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Court : Rajasthan

Decided On : Feb-05-1987

Reported in : 1987WLN(UC)252

Judge : Kishore Singh Lodha, J.

Appeal No. : S.B. Civil Writ Petition No. 1392 of 1986

Appellant : Sharad Kumar

Respondent : Municipal Board

Judgement :

Kishore Singh Lodha, J.

1. By this writ petition, the petitioner Sharat Kumar has prayed that the respondent Municipal Board, Sumerpur may be directed to regularise the services of the petitioner on the post of LDC with effect from 16-8-1979 and has further prayed that the Municipal Board may also be directed to fix him in the pay scale of LDC from the aforesaid date.

2. The contention of the petitioner bereft of all unnecessary details is based on two grounds. The first ground is that one Sona Ram, who had also been appointed in the same manner as the petitioner and was junior to him, had already been fixed in the regular pay scale from 13-8-1985 where as the petitioner has not so been

fixed His second contention is that he had been working as a LDC with the Municipal Board from 16-8-1979 and is entitled to the same pay scale as is applicable to other LDCs. Under new pay scales on the ground that the post cadred in the Rajasthan Municipal (Subordinate and Ministerial Service) Rules, because the authority concerned, namely, the Municipal Board has to act in accordance with the mandate of the statute. In this connection reliance has been placed upon B.N. Nagarajan and Ors. v. State of Mysore and Ors. 1966 AIR (53) SC 1942), State of Madhya Pradesh and Anr. v. Thakur Bharat Singh AIR 1967 SC 1170) and Bishambhar Dayal Chandra Mohan and Ors. v. Uttar Pradesh and Ors. (1982) 1 SCC 39. In connection with this second contention he has also placed reliance upon the principle of equal pay for equal work which has been accepted by the Hon'ble Supreme Court vide Randhir Singh v. Union of India and Ors : (1982)ILLJ344SC) Dhirendra Chamoli and Anr. v. State of UP Telecommunication Research Centre Scientific Officers (Class-1) Association and Ors. v. The Union of India and Ors. 1987 1 SLVR (L) 17), MP. Singh Deputy Superintendent of police, CBI and Ors. v. Union of India and Ors 19871 SVLR(L) 25 and Abid Hussain and Ors. etc. v. Union of India and Ors. (1987 1 SLVR(L)36.

3. It has not been disputed by the learned Counsel for respondent No. 1 that the petitioner had been an employee of the Municipal Board, Sumerpur on daily wages as Sona Ram was. It is also not disputed that Sona Ram had already been fixed in the regular pay scale with effect from 13-8-1985 but it is contended that as a matter of fact the appointments of both the petitioner as well as Sona Ram were illegal and beyond the strength of LDCs sanctioned for the Municipal Board. They could not have, therefore, been employed and, therefore, they are not entitled to ask for the pay scale sanctioned for LDCs as a matter of right.

4. So far as the contention that the petitioner should be allowed the pay scale applicable to the LDCs from the date of his appointment since 1979 goes it has been contended that in the first place he has not been appointed in accordance with the Rajasthan Municipal (Subordinate and Ministerial Service) Rules and, therefore, he cannot claim pay scale thereunder. In the second place, it has been contended that when the appointment itself is illegal the petitioner is also not entitled to the benefit under the principle of equal pay for equal work because that

can be applicable to the persons who are validly appointed but have been discriminated in the matter of pay scale. Lastly, it was contended that in any case at present there is no vacancy with the Municipal Board where the petitioner can be accommodated and, therefore, he cannot get the regular pay scale.

5. I have given my careful consideration to the rival contentions. From what has been stated above, it clearly appears that a discrimination has been made between the cases of the present petitioner and Sona Ram, who are similarly situated. Such a discrimination cannot be justified. The fact that at present there is no post where the petitioner can be accommodated also does not stand to reason. The affidavit of Shri Kailash Chandra, Executive Officer of the Municipal Board has been filed on 2-2-1987. A perusal of that affidavit would show that there are five substantive posts of LDCs in the Municipal Board, Sumerpur. Formerly all the five were named by Servashri Motiram, Gopal Parikh, Prem Ram, Vikram Kumar and Arun Kumar, however, when one Mansharam UDC expired in the year 1986, and Moti Ram LDC was promoted in his place on ad-hoc. basis on 20-6-86. Thus at present there is a vacancy of a LDC, which does not appear to have been filled in. It is not their case that this vacancy has been filled in by regularising Sona Ram and that probably could not have been the case of the respondent, in as much as Sona Ram had already been regularised in the pay scale as a LDC with effect from 13-8-85. Thus the petitioner can certainly be accommodated in the vacancy which has been created by the ad-hoc promotion of Moti Ram. Even otherwise, if the respondent No. 1 has created a situation by discriminating between the cases of the petitioner and Sona Ram, it is for it to accommodate the petitioner also. It may further be pointed out that the Municipal Board has already requested the Deputy Secretary, Local Self Department on 27-1-1987 for, sanctioning the post for the petitioner also and, therefore, there will be no difficulty in accommodating him. In these circumstances, I am clearly of the opinion that the petitioner is entitled to the regularisation in the pay scale applicable to L.D.Cs. from the date Sona Ram had been so accommodated.

6. Coming to the second contention, it may at once be stated that the petitioner cannot claim any benefit of the pay scale provided under the aforesaid rules before the date of regularisation of Sona Ram, in as much as he has not been

appointed under those rules, and initially his appointment was even beyond the cadre strength of L.D.Cs. If the strict view as envisaged by the learned Counsel for the petitioner on the basis of the authorities relied upon by him is to be taken then the conclusion may have to be arrived at that the petitioner is not even entitled to the regularisation because he has been appointed beyond the mandate of law. However, since Sona Ram has already been given the regular pay scale and the case of the petitioner cannot be discriminated from him that stringent view need not be taken.

7. So far as the question of equal pay for equal work, which has been recognised by the authorities relied upon by the learned Counsel for the petitioner goes, it is applicable to the persons who have been properly and legally appointed but those persons who have got entry by back door without following the rules of appointment cannot be deemed to be entitled to the benefit of this principle. In the circumstances of the case these authorities do not come to the help of the petitioner.

8. It may be observed that the contention of the learned Counsel for the petitioner was that he was senior to Sona Ram. In my opinion, this question cannot be and need not be gone into in this writ petition, in as much as Sona Ram is not a party to the present writ petition and the question can not be decided in his absence. It is left open to the petitioner to raise this question if he so chooses before the authorities concerned.

9. For the reasons stated above, the writ petition is partly allowed and it is directed that the petitioner shall be given regular pay scale from the date it was given to Sona Ram, and will be treated in the same manner. In the circumstances of the case there shall be no order as to costs.