

O R D E R

Kailash Chand Sharma **vs.** State of Raj. & Anr.

S.B. CIVIL WRIT PETITION NO.3599/1992
under Article 226 of the
Constitution of India.

Date of order : 23rd Nov., 2004

PRESENT

HON'BLE MR. JUSTICE RAJESH BALIA

Mr. Anil Bhandari for the petitioner.
Mr. Shyam Sundra for the respondents

BY THE COURT: -

Heard learned counsel for the parties.

The petitioner has sought a mandamus that he should be considered for promotion to the post of Lower Division Clerk on the basis of qualification held by him which he claims to be equivalent to Secondary/Higher Secondary qualification required for such promotion from class IV.

The petitioner was initially appointed on 23.9.1977 as a class IV employee in the office of S.D.M., Sojat. The petitioner obtained Parichaya certificate from the Rashtrabhasha Prachar Samiti, Vardha in the year 1981 and also passed Kovid Examination from the same institution in the year 1981. He also passed Madhyama Examination in the year 1988. After passing the Parichaya Examination, he appeared in English paper for examination of Secondary Education held by the Board of Secondary Education in order to complete the subjects required for eligibility for promotion. This examination of English was passed in the year 1986. However, the petitioner was not considered for promotion to the cadre of L.D.C. Hence, this petition has been filed alleging that since at the time when he passed the examination from Rashtrabhasha Prachar Samiti they were recognised by the State Government as equivalent to the eligibility qualification for promotion to the post of L.D.C., therefore, his case should be considered for such promotion.

The State Government has amended the Rules of 1957 w.e.f. 28.6.1985.

It may be noticed that under the Rajasthan Subordinate Offices Ministerial Staff Rules, 1957

initially the eligibility for promotion to the post of L.D.C. was Senior Secondary School Examination or its equivalent examination. Thereafter, vide amendment dated 28th June, 1985 from the eligibility criterion word 'equivalent examination' was deleted from the Rules which led to a spate of litigation. The State Government relying on de-recognition of the equivalent examination under its order and the petitioner's relying on obtaining that qualification making them eligible for promotion to the next higher post while recognition of equivalence was in force, there was a cross section of opinion on the issue amongst the judgment of this Court. This led to making of reference to the Full Bench on the following questions:-

"1. Whether the rules can prospectively lay-down different qualifications or eligibility for appointment by direct recruitment or by promotion and whether if the rules so provide, can it be said that so far as those who have acquired the qualification which was recognised earlier making person eligible for appointment either by direct recruitment or by promotion, they are retrospective in nature?

2. Whether the eligibility including educational qualification for any vacancy is to be seen on the date the vacancy occurs or on any anterior date?

3. Whether one who has passed Rashtra Bhasha Prachar Examination or any other examination during the period it was recognised or any other examination

making him eligible for appointment by direct recruitment, or by promotion, if it is de-recognised, whether those who have passed the examination during the period of recognition, have any right of appointment against the vacancy which occurs after derecognition.

The Full Bench rendered its decision on 11.9.1998 which is reported in **1999 (1) WLC 1**, Shanker Lal Verma & 13 others Vs. The Raj. State Electricity Board. The Court answered the reference as under:-

"In the result, we conclude that there is no force in the contention of the petitioners that the amended qualifications shall not apply to them because they had acquired the equivalent qualifications prior to the amendment of the rules. In our opinion, the amended rule and the qualifications will apply even to the candidates who have obtained the equivalent qualifications prior to the date of enforcement of amended rule. However, the amended qualifications shall not be applicable to the vacancies which had occurred prior to the date of enforcement of the amended rule and such vacancies shall be filled-in in accordance with the qualifications prescribed as on the date of occurrence of vacancies.

In the aforesaid judgment, it was held that mandamus prayed by the petitioner cannot be issued. Though the petitioner was eligible for consideration prior to the amended Rule came into force on the basis of equivalence of qualification held by him, he has

not made out a case that on his seniority he could be considered for promotion to the post of L.D.C. prior to amendment in Rules. Subsequent thereto, the qualification held by the petitioner from Rashtrabhasha Prachar Samiti, Vardha, cannot make him entitled for the benefit; as the rule does not provide for any equivalence in the qualification. The petition must, therefore, fail and is hereby dismissed.

The petitioner further states that subsequent to this decision, the Government has issued certain administrative instructions dated 5.9.97 under which his case may be considered. Without expressing any opinion on the merit of this contention, if the petitioner is so advised, he may make a representation to the State Government in that regard. It may be stated that the petitioner did not have the said notification with him to place before the Court but has only referred to it as has been mentioned in the decision of this Court in D.B. Civil Special Appeal No.982/1999 decided on 6.8.1999.

[RAJESH BALIA], J.

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