

Mali Ram Vs. State and ors.

Mali Ram Vs. State and ors.

SooperKanoon Citation : sooperkanoon.com/755184

Court : Rajasthan

Decided On : Aug-30-2001

Reported in : 2002(5)WLC773; 2002(5)WLN395

Judge : S.K. Keshote, J.

Acts : Rajasthan Subordinate Offices Ministerial Staff Rules, 1957 - Rules, 7(3), 12 and 26(3)

Appeal No. : S.B. Civil Writ Petition No. 1510 of 1991

Appellant : Mali Ram

Respondent : State and ors.

Advocate for Def. : S.S. Rathore, Addl. Govt. Adv.

Advocate for Pet/Ap. : Ram Swaroop, Adv.

Disposition : Petition partly allowed

Judgement :

Keshote, J.

1. This petition is directed by the petitioner an employee of the Office of the Collector, Jhunjhunu under Article 226 of the Constitution and the prayer has been made therein for quashing and setting aside of the orders Annexure-5 and 9 of the

respondents. The second prayer made is for direction to the respondents to appoint the petitioner on the post of L.D.C. with effect from 29.4.74, the date on which his junior was appointed on this post. The next prayer has been to restrain the respondent from making any recovery from the petitioner against the alleged excess amount of salary paid to him.

2. The facts of the case in brief are that the petitioner entered in service of respondent No.2 when he was appointed as Class-IV under the order dated 26.6.1970. The petitioner was promoted to the post of L.D.C. under the order dated 15.4.1978 of the respondent No.2.

3. One Bhagwati Prasad who was appointed along with the petitioner as Class-IV in the office of the Collector, Jhunjhunu was came to be promoted as L.D.C. under the order dated 29.4.1974 of respondent No. 2. The Reference has been made by the petitioner the letter of respondent No.2 dated 5.12.1988 to the Board of Revenue, Rajasthan, Ajmer praying therein for the sanction to give notional promotion to the petitioner w.e.f. 1.5.1974, the date on which his junior was promoted as L.D.C. The Personnel and Administrative Reforms Department of the Government of Rajasthan, Jaipur under its order dated 22.3.90 addressed to respondent No.2 directed him to cancel the promotion orders of both the petitioner and Bhagwati Prasad. In that letter it is stated that there was no provision under the Rajasthan Subordinate Offices Ministerial Staff Rules, 1957 (hereinafter referred as the 'Rules 1957') prior to 19.9.78 to give the promotion to the Class-IV to the post of L.D.C. This provision has been inserted in the rules aforesaid on 19.9.78. It further ordered that these two persons may be given promotion in accordance with the rules after 19.9.78. The respondent No.2 sent a letter dated 19.1.90 to the Personnel and Administrative Reforms Department of the Government of Rajasthan. The substance of the letter aforesaid is that prior to 19.9.78 in the rules aforesaid there was provision to fill in 10% of the post of L.D.Cs. from Class-IV. The reference has been made to Sub-rule (3) of Rule 7 of the Rules. It is stated that the word promotion has been inserted in place of appointment w.e.f. 19.9.78 in rule 7(3) of the Rules of 1957. It is mentioned that both these employees were not promoted but appointed as L.D.C. under Rule 7(3) of the Rules. To fortify this explanation respondent No.2 made reference to Rule

26-A of the Rajasthan Civil Service Rules, 1951. What is convey that the pay of the petitioner and his junior person were not fixed taking it to be a case of promotion but the same were fixed a minimum of the pay scale of L.D.C. taking it to be case of appointment on this post. The Collector has also stated to have written a letter to the Finance Department on 24.7.90 for clarification. The Finance Department of the Government of Rajasthan under its letter dated 28.11.90 directed respondent No. 2 that the appointment of these two persons as L.D.Cs prior to 19.9.78 was held to be illegal by the Personnel and Administrative Reforms Department and accordingly the action should be taken. Secondary it stated that because of this illegal promotion whatever the excess amount is paid to the petitioner and his junior person is to be recovered from them. Thirdly they may be given promotion from 19.9.78. Hence this petition.

4. Reply to the petition has been filed by respondent Nos. 1 & 2 to which the petitioner has not filed any rejoinder. This is borne out from the record as well as the counsel for the petitioner is also in agreement that the rejoinder has not been filed.

5. Along with the reply the respondents have submitted the copy of the order dated 30.4.91 as Annexure-R/1 of respondent No.2 at page No. 47. Respondent No.2 has cancelled its earlier orders dated 29.4.74 and 15.4.78 under which Shri Bhagwati Prasad and the petitioner were given promotion to the post of L.D.Cs. respectively. They are promoted to the post of L.D.C. from 19.9.78. It is ordered that prior to 19.9.78 these two persons are entitled only for pay in the pay scale of Class-IV. It is also ordered that pay of these persons to be fixed as per Rule 26-A of the R.S.R., 1951. Respondent No. 2 has decided the petitioner senior to Bhagwati Prasad. Lastly order is made for recovery of the excess amount of the salary paid to the petitioner and that person.

