
(2008) 01 RAJ CK 0042
In the Rajasthan High Court

Vijay Chand Thanvi

APPELLANT

Vs

Managing Director Rajaathan State Ware Housing Corporation
and Others

RESPONDENT

Date of Decision : 28-01-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2008) 3 RLW 2659

Hon'ble Judges : Sangeet Raj Lodha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sangeet Lodha, J.—In this writ petition, the petitioner has sought directions against the respondents for restoration of his seniority in the cadre of godown keeper as determined and shown in the final seniority list/gradation list dated 12.5.89 with consequential benefits viz. promotion, increments, fixation of pay and arrear of salary etc. which have been granted to his immediate juniors Shri Rajendra Singh and Shri Brij Mohan Saini, respondent Nos. 5 and 6 herein. The petitioner has also claimed seniority over respondent Nos. 7 to 12 in the final seniority list of Godown Keeper as on 1.4.94, published on 25.7.94.

2. Briefly stated the facts of the case are that the petitioner entered the services of Rajasthan State Ware Housing Corporation (hereinafter referred to as "the Corporation") on being appointed as Godown Keeper vide order dated 5.7.71 issued by the respondent No. 1. However, due to reduction of the cadre strength of Godown Keepers, vide order dated 22.12.72, the petitioner was appointed on the post of Class IV but the persons junior to the petitioner viz. Shri Rajendra Singh and Shri Brij Mohan Saini were continued as Godown Keeper. The petitioner was made to discharge duties of Class IV during the period, from January 1, 1973 to April 24, 1973, thereafter he was again posted as Godown Keeper. A tentative seniority list of the Godown Keeper was issued by the respondents on 26.5.88 wherein the petitioner was shown to be a promotee

Godown Keeper w.e.f. 25.4.73. It is stated that one Shri Ravindra Kumar Singh respondent No. 8 herein, who was initially appointed as Class IV in the Corporation w.e.f. 3.3.72 and continued to work on the said post upto 16.10.87 was promoted on the post of Godown Keeper I w.e.f. 13.12.79 retrospectively and he was also assigned seniority above the petitioner.

3. The petitioner made the representation and contended that he was appointed as Godown Keeper by way of direct recruitment w.e.f. 12.6.71 as Shri Rajendra Singh and Shri Brij Mohan Saini were appointed, therefore, after necessary correction, he may be assigned proper place in the seniority list. After due consideration of the representations made by the various incumbents including the petitioner holding the post of Godown Keeper Grade I, the final seniority list was issued by the respondent No. 1 vide circular dated 12.5.89 wherein the petitioners name was shown at Serial No. 23 as direct recruit and the date of his appointment was mentioned as 12.6.71. The names of Shri Rajendra Singh and Shri Brij Mohan Saini appointed as Godown Keeper on 23.6.71 and 22.2.72 were shown at Serial Nos. 24 and 25 respectively. Shri Ravindra Singh and others respondents No. 8 to 13 were place in the seniority list at Serial Nos. 26 to 33 respectively. Thus, the petitioner was shown senior to respondent No. 5 to 12 herein. It is relevant to mention here names of respondent No. 10 and 11 stands deleted from the array of respondents vide order dated 13.4.2000 passed by this Court.

4. It is further submitted that the candidature of Shri Rajendra Singh, respondent No. 6, was considered for promotion to the post of junior assistant by the Departmental Promotion Committee in its meeting held on 26.11.86 but since his service record was not found satisfactory, therefore, he was not accorded promotion on the said post. But Shri Brij Mohan Saini, respondent No. 5, whose candidature was considered in the meeting of Departmental Promotion Committee held on 29.6.86 was accorded promotion on the post of junior assistant vide order dated 3.8.87. In this view of the matter, the petitioner made a representation dated 16.6.89 and requested for holding the review DPC and to accord him promotion on the post of junior assistant w.e.f 26.11.86. Thereafter, the petitioner continued to make representations but the same were not responded by the respondents. However, in the meantime the petitioner so also Shri Rajendra Singh were promoted on the post of junior assistant vide order dated 23.6.90.

