

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JAIPUR BENCH, JAIPUR

D.B. Civil Special Appeal (Writ) No.1645/2012

Smt. Neelam
Versus
The District & Sessions Judge, Bharatpur & Anr.

Date of Judgment :: 31st July, 2013

PRESENT

HON'BLE THE CHIEF JUSTICE MR. AMITAVA ROY
HON'BLE MR. JUSTICE VEERENDR SINGH SIRADHANA

Mr. Shiv Charan Gupta for appellant.
Mr. Jinesh Jain, Government Counsel for respondents.

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BY THE COURT : (Per Hon'ble V.S. Siradhana, J.)

The petitioner-appellant is legal representative of the original petitioner-appellant (Late Ravindra Kumar Garg), who died on 2nd of April, 2012, aggrieved of the judgment and order dated 24th September, 2012, passed by the learned Single Judge, has preferred the present intra-court appeal, wherein the order dated 30th October, 2003, impugned in the writ application, has been maintained, however, the recovery of an amount to the tune of Rs.2,10,689/- has been set aside.

2. Essential facts for appreciation of the controversy raised are that the original petitioner-appellant (Late Ravindra Kumar Garg) was appointed as Stenographer vide order dated 20th December, 1985, in response to his application dated 6th December, 1985, without any advertisement and contrary to the procedure prescribed under the relevant Rules. The appointment was made only for a period of three

months, purely on temporary basis, with a further stipulation to the effect that the petitioner-appellant (Late Ravindra Kumar Garg) will have to qualify the competitive examination in accordance with the Rajasthan Subordinate Courts (Ministerial Staff) Rules, 1958 (hereinafter referred to as 'the Rules of 1958', for short). Be that as it may, the petitioner-appellant (Late Ravindra Kumar Garg) was continued in service and later on, his services were regularized vide order dated 3rd January, 1998. Thereafter, vide impugned order dated 30th October, 2003, all the benefits accorded in favour of the petitioner-appellant (Late Ravindra Kumar Garg), as admissible to regularly selected candidates, were withdrawn.

3. The petitioner-appellant (Late Ravindra Kumar Garg) challenged the said order dated 30th October, 2003, whereby the earlier order dated 3rd January, 1998, regularizing his service, was withdrawn as well as the selection scale granted vide order dated 9th January, 1998 after completion of 9 years of service w.e.f. 21st December, 1994. The respondents further ordered for recovery of the excess amount paid to the tune of Rs.2,10,689/- and allowed only the minimum of the pay scale as payable.

4. The respondents in their counter-affidavit to the writ application pleaded that the appointment of the petitioner-appellant (Late Ravindra Kumar Garg) was absolutely illegal so much so that his appointment was made even without an advertisement and contrary to the procedure for recruitment prescribed under the Rules of 1958. Further, the benefits of pay scale, regularization and selection scale as well as other benefits, were accorded contrary to the mandate of law and when these facts were brought to notice, the respondents rightly

withdrew the benefits illegally accorded vide impugned order dated 30th October, 2003.

5. Moreover, by notice dated 22nd/23rd May, 1990, the petitioner-appellant (Late Ravindra Kumar Garg) was compulsorily directed to appear in the competitive examination that was scheduled to be held on 2nd June, 1990, since he had not passed the proficiency test and the seniority assigned to him was objected to by one Shri Sunil Dutt Sharma, another Stenographer, pointing out the illegality committed by the respondents.

6. The petitioner-appellant (Late Ravindra Kumar Garg) was also informed that in case he failed to pass the proficiency test/competitive examination, his services were liable to be terminated forthwith. The petitioner-appellant (Late Ravindra Kumar Garg) was once again called upon vide notice dated 8th June, 1992, to explain as to why he did not appear in the typing test, and in response he expressed insufficiency of time to prepare for the examination. Thus, it is apparent on the face of record that petitioner-appellant (Late Ravindra Kumar Garg) did not appear at the examination pleading insufficiency of time to prepare for the examination.

7. On the basis of the pleadings of the parties, material available on record and after hearing rival submissions, the learned Single Judge has recorded a specific finding to the effect that the petitioner-appellant (Late Ravindra Kumar Garg) was given sufficient opportunity directing him to pass the competitive examination/proficiency test in the year 1990 and thereafter second opportunity in the year 1992 with specific stipulation that failure to pass the required test would entail termination of his service. The petitioner-appellant (Late

Ravindra Kumar Garg) for the reasons best known to him, did not avail of the opportunity to pass the proficiency test/competitive examination rather protested the same for one or the other pretext. However, keeping in view the totality of the facts and circumstances of the case, the learned Single Judge did interfere with the impugned order dated 30th October, 2003 to the extent of recovery to the tune of Rs.2,10,689/-, which has been quashed and set aside.

