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Court : Rajasthan

Decided On : Mar-09-1977

Reported in : 1977WLN(UC)154

Judge : D.P. Gupta, J.

Appeal No. : S.B. Civil Writ Petition No. 1422 of 1975

Appellant : Sohanlal

Respondent : State and ors.

Disposition : Petition dismissed

Judgement :

D.P. Gupta, J.

1. This case is illustrative of how undue favouritism was shown to petitioner by Municipal Council, Sri Gangangar. The petitioner was employed as a driver with the Municipal Council, Sri Ganganagar. It appears that in the year 1971, the post of Assistant Fire Officer in that Municipal Council was lying vacant. The Council requested the State Government to relax the ban for making direct appointment on the post of Assistant Fire Officer in the peculiar circumstances, probably because the aforesaid post was lying vacant for quite a long time. The State Government by its order dated July 24, 1971 accorded sanction to the Municipal Council for

effecting appointment by direct recruitment in accordance with the rules, on the post of Assistant Fire Officer. The then Chairman of the Municipal Council, Sri Ganganagar by order Ex. 2 dated July 29, 1971 appointed the petitioner as an Assistant Fire Officer for a period of six months, considering that he fulfilled all the qualifications which were prescribed in the Rajasthan Municipal Subordinate and Ministerial Service Rules, 1963 (hereinafter referred to as 'the Rules') for appointment to the said post of Assistant Fire Officer, by direct recruitment. The Chairman, Municipal Council also directed that the matter may be referred to the Rajasthan Municipal Subordinate and Ministerial Services Commission (hereinafter referred to as the Commission'), apparently for its concurrence in accordance with the provisions of Rule 27 of the Rules. There is no doubt in my mind that the petitioner was thus given an entry by the back door on the post of Assistant Fire Officer, for which post he was not eligible for appointment by promotion and the procedure prescribed for appointment by direct recruitment was not also followed. Rule 27 of the Rules, as amended by the notification dated June 16, 1969, runs as under:

27. Emergent Temporary appointments (1) A vacancy in the service may be filled temporarily by the appointing authority by appointing there to a person eligible for direct recruitment under the rules or by temporarily promoting there to a person holding the next lower post and possessing the requisite qualification:

Provided that no such temporary appointment either by promotion or by direct recruitment shall be continued beyond a period of one year without referring it to the Promotion Board, in case of promotion and to the Commission in the case of direct recruitment for their concurrence and on their refusal to concur, such appointment shall be terminated immediately.

(2) In case the vacancy under Sub-rule (1) is proposed to be filled in by direct recruitment, the same shall be notified to the nearest Employment Exchange which shall be asked to send a panel of names of persons possessing the requisite qualifications, consisting at least five times of the number of vacancies to be filled. The appointing authority shall then appoint suitable candidates to the posts from amongst the candidates whose names appear in the panel of names

sent by the Employment Exchange.

2. In accordance with the aforesaid rule, a vacancy in the Municipal Subordinate arid Ministerial Service could be filled in temporarily by the Appointing Authority, by appointing there to a person eligible for direct recruitment under the Rules or temporarily promoting a person holding the next lower post and possessing requisite qualifications. As for direct appointment, the procedure is prescribed in Sub-rule (2) of Rule 27, namely, that the vacancy has to be notified to the nearest Employment Exchange and a panel of names of persons possessing requisite qualifications, consisting of at least five times the number of vacancies, has to be obtained. Thereafter, the appointing authority could appoint a suitable person to the post from amongst the candidates whose names appeared in the panel sent by the Employment Exchange. It is not the case of the petitioner that the procedure prescribed in Sub-rule (2) of Rule 27 was followed in his case non it appears from the order Ex. 2, which has been placed on the record in respect of the appointment of the petitioner, that any requisition was sent by the Municipal Council to the Employment Exchange or the appointment of the petitioner was made out of a panel of names which might have been sent by such Employment Exchange. The order Ex.2 clearly shows that the then Chairman of Municipal Council, taking advantage of the permission accorded by the State Government by its order Ex.3 in respect of making an appointment by direct recruitment, merely considered the qualification of the petitioner alone and appointed him on the post of Assistant Fire Officer. It must be borne in mind that the State Government had merely accorded its approval to the making of an appointment to the post of Assistant Fire Officer by direct recruitment' in accordance with the Rules' but the provisions of the Rules were not at all complied with in the case of the petitioner and the procedure prescribed for direct recruitment, even for making temporary appointment, was not followed. The Schedule appended to the Rules provides that an appointment to the post of Assistant Fire Officer should be made either by direct recruitment or by promotion. By the process of promotion, a person holding the post of Tindal or leading Fireman and having five year's minimum experience on such post could only be appointed to the post of Assistant Fire Officer. The petitioner was merely a driver and he was neither a Fireman nor a Tindal and had no experience of the said posts and as such it was not possible to appoint the