5. A tentative seniority list of Godown Keeper as on 1.4.94 was issued by respondent No. 1 vide circular dated 18.5.94 wherein the petitioner's name was shown at Serial No. 23, however, the names of Serva Shri Rajendra Singh, Ravindra Kumar Singh, Nathuram Jat, Saudanram Saini, Moturam Saini and Babulal Sharma were shown at Serial No. 15 to 22 just above the petitioner, who were shown junior to petitioner in the seniority list dated 12.5.89. In the aforesaid tentative seniority list dated 18.5.94, the petitioner was shown to be promoted on the post of Godown Keeper w.e.f. 23.8.79, whereas in the final

seniority list of the Godown Keeper dated 12.5.89, the petitioner was shown to be a direct recruit w.e.f. 12.6.71. The petitioner submitted his objections to the aforesaid tentative seniority list dated 18.5.94 vide representation dated 31.5.94. However, without considering the objections made by the petitioner, the final seniority list dated 25.7.94 was issued wherein the petitioner's name was not even shown in the list persons who had filed their objections against the aforesaid tentative seniority list and he was placed at Serial No. 23 below Shri Rajendra Singh and others whose names were shown at Serial No. 15 to 22.

6. A tentative seniority list of the post of junior assistant was also issued by the respondent No. 1 vide circular No. 7836 dated 16.5.94 wherein also the petitioner was shown to be junior to Shri Rajendra Singh and others. It is stated that the petitioner made representation against the said seniority list of the junior assistant as well. But without considering his representation in the final seniority list of the junior assistant published vide notification dated 20.7.94 also the petitioner was placed at Serial No. 87 below the person junior to him. The persons junior to the petitioner Shri Rajendra Singh and others were placed above the petitioner at Serial Nos. 79 to 86.

7. At this stage, a representation dated 22.2.94 made by the petitioner regarding the higher salary being drawn by Shri Rajendra Singh, who was admittedly junior to the petitioner was responded by the respondents vide communication dated 17.8.94 and the petitioner was informed that since in the final seniority list dated 20.7.94, he has been shown below Shri Rajendra Singh, therefore, there is no anomaly existing in the pay of the petitioner vis-a-vis Shri Rajendra Singh.

8. The petitioner served the respondents with a notice for demand of justice claiming the relief that in the final seniority list of junior assistant, he is entitled to be placed at Serial No. 79 above Shri Rajendra Singh and other officials. He also claimed promotion to the post of junior assistant with effect from the date the person junior to him was promoted to the post of junior assistant, with all consequential benefits. However, the respondents have not extended the relief prayed for. Hence, this petition.

9. A reply to the writ petition has been filed on behalf of the respondents No. 1, 2 and 4, wherein it is stated that on account of reduction of business of the Corporation the cadre strength of the Godown Keeper was reduced and, therefore, on option being exercised by the petitioner, he was accorded appointment of the post of Class IV vide order dated 22.12.72 and in pursuance thereof he joined his duties on 1.1.73 and thereafter he was promoted to the post of Godown Keeper, therefore, his seniority has rightly been fixed below the respondent No. 5 to 12. It is stated that on account of fresh appointment being accorded to the petitioner on the post of Class IV there was break in service as Godown Keeper and on his subsequent promotion to the post of Godown Keeper, he has rightly been shown junior to Shri Rajendra Singh and others. The application submitted by the petitioner giving option for appointment as Class IV employee has been placed on record as Annexure-R1 and order appointing the

petitioner in the Class IV has been placed on record as Annexure- R2. That apart, though not referred in the pleadings along with Annexure-R/2, incidentally, the respondents have placed on record an order dated 25.11.72 (at page No. 145) wherein it is mentioned that services of the employees named therein are no longer required and shall be terminated w.e.f. 31.12.72. It is relevant to mention here that the name of petitioner is mentioned in the said order but the names of respondent No. 5 & 6 do not find mention therein.

10. It is submitted on behalf of the respondents that the final seniority list of Godown Keeper issued vide circular dated 12.5.89 was wrong and, therefore, a fresh seniority list of Godown Keeper dated 25.7.94 was published wherein Shri Rajendra Singh stands at Serial No. 15 and the petitioner at Serial No. 23. Precisely, it is submitted by the respondents that since on account of reduction of the cadre strength the petitioner was accorded appointment on the post of Class IV employee and subsequently promoted to the post of Godown Keeper, therefore, he cannot claim seniority over and above Rajendra Singh and others, who have continued on their post as Godown Keeper from the date of their initial appointment by way of direct recruitment. However, the dates of initial appointment of the petitioner and respondent No. 5 & 6 as Godown Keeper, set out in para No. 4 of the writ petition and as mentioned in the final seniority list of the Godown Keeper dated 12.5.89, are not disputed by the respondents.

