



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Writ Petition No. 8803/2010

Sunder Singh son of Shri Loku Mal, aged 50 years, r/o Prakash Bhawan, Ghas Mandi Road, Jodhpur.

-----Petitioner

Versus

1. State of Rajasthan through the Secretary, Ministry of Public Works Department, Jaipur.
2. Chief Engineer, Public Works Department, Rajasthan, Jaipur.
3. Executive Engineer, Public Works Department, Electrical Division-I, Jodhpur.

-----Respondents

For Petitioner(s) : Mr. M.S. Shekhawat.

For Respondent(s) : Mr. Aishwarya Anand.

HON'BLE MR. JUSTICE ARUN MONGA

Judgment (Oral)

27/11/2024

1. Demoted as a bolt from the blue, after working 17 years on the promotional post, the petitioner has challenged an order dated 16.09.2010 (Annex.8) vide which, he was directed to be reverted from the post of Electrician Grade II to the post of Helper Grade II.
2. The relevant facts shorn of unnecessary details, as pleaded in the petition, are as follows:-
 - 2.1. The petitioner was appointed in the Public Works Department at Jodhpur on the post of Helper Grade II on 14.07.1979. He was thereafter promoted on the vacant post of Electrician Grade II vide order dated 31.01.1993 along with four others. Subsequently,



petitioner was also accorded benefits of selection grade in the pay scale of Rs. 4,000-6,000/- vide an order dated 23.10.2000.

2.2. The respondent No.3 vide letter dated 08.09.2010 informed the petitioner that in terms of order dated 06.08.2010 passed by the respondent No.2, action is being taken to withdraw the order granting him promotion to the post of Electrician Grade II. The petitioner was asked to submit his response by 13.09.2010. A perusal of order dated 06.08.2010 (Annex.6) would reveal that the dispute arose on account of filing of writ petition by one Mohan Lal seeking same benefit as to the petitioner and thus his promotion order was relied upon.

2.3. The petitioner submitted another representation to the respondent No.3 on 13.09.2010 while stating that after working 17 years as Electrician Grade II, his promotion could not be cancelled or withdrawn. It was also submitted that Mohan Lal filed writ petition for granting him the benefit of stepping up while referring promotion of the petitioner to the post of Electrician Grade II.

2.4. The respondent No.3 while rejecting the representation dated 13.09.2010 of the petitioner, in implementation of the orders of his superiors, demoted the petitioner from the post of Electrician Grade II, promoted vide order dated 31.01.1993, to the post of Helper Grade II, vide his order dated 16.09.2010. Hence, this writ petition.

3. The stand taken by the respondents in their reply inter alia is that, under the service rules, there was no promotion channel from the post of Helper Grade II to the post of Electrician Grade II. Therefore, the petitioner could not have been promoted.



Hence, the promotion of petitioner was illegal being against the statutory rules. That one Mohan Lal also claimed stepping up of pay by filing writ petition (No. 4013/2004) which came to be decided on 02.04.2009. Mohan Lal contended that the petitioner was junior to him, yet was drawing salary higher than him. After the decision of the writ petition filed by Mohan Lal, the matter was thoroughly examined and ultimately, it was decided that the promotion granted to the petitioner being against the rules, be withdrawn. Thus the Department also withdrew the promotion granted to petitioner. The writ petition lacks merit and be dismissed.

4. In the aforesaid backdrop, I have heard learned counsel for the petitioner as well as learned counsel for the respondents and have gone through the record including the material placed before me.

5. Sum and substance of the Department having taken so called corrective measure to demote the petitioner after 17 years is stated to have its genesis to a judgment rendered in the case of Mohan Lal (supra), by a Single Bench of this Court whereby, similarly situated counterpart of the petitioner was also seeking promotion/ stepping up of his pay on parity with the petitioner herein. While rejecting the claim of the counterpart, it was observed in the judgment that the counterpart of the petitioner i.e. Mohan Lal was not entitled to the relief sought by him as the Circular dated 30.09.1998 which was sought to be relied upon did not have any application to the case of the petitioner therein. In the passing, it was also observed that the selection



grade/promotion granted to the petitioner herein was owing to an erroneous decision taken by the Department.

6. I am unable to persuade myself with the stand taken by the respondents. Reasons are not far to seek. Let us see how. First and foremost, the petitioner was not a party to the judgment rendered by this Court which seems to be the reason of demotion of the petitioner herein. Furthermore, the judgment rendered by this Court in Mohan Lal's case cannot be treated *in rem* for the reason that Mohan Lal claimed the relief of stepping up of his pay, therefore, the judgment in his case is/was *in personam*.

7. The petitioner herein cannot be visited with adverse consequences merely because of certain observations made by this Court, though in the passing reference, with regard to promotion being erroneous, without there being any discussion on the case of the petitioner. Such observations were merely in the context of determination of the right of relief sought by petitioner in that case, and not to determine validity of what had been conferred to the petitioner herein.

8. Moreover, the demotion of the petitioner concededly has been ordered after his having worked 17 years on the post in question and, therefore, is hopelessly barred by time.

9. What makes the case even more curiouser is the fact that it is not the case of the department that the petitioner had, in any manner, indulged in either any misrepresentation or concealment so as to be accorded with the benefit of selection grade, which was being sought by his counterpart.

12. In parting, I may hasten to add here that during pendency of the proceedings, the petitioner throughout worked on the



promotional post of Electrician Grade II, and his selection grade was not withdrawn owing to an interim order dated 04.10.2010, which is reproduced herein below:-



“The learned counsel for the petitioner may place on record copy of the decision of this Court dtd. 2.4.2009 in SBCWP No. 4013/2004 – Mohan Lal V/s State as the same appears to have connection with alleged demotion of the petitioner after 17 years of his service as Electrician Grade II.

The matter requires consideration.

Issue notice to the respondents, returnable within four weeks.

Notice be given ‘dasti’ to learned counsel for the petitioner for effecting direct service upon the respondents. The direct service would mean that PF and notice after being sealed and signed by the Office Superintendent will be handed over back to the learned counsel for the petitioner and it will be his responsibility to send the notices along with copy of this order along with copy of writ petition and its annexures by registered AD Post/Speed Post/courier to the respondents directly and if proof of postal receipt/original courier receipt/AD receipt is filed along with the affidavit of the counsel for the petitioner in the office before the next date, then the service on the respondents will be treated as complete.

It shall be responsibility of the learned counsel for the petitioner to serve the respondents by the next date positively otherwise the interim order granted by this Court shall stand vacated.

In the meanwhile, the operation of the impugned order Annex.8 dtd. 16.9.2010 shall remain stayed.”

13. Apropos, the petitioner has superannuated from service as he retired in the month of October, 2019. I am of the view that dehors the above discussion, all the benefits which the petitioner has enured by virtue of interim order are in any case fully justified by sheer fortuitous circumstances due to indulgence granted by this Court.



14. As an upshot, the writ petition is allowed. The impugned order dated 16.09.2010 (Annex.8) is quashed and set aside. Consequences to follow. Accordingly, the petitioner shall also be disbursed with all his retiral benefits as well as pension by calculating the same from the post he retired in accordance with the salary last drawn by him.



(ARUN MONGA),J

265-AK Chouhan/Mohan

Whether fit for reporting : Yes / No