

Abdul Rashid Rather Vs. State and Others

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Court : Jammu and Kashmir

Decided On : Aug-20-2015

Judge : Tashi Rabstan

Appeal No. : SWP No. 48 of 2002

Appellant : Abdul Rashid Rather

Respondent : State and Others

Judgement :

1. The challenge in this petition is to Order No.FC(A) 59 of 2001 dated 14.03.2001 issued by the Financial Commissioner (Revenue) - respondent No.2 herein, to the extent it rejects the claim of petitioner for his promotion to the post of Girdawar with effect from 27.07.1991.

2. The facts-in-brief, as gathered from the writ record, are that the petitioner herein was appointed as a Patwari on 30.08.1974. It is averred that in the year 1989 respondents 4 and 5 recommended the petitioner for the award of Gold Medal on the occasion of ensuing Independence Day for his extra ordinary hard work in accomplishing the job of Settlement Operation in Tehsil Ramban. Thereafter, on the recommendations of the competent authority, he was given the charge of the post of Girdawar, Batote vide Order No.254-57/DLR/Acctt dated 22.07.1991 issued by the Director Land Records, Jammu - respondent No.5 herein. It is averred that this action of respondent No.5 was also later on approved by the

Financial Commissioner (Revenue) -respondent No.2 herein, vide Order No.FC(S) of 1991 dated 10.09.1991. Consequently, the petitioner made a representation to the respondents for placing him in the regular grade of Girdawar with effect from the date he was given the charge of the said post, i.e., with effect from 22.07.1991. It is averred that though his case was also recommended by the then Chief Secretary as well as Settlement Commissioner, Jammu for according him the regular grade of Girdawar with effect from the date he was given the charge of the post of Girdawar, however, respondent No.2 vide Order No.FC(A) 59 of 2001 dated 14.03.2001, impugned herein, promoted him with effect from 12.10.2000. Hence this writ petition.

3. The grievance of petitioner is that after he was given the charge of the post of Girdawar, respondent No.3 vide order dated 21.02.1992 promoted certain Patwaris to the post of Girdawar, thereby ignoring the claim of petitioner despite the fact that he had already been recommended for out-of turn promotion in view of his outstanding performance. Not only this, again 35 Patwaris came to be promoted to the post of Girdawar vide order dated 14.06.1994; thereafter 37 Patwaris came to be promoted vide order dated 20.10.1994, then 69 Patwaris came to be promoted vide order dated 18.06.1998 and lastly 105 Patwaris came to be promoted to the post of Girdawar vide order dated 12.10.2000; however, the claim of petitioner was never considered when these promotion were made. It is averred that only on 14.03.2001 he came to be promoted to the post of Girdawar and the effect of promotion was given with effect from 12.10.2000.

4. The petitioner also claims that after he was given the charge of the post of Girdawar, he appeared in the departmental examination of Naib Tehsildar and was declared successful by the Public Service Commission vide Notification No.PSC/EX-2000/12 dated 21.02.2000.

5. The contention of learned counsel for petitioner is that when the petitioner was given the charge of the post of Girdawar in July, 1991, no such condition was imposed that his officiating capacity would be temporarily for a period of three months or until the post is filled up by promotion on regular basis in terms of Rule 25(4) of JandK Civil Services (Classification, Control and Appeal Rules), 1956. His

further contention is that the petitioner was allowed to perform his duties against the post of Girdawar continuously for more than nine long years with effect from 27.07.1991 to 12.10.2000, when during the said period about 250 posts of Girdawar came to be filled up by promotion on regular basis, but the claim of petitioner was never considered. He argued that had the promotion of petitioner been treated as temporary in terms of Rule 25(4) of CCA Rules, the post of Girdawar held by him would have been filled up by another candidate. He further argued that in fact the services of petitioner against the post of Girdawar had already been treated to have been confirmed by the Financial Commissioner vide its order dated 10.09.1991, but despite that the respondents did not release the regular grade of Girdawar in favour of petitioner.

6. Objections have been filed on behalf of respondents. It is averred that the petitioner was assigned the charge of the post of Girdawar in July 1991 purely as a temporary arrangement without prejudice to the seniority of others, and such an arrangement did not confer any right in favour of petitioner to seek his regularisation from the said date. Although it has been admitted that a recommendation had been made by an officer to promote the petitioner out-of-turn, however, it is averred that he was not entitled to steal a march over his seniors, as it was the prerogative of the Government to grant out-of-turn promotion by relaxing the relevant rules. It is contended that the petitioner was junior to such Patwaris who were promoted as regular Girdawars on substantive basis before him, therefore, no question ever arose to grant him out-of-turn promotion before his seniors. It is submitted that the petitioner has now been promoted on his own turn on substantive basis vide order dated 14.03.2001 and the effect of promotion has been given to him with effect from 12.10.2000. Further, it is averred that the petitioner was permitted to appear in the departmental examination of Naib Tehsildar only under the directions of this Court in writ petition No.917/95, however, since he did not possess the requisite experience of five years as a confirmed Girdawar to appear in such examination at the relevant time in terms of JandK Revenue (Subordinate) Service Recruitment Rules, he was not entitled to be considered for promotion as Naib Tehsildar.