8. We have heard the learned counsel for the petitioner-appellant and respondents as well as perused the material available on record.

9. A bare perusal of the material available on record would reveal that the very appointment of the petitioner-appellant (Late Ravindra Kumar Garg) in response to his application, was absolutely illegal and contrary to the procedure prescribed under the Rules of 1958. Be that as it may, even while according the appointment to the petitioner-appellant (Late Ravindra Kumar Garg), a condition was specifically stipulated to the effect that the appointment was only for a period of three months purely on temporary basis, and with a further stipulation to pass the proficiency test/competitive examination as per the mandate of Rules of 1958.

10. It is not in dispute that the petitioner-appellant (Late Ravindra Kumar Garg) was accorded ample opportunities, with a clear stipulation to the effect that failure to pass the proficiency test/competitive examination would entail termination of his service, but he did not avail of the opportunities.

11. It is trite law that the public employment is not a matter between the appointing authority and the appointee. Aggrieved are all those who had similar or even better qualification than the appointee, but

who had no opportunity to apply for the post for want of an opportunity to have their candidature considered.

12. It is also apparent on the face of record in view of a bare perusal of the order dated 20th December, 1985 that the appointment of the petitioner-appellant (Late Ravindra Kumar Garg) was only for a period of three months, purely on temporary basis and with a further rider to qualify the proficiency test/competitive examination as per the Rules of 1958. The mere fact that the petitioner-appellant (Late Ravindra Kumar Garg) continued on temporary/ad-hoc basis without qualifying the essential test as per the Rules of 1958 and further benefits of selection scale accorded to him, does not improve his case any further for the reason that one wrong cannot be justified by another and the law in this regard is no more *res-integra*. The Hon'ble Apex Court of the land in case of *Mayuram Supramaniam Srinivasan Versus CBI (2006 (5) SCC 752)* in unequivocal terms held thus:-

“to perpetuate an error is no heroism. To rectify it is the compulsion of the judicial conscience.”

13. In an intra-court appeal, no doubt it is open to reappraise the question of law and fact, but the power while entertaining an intra-court appeal is discretionary and normally the Division Bench would not differ from a finding of fact arrived at by the learned Single Judge on the basis of material available on record, unless there exist cogent reasons calling for interference. The learned counsel for the appellant-petitioner, but for reiterating the facts and grounds pleaded before the learned Single Judge could not point out any substantial reason warranting interference with the findings arrived at and therefore, the view taken by the learned Single Judge cannot be faulted.

14. For the reasons and discussions detailed out hereinabove as well as keeping in view the findings arrived at by the learned Single Judge on the basis of service record, we are not inclined to interfere with the impugned judgment and order dated 24th of September, 2012. The intra-court appeal is bereft of any merit and deserves to be dismissed.

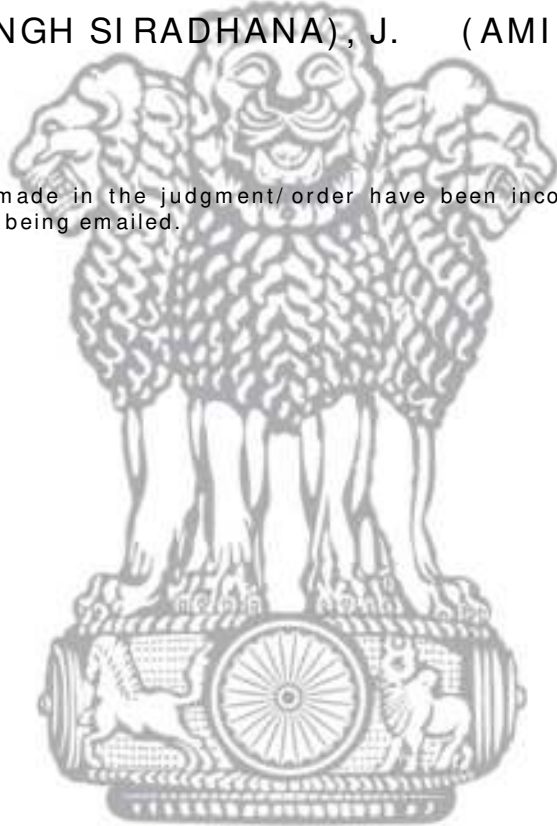
15. In the result, the intra-court appeal is hereby dismissed. However, keeping in view the facts and circumstances of the case, there shall be no order as to costs.

(VEERENDR SINGH SIRADHANA), J. (AMITAVA ROY), CJ.

Sunil/ P.A.

All corrections made in the judgment/order have been incorporated in the judgment/ order being emailed.

(Sunil Solanki)
P.A.



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