

Rajasthan High Court

Raj Bahadur vs State Of Rajasthan And Ors. on 2 December, 1997

Equivalent citations: 1998 (3) WLC 83, 1997 (2) WLN 602

Author: J Verma

Bench: J Verma

JUDGMENT J.C. Verma, J.

1. Late Ramesh Chand was serving in police Department as Head Constable with Government of Rajasthan when he died in service on 7.3.1991. The family of the deceased became destitute. His widow who come how herself was not eligible for being appointed or getting appointment under the Rajasthan Recruitments of the Dependents of Government Servant (Dying while in Service) Rules, 1975 (hereinafter referred to as 'the Rules') informed the government and the concerned authorities that the deceased had left three daughters aged 10, 14 and 17 years and one son Raj Bahadur aged About 9 years at that time Raj. Bahadur had passed secondary school examination from Board of Secondary Education Rajasthan in the year 1989. Her application was verified and after complete examination of the facts, ultimately Dy. Inspector General of Police, Head quarters, vide his order dated 16th November, 1992 directed the Superintendent of Police. Bharatpur to offer an appointment to the petitioner as per Rules and as per the qualification and eligibility of the petitioner Raj Bahadur. A copy of the letter has been placed on record as Annexure-3. The petitioner was asked to appear for medical test vide letter dated 5.1.93, copy of which is attached as Annexure-4. The petitioner appeared for medical test before the Recruiting Inspector, Police Lines, Bharatpur and he was found fit still no appointment was offered to the petitioner. Representations were submitted by petitioner. It revealed lateron that the petitioner was involved in a criminal case registered against him under Section 302 IPC in FIR No. 86/91 and perhaps for that reason the appointment was not offered. The criminal trial against the petitioner resulted into acquittal in Sessions Case No. 8/93 and the learned Sessions Judge Bharatpur acquitted the petitioner on 10th June, 1994. On having been acquitted the petitioner and his mother once again made representation to the authorities attaching thereto a copy of the judgment of the trial court as well but no response was given by the respondents to the petitioner or to the family of the petitioner with the result that the provisions of 1975 Rules were not complied with and even the offer made to the petitioner for appointment and for which he was medically examined and found fit remained in abeyance. Finding no response from the authorities, the petitioner ultimately approached this Court by way of filing the present writ petition.

2. Reply has been filed by the respondents by way of affidavit of one Shri Madhu Sudan Singh, Addl. Superintendent of Police Bharatpur. The facts as stated are not denied. It is stated in the reply that even though, appointment was offered to the petitioner and he was medically examined, but on character verification it was found that his antecedents were not up to the mark and he was facing a criminal trial. It is not disputed that the petitioner has since been acquitted of the charges and he was not found guilty by the Sessions Judge. Counsel for petitioner states that the judgment of acquittal has become final as no appeal has been filed by the State Government against the order of acquittal.

3. It has been held by this Court time and again that the dependants of the Government servants dying while in service are entitled to be considered for appointment under the 1975 Rules as per their qualification and eligibility. In the present case, action was taken under the Rules and appointment order under the Rules was issued and the petitioner had appeared even for medical test but for pendency of criminal case he was not immediately appointed. It has not been brought on record by the respondent that at any given time offer of appointment was ever cancelled by the authorities after due notice to him. Even otherwise, if a person has been ultimately acquitted by the court after facing trial, it cannot be said that he loses all rights of appointment under the 1975 Rules. Because of the reason that the petitioner had ultimately been acquitted, the respondent cannot deprive the petitioner of his right of appointment if he is otherwise eligible and fulfills the qualifications under the 1975 Rules, only because of the reason that there was pendency of criminal trial. If the respondent authorities were not inclined to give appointment to the petitioner in the circumstances, it was mandatory for them to have informed the widow for such action which was not done. In any case, some other members of the family who fulfilled the qualifications could be entitled to be considered for such appointment which has not been done in the present case. It is a settled law that even a government servant who is suspended or removed from service because of pendency of criminal trial or conviction on a criminal trial on the conclusion of the criminal trial if such Government servant is acquitted, he is generally and in normal course put back to his job. It cannot be said that in the present case, any other criteria is to be adopted as that will be discriminatory and arbitrary and violative of Article 14 of the Constitution of India.

4. For the reasons and discussions mentioned above, the respondents are issued a writ of mandamus to comply the offer of appointment made to the petitioner as per letter issued by the Dy. Inspector General of Police (Head Quarters), Jaipur dated 16th November, 1992 (Annexure 3) and Annexure-4 dated 5th January, 1993 by offering the appointment. The respondents shall complete the exercise within three months from the date of receipt of a certified copy of this order. However, it is made clear that the petitioner shall be watched during the service and if any thing adverse is found against him, the respondents shall be at liberty to take legal action as permitted under the law.

5. The writ petition is allowed with the above said observations.