

Salim Mohammad Vs. State of Raj. and anr

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Court : Rajasthan Jodhpur

Decided On : Aug-26-2014

Appellant : Salim Mohammad

Respondent : State of Raj. and anr

Advocate for Def. : Mr. R.S. Saluja

Advocate for Pet/Ap. : Mr. Digvijay Singh

Judgement :

S.B. CIVIL WRIT PETITION No.5676/2010. Salim Mohammad Vs. State of Rajasthan & Ors. Order dated 26/08/2014 1/10 IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR ::

ORDER

:: S.B. CIVIL WRIT PETITION No.5676/2010. Salim Mohammad Vs. State of Rajasthan & Ors. Date of Order ::::

26. h August, 2014. PRESENT HON'BLE Dr. JUSTICE VINEET KOTHARI
Appearance: Mr. Salim Mohammad, petitioner present-in-person. Mr. Jabbar Singh, OIC, Regional Joint Director, Agri. Marketing, Jodhpur. -- BY THE COURT:

1. The lawyers are observing strike which is contrary to various Supreme Court decisions. Names of Mr. Rishabh Sancheti, Mr. M.S. Godara, Mr. Sandeep Shah

and Mr. Digvijay Singh, counsel for the petitioner are shown in the cause list. Name of Mr. Bharat Dutt Sharma, Dy. Govt. Counsel and Mr. R.S. Saluja, counsel for the respondent are shown in the cause list.

2. The case is listed at Serial No.110 in today's cause list under the category for hearing.. The present writ petition has been filed on 23.06.2010 with the following prayers: - In the above facts, it is therefore humbly S.B. CIVIL WRIT PETITION No.5676/2010. Salim Mohammad Vs. State of Rajasthan & Ors. Order dated 26/08/2014 2/10 prayed that this writ petition may kindly be allowed, and by an appropriate writ, order or direction: i) The impugned direction/order dated 10.5.2010 (Annexure

8) and 25.5.2010 (Annexure

9) and any consequential action, may kindly be declared illegal, be quashed and set aside, and all further proceedings taken by the respondents, if any, in pursuance of the said order may be quashed and set aside; ii) The respondents may be directed to restore the pay as fixed vide order dated 30.9.2009 (Annexure

5) and also grant all other consequential and incidental benefits that would have accrued subsequently; iii)The circular dated 13.3.2006 (Annexure

10) may be declared to not apply to the case of the petitioner, or in an alternative, but without prejudice, may kindly be declared illegal, and quashed and set aside; iv)The respondents may be directed to decide the petitioner's representations (Annexure 6 & 7), expeditiously, and in accordance with law; v) Any other appropriate order or direction which this Hon'ble Court deems just and proper in the peculiar facts and circumstances of the case may be passed in favour of the petitioners. vi)Costs of the writ petition may kindly be awarded S.B. CIVIL WRIT PETITION No.5676/2010. Salim Mohammad Vs. State of Rajasthan & Ors. Order dated 26/08/2014 3/10 to the petitioners.. 2. While issuing notices to the respondents, this Court granted an ad-interim order on 28.06.2010 staying the effect and operation of the orders dated 10.05.2010 (Annex.8) and the order dated 25.05.2010 (Annex.9).