6. The petitioner has not challenged the order dated 30.4.91 in this petition. It is not the case of the petitioner that this order was not received by him. The petitioner by not challenging this order accepted the order and his promotion on the post of L.D.C. from 19.9.78. The grievance made in this petition by the petitioner does not survive after this order of respondent No.2 dated 30.4.91. The

petitioner and his junior have been given promotion on the post of L.D.C. from 19.9.78. The petitioner has been given seniority above Shri Bhagwati Prasad, this way their petition has become infructuous. It is unfortunate that both the parties have not taken care of the matter otherwise for last more than 10 years the matter would not have been remained pending in the Court. After the order dated 30.4.91 nothing substantial survives in the petition except of the grievance made by the petitioner against the order of Finance Department of recovery of the excess amount paid to the petitioner for the period from the date of his promotion on the post of L.D.C. till 19.9.78. This grievance of the petitioner still survives and it is to be considered and decided. It is not the case where the petitioner is at fault. This is a case as per the respondent Government of Rajasthan of the promotion of the petitioner and Bhagwati Pal were made de hors the recruitment rules. But the petitioner cannot be blamed and not responsible for this promotion. If any promotion is made by the officer de hors the recruitment rules, as what it has been done in the present case by respondent No.2 whatever the excess amount is paid to the promoted employees has to be recovered from the officer concerned. What for this poor promote employees have to suffer for his this illegal action de hors of the recruitment rules and the constitutional provision. It is the mistake, error or illegality committed by respondent No.2 and not by the petitioner. It is a different matter where the petitioner would have manipulated this promotion or he has committed a fraud or has concealed the fact and manures this promotion, which is not the case here. It is a plain and simple case where the respondent No.2 his own given promotion to the petitioner whatever excess amount has been paid to the petitioner is not the case where he has snatched this promotion from the pocket of the respondent No.2. Respondent No.2 though has justified the promotion of the petitioner but having heard learned counsel for the parties I am satisfied that the promotion of petitioner and Bhagwati Prasad were contrary to the Rules of 1957. In this matter it is no more desire and necessary to go deep as said earlier after the order dated 30.4.91 in substance this petition has become infructuous. But, I failed to see any justification in the action of the Finance Department to order for the recovery of the excess amount paid to the petitioner after a long period of 16 years of his promotion to the post of L.D.C. The Finance Department or the Department of Personnel and Administrative Reforms in the facts of his case

should have considered to waive the recovery of this excess amount paid to the petitioner. It is to be stated at the cost of repetition that mistake, error or illegality has been committed by the officer then what for this poor low paid employee should be punished.

7. The matter may yet to be examined from another angle. The petitioner worked on the post of L.D.C. and the respondents took from him the work of LDC and by virtue of the principles of equal pay for equal work he could have been given the minimum of the pay scale of L.D.C. for this period i.e. 1974 to 18.9.78. It is not in dispute that the respondents have taken the work of L.D.C. from the petitioner for the period from the date of his promotion upto 18.9.78. It is also not the case of the respondents that on the day on which the petitioner was promoted to the post of L.D.C., the substantive post was not available. From the facts of this case, it can reasonably be inferred that on the date on which the petitioner was appointed on the post of L.D.C. substantive/permanent post was available. In view of this fact on which there is no dispute when the petitioner worked on this post under the order of respondent No.2 he is entitled for the minimum of the pay scale with allowance of the post of LDC and that what have been given to the petitioner etc. The reference here may have to the provisions of Sub-rule (3) of Rule 26 of the Rules, 1957 which reads as under:-

'(3) Urgent Temporary Appointment-(i) A vacancy in the Service cannot be filled in immediately either by direct recruitment or by promotion under the rules may be filled in by the Government or by the (Authority competent to make appointments) as the case may be, by appointing in an officiating capacity thereto an officer eligible for appointment to the post by promotion or by appointing temporarily thereto a person eligible for direct recruitment to the Service, where such direct recruitment has been provided under the provisions of these Rules.

Provided that such an appointment will not be continued beyond a period of one year without referring the case to the Commission for concurrence, where such concurrence is necessary, and shall be terminated immediately on its refusal to concur.'

8. Rule 12 of the Rules, 1957 provides the academic qualification which are to be possessed by a candidate for direct recruitment to the post of L.D.C. It is not in dispute that in 1974 when this appointment was given to the petitioner he was possessing the qualification of secondary. Not only this in 1970 when the petitioner was appointed on the post of Class-IV he was possessing the qualification secondary examination passed. So he was eligible for appointment for on the post of L.D.C. and under Sub-rule (3) of Rule 26 of Rules, 1957 it is permissible to the appointing authority to make the temporary appointment. In view of this provision of Rules, 1957 otherwise also the appointment of the petitioner on the post of L.D.C. made in the year 1974 was permissible under Sub-rule (3) of Rule 26 of the Rules, 1957 and this order for recovery of the excess amount made by the finance Department of Government of Rajasthan is wholly perverse and arbitrary.

9. As a result of the aforesaid discussions, this petition succeeds in part and it is allowed only to the extent where the recovery of excess amount got by the petitioner while working on the post of L.D.C. from 15.4.1978 to 18.9.78 is quashed and set aside. Other prayers made by the petitioner in this petition otherwise have become infructuous. No order as to costs.