

RAJASTHAN HIGH COURT, JODHPUR THROUGH REGISTRAR A

v.

BABU LAL ARORA

DECEMBER 12, 2003

[S. RAJENDRA BABU AND RUMA PAL, JJ.] B

*Service Law :*

*Promotion—Conditions to be fulfilled—Held : Promotions take place according to conditions of employment and not on any general principle of justice and fair play.* C

*Promotion—Indicia of—Promotion to a higher post implies additional responsibility attached to the post and higher emoluments.*

The respondent was appointed as a Lower Division clerk in the appellant's establishment and was promoted to the post of Upper Division Clerk. Subsequently, the respondent was promoted to the post of Court Fee Examiner/Stamp Reporter and received a further promotion to the post of Bench Reader. Both these posts carried the same pay scales. D

The State Government issued a circular, which prescribed selection grade pay for employees in the Ministerial and Subordinate Services. The respondent made a representation for getting the benefit of 3rd selection grade in his pay scale. The appellant rejected the representation on the ground that the benefit of the circular could not be extended to the respondent as he had already earned three promotions in his existing cadre. E

Being aggrieved the respondent filed a writ petition before the High Court. The Division Bench allowed the petition based on doctrine of justice and fair play. Hence the appeal. F G

Allowing the appeal, the Court

**HELD : 1.** The employees who are in service are governed by the conditions of employment and their promotions also take place accord- H

**A** ingly and not on any general principle of justice and fair play. Discrimination, if any, will arise only amongst equals and not between those who are in different cadres. [750-E-F-]

**B** 2. One of the important indicia to find out whether an employee holds a higher post on promotion is whether such post carries higher emoluments. Hence when the respondent was appointed as Bench Reader, whether it was really a promotion or posting in another equivalent post should have been examined. That aspect of the matter has not been examined by the High Court by reference to the nature of duties performed with additional responsibility attached to that post or any higher emoluments were paid to him. Unless that aspect of the matter is examined, the High Court could not have arrived at the conclusion whether the respondent had obtained three promotions as envisaged in the circular. In the absence of this exercise, the Division Bench could not have merely decided the matter on the doctrine of justice and fair play. [751-A-D]

**C** CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4468 of 1999.

**E** From the Judgment and Order dated 12.5.98 of the Rajasthan High Court in D.B.C.S.A. No. 860 of 1997.

Aruneshwar Gupta for the Appellant.

**F** Pallav Shishodia, Hemant Sharma, Mrs. Shalini Shishodia and A.P. Medh for the Respondent.

The Judgment of the Court was delivered by

**G** **RAJENDRA BABU, J. :** The respondent was appointed as a Lower Division Clerk in the pay scale of Rs. 950-1680 in 1960 in the appellant's establishment under the provisions of the Rules framed in 1953. He was promoted as Upper Division Clerk in the pay scale of Rs.1200-2050 by an order made on 12.11.1973. He passed the qualifying test for promotion to the post of Court Fee Examiner/Stamp Reporter in the pay scale of Rs. 1400-2600. He was promoted to the post of Court Fee Examiner/Stamp Reporter by an order made on 7.4.1984. Subsequently he was promoted

**H**

to the post of Bench Reader in the pay scale of Rs.1400-2600 by an order made on 28.10.1989. A

The Government of Rajasthan issued a circular on 25.1.1992, which prescribed selection grade for employees in Class IV, Ministerial and Subordinate Services for fixation of pay in Selection Grades. The respondent made a representation for getting the benefit of 3rd selection grade in the pay scale of Rs. 2000-3200. On 12.5.1994, the representation of the respondent was rejected by the Registrar of the appellant's establishment by an order made on 25.7.1994. The respondent filed a writ petition before the High Court for getting the benefit of the circular dated 25.1.1992 on the grounds that certain others who had joined the service as Upper Division Clerks and were junior to him were getting higher pay scales by the extension of the benefits under the 1992 circular. The stand of the appellant is that the benefit of 1992 circular cannot be extended to the respondent inasmuch as he has already earned three promotions in his existing cadre and he was not entitled to third selection grade in terms of the said circular after three promotions to the higher cadres and the case of those persons whose cases were cited is that they continued in different branches as Assistants and so on. B C D

