

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR.

O R D E R.

LAL MOHAMMAD.

V. THE STATE OF RAJASTHAN
AND ANOTHER.

S.B.CIVIL WRIT PETITION NO.3284/2004,
under Article 226 of the Constitution of
India.

DATE OF ORDER:

22.9.2005

PRESENT.

HON'BLE MR. JUSTICE R.P.VYAS

Mr.M.A.Siddiqui, for Petitioner.
Mrs.R.R.Kanwar, Additional
Government Advocate, for Respondents.

BY THE COURT:

REPORTABLE

By this writ petition, the petitioner has prayed that the impugned order dated 28.4.2004 (Annexure 4) may be quashed and set aside.

Brief facts, giving rise to the instant petition, are that on 1.8.1993, the petitioner entered in the service of the respondent-department, being surplus from the General Administration Department (GAD). In the year, 1986, the respondent-department published a seniority list of technical employees of Deedwana Division dated 31.3.1985 (Annexure

1), in which name of the petitioner was shown as Helper at Serial No.5. Again, vide office order dated 22.6.2001 (Annexure 2), a provisional seniority list of regular employees was issued, in which also, the petitioner was shown as Helper. It was also mentioned in the aforesaid order that if any employee has any objection with regard to the said provisional seniority list (Annexure 1), he can send the representation along with the concerned service record within fifteen days. It is further averred by the petitioner that he was regular employee of the respondent -department (PHED) and was performing the duty of Helper, so he was given the pay scale of Rs.245-310. But, later on, the Department itself realized that since the petitioner is a regular employee of the department, he should be given the pay scale of Rs.250-360 in place of the pay scale of Rs.245-310, therefore, the office order dated 13.3.1991 (Annexure 3), granting the aforesaid pay scale (Rs.250-369) to the petitioner was issued.

Thereafter, an office order dated 28.4.2004 (Annexure 4) was issued by the respondent-department, in which it was stated that due to non-compliance of the letter No.F.5 (113) Jan.Swa/Ka/2000/817 dated 23.4.2001 issued by the Chief General Officer, PHED, Rajasthan, Jaipur and the letter of this Office, (Superintending Engineer, PHED, Division Nagaur) bearing No.2227-28 dated 8.5.2001 and vide Order dated P.1 (5) Sa.Pra/3/8 dated 14.8.1981, issued by the Special Secretary, GAD (Group3), Rajasthan, Jaipur, Shri Lal Mohammed

was absorbed as Class IV employee in this Department. Therefore, the seniority and services of this employee shall be treated as of Class IV employee. It was further mentioned in the aforesaid office order (Annexure 4) that vide office order No.8458-8519 dated 18.10.2003, a provisional seniority list of technical employees, working in city Jal-Yojna Deedwana, was issued, in which name of Shri Lal Mohammed S/o. Shir Mumtaj Khan, appearing at Serial No.1 of the List, working as Helper in Line Branch, is removed from the Seniority List. His seniority will be fixed on the post of Class IV servant.

It is also averred in the petition that vide office order dated 30.11.1985 (Annexure 5), similarly situated persons, namely, Shri Uda Ram, Shri Kisna Ram and Shri Girdhari Lal were also reverted from the post of Helper to Class IV servant. Thereafter, they raised their grievance against this impugned order. The Chief Engineer vide his letter dated 23.3.87 (Annexure 6) granted permission to the Executive Engineer, PHED, Division, Suratgarh, to cancel the order dated 30.11.1985 by which the reversion was made. Then, the Executive Engineer, PHED, Suratgarh issued the office order dated 15.5.1987 (Annexure 7) to the effect that the previous order No.4589-4602 dated 30.11.85 is hereby cancelled with immediate effect and Shri Uda Ram, Shri Kishna Ram and Shri Girdhari Lal are allowed to work as Helpers on the present place of posting till further orders.

Being aggrieved by the order dated 28.4.2004 (Annexure 4), the petitioner has preferred the instant petition.

It is submitted by the learned counsel for the petitioner that prior to passing the order (Annexure 4), neither any information, intimation or notice was given nor any opportunity of hearing was afforded to the petitioner, so, in this view of the matter, the aforesaid impugned order is not sustainable.

It is further submitted by the learned counsel for the petitioner vide order dated 13.3.1991 (Annexure 3), the petitioner has been granted regular pay scale as Helper, but in the year, 2004, without any basis, the petitioner has been reverted to Class IV employee.

It is also submitted by the learned counsel for the petitioner that vide order dated 30.11.1985 (Annexure 5) the persons, namely, Shri Uda Ram and Shir Krishna Ram, who were similarly situated to the petitioner, were ordered to be reverted from the post of Helper to the post of Class IV employee, but vide order dated 15.5.1987 (Annexure 7), the earlier order (Annexure 5) has been cancelled and Shri Kisna Ram and Shri Girdhari Lal have been allowed to work as Helper, where as discriminatory treatment has been given to the petitioner.

It is argued by the learned counsel for the petitioner that he has been serving in the respondent-department for the last 21 years and, in the year, 1991, he has been granted regular pay scale and, thereafter, suddenly vide order dated 28.4.2004 (Annexure 4), his name has been removed from the Seniority List of Helper and his Seniority has been fixed on the post of Class IV servant by the Department which is illegal and not in accordance with law.

