

(2018) 07 RAJ CK 0008
In the Rajasthan High Court
Case No : Civil Writ Petition No. 2722 of 2001

Vinod Gehlot @APPELLANT@Hash State of Rajasthan & Ors.

Date of Decision : 02-07-2018

Acts Referred:

Rajasthan Subordinate Offices Ministerial Service Rules, 1999 — Rule 2, 2(I)
Rajasthan Service Rules, 1951 — Rule 26
Constitution of India, 1950 — Article 309

Citation : (2018) 07 RAJ CK 0008

Hon'ble Judges : ARUN BHANSALI, J

Bench : Single Bench

Advocate : Ravindra Paliwal, Sanjay Mathur, Pratishtha Dave

Final Decision : Allowed

Judgement

This writ petition has been filed by the petitioner seeking following reliefs:-

1. It is, therefore, humbly prayed that this petition for writ in the nature of mandamus may kindly be allowed. The respondents may kindly be directed to treat the petitioner eligible for the purpose of appointment by way of promotion to the post of Personal Assistant under the Rules of 1999 against the vacancies of the year 1998-99.

2. The respondent may kindly be directed to consider the candidature of the petitioner afresh for the purpose of appointment on the post of Personal

Assistant by way of promotion against the vacancies of the year 1998-99 and in the event, of his selection, he may be promoted on the post referred

above against the vacancies of the year 1998-99 with all consequential benefits.

3. Any other appropriate writ, order or direction, which this Hon'ble Court may deem it just and proper in the facts and circumstances of the case,

may kindly be issued.

It is, inter alia, indicated in the writ petition that the petitioner was selected for appointment on the post of Stenographer Grade-II under the Rajasthan

Civil Subordinate Courts Ministerial Establishment Rules, 1986 (â??the Rules of 1986â??) by an order dated 22.07.1993 passed by the District &

Sessions Judge, Udaipur. Pursuant to the order dated 22.07.1993, the petitioner was posted as Stenographer Grade-II in the Court of Civil Judge-cum-

Additional Chief Judicial Magistrate, Vallabhnagar, where he joined his services on 22.07.1993 itself.

Â Whereafter the petitioner submitted an application through Rajasthan Public Service Commission (â??the Commissionâ??) for the purpose of

appointment on the post of Hindi Stenographer Grade-II; the petitioner faced regular selection proceedings and was selected by the Commission by an

order dated 28.02.1997; the petitioner was posted as Stenographer Grade-II in the office of Additional Public Prosecutor No.3, Udaipur by order dated

28.02.1997.

On being relieved from the Court of Civil Judge-cumAdditional Chief Judicial Magistrate, Vallabhnagar on 01.04.1997, the petitioner joined in the

office of Additional Public Prosecutor No.3, Udaipur on 02.04.1997. Subsequently, the petitioner was transferred from Prosecution Department to the

office of Collector, Rajsamand by order dated 11.06.1998 and he joined there on 04.07.1998.

It is, inter alia, indicated in the writ petition that the petitioner is the only person holding the post of Stenographer Grade-II in the office of Collector,

Rajsamand and a seniority list dated 03.03.2000 has been placed on record as Annex.-5. It is then contended in the writ petition that in terms of the

Rajasthan Subordinate Offices Ministerial Service Rules, 1999 (â??the Rules of 1999â??), a promotional avenue for Stenographer to the post of

Personal Assistant has been provided. As per Entry No.13 in Schedule-I, recruitment to the post of Personal Assistant is required to be made 100%

by way of promotion from among the Stenographer having 5 yearsâ?? experience; for the purpose of promotion, a DPC consisting of Appointing

Authority â?? Dy. Secretary to the Government and Administrative Department concerned and two Senior Deputy Head of Department or next

senior most Officers are required to adjudicate suitability of the incumbent and on recommendation of the Committee, the promotion is required to be

made.