The learned Single Judge of the High Court allowed the writ petition directing the appellant to award the grade in the pay scale of Rs. 2000-3200 by holding that the juniors of the appellant in the UDC cadre have been granted such pay scales. Aggrieved by that order, the matter was carried in appeal to the Division Bench of the High Court. The Division Bench dismissed the appeal upholding the order of the learned Single Judge on the basis of doctrine of justice and fair play without adverting to the contentions raised on behalf of the appellant. E F

In order to appreciate the contentions urged on behalf of the parties, it is necessary to set out the relevant portion of the circular :

“2.(i) The first Selection Grade shall be granted from the day of which one completes service of nine years, provided that employee has not got any promotion earlier as is available in his existing cadre; (ii) The second Selection Grade shall be granted from the day following the day on which one completes services of G H

A eighteen years, provided that the employee has not got two promotions earlier as might be available in his existing cadre and the first selection grade granted to him was lower than the pay scale of Rs. 2200-4000; (iii) the third selection grade shall be granted from the day following the day on which one completes service of twenty seven years, provided that the employee has not got three promotions earlier as might be available in his existing cadre and the first or the second selection grade granted to him, as the case may be, was lower than the pay scale of Rs. 2,200-4,000.”

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C In order to earn the first benefit, the employee must have completed nine years of service and should not have got any promotion earlier in his existing cadre; secondly, the second benefit will become available on completion of 18 years of service provided the employee has not got two promotions earlier in his existing cadre and the first selection grade granted to him was lower than the pay scale of Rs. 2200-4000; and lastly, the third benefit will become available on completion of 27 years of service provided that the employee has not got three promotions earlier as might be available in his existing cadre and the first or the second selection grade granted to him, as the case may be, was lower than the pay scale of Rs. 2,200-4,000.

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F The employees who are in service are governed by the conditions of employment and their promotions also take place accordingly and not on any general principle of justice and fair play. Discrimination, if any, will arise only amongst equals and not between those who are in different cadres. As was set out earlier, the respondent had obtained three promotions as per the orders issued by the Registrar - firstly, as UDC on 12.11.1973, secondly as Court Fee Examiner/Stamp Reporter on 7.4.1984 and lastly as a Bench Reader on 28.10.1989. Thus in the course of his 27 years service, he had already obtained three promotions and, therefore, the circular was not attracted to his case at all. It is, therefore, that the High Court wanted to rely upon the doctrine of justice and fair play.

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H It is unfortunate that the respondent on promotion did not continue as Assistant but he got the promotion to the post of Court Fee Examiner/Stamp Reporter and subsequently as a Bench Reader. These two postings

carry a much higher pay scale than what had been given to him as Assistant. A  
However, the point to be noticed is that when he was promoted to the post  
of Court Fee Examiner/Stamp Reporter and thereafter as Bench Reader it  
was in the same pay scale of Rs. 1400-2600. One of the important indicia  
to find out whether an employee holds a higher post on promotion is  
whether such post carries higher emoluments. Hence when the respondent B  
was appointed as Bench Reader, whether it was really a promotion or  
posting in another equivalent post though termed as promotion should be  
examined. That aspect of the matter has not been examined by the High  
Court by reference to the nature of duties performed with additional  
responsibility attached to that post or any higher emoluments were paid C  
to him. Unless that aspect of the matter is examined, the High Court could  
not have arrived at the conclusion whether respondent had obtained three  
promotions as envisaged in the circular. In the absence of this exercise,  
the Division Bench could not have merely decided the matter on the  
doctrine of justice and fair play.

Hence we set aside the order made by the Division Bench in Civil D  
Special Appeal No. 860 of 1997 and remand the matter to the High Court  
for fresh examination as to whether the respondent had been really  
promoted to the cadre of Bench Reader from the cadre of Court Fee  
Examiner/Stamp Reporter bearing in mind the aspect that two posts carry E  
identical pay scale. It is only on determination of the same, the benefit  
of the circular dated 25.1.1992 can be granted to the respondent or refused.  
Hence we set aside the order made by the High Court and remit the matter  
to the High Court for fresh consideration in the light of what we have set  
out and restore Civil Special Appeal No. 860 of 1997 to its original file. F

The appeal is allowed accordingly.

V.S.S.

Appeal allowed.