

SUPREME COURT OF INDIA

State of Rajasthan

Vs.

Mahender Kumar Thanvi

(S Agrawal, M Srinivasan and A Misra JJ.)

02.03.1998

ORDER

1.Delay condoned.

2.Special Leave granted.

3.The only question which falls for consideration in this appeal is whether Mahender Kumar Thanvi, the respondent herein, is entitled to be absorbed on the post of Lower Division. Clerk (LDC) which is a Class III post.

4.The respondent had worked as Beldar on daily wage basis intermittently during the period 1988 to 1991 and with effect from April 29, 1991 he was working as casual labourer (skilled labour) on consolidated wages of Rs. 748.52 per month. In the year 1993 the respondent filed a writ petition in the Rajasthan High Court at Jodhpur praying for a direction that he be given the minimum pay of the pay-scale of the post of regular LDC along with allowances on the principle of equal pay for equal work. In that writ petition an interim order was passed by the High Court on February 2, 1993 directing the appellants to pay the minimum of the pay-scale of LDC to the respondent. In pursuance of the said direction of the High Court, an order was passed on September 17, 1993 for

granting minimum pay of Rs. 950/- per month in the pay-scale of Rs. 950-1680 for LDC to the respondent with effect from February 2, 1993. In the said Order dated September 17, 1993 it is clearly mentioned that it was issued in pursuance of the interim order dated February 2, 1993 passed by the High Court in the writ petition of the respondent. The said writ petition of the respondent was disposed of by the learned single Judge by his judgment dated July 18, 1995 whereby the writ petition filed by the respondent was allowed and the appellants were directed to make payment of the salary to the respondent in the minimum of the pay-scale applicable to the post of LDC with effect from the date of the filing of the writ petition on the principle of equal pay for equal work and the appellants were also directed to consider the question of regularisation along with the case of other employees in similar position. The Special Appeal filed by the appellants against the said judgment of the learned single Judge was dismissed by the Division Bench of the High Court by the impugned judgment dated August 26, 1996. Feeling aggrieved by the said judgment the appellants have filed this appeal by way of Special Leave.

5. It has been submitted by Shri Aruneshwari Gupta, the learned Counsel appearing for the appellants, that the post of LDC is a Class III post falling within the purview of the Rajasthan Public Service Commission and that under the relevant rules a candidate for appointment on the post of LDC is required to pass the examination conducted by the Rajasthan Public Service Commission and that the respondent failed to pass the examination and, therefore, he was not selected for appointment on the post of LDC by the Rajasthan Public Service Commission. The learned Counsel has submitted that this fact was brought to the notice of the Division Bench of the High Court but the Court has wrongly proceeded on the basis that the respondent has been absorbed on the post of LDC.

6. In view of the fact that the post of LDC falls within the purview of the Rajasthan Public Service Commission and the respondent was considered by the Rajasthan Public Service Commission for appointment on the post of LDC but he was not selected, the respondent cannot claim that he has been absorbed on the post of LDC. Shri Gupta has also pointed out that the respondent has been absorbed on regular basis on a Class IV post. In these circumstances, the impugned judgment of the High Court in so far as it holds that the respondent has been absorbed on the post of LDC cannot be upheld. The appeal is, therefore, allowed, the impugned judgment of the High Court is set aside. The respondent shall be treated to have been absorbed on a Class IV post. No costs