With reference to the term "experience", a reference has been made to Clause (I) of Rule 2 of the Rules of 1999 and it has been contended that

the experience includes the period for which the person has continuously worked on lower post after regular selection in accordance with the Rules.

Based on the above provisions of the Rules of 1999, it is contended that as the petitioner is in service of the State since 1993, he possesses the

requisite qualification and eligibility for the purpose of appointment by way of promotion to the post of Personal Assistant. It is further contended that

the post of Personal Assistant is vacant in the office of Collector, Rajsamand since 1997 and the petitioner is eligible to be promoted on the said post

since 1998 on acquiring 5 years' experience on the post of Stenographer Grade-II from the date of his initial appointment i.e. 22.07.1993.

The DPC constituted under the Rules of 1999 met on 29.05.2000 for the purpose of promotion to the post of Personal Assistant and candidature of the

petitioner was considered, but he was not selected on account of the Committee not finding him eligible on account of treating his date of regular

appointment as 02.04.1997. A copy of the communication issued by the Dy. Registrar (Administration) has been placed on record as

Annex.-7.

It is, inter alia, contended on behalf of the petitioner that denial of the promotion to the petitioner against the vacancies of the year 1998-99 is illegal as

he was possessing the requisite eligibility for the purpose of appointment by way of promotion to the post of Personal Assistant. It is contended that as

the petitioner was appointed as Stenographer in Udaipur Judgeship on 22.07.1993 by way of regular selection under the Rules of 1986, he was

working in the feeder post since 1993 and as he fulfilled the requirement of 5 years' experience in the feeder post, he was entitled for being

considered for promotion against the vacancies of the year 1998-99. It is also contended that the requisite experience of 5 years includes the period

for which the petitioner had continuously worked as Stenographer in accordance with the Rules, whereby the petitioner was appointed under the Rules

of 1986 in July, 1993 and had completed 5 years' experience, requisite for the purpose of promotion to the post of Personal Assistant. With

reference to provisions of Rule 2(I) of the Rules of 1999, it is submitted that

apparently there was no reason for the respondents to exclude the period the petitioner served as Stenographer on being appointed under the Rules of 1986.

Learned counsel for the petitioner relied on judgment in the case of Dhanraj Meena v. State of Rajsathan & Ors.: SBCW No.12846/2017, decided on 15.01.2018.

During the pendency of the writ petition, on 23.08.2016, learned counsel for the petitioner placed on record a copy of order dated 06.02.2006, whereby

the Dy. Registrar (Administration), Revenue Board indicated to the District Collector, Rajsamand that as the petitioner was regularly appointed under

the Rules of 1986, the services rendered by him since 22.07.1993 were required to be considered for the purpose of grant of selection grade on

completion of 9-18-27 years of service, the said document was taken on record and the respondents were directed to respond to the said document

dated 06.02.2006.

An additional affidavit has been filed by the respondents, inter alia, indicating that for the purpose of grant of selection grade, the relevant date is the

date of initial appointment, whereas in the matter of promotion, the relevant date for the purpose of counting requisite experience of feeder post is the

date on which incumbent joins duties in the concerned

Department on the feeder post and, therefore, the document dated 06.02.2006 indicating recommendation of counting of the services since 1993 for

the purpose of grant of selection grade ipso facto does not entitle the petitioner for grant of promotion.

Learned counsel appearing for the respondents essentially based on the submissions as made in the additional affidavit opposed the submissions as

made by the petitioner. It was, inter alia, submitted that as the Rules of 1999 provides for 5 years's experience on the post of Stenographer as the

qualification / eligibility for promotion to the post of Personal Assistant, it necessarily means that the experience acquired by the incumbent should

be in the concerned Department on the feeder post and the experience with other Department is of no consequence and, therefore, the writ petition is

liable to be dismissed.

I have considered the submissions made by learned counsel for the parties and have perused the material available on record.