3. The facts leading to filing the present writ petition in nut shell are as infra. The petitioner was initially appointed as Lower Division Clerk (LDC) in the handicapped category vide the order dated 21.12.1987 (Annex.1) issued by the Secretary, Krishi Upaj Mandi Samiti, Merta City ('KUMS', for short). The petitioner was later on confirmed on that post and rendered the services as LDC there for almost 20 years. Thereafter, upon a Notification No.5/2007-08 dated 28.02.2008 issued by the Rajasthan Public Service Commission inviting applications for the post of Junior Marketing Officer., the petitioner applied for the said post and on the basis of 25% of the posts reserved for departmental candidates including ministerial staff of Krishi Upaj Mandi Samiti, the petitioner was selected and appointed on the post of Junior Marketing Officer vide the order (Annex.3) dated 18.08.2009. The petitioner's pay while he was working as LDC in the KUMS was Rs.14,290/- was protected and instead of monthly fixed pay of Rs.11,100/- to be given to the petitioner as Probationer Trainee in view of said selection, the petitioner was paid a sum of Rs.14,290/-. Later on, the said benefit was sought to be S.B. CIVIL WRIT PETITION No.5676/2010. Salim Mohammad Vs. State of Rajasthan & Ors. Order dated 26/08/2014 4/10 withdrawn by the impugned order (Annex.8) dated 10.05.2010 and recovery of excess amount paid on this ground was sought to be made vide the impugned order (Annex.9) dated 25.05.2010. The petitioner has challenged the said order and in the alternative has challenged the said condition in the Notification of the Government of Rajasthan dated 13.03.2006 to the extent of Clause (iv) and its proviso, which are also quoted herein below for ready reference: - (iv). at the end of existing Rule 24, the following new provisions shall be inserted, namely:- Provided further that a probationer- trainee will receive a fixed remuneration at such rates as may be prescribed by the Government from time to time and on completion of period of probation, minimum pay of the pay scale of the post shall be allowed under this rule, from the day following the day of successful completion of the period of probation. Provided further also that a government servant, who is already in regular service of the State Government, if appointed as probationer- trainee for a period of two years on or after 20.1.2006 shall be allowed pay in his/her own pay scale of the previous post or fixed remuneration at such rates as may be prescribed by the Government from time to time, whichever may be S.B. CIVIL WRIT PETITION No.5676/2010. Salim

Mohammad Vs. State of Rajasthan & Ors. Order dated 26/08/2014 5/10 beneficial to him/her and after successful completion of period of probationer-trainee, his/her pay shall be fixed in pay scale of the new post as per provisions of Rule 26.. 4. The respondents upon services of the notices, have filed a reply to the writ petition and took a stand that since the petitioner was not a Government servant, but was an employee of an autonomous body like KUMS, though he was entitled to participate and be selected against the reserved 21 vacancies out of total 84 posts of Junior Marketing Officers, advertised vide the Notification dated 28.02.2008, but his pay as LDC could not be protected upon being appointed as Junior Marketing Officer, but he was entitled only to the monthly consolidated pay of Rs.11,100/- as payable to all such appointees and it is only after completion of two years' probation period that he could be regularized and regular pay scale of Junior Marketing Officer could be given to him on passing of the pay fixation orders. The contentions raised by the respondents in their reply in para Nos.5 and 9 relevant, are quoted herein below for ready reference: -

5. That contents of para No.5 of the writ petition are admitted to the extent of annexure 2 of the writ petition, but the manner in which the averments are made are not admitted, it is humbly submitted that the endorsement made in appointment with regard to option has been made S.B. CIVIL WRIT PETITION No.5676/2010. Salim Mohammad Vs. State of Rajasthan & Ors. Order dated 26/08/2014 6/10 as per proviso to rule 24 of RSR which reads as under; - Provided further also that a government servant who is already in regular service of state Government, if appointed as probationer-trainee for a period of two years on or after 20.1.2006 shall be allowed pay in his/her own pay scale of the previous post or fixed remuneration at such rates as may be prescribed by the Government from time to time, which ever is beneficial to him/her and after successful completion of period of probationer-trainee, his/her pay shall be fixed in the pay scale of new post as per the provision of Rule 26.. Thus it is clear that this benefit is given to State Government Employees working regularly in State Government Department and on the contrary the petitioner was not a government servant when he applied for the post of junior marketing officer hence this endorsement is not applicable on him. Thus it is crystal clear that right to give option was given to the Government servant already working in different State Government departments

and not to the employees of Krishi Upaj Mandi which is not a government Department. xxx xxx 9. That averments contained in para No.9 of the writ petition are admitted to the extent of annexure 5 of the writ petition, it is humbly S.B. CIVIL WRIT PETITION No.5676/2010. Salim Mohammad Vs. State of Rajasthan & Ors. Order dated 26/08/2014 7/10 submitted that Finance Department has made an amendment in the Rajasthan Service Rules 1951 vide notification dated 13.3.06 which came into effect from 20.1.2006, the amendment made is as under; (i) Below the existing item (iii) of sub clause (a) of clause (8) of rule 7, the following new item iv shall be inserted, namely: (iv) Probationer Trainee. (ii) The existing rule 8 shall be renumbered as Rule 8A and following new Rule 8 shall be inserted, namely: -

8. Notwithstanding anything contained in any rules all appointments in Government services on or after 20.1.2006 shall be made as Probationary trainee for a period of two years and during the period of probation training, he/she will be paid fixed remuneration at such rates as may be prescribed by the government from time to time. After successful completion of probation training he/she will be allowed minimum pay in the pay scale of the post and the period of probation training shall not be count for grant of annual grade increment(s).