7. Heard learned counsel for the parties and perused the pleadings on the file.

8. It is not the case of petitioner that he was senior to such Patwaris who were promoted as regular Girdawars on substantive basis before him; rather his plea is that he was given out-of-turn promotion in view of his outstanding work in the field. The said claim of petitioner has been belied by the respondents on the ground that the petitioner had only been assigned the charge of the said post.

9. The documents annexed with the writ record reveal that in the minutes of the meeting held on 17.07.1991 at Patnitop in connection with the review of progress for Settlement Work of Settlement Task Force, Ramban, it was recommended that in view of the outstanding work done by the petitioner, he be assigned the charge of the post of Girdawar Batote temporarily till further orders. It was also recommended that the petitioner needs to be appreciated by way of promoting him to the post of Girdawar against available vacancy in the Settlement Organization itself.

10. Accordingly, the Director- Land Records issued order dated 22.07.1991, whereby the petitioner was temporarily assigned the charge of Girdawar, Batote, relevant portion whereof is reproduced hereunder:

"Now, therefore, as approved by the Financial Commissioner and in the interest or Settlement Work, Sh. Abdul Rashid Rather, Patwari Batote, is on the basis of merit and ability (without prejudice to the seniority of others) assigned the charge of the post of Girdawar Batote, purely as a temporary measure. He will be entitled to charge allowance, as admissible under rules."

11. The said order clearly reveals that the petitioner was temporarily assigned the charge of the post of Girdawar without prejudice to the seniority of others. The petitioner, however, was allowed the charge allowance as admissible under rules.

12. Learned counsel for petitioner, however, argued that thereafter the services of petitioner came to be confirmed vide order dated 10.09.1991 issued by the Financial Commissioner (Annexure 'F' to the writ petition). It would be relevant to reproduce the said order hereunder:

"Action taken by the Director Land Records Jammu in assigning the charge of the post of Girdawar temporarily to Shri Abdul Rashid Rather Patwari Batote, vide his Order No.254-57/DIR/Acctt. Dated 22.7.1991, is hereby confirmed."

13. After going through the said order, I do not find any force in the contention of learned counsel for petitioner that the services of petitioner against the post of Girdawar came to be confirmed vide the said order. Order dated 10.09.1991 is nothing but simply confirmation of the action of Director Land Records by the Financial Commissioner, whereby temporarily assigning the charge of Girdawar to the petitioner had been confirmed. Even in subsequent communications dated 08.04.1992, 29.09.1993 and 25.04.1995 addressed to the Financial Commissioner by the Director Land Records, Jammu, it has been recommended to place the petitioner in the regular grade of Girdawar, although it has specifically been mentioned that he was not eligible to be promoted against the post of Girdawar in view of his seniority position. Thus, these communications itself speak that the services of petitioner against the post of Girdawar had not been confirmed. Otherwise too, for according out-of-turn promotion, relevant procedure and norms have to be followed, while nothing has been done in the present case.

14. As regards the claim of petitioner seeking his promotion against the post of Naib Tehsildar, learned counsel for respondents although admitted that the petitioner was allowed to appear in the departmental examination of Naib Tehsildar under the direction of this Court passed in OWP No.917/95 on 06.09.2000, yet the petitioner was not eligible to be promoted against the said post, as he did not possess the requisite experience of five years as a confirmed Girdawar to appear in such examination at the relevant time in terms of JandK Revenue (Subordinate) Service Recruitment Rules.

15. Before dealing with this aspect of the matter, it would be relevant to reproduce the relevant portion of order dated 06.09.2000 passed in OWP No.917/95 hereunder:

"In view of the stand of the petitioner, writ petition is disposed of with a direction to the respondents that in case petitioner on declaration of his result falls within the zone of consideration for grant of relief prayed for, respondents will proceed to

deal with the same as per rules governing it. Writ petition stands disposed of finally."

16. The said order clearly reveals that it was for the respondents to see as to whether the petitioner had fallen within the zone of consideration as per the rules Government it or not.

17. In terms of the Schedule appended to the Jammu and Kashmir Revenue (Subordinate) Service Recruitment Rules, 1973, a departmental candidate must have the requisite experience of five years as a confirmed Girdawar to appear in the examination of Naib Tehsildar. Whereas, in the present case, the petitioner appeared in the departmental examination of Naib Tehsildar in July, 1995, when he had , his credit only four years service in the capacity of Girdawa that too on officiating/temporary basis. His services again the said post came to be confirmed/regularized only on 14.03.2001 and the effect of promotion was given to him with effect from 12.10.2000. Thus, the petitioner was not ever eligible to apply and compete against the said post in July 1995. The respondents, therefore, were right in rejecting the claim of petitioner for his promotion against the post of Naib Tehsildar.

18. No other point has been urged.

19. In view of what has been discussed above, I do not find any merit in the writ petition. Accordingly, the same is dismissed along with connected CMP, if any.

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