It is no in dispute that the petitioner was regularly selected and was appointed under the Rules of 1986 on the post of Stenographer Grade-II by way

of regular selection on 22.07.1993 (Annex.-1). Whereafter, having participated for selection to the post of Hindi Stenographer Grade-II held by the

Commission, he was again selected on 28.02.1997 (Annex.-2) and was posted in the office of Additional Public Prosecutor No.3, Udaipur, from

where he was transferred/posted to the office of Collector, Rajsamand, where he continued to work.

The DPC for promotion to the post of Personal Assistant under the Rules of 1999 met and considered the case of the petitioner, however he was not

found eligible by treating his regular appointment in service w.e.f. 02.04.1997 only.

The eligibility condition as already noticed hereinbefore is 5 yearsâ?? experience on the post of Stenographer for promotion to the post of Personal

Assistant as per Entry No.13 of Schedule-I.

The word â??experienceâ?? has been defined under Rule 2(l) of the Rules of 1999, which reads as under:-

â??(l) "Service" or "Experience" wherever laid down in these Rules as a condition for promotion from one service to another or within the service

from one category to another or to senior posts in the case of a person holding a lower post eligible for promotion to higher post shall include the period

for which the person has continuously worked on such lower post after regular selection in accordance with Rules promulgated under proviso to

Article 309 of the Constitution of India; and Â Note:- Absence during service e.g. training, leave and deputation etc. which are treated as "duty" under

the Rajasthan Service Rules, 1951 shall also be counted as service for computing experience or service required for promotion.â??

A bare look at the definition of â??experienceâ?? would reveal that from promotion to a senior post, experience shall include the period for which the

person has continuously worked on such lower post after regular selection in accordance with â??the Rules promulgated under proviso to Article 309

of the Constitution of India.â??

A close scrutiny of the above definition would reveal that the provision envisage having worked on lower post after regular selection in accordance

with the Rules promulgated under proviso to Article 309 of the Constitution of

India i.e. the experience has not been confined to the experience acquired after appointment under the Rules of 1999.

Admittedly, the petitioner was regularly selected under the Rules of 1986, which Rules have also been promulgated under proviso to Article 309 of the Constitution of India and, therefore, the experience acquired by the petitioner on the post of Stenographer while working under the Rules of 1986 since 22.07.1993 was required to be taken into consideration for the purpose of considering petitioner's eligibility for promotion to the post of Personal Assistant under the Rules of 1999.

Besides the above, Rule 26 of the Rajasthan Service Rules, 1951, provides for pay protection of a Government Servant already serving in one Service, Cadre or Department on his appointment to another Service, Cadre or Department by direct recruitment or special selection and not by promotion, which necessarily envisage continuity in service.

As already noticed hereinbefore, the respondent Department itself by its communication dated 06.02.2006 indicated that the service period of the petitioner under the Rules of 1986 was required to be counted for the purpose of grant of selection grade. The distinction sought to be projected by the respondents and as submitted by the counsel for the petitioner that for grant of selection grade, the date of initial appointment would be different from the relevant date for the purpose of requisite experience on the feeder post, has no legal basis.

Consequently, it is apparent that the petitioner is entitled to get the services rendered by him under the Rules of 1986 w.e.f. 22.07.1993 counted for the purpose of experience on the feeder post of Stenographer for promotion to the post of Personal

Assistant under the Rules of 1999 and based on the counting of the said experience was required to be considered for promotion to the post of

Personal Assistant. The action of the respondents in denying the consideration of petitioner's case on account of lack of experience by

consideration of his experience w.e.f. 02.04.1997 cannot be sustained.

In view of above discussion, the writ petition filed by the petitioner is allowed. The respondents are directed to consider the case of the petitioner for

promotion to the post of Personal Assistant by counting his experience on the feeder post of Stenographer w.e.f. from the date of his initial

appointment i.e. 22.07.1993 as and when he became eligible based on such experience and on being found eligible, grant him promotion with all consequential benefits.

The needful be done by the respondents within a period of four months from the date of this judgment.

No order as to costs.