HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

S.B. Civil Writ Petition No. 6178/2020

Kanchan Verma W/o Shri Sunil Kumar, Aged About 41 Years, D/o Shri Madan Lal Aged About 41 Years, R/o Ward No. 01, Shastri Colony, Near Vedi Aata Chakki Raisingh Nagar, District Sri Ganganagar, Rajasthan.

----Petitioner

Versus

1. State Of Rajasthan, Through The Secretary, Department Of Rural And Development And Panchayati Raj, Government Of Rajasthan, Jaipur, Rajasthan.
2. Secretary, Rural Development And Panchayati Raj Department, Government Of Rajasthan, Jaipur, Rajasthan.
3. The Director, Elementary Education, Bikaner, District Bikaner, Rajasthan.
4. The District Education Officer (Elementary Education), Sri Ganganagar, District Sri Ganganagar, Rajasthan.
5. The Chief Executive Officer, Zila Parishad Sri Ganganagar, Rajasthan.

----Respondents

For Petitioner(s) : Mr. S.R. Godara, on video call

HON'BLE DR. JUSTICE PUSHPENDRA SINGH BHATI

Order

30/07/2020

In wake of onslaught of COVID-19, lawyers have been advised to refrain from coming to the Courts.

Learned counsel for the petitioner submits that for the same recruitment, Jaipur Bench of this Court in the case of ***Om Prakash & Ors. v. State of Rajasthan & Ors. : S.B. Civil Writ Petition No.21214/2017***, vide its order dated 21.11.2017 granted relief to the petitioner following the judgment in the case of ***Hemlata***

Shrimali & Ors. v. State of Rajasthan & Ors. : S.B. Civil Writ Petition No.3247/2015, decided on 1.4.2015, which was based upon adjudication made in the case of *Suman Bai & Anr. v. State of Rajasthan & Ors. : 2009 (1) WLC (Raj.) 381.*

Stating that Coordinate Bench has decided many of petitions, without issuing notices to the respondents (SB Civil Writ Petition No.21214/2017), learned counsel submits that the present writ petition may also be decided in light of judgment in the case of *Om Prakash* (supra). Relevant part of the order in case of *Om Prakash* (supra) reads thus :

> "Learned counsel for the petitioners, at the very outset, submits that the controversy raised in the instant writ application stands resolved in view of the adjudication made by a Coordinate Bench of this Court in a batch of writ applications lead case being S.B. Civil Writ Petition Number 3247/2015: Hemlata Shrimali & Ors. Versus State of Rajasthan & Ors., decided on 1st Apri., 2015, relying upon the adjudication in the case of Suman Bai & Anr. Versus State of Rajasthan & Ors.: 2009 (1) WLC (Raj.) 381, observing thus:
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> > "5. Upon consideration of the arguments aforesaid and the judgment of the Division Bench in Hari Ram and the subsequent order dated 21.7.2001 whereby clarification application of the State Government was dismissed, I find that the entitlement of the petitioner for appointment on the basis of originally prepared merit list cannot be denied. If admittedly the candidates, who are lower in merit, have been granted appointment, those who are above them in the merit cannot be denied such right of appointment. Seniority as per the rules in the case of direct recruitment on the post in question is required to be assigned on the basis of placement of candidates in the select list and when the selection is common and the merit list on the basis of which appointments were made is also common, right to secure appointment to both the set of employees thus flows from their selection which in turn is based on merit. Regard being had to all these facts, merely because one batch of employee approached this Court later and another earlier, and both of them having been appointed, the candidates

who appeared 6 lower in merit cannot certainly be placed at a higher place in seniority. It was on this legal analogy that Division Bench of this Court in Niyaz Mohd.Khan (supra) held that the petitioner therein entitled to be placed in seniority in order of merit of common selection amongst persons appointed in pursuance of the same selection with effect from the date person lower in order of merit than the petitioner was appointed with consequential benefits.

6. I am not inclined to accept the argument of the learned counsel for the respondents No.4 to 8 that the judgment of the learned Single Judge should be so read so as to infer therefrom that though the petitioners would be entitled to claim appointment but not seniority above the candidates who are already appointed even though they admittedly are above them in the merit list. Infact, the judgment of the learned Single Judge merely reiterated the direction of the Division Bench in Hari Ram (supra) in favour of the petitioners. But construction of that judgment in the manner in which the respondents want this Court to do, would negat the mandate of the Rules 20 and 21 of the Rajasthan Education Subordinate Service Rules, 1971, which requires seniority to be assigned as per the inter-se merit of 7 the candidates in the merit list based on common selection. Even otherwise, no such intention of the Court is discernible from reading of that judgment. Mere appointment of the petitioner was a sufficient compliance of the judgment and not total compliance was the view taken by this Court also when contempt petition filed by the petitioners was dismissed. Question with regard to correct and wrong assignment of seniority having arisen subsequent to appointment of the petitioners would obviously give rise to a afresh cause of action. The writ petition filed by the petitioners, therefore, cannot be thrown either barred by resjudicata or otherwise improperly constituted.

7. In the result, this writ petition is allowed and the respondents are directed to treat the petitioners senior to respondents No.4 to 8 as per their placement in the merit list."

Learned counsel for the petitioners further submits that instant writ application be also disposed off in terms of the order dated 24th May, 2017, as extracted herein above.

Ordered accordingly."

In view of the aforesaid, following the judgment in case of Om Prakash (supra), the writ petition is disposed of in same terms.

For the purpose aforesaid, the petitioner shall file representation before the competent authority giving out the requisite details along with certified copy of the order instant within a period of four weeks from today. On receipt of the representation, the concerned respondent shall decide the same, in accordance with law within a period of eight weeks from the date of receipt of the representation and accord notional benefits to the petitioner from the date persons similarly situated to her and lower in merit were given appointment.

Upon consideration of the representation so filed, if respondents find the case of the petitioner to be covered by the judgment(s) aforesaid, before giving actual benefits, an undertaking shall be procured from the concerned petitioner to the effect that her rights/entitlements shall be subservient to the fate of the judgment(s) aforesaid and in case the same is reversed or modified in any manner, they shall also be liable for restitution of any benefits/emoluments so received. Stay application also stands disposed of accordingly.

(DR. PUSHPENDRA SINGH BHATI),J

230-Zeeshan/-