
(2014) 03 RAJ CK 0055
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1357/2012

Virendra Kumar Mathur

APPELLANT

Vs

The Raj. High Court

RESPONDENT

Date of Decision : 20-03-2014

Acts Referred:

Citation : (2014) LabIC 3718 : (2014) 3 WLN 180

Hon'ble Judges : Amitava Roy, C.J.; Vijay Bishnoi, J

Bench : Division Bench

Advocate : Kuldeep Mathar, Advocate for the Appellant; G.R. Punia, Sr. Advocate, Assisted by Rajesh Punia, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Amitava Roy, C.J.—The petitioner, a serving Judicial Officer of the Rajasthan Higher Judicial Service, seeks judicial intervention for annulment of the administrative decision(s) rejecting his representations claiming grant of Selection Grade Scale of Pay of District Judge Cadre with effect from the year 2006 and a consequential direction to confer upon him the above benefit. We have heard Mr. Kuldeep Mathur, learned counsel for the petitioner and Mr. G.R. Punia, learned Sr. Advocate, assisted by Mr. Rajesh Punia, for the respondents.

2. The petitioner by order dt. 03.05.2001 issued by the Department of Law and Legal Affairs, Govt. of Rajasthan, was appointed as Additional District & Sessions Judge in the Rajasthan Higher Judicial Service., he having been placed at S. No. 6 therein in order of merit. One Shri Ramchandra Singh Jhala too, was so appointed on selection and was inducted at S. No. 7 in order of merit. Incidentally, their placement in the list was at S. Nos. 5 and 6, though their ranking in order of merit was indicated in the order aforementioned. According to the petitioner, he, on such appointment, discharged his duties with sincerity and dedication and in course thereof, was transferred in the year 2006 as Additional District & Sessions Judge No. 2, Bhilwara and he joined thereat on 01.07.2006. The High Court of Judicature for Rajasthan at Jodhpur (for short hereinafter

referred to as "the High Court"), he has averred, vide Circular dt. 05.02.2004 notified the "Revised Standard of Work" comprised of norms to adjudge the performance of the Presiding Officers of the Subordinate Courts. Whereas amongst others, Clause 6 thereof enjoined that the merit of an officer would also be adjudged by the quality of his work, which, by no means, would permit him/her to depart therefrom for the sake of quantity. Clause 9 postulated that the norms would not be enforced for the quarter in which the charge is taken over at a New Station. The petitioner has pleaded that after a short stint as the Additional District & Sessions Judge No. 2, Bhilwara, he was posted as Judge, Labour Court cum Industrial Tribunal, Bikaner, by order issued in the month of May, 2007. While posted thereat, he received letter No. PA/RG/5(I)2008/140 dt. 09.05.2008 from the Registrar General of the High Court indicating him that for the year 2006 (from 01.07.2006 to 31.12.2006), an advisory remark "disposal of work is inadequate" had been recorded in his A.C.R. On receipt thereof, petitioner submitted a representation on 19.06.2008 to the respondent No. 2 reciting the reasons for the insufficient disposal of work. He inter alia pointed out that though in the quarter commencing from 01.07.2006 to 30.09.2006, his disposal was 40.24%, in the subsequent quarter i.e. 01.10.2006 to 31.12.2006, it had ascended to 165.41%, which, according to him, was above the percentage of work, prescribed in the Circular dt. 05.02.2004. He, thus, requested for the expunction of the above referred remarks, which he considered to be of adverse bearing. According to the petitioner, the respondent No. 2, subsequent thereto, vide letter dt. 28.07.2008 communicated to him that the remark "disposal of work is inadequate" has been treated to be advisory and that the same would not come in the way of promotion or grant of scale. Referring to the prescription for grant of Selection Grade and Super Time Scale Grade in terms of the decision of the Hon'ble Apex Court in Writ Petition No. 1022/1989 "All India Judges Association & Ors. v. Union of India & Ors., and the recommendation of the First National Judicial Pay Commission, the petitioner has pleaded that he was entitled for the Selection Grade in the year 2006-2007 and, thus, on 21.08.2008, he registered his claim therefor. However, in the list of the officers notified in the order No. Estt.(RJS)/11/2011 dt. 21.01.2011 of the Registry of this Court, granting Selection Scale of Pay of District Judge Cadre, he was shown to have been awarded the said benefit with effect from 01.04.2008, whereas Shri Ramchandra Singh Jhala (placed below him in order of merit in the order dt. 03.05.2001) was sanctioned the same with effect from 01.11.2006. Being aggrieved, the petitioner on 31.01.2011 submitted a representation, reiterating his claim for the Selection Grade from the year 2006, ventilating his remonstrance in particular that Shri Ramchandra Singh Jhala had been accorded the benefit prior to him, though he was below in order of merit. The representations dt. 21.08.2008 and 31.01.2011 were rejected and the petitioner was intimated of the said decision by communications dt. 07.02.2011 and 24.11.2011 respectively. The petitioner is, thus, before this Court for redress.