petitioner on the post of Assistant Fire Officer by promotion. It is for this reason that the petitioner has claimed in his writ petition that his appointment on the post of Assistant Fire Officer was made by direct recruitment. But as I have observed above, the procedure for direct recruitment was also not followed in his case & the appointment of the petitioner on the post of Assistant Fire Officer was apparently illegal and irregular. It appears that some time later, this matter was brought to the notice of the State Government that the petitioner was promoted to the post of Assistant Fire Officer, under the guise of direct recruitment, which was not in accordance with the Rules. The Assistant Director Local Bodies, Rajasthan, Jaipur by his letter dated July 19, 1975 (Ex 8) drew the attention of the Administrator of the Municipal Council to this irregularity and asked him to set right the same. The Administrator, Municipal Council, Sriganaganagar realised the irregularity when his attention was drawn by the State Government to this matter and by his order dated August 16, 1975, he directed that the petitioner be reverted back to his post of driver.

3. The submission made by learned Counsel for the petitioner is that the Municipal Council has not assigned any good reason for terminating the temporary appointment of the petitioner on the post of Assistant Fire Officer. From the order of the Municipal Council, it clearly emerges that it could not defend the appointment of the petitioner on the post of Assistant Fire Office, either by way of promotion or by direct recruitment and as such, the Administrator stated that the promotion/direct recruitment of the petitioner was contrary to the rules. The respondent Municipal Council in its reply has stated that actually the appointment of the petitioner on the post of the Assistant Fire Officer in a temporary capacity was not by direct recruitment but was by promotion. It is not the case of the petitioner that he was eligible for Appointment on the post of Assistant Fire Officer even in a temporary capacity by way of promotion under Rule 27 of the Rules. It is clear on a perusal of the Rules that such a situation was not possible because the petitioner did not hold the post of a Tindal or even that of a Fireman. So far as the appointment of the petitioner by direct recruitment is concerned, the petitioner has not been able to defend that his appointment was after following the procedure prescribed in Sub-rule (2) of Rule 27 of the Rules. Thus the Municipal Council rightly held that the appointment of the petitioner on the post of Assistant Fire

Officer was contrary to the provisions of the Rules.

4. The matter of temporary appointment of the petitioner was referred by the Municipal Council to the Commission as every case of direct recruitment is bound to be referred to. The Commission also examined the matter and it came to the same conclusion namely, that the appointment of the petitioner on the post of Assistant Fire Officer appeared to have been made by promotion and further that the petitioner was not entitled to be so appointed as he was not holding the post of a Tindal or leading Fireman. Thus, it is clear that the Commission also came to the conclusion that the appointment of the petitioner was not by way of direct recruitment and taking that view of, the matter, the Commission refused to give its concurrence to the continuance of the petitioner on the post of Assistant Fire Officer. The proviso to Sub-rule (1) of Rule 27 lays down that in case of direct recruitment, if the Commission refuses to accord its concurrence, the appointment of the concerned person shall be terminated immediately. Learned Counsel for the petitioner contends that the Municipal Council has not terminated the appointment of the petitioner on the ground of the refusal of the Commission to give its concurrence. That may be so, yet a copy of the letter of the Commission dated February 18, 1974 refusing to give its concurrence to the continuance of the petitioner on the post of Assistant Fire Officer has been placed on record as Ex. R4 before this Court and as the Commission has refused to give its concurrence, this Court cannot ignore the same. In these circumstances, the appointment of the petitioner could not be continued on the post of Assistant Fire Officer.

5. In this view of the matter, the temporary appointment of the petitioner was rightly terminated and this Court cannot grant any relief to the petitioner in the matter of his continuance in office on the post of Assistant Fire Officer, to which post he was not validly appointed. It was incumbent upon the petitioner before seeking relief from this Court, to show that he was validly appointed on the aforesaid post and was entitled in law to hold the same or continue to hold the same, in spite of the refusal of the Commission to give its concurrence to his continuation.

6. The writ petition is, therefore, dismissed.

