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Court : Rajasthan

Decided On : Apr-26-2001

Reported in : 2001(2)WLC560; 2007(3)WLN435

Judge : AR. Lakshmanan and; Ashok Parihar, JJ.

Appeal No. : S.B. Civil Writ Petition Nos. 1207, 1529, 3661 to 3668, 4065, 4383, 4354, 4385, 4904, 5573 of 1996

Appellant : Smt. Pushplata Thada and ors.

Respondent : State and ors.

Disposition : Petition allowed

Judgement :

AR. Lakshmanan, C.J.

1. These writ petitions raised a common question, as such, by consent of both the parties all the writ petitions were taken up for final hearing and are being decided by this common order.

2. Writ Petition No. 3661/1996 was filed to quash and set aside the circular dated 27.7.1995 and recovery order dated 26.6.1996. A further prayer to restrain the respondents from taking any action against the petitioner in pursuance to the said order/circular was also made. The contentions of the petitioner is that the

petitioner came to be recruited through a duly constituted selection body as Teacher Gr. HI and that the petitioner was confirmed and, therefore, she is a substantive government employee serving under the respondents. The petitioner was regularly granted benefits of salary, payable allowances, annual grade increments and benefit of revision in pay scale as and when the pay scale was revised. Thus, being a substantive Government employee, the petitioner is receiving all due benefits in due time. The petitioner's suitability was also considered and granted the benefit of selection grade which was made applicable after completion of 15 years of service to each government employee. On completion of 15 years of service, the petitioner was granted selection grade in the year 1987.

3. The Government of Raj as than issued an order dated 25.1.1992 providing benefit of grant of selection grade for employee in Class-IV, Ministerial and Subordinate Services on completion of 9, 18 and 27 years of service in cases of Government employee who are not granted one, two and three promotions during the aforesaid period respectively. According to the petitioner, a perusal of the order dated 25.1.1992 it is crystal clear that as per Clause-3 of the said order, all employees, irrespective of their nature of service who have rendered 9, 18 and 27 years of services, as the case may be, their total length of service shall be counted in their existing cadre/service for the purpose of grant of selection grade and there is no exception either way in the circular dated 25.1.1992 making out distinction between government employee among whom it applicable. So far as the present matter is concerned, there is no exception either was making out distinction for grant of selection grade to trained or untrained teachers. On the contrary, the circular contemplates one and only one situation which is to be considered that whosoever completed 9, 18 and 27 years of service, he or she became entitled to grant of selection grade as a matter of course.

4. According to the petitioner, the Circular dated 25.1.1992 only contemplates completion of prescribed period of service, which is to be reckoned on the basis of total length of service for the purpose of grant of selection grade. On 27.7.1995 a circular was passed whereby directions have been issued that for the purpose of grant of selection grade, the service of teachers be counted only from the date

he/she acquired training or on completion of 10 years of service with further direction that the period of service rendered by the employees as untrained teacher may be excluded for the purpose of grant of selection grade and after revising the same, arrears from their salary be recovered. It is submitted that the aforesaid circular is absolutely illegal, and void ab initio. The circular granting benefit of selection grade was issued way back on 25.1.1992 and the present circular is neither an amendment in the circular dated 25.1.1992 nor has been passed in supersession of the said circular. According to the petitioner, by the circular dated 27.7.1995 an anomaly has been created in the matter of granting selection grade/scale specially in case of those employees like the petitioner who stands confirmed vide order dated 17.2.1977 and has been held entitled for benefit of selection grade on completion of 9, 18 and 27 years of service in compliance of the order dated 25.1.1992. In view of the circular dated 27.7.1995 the respondents have now asked the concerned authorities to initiate action in terms of the said circular.

5. It is further submitted that the impugned circular dated 27.7.1995 has been passed in reference to the order dated 15.1.1992 but for the purpose of recovery and revision of pay scale respondents have revised pay scales of period prior to grant of selection grade granted in pursuance of order dated 25.1.1992 and thus, have encroached upon the legal rights of the petitioner. Being aggrieved by the order dated 27.7.1995 and recovery order dated 26.6.1996, the petitioner has preferred the present writ petition.

6. Similar writ petitions have been filed by other writ petitioners questioning the correctness of the order dated 27.7.1995 and of their respective recovery orders.

7. The State of Rajasthan has filed a reply to the writ petition. In the reply, it is contended that the petitioner was given benefit of selection grade after completion of 15 years service. In fact, the same was given inadvertently though the petitioner was not entitled to be given such benefit. According to the State, the petitioner was entitled to be given the benefit of selection grade only after completion of 10 years service as untrained teacher so as to be treated a trained teacher as per rules and regulations and as per the cadre existing in the Schedule. Thus, the petitioner was

to be given the benefit only after 1982, i.e. after completion of 10 years as untrained teacher and it was only thereafter that the period was required to have been counted so as to be given the benefit of selection grade.

8. It is submitted by Sh. R.N. Mathur, learned Addl. Advocate General for the State, at the time of hearing that inadvertent error, so committed, was rectified by a subsequent order and, therefore, the order does not create any right in favour of petitioners to raise an issue before this court invoking extra ordinary jurisdiction of this Hon'ble Court Under Article 226 of the Constitution of India.

9. It is further submitted by Sh. Mathur that the order issued by the Department of Finance was well intended and was meaningful because persons who have approached this Hon'ble Court by way of filing writ petitions, can not make a claim to be given the benefit of selection grade until and unless they are regularly appointed or fulfil the basic qualification of the post to which they were appointed. It is argued that the submissions made by the petitioner does not have any basis or substance because the selection grade can only be interpreted meaningfully for the purpose of selection to the higher post. Thus, it is submitted, that the action taken by the concerned authorities is proper and legal. The circular dated 25.1.1992 is totally valid and is in conformity with the provisions of law.