3. The respondents in their reply, while endorsing the validity of the decisions

taken, pleaded that the case of the petitioner had been duly considered at all relevant times for examining his entitlement to the Selection Grade Scale of Pay alongwith others eligible therefor. According to them, the Concerned Committee for grant of Selection Grade Scale to the officers in the Rajasthan Higher Judicial Service had laid down the following criteria:

"The incumbents who are having at least five good, very good or outstanding entries with no adverse remarks in the preceding seven years are entitled for grant of Selection Scale. However, in case, the continuous service of the officer in order of seniority is five years or more but less than seven years then the assessment be made on the basis of available record. "

4. This norm had been uniformly applied to all the Eligible Officers, while examining their entitlement for the Selection Scale and the Concerned Committee therefor, while scrutinising the case of the petitioner for grant of Selection Scale for the years 2006-07 and 2007-08, did resolve as hereunder:

"2006-07: The Committee has considered the case of Dr. V.K. Mathur. Since, he has not earned required entries to his credit, he is not entitled to Selection Scale.

2007-08: The Committee has considered the case of Dr. V.K. Mathur. Since, he has not earned required good entries to his credit, therefore, he is not entitled to Selection Scale."

5. These resolutions were approved by the Full Court in its meeting on 12.07.2008. The respondents asserted further that in the year 2003-04, for the period from 01.01.2004 to 14.06.2004, petitioner had been rated as "average" in his A.C.R. That there were some complaints pending against him and that in one of those, he had been advised to sit in Court on time, was mentioned as well. The respondents disputed the petitioner's claim that he had been discharging his duties with utmost sincerity and dedication. The respondents asserted further that the petitioner's representation dt. 19.06.2008 submitted against the advisory remarks in the A.C.R. for the year 2006 was duly considered by the Concerned Committee and was disposed of observing that the remarks "disposal of work is inadequate" were to be treated as advisory so much so that the same would not come in the way of promotion for grant of Selection Scale to him. This decision was communicated to the petitioner vide letter dt. 28.07.2008 by the Registry of the High Court. That the petitioner's representation dt. 21.08.2008 and 31.01.2011 were duly considered & rejected and the decision to that effect had been communicated on 07.02.2011 and 24.11.2011, was reiterated. It was asserted in particular that the Concerned Committee, while considering the representation of the petitioner for grant of Selection Scale in the D.J. Cadre from the year 2006, as claimed by him, did observe in its meeting held on 19.05.2011 as hereunder:

"The representation of Dr. Virendra Kumar Mathur was earlier considered and rejected by the Full Court in its meeting held on 12.07.2008. Thereafter, he has made another representation and the same was also rejected by the Full Court in

its meeting held on 15.01.2011. Thus, the representation of the petitioner for grant of Selection Scale for the relevant period having been earlier rejected by the Full Court, the same matter cannot be reviewed and the instant representation deserves rejection and, therefore, the same stands rejected."

6. The Full Court of this Court in its meeting held on 05.11.2011 on a detailed consideration of all relevant aspects, bearing on the above decision of the Committee, decided as hereunder:

"Resolved to reject the representation made by Dr. Virendra Kumar Mathur."

7. The decision taken on the representation of the petitioner was, thus, communicated to him as aforesaid. According to the respondents, the petitioner not being entitled on the basis of his service record to the benefit of Selection Scale from the year 2006, as claimed by him, his grievance is wholly misconceived.

8. Petitioner in his rejoinder has stressed upon in particular that as he had not been communicated with the remark that for the period from 01.01.2004 to 14.06.2004, he had been rated as "average" and that some complaints were also pending against him, such adverse entry could not have been noticed and acted upon by the respondents in denying him the Selection Scale from the year 2006 on the ground that he had not earned the essential gradings, required therefor, in terms of the prescribed norms.

