. As per the respondents, the post of Director is also required to be filled in 100% by promotion on the basis of merit from the post of Additional Director and on of the requisite eligibility condition for such promotion is three years experience on the post of Additional Director. The petitioner did not possess the eligibility condition as he was not having requisite experience of three years as on 28.2.2007 when the respondent No. 3 was retired from service and granted re-employment, therefore, it is felt necessary by the State Government in the

public interest to grant re-employment to the respondent No. 3, who was working on the post of Director since 1997 and was having experience of number of years and having vast experience in his subject. Therefore, the petitioner cannot claim relaxation in experience as a matter of right, hence, there is no ground for interference in this writ petition on this ground.

As per the respondents, the respondent No. 3 had been working on the post of Director, Police Forensic Science Laboratory since 4.3.1997 and he had 10 years experience on the said post and during his tenure he has performed so many important works and equipped the department and his work is appreciated by the State in public interest, therefore, the post of Director which is highest post of the Department upon which a meritorious person is required and with a view not to compromise and to accommodate an ineligible candidate, it is felt necessary by the Government to grant opportunity of re-employment to the respondent No. 3 while exercising power under Rule 151 of the Rules of 1996 in which there is no illegality. The petitioner is claiming his right under Rule 24 of the Rules of 1979 on the ground that there is a provision for relaxation in experience for the purpose of promotion for which he is legally entitled and his case was to be placed before the DPC but admittedly the petitioner is not possessing the eligibility condition till today, which is admitted by the petitioner himself, therefore, in the public interest, it is felt necessary by the Government to grant reemployment to the respondent No. 3 for two years more, looking to his achievements and performance in the department, therefore, no interference is required in this case.

12. Learned Counsel for the respondents vehemently argued that when rules provides for extension/re-employment after retirement and the petitioner who is claiming his right on the basis of relaxation in the eligibility condition is not entitled to claim promotion on highest post of the Department as a matter of right, which is not permissible under the Rules as a matter of course. When a person like the respondent No. 3 was available, therefore, after taking recourse of provisions of Rule 151 of the Rules of 1996, it is felt necessary by the Government to grant an opportunity of re-employment for two years. The petitioner cannot claim as a matter of right to be promoted on the post of Director while saying that in the Rules there is a provision for relaxation in experience and on the other hand an experienced person like the respondent No. 3 is available then in the public interest, it is permissible under Rule 151 of the Rules of 1996 to grant extension, which has been done in this case, cannot be questioned by way of filing writ petition by a candidate who was not eligible for promotion on the date of re-employment of respondent No. 3 but claiming promotion on the ground that there is provision in the rules for relaxation in the eligibility condition of experience. On the aforesaid ground, there is no question of quashing the order Annexure-1, which is passed by the State Government after due approval by the DOP which is condition precedent for providing re-employment in the rules.

13. Learned Counsel for the respondents vehemently argued that allegations with regard to granting special indulgence to the respondent No. 3 is totally baseless because the petitioner himself was promoted on the post of Additional Director while granting relaxation in experience when he was working on the post of Dy. Director and again on the post of Director, he is claiming relaxation. Admittedly, the petitioner was promoted on the post of Additional Director on 30.8.2005, therefore, obviously, he has not completed three years as on 28.2.2007 - the day on which the respondent No. 3 was superannuated and post of Director became available with the department. It is true that the respondent No. 3 was promoted from the post of Dy. Director to the post of Director directly in the year 1997 but at that relevant time the post of Additional Director was not in existence, therefore, the respondent No. 3, who was working on the post of Dy. Director was considered by the DPC and he was found suitable for promotion, therefore, in the year 1997 he was promoted and he continued on the post of Director till 28.2.2007 - the day on which he was retired but on the same day he was provided reemployment for two years in the public interest after due approval and sanction as per rules in which there is no illegality and allegation of the petitioner with regard to not inserting the post of Additional Director in the Rules after delay of three years is also not tenable because after insertion, the petitioner himself was granted relaxation in eligibility condition and he was promoted on the post of Additional Director from the post of Dy. Director after granting relaxation in the experience. In these circumstances, it is prayed that this writ petition deserves to be dismissed.

14. In the rejoinder, it is submitted by the learned Counsel for the petitioner that if the rules provides for the relaxation in experience without putting any embargo as to number of years then employee can claim the relaxation in experience. Secondly, the suitability of the petitioner for the purpose of promotion is to be adjudged by the DPC but the respondents have illegally presumed without placing the petitioner's case before the DPC that the petitioner is not eligible and not entitled for promotion whereas the respondents were under obligation to act in accordance with the law and to adjudge the suitability of the petitioner for promotion on the post of Director and his case was to be placed before the DPC and DPC was to consider the case of the petitioner in accordance with the law in which there is provision for granting relaxation at the time of non-availability of eligible candidate on the higher post of Director. Therefore, the order impugned Annexure-1 whereby the respondent No. 3 was granting re-employment is totally illegal, unconstitutional and in contravention of law.

