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Court : Rajasthan

Decided On : Oct-23-1991

Reported in : 1991(2)WLN511

Judge : J.R.Chopra and; V.K. Singhal, JJ.

Appeal No. : D.B.Civill Special Appeal Nos. 274 and 325 of 1985

Appellant : Arvind Kumar

Respondent : State and ors.

Judgement :

V.K. Singhal, J.

1. These two special appeals one filed by Shri Arvind Kumar (D.B.Civil Special Appeal No. 274/85 and the other filed by Shri Narpat Singh (bearing D.B.Civil Special Appeal No. 325/85) are directed against the judgment of the learned Single Judge dated 30th July, 1985 and 7th of October 1985 respectively whereby their writ petitions have been dismissed and the relief of their regularisation on the post of Assistant Jailor has been refused with these observations that they have worked for about 8 years as Assistant Jailores and therefore their cases may be considered sympathetically by the Department.

2. The facts necessary to be noticed for the disposal of these two writ petitions, briefly stated, are that before their promotion as Assistant Jailors they were working as Wardens in the Jail Department. Shri Arvind Kumar was posted as Assistant Jailor vide order Anx. 1 dated 13.8.76 and Shri Narpat Singh was posted as Assistant Jailor vide an order dated 28th of December 1976, the copy of which has not been filed. Shri Arvind Kumar has passed his matriculation Examination in the year 1963 whereas Shri Narpatsingh has passed his matriculation Examination in the year 1973, The case of the petitioners is that it is not a case of their promotion as Assistant Jailor but they have been posted as Assistant Jailors against the direct recruitment quota on adhoc basis. It is an admitted case of the parties that it was not a case of the regular selection by direct recruitment but it was only an adhoc selection but their appointments were made by the Head of the Department i.e. the Inspector General of Prison as Assistant Jailors. Both of them have been working as Assistant Jailors since 1976. It has been claimed by them that after completion of the period of 2 years as probationers they should be deemed to have been automatically confirmed and hence they cannot now be reverted as wardens. It has not been claimed by the petitioners that this is a case of promotion because so far as channel of promotion is concerned a warder has to be first promoted as head warder and thereafter after completion of a particular period as Head Warder and after his confirmation on that post they can be promoted as Assistant Jailors and, therefore, it has been pleaded by Shri J.P.Joshi that it is not a case of promotion on adhoc basis but it is a case of an adhoc appointment as direct recruitees. They were liable to reversion as and when persons duly selected as Assistant Jailors were made available to the department; the petitioners, therefore, feared that they will be reverted and at that time they filed the writ petitions before this Court and obtained the stay orders that they should not be reverted. However, after hearing both these parties the learned Single Judge came to the conclusion that it is not a case of direct regular recruitment and they also cannot be absorbed against the promotion quota because as per the Rules of the promotion, Warder cannot be promoted directly as Assistant Jailor without first promoting him as a Head-warder and therefore, as per the explanation to Rule 28 of the Rajasthan Jail Subordinate Service Rules of 1976(hereinafter referred to the Rules of 1976) they cannot be confirmed and if

they cannot be confirmed and when suitable candidates have been made available, then the possibility of reversion cannot be avoided. However, the learned single Judge was pleased to observe that as they have served for 8 years their cases should be considered sympathetically. The learned single Judge further observed that in all there are 20 similar cases and, therefore, their cases should be considered sympathetically to address their grievances. Mr. Joshi has submitted that these two appellants were eligible for direct recruitment, as they have already done their matriculation, before they were appointed as Assistant Jailors. He conceded that the regular procedure for direct recruitment was not followed, but at that time, in order to fill up those posts, selection of such wardens, who were qualified for appointment as Assistant Jailors were selected by the Inspector General (Prisons) and orders were issued by the competent authority to appoint them as Assistant Jailors and the petitioners have worked for 15 long years as Assistant Jailors and, therefore, they cannot be reverted.

3. Mr. N.S. Acharya Additional Government Advocate strenuously argued that when it is an admitted case of the appellants that it is not a case of promotion but it is a case of direct recruitment and when the direct recruitment has not taken place by adopting the regular procedure prescribed for the direct selection by the Rules, then the Government has no option but to revert them as they cannot be confirmed on these posts, under Rule 28 of the Rules of 1976 which clearly provides that only those persons can be confirmed who are regularly recruited.

4. We have considered the rival submissions made at the Bar. The petitioners are not usurpers of the post. They have been appointed on the post by the order of the Head of the Department who is the Competent Authority to appoint them. It is true that it is not a case of regular appointment by direct recruitment but it is a case of adhoc appointment. But once it is held that these persons have worked on that post for 15 long years, it will be most unfair and unjust to revert them without any rhyme or reason. The experience that they have gained on that post is a very relevant factor which has to be considered for their confirmation. The consideration of their service record and confidential reports for all these years will be a material factor which has to be taken into account for regularisation of their cases and, therefore, keeping in view the special circumstances of these two

cases and the cases of other similarly situated persons who might have faced reversion after working as Assistant Jailors for about 8 years or more but who were otherwise qualified to be directly recruited as Assistant Jailors at the time they were appointed as Assistant Jailors deserve to be scrutinised by a selection Committee, keeping in view their service record, confidential record, record of Departmental Enquiries etc. and their performance as Assistant Jailors and if they find that their performance as Assistant Jailors has been satisfactory or good, and there are no adverse entries against them and they are otherwise qualified to be Recruited as Assistant Jailors, then a system be devised to regularise them against the existing vacancies of Assistant Jailor and if there are no vacancies presently existing then against the future vacancies of Assistant Jailors. The meeting of the committee for regularisation be convened within a period of 3 months and after scrutiny of their record as aforesaid it should be decided whether they deserve to be confirmed or are fit to be reverted and it is only after this decision is obtained by the Government or the Head of the Department from the selection committee that these two petitioners as also others who may be similarly situated should be confirmed as the Assistant Jailors against the existing vacancies or the vacancies which may occur in future and till then they should not be reverted. They can only be reverted if the committee opines against their confirmation as Assistant Jailors. Both these Special Appeals are decided accordingly on merits with the aforesaid directions by this common judgment.

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