9. Mr. Mathur, learned counsel for the petitioner, has insistently urged that it being apparent on the face of the record that the denial of Selection Scale to the petitioner is traceable to the un-communicated grading of being "average" in the concerned A.C.R. for the period from 01.01.2004 to 14.06.2004 and pendency of some complaints against him as alleged, the impugned action is clearly illegal, arbitrary and unsustainable in law and is liable to be interfered with. As such, adverse remark could not have been acted upon in the face of the decisions of the Hon'ble Apex Court in *Dev Dutt Vs. Union of India (UOI) and Others*, and *Sukhdev Singh Vs. Union of India (UOI) and Others*, , the rejection of his representations, claiming Selection Scale from the year 2006, is liable to be adjudged null and void and a writ of mandamus ought to be issued to the respondents to grant him the said entitlement, as due to him.

10. Mr. Punia, learned Sr. Advocate, appearing on behalf of the respondents, has urged that the norms stipulated for evaluating the suitability of an Eligible Officer for grant of Selection Scale having been uniformly applied qua the service records of all concerned Judicial Officers, including the petitioner, for the periods 2006-07 and 2007-08 and he having been adjudged to be disentitled thereto, his grievance is wholly misplaced. Reiterating that the remarks in his A.C.R. of the year 2006 i.e. "disposal of work is inadequate" had been throughout construed to be advisory in nature and bereft of any adverse impact on his prospects of promotion or grant of Selection Scale and that he, accordingly, had been accorded the Selection Scale with effect from 01.04.2008, his demur vis-?-vis his

grading of "average" for the period 01.01.2004 to 14.06.2004 and pendency of complaint against him at this distant point of time, is wholly inconsequential. The learned Senior Counsel argued that the Concerned Committee as well as the Full Court having exhaustively dealt with all relevant aspects, factual and legal, while examining his claim for Selection Scale and the grievance expressed by him in his representations in rejecting these after an in-depth deliberations, the reliefs sought for, are wholly untenable.

11. We have examined the rival pleadings and have analysed as well the arguments advanced. The pleaded facts and the documents available, including original records, bearing on the issues, do reveal in unequivocal terms that the norms formulated by the Concerned Committee for scrutinising the cases of the Judicial Officers, including the petitioner, for grant of Selection Scale had been uniformly applied to all concerned. Whereas the resolutions of that Committee for the periods 2006-07 and 2007-08, taken on 05.07.2008, would unimpeachably demonstrate that the case of the petitioner was also considered but rejected on merits, the same was ratified as well after due consideration by the Full Court on 12.07.2008. The records reveal that the recommendation of the Concerned Committee for grant of Selection Scale to officers in the D.J. Cadre, which eventually got reflected in the order dt. 21.01.2011, had been approved by the Full Court in its meeting held on 15.01.2011 in the following terms:

"The recommendations made by the Committee in the matter of grant of Selection Scale to officers in D.J. Cadre are hereby approved."

12. In the resolution dt. 09.01.2011 of the Higher Judiciary Committee for grant of Selection Scale to the officers in the D.J. Cadre for the year 2006-07, vis-?-vis the petitioner, it was resolved as hereunder:

"YEAR 2006-2007

xxxxx

However, there is a representation of Dr. Virendra Kumar Mathur, who was not found fit by the earlier Committee for the year 2006-07 and 2007-08 vide report dt. 05.07.2008, which was approved by Full Court on 12.07.2008. Thereafter, a representation of Shri Mathur against remarks in the A.C.R. of the year 2006 was considered on the administrative side, and the remarks "Disposal of work is inadequate" were treated as Advisory with note that it will not come in the way of promotion or grant of scale vide letter dt. 28.07.2008. Thus, the grade rating of Shri Mathur remained unchanged. Earlier his matter was approved by the Full Court, therefore, the Committee is of the view that the representation be placed before the Full Court for consideration of grant of Selection Scale against one vacancy of year 2006-07 and 2007-08.

Incidentally Shri Mathur was not eligible for this vacancy as on 01.04.2006 as he had not completed 5 years of service, therefore, the Committee is of the view that this vacancy be kept unavailed upto 31.03.2008 and be taken into account

from 01.04.2008 without disturbing the scales already granted.

Another vacancy occurred on 01.11.2006 was kept reserved for Shri Ram Chandra Singh Jhala. In view of acceptance of his representation regarding expunction of remark vide letter dt. 28.07.2008, he is found fit for this vacancy."