15. I have perused the entire record of the case and gone through the pleadings of the parties. In this case some facts are undisputed, which are as follows:

1. It is not disputed by the petitioner that he was completely eligible for promotion on the post of Director. Admittedly, the petitioner was lacking requisite experience, which is provided under the Rules for promotion to the post of Director and he was not entitled for promotion on the post of Director on this

count but the petitioner is claiming relaxation in experience for promotion.

2. The respondent No. 3 was eligible for promotion to the post of Director and he was promoted in public interest.

4. It is admitted position of the case that the petitioner was promoted on the post of Additional Director accordance with the law on the post of Director in the year 1997 and he continued till his retirement on the said post.

3. There is provision under Rule 151 of the Pension Rules, 1996 to re-employee any government servant from the post of Dy. Director while granting relaxation in experience because he was holding the post of Dy. Director since 8.7.2003 and he was to possess three years experience but he was promoted on 30.8.2005 on the post of Additional Director. Meaning thereby, the right of consideration of the petitioner after granting relaxation was considered for the post of Additional Director and he was promoted on the post of Additional Director after granting relaxation by the DPC.

5. It is not disputed by any of the parties that any person was completely eligible for promotion on the post of Director when respondent No. 3 was reemployed in public interest.

16. In these circumstances, the petitioner is claiming his right that according to Rule 24 of the Rules of 1979, his case was to be placed before the DPC and under proviso II to Sub-rule (5) to Rule 24 of the Rules of 1979, in which there is provision for granting relaxation by the DPC in the event of nonavailability of the eligible candidate, therefore, as per the petitioner without sending or placing his case for promotion before the DPC, it was presumed that no one is eligible for promotion. In my opinion, although there is force in the contention of the learned Counsel for the petitioner that he was to be granted relaxation and his case was to be placed and was to be considered by the DPC but the petitioner cannot claim the said consideration as a matter of right because the post of Director, Police Forensic Science Laboratory is very important post upon which in the public interest most suitable person should be deployed to work. Admittedly, the petitioner was granting promotion on the post of Additional Director even after granting relaxation in experience, then for the post of Director, he cannot claim relaxation in experience as a matter of right again. The State Government is having jurisdiction or power in public interest to appoint most capable person on the post, which is Director. In this case, admittedly, the respondent No. 3 was working on the post of Director since 1997 and was having ten years experience and he has performed many important work and attained targets for development of FSL in Rajasthan, therefore, it is felt necessary by the State Government after due approval from DOP to re-employ the respondent No. 3.

17. During the course of arguments, the record of Department of Personnel was also called. Upon perusal of entire file, it is revealed that in the public interest, it is felt necessary by the State Government to grant re-employment to the respondent No. 3, looking to his expertise in the subject and experience and the

said re-employment which is granted after due approval as per rules was further approved by the Cabinet, which is evident from the record, which I have perused and in public interest, the Cabinet after considering the case of re-employment of the respondent No. 3, approved the action of the State Government, which is evident from the decision No. 74/2007 dated 10.8.2007 of the Cabinet.

18. Although there is a provision for granting urgent temporary appointment in accordance with the rules and notification was also issued by the Government for the said purpose, which is placed by the petitioner on record as Annexure-5 in which it is provided that the relaxation can be granted by the DPC but in my opinion nobody can claim promotion as a matter of right while asking that he is entitled for relaxation in the eligibility condition. The right of consideration is available to a employee in the event of possessing all eligibility condition. Any relaxation cannot be claimed as a matter of right even though it is provided under the Rules because the prime duty of the State Government is to appoint most suitable candidate to the highest post of department and for the said purpose, if it is felt necessary by the State Government to re-employee the Director for two years while exercising power under Rule 151 of the Rules of 1996, then, in my opinion, there is no Illegality committed by the State Government. Further, it is also evident from the order Annexure-1 itself that this order is for two years or till any eligible officer becomes available in the Department. Therefore, when the State Government has not exercised its discretion to grant relaxation then it is not proper for this Court to direct the State Government to grant relaxation in eligibility condition for promotion of the petitioner and allow ineligible person to work on the highest post of the important department. In view of above discussions, the order Annexure-1 dated 28.3.2007 does not require any interference by this Court because it has been passed within the competence of the State Government in public interest.

19. Accordingly, there is no force in the writ petition and the same is hereby dismissed with no order as to costs.