11. It is contended by the learned Counsel for the petitioner that admittedly the petitioner entered the services of the respondents as Godown Keeper prior to respondent No. 5 & 6, therefore, if under the threat of termination of services on account of reduction of cadre strength, the petitioner accepted the appointment on the post of Class IV for intervening period from 1.1.73 to 24.4.73, then on that account the petitioner cannot be deprived of his seniority in the cadre of Godown Keeper from the date of his initial appointment, more so, when after due consideration of his representation the respondents had already restored his position in the final seniority list of Godown Keeper dated 12.5.89. The learned Counsel submitted that on account of reduction in cadre strength, if the services of any person holding the post of Godown Keeper were to be dispensed with, then obviously, before the petitioner the services of respondent No. 5 & 6 were liable to be terminated. It is submitted that instead of suffering unemployment at the relevant time, if the petitioner under the threat of termination of services has accepted the employment on the post of Class IV for a short span of time, then on that account, the petitioner cannot be deprived of his seniority in the cadre of Godown Keeper from the date of his initial appointment. It is submitted that the respondents having decided the claim of the petitioner and restored his seniority after due consideration vide seniority list dated 12.5.89 cannot be permitted to disturb the seniority of the petitioner at this stage unilaterally in an illegal manner. Accordingly, it is prayed that the petitioner is entitled for restoration of his seniority in the cadre of Godown Keeper as assigned vide seniority list dated 12.5.89 and all consequential benefits flowing therefrom.

12. Per contra, the learned Counsel for the respondents while reiterating the stand taken in the reply to the writ petition submitted that the petitioner having exercised the option for appointment on the post of Class IV and having worked on the said post w.e.f 1.1.73 to 24.4.73 cannot claim continuity of service on the post Godown Keeper from the date of his initial appointment and he has rightly been assigned seniority on the said post treating him to be a promotee Godown Keeper w.e.f. 25.4.73. Learned Counsel further submitted that since the petitioner was promoted on the post of junior assistant w.e.f. 23.6.90, therefore, in the seniority list of junior assistants, he has rightly been assigned seniority at Serial No. 87 below Shri Rajendra Singh and Ors., whose names have been shown at Serial No. 79 to 86. It is contended by the learned Counsel that the writ petition suffers from vice of delay and that apart an alternative remedy of appeal is available to the petitioner before the Rajasthan Civil Services Appellate Tribunal, therefore, the writ petition deserves to be dismissed for this reason also.

13. I have considered the rival submissions and perused the record.

14. It is not in dispute that the petitioner entered the services of the respondents as Godown Keeper w.e.f. 12.6.71 and thus he was senior to the respondent No. 5 & 6 who were appointed on the post w.e.f. 22.2.72 and 23.6.71 respectively. It goes without saying that if on account of reduction of the cadre strength, the services of existing employees are brought to be an end, then the services of the junior most person holding the post in the cadre shall be dispensed with first. In this view of the matter, if on account of reduction of strength as alleged by the respondents, the services of any existing incumbent holding the post of Godown Keeper was required to be brought to an end then the respondents were under an obligation to terminate the services of respondents No. 5 & 6 first, before picking up the petitioner for such treatment being given. Further, if on account of abolition of posts of Godown Keeper as aforesaid, the existing employees were to be offered appointment/absorption on the lower post of Class IV then obviously such options were also required to be taken first from the respondents No. 5 & 6, who were admittedly junior to the petitioner in the cadre of Godown Keeper. The respondents have not been able to justify their action in continuing the respondents No. 5 & 6 persons junior to the petitioner on the post of Godown Keeper and obtaining the option from the petitioner for absorption on the post of Class IV on the threat of termination of his services projected vide order dated 25.11.72. Thus, the treatment meted out to the petitioner by the respondent Corporation is illegal, avowedly arbitrary and discriminatory so as to violative of Article 14 & 16 of the Constitution of India.

