
(2012) 11 RAJ CK 0009
In the Rajasthan High Court
Case No : Civil Writ Petition No. 10575 of 2009

Virendra Kumar Bhatia

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 02-11-2012

Acts Referred:

Citation : (2013) LabIC 139

Hon'ble Judges : Govind Mathur, J

Bench : Single Bench

Advocate : Pradeep Choudhary and Sudhir Tak, for the Appellant; Sachin Acharya, for the Respondent

Final Decision : Allowed

Judgement

Govind Mathur, J.—By this petition for writ, the petitioner is seeking a direction to expunge the adverse remark recorded in Annual Confidential Appraisal Report pertaining to the year 2006-07 and further to promote him as Vice Principal against the vacancies of the year 2008-09. The factual matrix necessary to be noticed is that the petitioner is holding the post of Lecturer created under the Rajasthan Educational Service (Collegiate Branch) Rules, 1986 (for short "the Rules of 1986" hereinafter). Under the Rules of 1986, a Lecturer is having an avenue for promotion to the post of Principal/Vice-Principal. The criteria for promotion to the post aforesaid is merit and seniority-cum-merit with the ratio of 1:1. The respondents under the order dated 9.10.2009 made promotion of 50 Lecturers as Vice-Principal as per the criteria of seniority-cum-merit against the vacancies of the year 2008-09.

2. The grievance of the petitioner is that under the order aforesaid promotions were accorded to several persons junior to him. It is pointed out that all the persons named subsequent to Sr. No. 35 are junior to him in the cadre of Lecturer. As per the petitioner promotion was denied to him on the count of an adverse remark made in his Annual Confidential Appraisal Report pertaining to the year 2006-07. It is asserted that the adverse remark pertaining aforesaid

could have not been taken into consideration in view of sub-clause (4) of Clause 15 of the Rajasthan Civil Services (Performance Appraisal Report) Instructions, 2008 (for short "the Instructions of 2008" hereinafter), which provides that where an employee has tendered evidence against the reporting/reviewing authority, before the court of law, the reporting/reviewing authority cannot write/review the Annual Confidential Appraisal Report of the employee. The petitioner tendered evidence against the reporting officer Dr. M.R. Choudhary (respondent No. 3), as such, the remark made by him in the Annual Confidential Appraisal Report for the year 2006-07 is nonest and that could have not been taken into consideration while considering the case of the petitioner for promotion.

3. As per reply to the writ petition filed on behalf of the respondent Nos. 1 and 2 the promotion was denied to the petitioner on the count of adverse remarks in his Annual Confidential Appraisal Report pertaining to the year 2006-07 and that remark was made by Dr. M.R. Choudhary (respondent No. 3). The respondents admitted that in view of Clause 15(4) of the Instructions of 2008 Dr. M.R. Choudhary could have not made any remarks regarding performance of the petitioner. The stand taken by the respondent Nos. 1 and 2 in para No. 18 of the reply reads as under:--

18. That in reply to the averments contained in para 18 of the writ petition, it is submitted that the ACR of the petitioner for the period in question was filled up by Dr. M.R. Choudhary who was not competent to do so in view of Clause 15(4) of the Instructions of 2008 and being violative of Principles of Natural Justice. In this regard, it is submitted that the petitioner had given statement against Sh. M.R. Choudhary. Since the petitioner had given statement in a criminal case against Sh. M.R. Choudhary, in view of Clause 15(4) of the Instructions of 2008, Dr. M.R. Choudhary could not write the PAR of the employee and he was incompetent to write PAR against the petitioner. So far as remarks for the year 2005-2006 are concerned, they cannot be said to be unsatisfactory or adverse as per the Instructions.

4. It is not at all in dispute that the petitioner tendered evidence against respondent No. 3 and as such, in view of Clause 15(4) of the Instructions of 2008 he could have not made any remarks pertaining to the performance of the petitioner. The respondent Nos. 1 and 2 are also not considering the adverse remarks entered by Dr. M.R. Choudhary as adverse to the petitioner, as such, they erred while denying promotion to the petitioner by banking upon such remarks. Accordingly, this petition for writ deserves acceptance. The same is allowed. The respondents are directed to consider case of the petitioner for grant of promotion under the criteria of seniority-cum-merit to the post of Vice-Principal as per provisions of the Rules of 1986 ignoring the remarks available in his Annual Confidential Appraisal Report for the year 2006-07 and if he is otherwise found suitable promotion be accorded to him. Necessary consideration in the terms above is required to be made within a period of two months from today.