HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

S.B. Civil Writ Petition No. 13562/2020

Keshav Lal Kharadi S/o Shri Khamiya Kharadi, Aged About 37 Years, R/o Veripura, Post Dagal, Tehsil Ghatol, District Banswara (Raj.).

----Petitioner

Versus

1. State Of Rajasthan, Through The Secretary, Department Of Rural Development And Panchayati Raj, Govt. Of Rajasthan, Jaipur.
2. The Additional Commissioner-Cum-Joint Secretary, Rural Development And Panchayati Raj Department, Govt. Of Rajasthan, Jaipur.
3. The Chief Executive Officer, Zila Parishad, Banswara.
4. The Vikas Adhikari, Panchayat Samiti Ghatol, District Banswara.

----Respondents

For Petitioner(s) : Mr.JSBhaleria, through Cisco Webex
For Respondent(s) :

JUSTICE DINESH MEHTA

Judgment

17/12/2020

1. Learned counsel for the petitioner submits that in a matter involving identical issue i.e. Satdev Vs. Sate of Rajasthan & Ors. (SB Civil Writ Petition No.9899/2019), a Co-ordinate Bench of this Court on 25.07.2020 passed following order :-

> "This writ petition has been filed by the petitioner seeking a direction to the respondents to accord notional benefits from the date appointment was given to similarly situated persons in the year 2013.

It is inter alia indicated in the writ petition that pursuant to the LDC recruitment 2013 (Annex.1), the petitioner participated in the recruitment and was selected, however, appointment was not accorded on account of pendency of litigation before this Court,wherein, the petitioners who were contractual employees, had questioned termination of their services as contractual employees. After the litigation was over, by order dated 4.9.2017 (Annex.2),the petitioners were accorded appointment pursuant to the selections held in the year 2013.

It is inter alia indicated that petitioner was eligible in the year 2013, was duly selected pursuant to the selection process held by the respondents and was not accorded appointment only on account of pendency of litigation, which has apparently nothing to do with the eligibility of the petitioner and, therefore, according the appointment in the year 2017 and not providing the petitioner notional benefits, fixation etc. w.e.f. the date similarly situated persons were accorded appointment, are not justified. Reliance was placed on judgment in the case of Om Prakash & Ors. v. State of Rajasthan & Ors. : S.B. Civil Writ Petition No.21214/2017, decided on 21.11.2017.

Learned counsel for the respondents resisted the submissions made by learned counsel for the petitioner. It was submitted that as the petitioner has been accorded appointment in the year 2017, he is not entitled to any relief and, therefore, the writ petition filed by the petitioner deserves to be dismissed.

I have considered the submissions made by learned counsel for the parties and have perused the material available on record.

It is not in dispute that the petitioner was eligible in the year 2013 and his name found place in the list of selected candidates

in the year 2013 itself, however, on account of pending litigation which apparently had no relation with the eligibility of the petitioner, the appointment was not accorded to the petitioner and ultimately in the year 2017, the same was accorded to the petitioner, for which act of respondents, the petitioner cannot be penalized.

In case of Om Prakash (supra), in somewhat similar circumstances, relief was granted to the petitioners therein in light of 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 and relying upon the adjudication in the case of Suman Bai & Anr. v. State of Rajasthan & Ors. : 2009 (1) WLC (Raj.) 381.

In the case of Om Prakash (supra), the Bench at Jaipur after noticing orders in the case of Hemlata Shrimali (supra) and Suman Bai (supra) observed and ordered as under:-

> "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:
>
> > "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 where by 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.

In fact, 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 res judicata 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."

> The fact situation in the present case is not different from the case of Om Prakash (supra), wherein relief was granted on account of delayed appointment qua persons, who were lower in merit to the petitioners therein, while in the present case, similarly situated persons were accorded appointments. In view thereof, the writ petition filed by the petitioner is allowed in light of judgment in the case of Om Prakash (supra).The petitioner may make a representation to the respondents pointing out the requisite dates etc., based on which, the respondents would deal with the representation while according notional benefits to the petitioner from the date persons similarly situated to the petitioner, were accorded appointment by the respondents. Needful may be done by the respondents within a period of four weeks from the date such representation alongwith a copy of this order is placed by the petitioner before the respondents."

3. Thus, the present writ petition is disposed of with the direction to the respondents to decide representation of the petitioner within 30 days from the date such representation along with copy of this order is placed before the respondents in the same terms as in the matter of Satdev (Supra).

4. 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 petitioners from the date persons similarly situated to them and lower in merit were given appointment.

5. 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, she shall also be liable for restitution of any benefits/emoluments so received.

6. The stay application is also disposed of.

RAJASTHAN HIGH COURT

(DINESH MEHTA),J

124-CPGoyal/-

सत्यमेव जयते