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Court : Rajasthan

Decided On : Aug-10-1992

Reported in : 1992(2)WLN44

Judge : R.S. Verma, J.

Appeal No. : S.B. Civil Writ Petn. No. 3913 of 1989

Appellant : Aditya Kumar

Respondent : State of Rajasthan

Judgement :

R.S. Verma, J.

1. This writ petition has been finally heard at the admission stage with the consent of all concerned.

The brief facts of this case are as follows:

The petitioner was appointed on 15th May, 1986 under the respondents as a clerk on wages of Rs. 15/- per day. The petitioner was a work-charge employee and his name was entered in the muster-rolls. On 10th February, 1987, the petitioner was transferred under the respondent No. 3. He reported on duty to respondent No. 3 on 11th February, 1987. However, respondent No. 3 did not allow him to join. In these circumstances, the petitioner filed D.B. Civil Writ Petition No. 488/88. When

that matter came up for hearing, the learned Assistant Government Advocate submitted before the Court that in case the petitioner forgoes his claim for back wages and does not insist upon continuity of service, the Department is prepared to give fresh appointment to the petitioner on the post of Assistant Store Keeper from the date he joins this post. This offer was accepted by the learned Counsel for the petitioner and consequently this Court directed the petitioner to approach the respondent No. 2 within one week and the respondent No. 2 in turn was directed to issue order for fresh appointment of the petitioner on the post of Assistant Store Keeper. This order was not complied with initially and the petitioner moved a contempt petition before this Court. Upon this contempt petition being moved, respondent No. 2 issued order Annex. 1 dated 26th January, 1989 whereby the petitioner was re-employed on the post of Assistant Store Keeper on daily wages at Rs. 15 per month. In pursuance of this order, another order Annex. 2 was passed by the Executive Engineer, P.H.E.D., Sural Garh directing the petitioner to join by 6th February, 1989 failing which the appointment order would lapse. The petitioner appears to have joined the new place of posting.

2. The case of the petitioner is that by Annex. 3, the Government of Rajasthan has created 750 posts of LDC's in regular cadre with effect from 1st April, 1989 and by this order, the pay of the petitioner as on 1st April, 1989 was to be protected and he was to be absorbed against regular post subject to passing of the performance test. The case of the petitioner is that in the capacity of Assistant Store Keeper, he is discharging duties as such; the petitioner also possesses necessary qualifications for appointment to the post. Upon such pleadings, the petitioner has prayed that he may be put in the regular pay scale of L.D.C. with effect from 28th January, 1989 and may also be paid emoluments accordingly. It was further pleaded that respondents may absorb the petitioner as L.D.C. w.e.f. 1st April, 1989.

3. The writ petition was opposed on behalf of the respondents. It was pleaded that petitioner was only working on daily wages basis and he did not fulfil requirements of order Annex. 3 dated 30th August, 1989 and hence he was not eligible for being regularised. It was also submitted that once the petitioner had accepted fresh appointment on daily wages, he could not challenge the same.

4. In his supplementary rejoinder, the petitioner reiterated that he had been engaged as Clerk as was evident from Annex. 1 dated 28th January, 1989. It was submitted that petitioner had objected to his appointment on daily wages by filing an application dated 25th February, 1989 (Annex. 5). It was further submitted that the petitioner has been discharging the duties as Assistant Store Keeper since 28th January, 1989. Upon such pleadings, it was submitted that respondents may pay emoluments admissible to L.D.C.'s to the petitioner and may also absorb him in terms of order Annex. 3 dated 30th August, 1979. The petitioner also filed an additional affidavit today alongwith one document Annex. 8 whereby respondents granted to the petitioner regular pay scale of Store Munshi with effect from 17th January, 1989.

5. I have heard the learned Counsel for the parties. So far as the grievance of the petitioner for grant of regular pay scale on the post of Store Munshi is concerned, the same stands redressed by Annex. 8 which was passed on 10th June, 1992. This order is to be operative from 17th January, 1989. Learned Counsel for the petitioner submits that a rider has been added to this order that the order was to remain in force till orders were passed by the Additional Chief Engineer, P.H.E.D. He submits that this rider to Annex. 8 observes to be quashed, being contrary to the earlier directions of this Court. He submits that respondent should now absorb the petitioner after taking performance test as provided by Annex. 3.

6. Learned Counsel for the respondents has been unable to controvert the position that the petitioner had been appointed as Store Munshi with effect from 17th January, 1989 in the regular pay scale vide order Annex. 8 dated 10th June, 1992. He, however, has brought to the notice of the Court judgment rendered in Naga Ram Choudhary v. State of Raj. and Ors. in S.B. Civil Writ Petn. No. 4501/90 decided on 16th January, 1992 wherein respondents were directed to regularise the services of the petitioner on the post of L.D.C. in similar circumstances.

7. I have considered the circumstances of the case. In the present case order Annex. 8 dated 10th June, 1992 resolves the controversy so far as grant of regular pay scale of the petitioner is concerned with effect from 17th January, 1979. Respondents may fix the pay in the aforesaid pay scale from 17th January, 1979.

The rider in this order that it shall remain in force till further orders of Additional Chief Engineer, P.H.E.D. is neither here nor there and, therefore, this rider has to be ignored. This takes care of the relief prayed in prayer Clause (A) of the writ petition.

8. Now remains the question of direction to absorb the petitioner as L.D.C. Annex. 3 on the face of it applies to the case of the petitioner and regularisation of the petitioner is to be done subject to passing of performance test to be conducted by the department in accordance with Annex. 3. Respondents are directed to hold such test within a period of three months from today and in case the petitioner passes the performance test, as required by Annex. 3, they may regularise the petitioner on the post of Store Munshi. In the circumstances of the case, the parties are left to bear their own costs. The writ petition is disposed of accordingly.

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