. (iv) at the end of existing Rule 24, the following new provisions shall be inserted, namely:- S.B. CIVIL WRIT PETITION No.5676/2010. Salim Mohammad Vs. State of Rajasthan & Ors. Order dated 26/08/2014 8/10 Provided further that a probationer- trainee will receive a fixed remuneration at such rates as may be prescribed by the Government from time to time and on completion of period of probation, minimum pay of the pay scale of the post shall be allowed under this rule, from the day following the day of successful completion of the period of probation. Provided further also that a government servant, who is already in regular service of the State Government, if appointed as probationer-trainee for a period of two years on or after 20.1.2006 shall be allowed pay in his/her own pay scale of the previous post or fixed remuneration at such rates as may be prescribed by the Government from time to time, whichever may be beneficial to him/her and after successful completion of period of probationer-trainee, his/her pay shall be fixed in pay scale of the new post as per provisions of Rule 26.

. Thus it is clear that petitioner was never remain a State Government servant working regularly in state Government Department, therefore, the benefit given to him was due to bonafide mistake and it was rectified vide annexure 5.

. S.B. CIVIL WRIT PETITION No.5676/2010. Salim Mohammad Vs. State of Rajasthan & Ors. Order dated 26/08/2014 9/10 5. The Officer-in-Charge, present in person, also reiterated these submissions and urged that the impugned orders were, therefore, justified and the challenge laid to the Clause (iv) of the Notification dated 13.03.2006 is also unsustainable.

6. During the course of arguments, the petitioner, who is present in person, did not seriously press this challenge laid to Clause (iv) of the Notification dated 13.03.2006 and submitted that even if his lien of service as LDC in the KUMS is treated as terminated and he is paid the monthly fixed pay of Rs.11,100/- from the date of his appointment as Junior Marketing Officer w.e.f. 18.08.2009, the respondent KUMS, should now pay all his retiral dues like provident fund, gratuity etc. and the respondent Agricultural Marketing Department should be asked to pass necessary pay fixation orders upon completion of two years' probation period from the date of appointment as Junior Marketing Board w.e.f. 18.08.2009, which has not been done so far.

7. Having heard the parties, this Court is satisfied that the challenge laid to Clause (iv) and proviso of the Notification in the alternative, cannot be sustained as the petitioner himself does press the same, and therefore, the prayer No.(iii) is rejected as not pressed. So far as the impugned order (Annex.8) dated 10.05.2010 and the order (Annex.9) dated 25.05.2010 are S.B. CIVIL WRIT PETITION No.5676/2010. Salim Mohammad Vs. State of Rajasthan & Ors. Order dated 26/08/2014 10/10 concerned, the same are, therefore, liable to be sustained and upheld. However, as far as the respondent- K.U.M.S is concerned, the said Samiti should pay all the dues of the petitioner like, PF and gratuity etc. since his lien would be treated as discharged from the date of his appointment as Junior Marketing Officer in the respondent Agricultural Marketing Department, and the respondent, Director of Agriculture Marketing, Jodhpur, is therefore, directed to give effect to the impugned orders Annex.8 and Annex.9 and after adjustment of

the excess amount, if any, paid to the petitioner against the retiral dues of the petitioner from the KUMS, Merta City/Jaisalmer, the remaining due amount of the petitioner may be paid to the petitioner within a period of three months from today. The consequential orders upon completion of probation period of two years for pay fixation etc. may also be passed by the said Director, within the aforesaid period of three months from today.

8. The writ petition is, accordingly, disposed of. No costs. A copy of this order be sent to the concerned parties forthwith. (Dr. VINEET KOTHARI), J.

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