10. At the time of hearing our attention was drawn to the judgment, rendered by Hon'ble J.C. Verma, J. at the Principal Seat of the Rajasthan High Court in a batch of writ petitions which is reported in 1998 WLR (Raj.) Page 424 cases). The learned Judge on consideration of the entire material, as placed before him, came to the conclusion that the impugned action in withdrawing the selection grade or ordering the recovery from the petitioners is not legal and can not be sustained in the eyes of law. The learned Judge, therefore, quashed the impugned action on the part of the State Government. The learned Judge has also made it clear that no recovery shall be made from the petitioners and in case any amount has been recovered because of the impugned actions, the amount shall be refunded back to the petitioners. The learned Judge, in coming to the conclusion, has placed reliance on a Division Bench judgment of this court in DB Civil Writ Petition No. 2079/87 Habbibur Rehman v. State of Reg. and observed as under:

I fully agree with the observations made by the Division/Bench in Habbibur Rehman case and hold that the interpretation as made by the respondents in depriving the petitioner or in withdrawal the Selection grade from the petitioner on the ground that they are to be treated to have completed fifteen years of service, as per Annex. R-1 or from the date they were put in regular scale of trained teacher or that the petitioner shall be entitled to the grant of the selection grade only when they complete the ten years service of untrained teacher has no basis and cannot be sustained. There is another aspect which may also be noted that after having granted the selection grade in accordance with the instructions R-1, the selection grade had been withdrawn without issuing any show cause notice to any of the petitioners after a period of about four to five years of such sanction. As it involves the basic rights, involving civil consequences, the selection grade could not have been withdrawn except by issuing a show cause notice and thus this very action, of the respondents was violative of principles of natural justice and could not be sustained in the eyes of law.

11. The above judgment, rendered by the learned Single Judge, was again reiterated in another case of Smt. Snehlata Mathur v. State of Rajasthan and Ors. (SB Civil Writ Petition No. 2322/93 decided on 14.5.1999), which is also authored by Hon'ble Mr. J.C. Verma, J.

12. A special appeal was also filed by the State of Rajasthan against the said judgment dated 14.5.1999. In the said appeal, Hon'ble Mr. V.S. Kokje and Hon'ble Mr. Mohd. Yamin, JJ., dismissing the appeal, have passed the following order on 7.1.2000;

Heard Ms. Naina Saraf, the learned Counsel for the appellant, and Mr. S.P. Sharma, the learned Counsel for the respondents. Upon hearing the learned Counsel and perusing the record, we find that the order passed by the learned Single Judge is based on a Single Bench judgment which was approved by a Division Bench of this court in DB Civil Special Appeal No. 70/98, at Jodhpur. In view of this, we do not place any force in the contentions raised by the learned Counsel for the appellant, specially because both of us constituted the Bench, which has decided that case at Jodhpur.

The appeal is dismissed.

13. The matter was again agitated further by the State of Rajasthan before the Hon'ble Supreme Court in Special Leave to Appeal (C) No. 5092/2000. The Supreme Court, upon hearing the counsel, condoned the delay and dismissed the special leave petition.

14. The above judgment dated 1.10.1997 of Hon'ble Justice J.C. Verma was also followed by one of us while sitting in Single Bench (Justice Ashok Parihar) in SB Civil Writ Petition No. 2939/99 and also by another Division Bench of this court comprising of Hon'ble Mr. P.P. Naoleker and Hon'ble Mr. J.C. Verma, JJ. in DB Civil Special Appeal No. 276/2000 dated 11.4.2000.

15. We are in entire agreement with the opinion expressed by the learned Single Judge in the case of Smt. Snehlata Mathur v. State (supra) and as upheld by the Division Bench of this Court. The judgment rendered by the Single Bench and also by the Division Bench, in the above case, have been upheld by the Hon'ble Supreme Court while dismissing the SLP at the admission stage. We also fully endorse the view expressed by the Division Bench in Habbibur Rehmani's case (supra) and the interpretation given by the Division Bench.

16. The withdrawal of selection grade, in our opinion, is not proper. The petitioners in all these cases shall be entitled for grant of selection grade and after having granted the selection grade, in accordance with the instructions issued by the Department, the selection grade will be issued without issuing any show cause notice to any of the petitioners after five years of such sanction. As rightly pointed out by the learned Single Judge in the case of Smt. Anntuna Chako v. State and Ors. (supra), as it involves the basic rights, involving civil consequences, the Selection Grade could not have been withdrawn except by issuing a show cause notice. We, therefore, held that the action of the respondents was violative of principles of natural justice and could not be sustained in the eyes of law. We make it clear that now as we have quashed the impugned action of the Government in each, the respondents are not permitted to initiate recovery proceedings. In case, any recovery has already been made, the recovered amount shall be refunded to the petitioner concerned. It is brought to our notice that on

account of the impugned circular, the pay scale has been reduced to some of the petitioners. In view of the order, now passed by us in these batch of writ petitions, the pay scale is also to be revised to those teachers whose pay structure has been reduced in view of the impugned circular and the arrears may be paid to the concerned petitioners within three months from the receipt of certified copy of this order.

17. With the above observations, all the writ petitions are allowed and the impugned circular dated 27.7.1995 is quashed.

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