

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6434 OF 1998@@
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Anil K. Sharma ...Appellant (s)

Versus

State Insurance & G.P.F. Deptt. & Anr. ...Respondent(s)

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The appellant was appointed initially in the year 1994 on daily wage basis as L.D.C. in the State Insurance and G.P.F. Deptt. He worked as such up to July, 1986. Then, on the basis of a fresh selection made he was again appointed on daily wage basis on 25.7.1987 and that appointment was extended from time to time till 29.2.1988. The services of the appellant were not extended any further and it stood terminated. On 13.12.1988, 8 other persons were appointed, but the appellant was not considered for the same. The appellant approached the High Court by filing a C.W.P. in the year 1990. That writ petition was disposed of by the High Court by its order dated 22.10.1992. The High Court came to the conclusion that non-consideration of the appellant's case for reappointment must be held to be in violation of Section 25-H of the Industrial Disputes Act (For short "the Act"). The High Court, therefore, directed that the appellant shall be deemed to have been appointed w.e.f. 13.12.1988, but will not be entitled to any salary from the date of termination

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till the aforesaid date of reinstatement. The High Court further observed that the appellant would be at liberty to take appropriate steps as provided under Section 33-C(2) of the Act. A further condition was also inserted in the order of the High Court that the appellant would not be entitled to continue in service after the candidates selected by the Rajasthan Public Service Commission (for short "RPSC") are made available. A few days before the aforesaid judgment of the High Court, the statutory recruitment rules framed under proviso to Article 309 of the Constitution of India stood amended by a notification dated 12th of October, 1992. Unfortunately, the aforesaid amendment was not brought to the notice of the learned Judge while disposing of the writ petition. The present controversy centres round the question, as to whether the appellant would be entitled to the benefit of the aforesaid amended provision which was brought into effect on 12th October, 1992. The amended provisions of sub-rule (10) of rule 25 are extracted herein-below in extenso.

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"(10) Notwithstanding anything contained in Rule 7 during the period from 1.1.85 to 31.3.90 all persons appointed as junior clerk on ad hoc or daily wages basis, who have been working in that capacity as on the date of coming into force of this amendment, on availability of the vacancy would be appointed on regular basis under the same terms provided they shall pass the efficiency examination within a period of three years to be conducted by the concerned Head of the Department according to the syllabus prescribed in Part IV of Schedule I. Three chances would be provided to such persons to

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qualify the said examination, which would have to be availed of within the period of three years.

Provided that if any persons is unsuccessful in qualifying the said examination in three chances within the period of three years, he would be liable to be terminated from the services."

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The State Government instead of assailing the order of the learned Single Judge of the High Court not only implemented the same and reinstated the appellant in service, but also implemented the other part of the direction contained in the judgment of the High Court and terminated his services on 12.02.1996 when the candidates selected by the RPSC became available. It is this order of termination which was assailed by the appellant before Rajasthan Civil Services Appellate Tribunal, Jaipur (for short "the Tribunal). The Tribunal disposed of the matter by its order dated 21.5.1996 and came to the conclusion that the appellant would be entitled to be treated with other persons appointed by the order dated 13.12.1988 and since all others have been given the benefit of the amended provisions of sub-rule (10) of rule 25, the appellant also was entitled to be considered in accordance with the amended provisions. The State Government assailed the said order of the Tribunal by filing a writ petition which, however, was dismissed by the learned Single Judge by order dated 26.7.1996. The matter was carried in appeal to the Division Bench and the Division Bench by the impugned judgment, came to hold that the appellant would not be entitled to the benefit of the amended provisions of sub-rule

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(10) of rule 25 and since the appellant was taken into service pursuant to the direction of the High Court and in terms of the said direction his services having stood terminated on the availability of the regularly selected candidates by the Rajasthan Public Service Commission, the order of termination cannot be found fault with. That appeal thus being allowed, the appellant is before us.

The only contention raised by Mr. Jain, appearing for the appellant is that by virtue of the order of the learned Single Judge of the High Court, the appellant having been held to be deemed to be in service on 13th December, 1988, and the statutory rule amending rule 25 having conferred the benefit of all daily wage appointees appointed between 1.1.1985 and 31.3.1990, the right of consideration flowing from the aforesaid amended provisions cannot be denied to the appellant

and, therefore, the Division Bench of the High Court was in error in allowing the appeal. Ms. Goswami, appearing for the respondent, on the other hand, contended that the appellant not being in service factually on the date the amended provisions came into force and by virtue of the order of the High Court his deemed service from 1988 would not confer a right of consideration under the amended provisions, particularly when the High Court itself has circumscribed the so-called deemed appointment with the condition that it would stand terminated the moment candidates duly selected by the Rajasthan Public Service Commission are available.

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In view of the rival submissions, the only question that arises for consideration is, whether in the facts and circumstances of the present case, the appellant was entitled to the benefit of being considered under the amended provisions of sub-rule (10) of rule 25 ? As has been stated earlier, the amended provisions conferred a right of consideration for regularisation of ad hoc or daily wage junior employees who had been appointed between 01.01.1985 and 31.03.1990, it is undoubtedly true that the amended provision applies to all those who were in service on the date the amendment came into force i.e. 12th of October, 1992 and on that date the appellant was obviously not in service. But by virtue of the judgment of the learned Single Judge of the Rajasthan High Court, he having been deemed to be in service w.e.f. 1988, the right flowing from the statutory provisions as amended cannot be denied to the appellant notwithstanding the fact that the High Court itself had indicated that he could be terminated the moment candidates duly selected by the Rajasthan Public Service Commission are available. It is obvious that the High Court passed the impugned direction earlier not being aware of the fact that the rules have been amended in the meantime. At any rate, the status of the appellant pursuant to the order of the High Court would not be altered in any way and, therefore, the so-called deemed in service from 1988 would entitle him for being considered for regularisation under the amended provisions of statutory rules.

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In the aforesaid premises we have no doubt in our mind that the Division bench of the High Court committed error in allowing the appeal. We, therefore, set aside the impugned judgment of the Division bench of the High Court and direct that the appellant be considered in terms of the amended provisions of sub-rule (10) of rule 25 of the recruitment rules. The order of the Tribunal is restored. We make it clear that the appellant would not be entitled to any backwages.

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