15. It is trite law that a person cannot be treated unjustly even with his own consent. The respondent Corporation a statutory functionary was under an obligation to act fairly and if at all it was found necessary to dispense with the services of the existing employees holding the post of Godown Keeper then, they should have proceeded to take such action strictly in accordance with the seniority of the existing employees in the cadre. In my considered opinion, the

petitioner a lowly placed person had accepted the employment on the post of Class IV during the intervening period just to save himself from agony of loss of employment altogether. The respondents cannot be permitted to plead that while accepting the employment on the post of Class IV, the petitioner has acquiesced with the action, therefore, may be that on the basis of the date of his initial appointment as Godown Keeper he is senior to the respondent No. 5 & 6, yet he stands precluded from claiming restoration of his seniority and consequential benefits. It is pertinent to note that the sense of justice prevailed over even the respondents at one point of time and accordingly after due consideration while remedying the injustice caused to the petitioner his seniority in the cadre of Godown Keeper was restored by issuing final seniority list vide circular dated 12.5.89 wherein the petitioner was shown to be senior to the respondent No. 5 & 6. Thereafter, at this stage, again harping on the same string, the action of the respondents in disturbing the seniority of the petitioner on the basis of alleged discontinuity in the service as Godown Keeper for the period 1.1.73 to 24.4.73 which was apparently on account of hostile discrimination being practiced by the respondents is not understandable and cannot be countenanced. The respondents insistence for perpetuation of injustice caused to the petitioner deserves to be deprecated.

16. The seniority of the petitioner in the cadre of Godown Keeper having been restored by placing him at the proper place in the seniority list published vide circular dated 12.5.89, the respondents had no authority to disturb the position of this seniority which had attained finality in such a perfunctory manner. After restoration of the petitioner's seniority as, aforesaid, the respondents were under an obligation to consider his candidature for promotion on the post of junior assistant by holding review DPC and to accord him promotion, if he is found suitable according to the criteria laid down, atleast with effect from the date person immediately junior to him has been promoted to the said post. The action of the respondents in not considering the representation made by the petitioner claiming consequential benefits flowing from restoration of his seniority in the cadre of Godown Keeper and instead undoing the basis of his claim; is ex facie unjust, unfair, unreasonable and falls foul of Article 14 & 16 of the Constitution of India.

17. The objection with regard to the delay in filing the writ petition appears to have been raised by the respondents just to see the rejection. On the basis of material on record, it is manifestly clear that the petitioner was continuously representing to the respondents against the injustice caused to him and having considered the claim of the petitioner, the respondents themselves had restored his seniority in the cadre of Godown Keeper in the seniority list published vide circular dated 12.5.89, thereafter the petitioner has represented for consequential benefits but instead of extending due benefits to him, the respondents by issuing fresh seniority list vide circular dated 25.7.94, disturbed the seniority of the petitioner in the cadre of Godown Keeper by placing him below the respondent No. 5 to 12. Similarly, in the seniority list of junior assistant

published vide circular dated 20.7.94 also the petitioner was shown below the respondent No. 6 to 12. Thus, the writ petition preferred by the petitioner assailing the aforesaid action of the respondents and claiming restoration of his seniority as assigned to him vide seniority list dated 12.5.89 and the consequential benefits flowing therefrom cannot be said to be suffering from vice of delay.

18. Coming to the objection raised by the respondents regarding availability of the alternative remedy of appeal before the Rajasthan Civil Services Appellate Tribunal, suffice it to say that the petitioner is not a member of civil service or holds a civil post under the government of Rajasthan, and thus does not fall within the definition of "government servant in terms of Section 2(c) of the Rajasthan Civil Services Appellate Tribunal Act, 1976, therefore, the objection raised by the respondents regarding availability of alternative remedy under the Act of 1976, is absolutely misconceived.

19. In view of the discussion above, the writ petition succeeds, it is hereby allowed. The seniority list of the Godown Keeper published by the respondents vide circular dated 25.7.94 to the extent of placing the petitioner in the said seniority list below the respondent No. 6 and others is declared illegal. The seniority position of the petitioner as assigned in the seniority list published vide circular dated 12.5.89 is restored. Accordingly, the respondents are directed to place the petitioner in the seniority list of Godown Keeper dated 25.7.94 above Shri Rajendra Singh at Serial No. 15. The respondents are further directed to consider the candidature of the petitioner for promotion to the post of junior assistant by holding the review DPC and if he is found suitable for promotion according to the criteria laid down, then, he may be promoted to the said post at least from the date the person junior to him Shri Brij Mohan Saini respondent No. 5 was promoted on the said post. On promotion being accorded, as aforesaid, the petitioner shall be entitled for notional fixation of his pay in the pay scale admissible to the post of junior assistant with effect from the date of his promotion but he shall be entitled for actual monetary benefits w.e.f. 23.6.90 i.e. from the date he is already discharging duties of the post of junior assistant. The entire exercise for extending the benefits to the petitioner as aforesaid, shall be completed within a period of three month from the date of this order. No order as to costs.