13. For the year 2008-09, it was resolved further as hereunder:

"YEAR 2008-2009

There are 15 (14+1) vacancies in this year, for which names of Eligible Officers were considered as per above mentioned criteria. The Committee recommends grant of Selection Scale to the following officers from the date shown against their names as they have been found fit,-

SARVA SHRI:

14. To reiterate, the representation of the petitioner for grant of Selection Scale with effect from the year 2006 was considered and rejected by the Higher Judiciary Committee in its meeting held on 19.05.2011 and its resolution was approved by the Full Court on 05.11.2011 in unequivocal terms. The progression of events, as narrated hereinabove, is all borne out from the records and does not admit of any doubt.

15. As has been the procedure uniformly followed in all cases of assessment of every Judicial Officer of the High Court, the Concerned Committee, while undertaking an exercise to examine any representation pertaining to his/her service record, do scrutinize the same essentially on its merit with exhaustive reference to A.C. Rs. for the relevant years, the quality and quantity of disposal with explanation provided, vigilance inputs, overall performance and other factors taken note of by the concerned D.J., the Hon"ble Inspecting Judge, the Hon"ble Administrative Judge and the Hon"ble Chief Justice in awarding the eventual grading to him/her. Each and every decision of the Committee in this regard, thus, is preceded by a comprehensive study of all relevant aspects bearing on all round performance of the officer concerned. The case of the petitioner as well, was no exception and the Concerned Committee for grant of Selection Scale did examine thoroughly the above aspects and consciously took a decision on the basis thereof by applying the relevant norms to fix 01.04.2008 to be the date on and from which the petitioner was held entitled to the grant of Selection Scale. The Full Court in its meeting held on 12.07.2008 did apply these norms without any reservation whatsoever and after a detailed examination of the relevant materials on record, the representation of the petitioner seeking grant of Selection Scale with effect from 2006 was rejected on its own merit. This decision was also affirmed after due deliberations by the Full Court in its subsequent meetings held on 15.01.2011 and 05.11.2011.

16. The authorities cited at the Bar are to the effect that every entry in the A.C.R. of an employee, except in military services, whether "poor", "fair", "average", "good", "very good" or "outstanding", ought to be obligatorily

communicated to him/her within a reasonable period of time so as to enable him/her to represent against the same, wherever felt imperative for expunction of the adverse remarks or for elevation of the grading awarded and also to further improve his/her performance in overall administrative interest. No legal proposition or injunction as such had been recorded therein that even in cases prior to the dates of decisions so rendered, communication of the entries contemplated would have to be made compulsorily even if those relates to years in the long past. Though in *Devdutt (supra)*, their Lordships did direct communication of the "good" entry for the year 1993-94 to the appellant therein within a period of two months, leaving him (appellant) to make an appropriate representation which, if filed, was ordered to be decided within a period of two months to be followed by the release of consequential benefits thereof, in *Sukhdev Singh (supra)*, noticing the fact that the appellant therein had already been promoted on the basis of the service records, plainly left him with the option to make a representation seeking retrospective promotion.

17. In the case in hand, as adverted-to hereinabove, the representations of the petitioner bearing on his claim for grant of Selection Scale with effect from the year 2006 had been considered more than once by the Concerned Committee as well as by the Full Court, declining the said relief to him. On a detailed scrutiny of the records laid before us, we see no discernible reason to entertain any reservation with regard to correctness and/or the validity of the decisions taken by the Concerned Committee as well as the Full Court on merit. In the face of such successive scrutiny of his representation for grant of the Selection Scale from the year 2006 and consistent rejection, we are of the firm comprehension that in course of such exercise, the justifiability of his grading of "average" and the aspect of pendency of complaints have been considered as well. The fact that Shri Ramchandra Singh Jhala had been at the time of appointment of the petitioner placed below him in order of merit, ipso facto cannot be an unimpeachably permanent and immutable performance index or a hallmark of suitability for further progressions in the service, be it by promotion or grant of higher scales. It is a trite proposition that the Selection Scale cannot be claimed as a matter of right and is awarded subject to assessment of merit and overall suitability based on performance manifested by objective materials, scripted in contemporaneous records including vigilance inputs. To reiterate, the Concerned Committee and the Full Court did, as the record testifies, examine all these aspects in rejecting the claim of the petitioner repeatedly.

18. In the attendant facts & circumstances, therefore, we are of the comprehension that the decisions relied upon by the petitioner, are of no avail to him. His case, having been considered amongst others also noticing his overall performance for the year 2004, as aforestated, we are left unpersuaded that his claim for Selection Scale with effect from the year 2006 at this distant point of time and in the above factual background in particular, is entertainable in law. Resultantly, the writ petition is, thus, rejected. No costs.