It is also argued by the learned counsel for the petitioner that when initially, the petitioner was appointed on the post of Centrifugi Operator vide order dated 14.2.1974 (Annexure 8) issued by the Manager, Rajasthan State Chemicals Works, Government of Rajasthan. The post of Centrifugi Operator is equivalent to that of Helper as is evident from the order dated 14.4.1978 (Annexure 9), then after such a long period, there arises now no question to revert the petitioner from the post of Helper to that of Class IV servant. It is pointed out by the learned counsel that when the petitioner has been appointed on the post of Centrifugi Operator, which is equivalent to that of Helper, then how he can be absorbed on the post of Class IV employee in the PHED.

In support of his contentions, learned counsel for the petitioner has placed reliance on the case of M.A.Hameed v.

State of A.P., reported in (2001) 9 SCC 261, in which it was held by their Lordships of the Supreme Court that the reversion of the appellant after a period of 11 years is wholly unjustified. If his appointment was temporary or irregular in any manner, he should have been reverted within a reasonable period.

Per contra, it is submitted by the learned counsel for the respondents that vide Order dated 14.2.1974, the petitioner was appointed on the post of Centrifugal Operator in Rajasthan State Chemical Works, Deedwana and he was given the pay scale of Rs.66-2-90. Thereafter vide order dated 14.4.1978, he was made permanent on the post of Helper w.e.f. 22.3.1977.

It is further submitted by the learned counsel for the respondents that vide order dated 18.2.1981, the petitioner was declared surplus and was relieved from Rajasthan State Chemical Works, Deedwana on 23.3.1981 and was sent to the General Administration Department on 24.3.1981, where he was adjusted on the post of Class IV employee and was given the pay scale of Rs.245-310. Then the petitioner was posted in Public Health and Engineering Department, Merta City Division.

It is also submitted by the learned counsel for the respondents that vide order dated 27.7.1982, the petitioner was posted as Helper and was given the pay scale of Rs.245-

310. The petitioner joined his duty on the post of Helper on 31.7.1982. Later on, he was transferred in Sub Division Deedwana on his own request. Since August, 1988, the petitioner is working as Helper in the Office of Deedeana. It is submitted that initially, the petitioner was adjusted on the post of Helper vide Order dated 14.8.1981. Thereafter, the Superintending Engineer, PHED, Nagaur raised an objection vide his letter dated 22.1.2001 as to how the petitioner was given the post of Helper as initially , he was adjusted on the post of Class IV cadre. In these circumstances, the error committed earlier, while preparing the seniority list, was rectified and by a fresh seniority list, his name was deleted from the Line Branch (Technical) and vide order dated 28.4.2004 (Annexure 4), he has been placed in the seniority list of Class IV employees.

Heard learned counsel for the parties.

It is admitted position that in the seniority list dated 31.3.1985 (Annexure 1), the name of the petitioner appears as Helper. It is also admitted position that in the seniority list of regular technical employees dated 22.6.2001 (Annexure 2), issued by the Department, the name of the petitioner also finds place in the category of regular helpers. Not only that, but also vide order dated 13.3.1991 (Annexure 3), the petitioner was given pay scale of Helper by the Department itself. It is also clear from the record that in the year, 2004, the Department has

abruptly reverted the petitioner from the post of Helper to Class IV servant without following the principles of natural justice.

It is evident from the letter dated 23.3.1987 of the Chief Engineer, PHED, Jaipur addressed to the Executive Engineer, PHED, Division – Suratgarh that the posts of Helper were lying vacant in the Department and the employees of the PHED, including the petitioner had the requisite experience, therefore, the XEN was granted permission to cancel his earlier order dated 30.11.85, by which the other employees of the PHED, similarly situated to the petitioner, were reverted from the post of Helper to that of Class IV servant. Not only that, but also, it is very much clear from the Office Order dated 14.4.1978 issued by the Respondent that the services of the petitioner were treated equivalent to that of Helper. It is also clear from the Office Order dated 14.2.1974 that the name of the petitioner was sponsored by the Employment Exchange, Nagaur and, after interview, he was appointed as Centrifugi Operator in the pay scale of Rs.66-9-90. The aforesaid order also reveals that the post of Centrifugi Operator is equivalent to that of Helper. Thus, in view of the aforesaid facts and circumstances of the case, it is clear that the petitioner was initially appointed on the post of Centrifugi Operator, which is equivalent to that of Helper and the services of Helper were taken by the Department. However, he was absorbed as Class IV employee, but no order to that effect was

passed by the Department. The persons situated similarly, were absorbed as Class IV employees, but, by virtue of the order dated 23.3.1987, passed by the Chief Engineer, they were posted on the post of Helper, whereas, the petitioner, who was never appointed as Class IV employee and directly appointed as Helper, has now abruptly been reverted from the post of Helper to that of Class IV without following the principles of natural justice. It may be mentioned that in view of the principle laid down in M.A.Hameed's case (Supra) by their Lordships of the Supreme Court, after such a long time, reversion of the petitioner from Helper to Class IV servant is wholly unjustified, as the settled position, cannot be allowed to be unsettled by the Department on account of their fault.

Consequently, the writ petition is allowed. The order dated 28.4.2004 (Annexure 4) is quashed and set aside. There will be no order as to costs.

(R.P.VYAS), J.

scd.