
(2017) 01 RAJ CK 0030
In the Rajasthan High Court
Case No : 4112 of 2004

Anil Kumar S/o. Shri Jagwal Laduna

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 16-01-2017

Acts Referred:

Constitution of India, Article 16 -
Dissolution of a District or a Regional Council

Citation : (2017) 01 RAJ CK 0030

Hon'ble Judges : SANDEEP MEHTA

Bench : SINGLE BENCH

Advocate : NARPAT SINGH, ?SS RATHORE

Judgement

1. By way of this writ petition, the petitioners herein have approached this Court craving for issuance of a direction to the respondents to consider the candidature of the petitioners and to shuffle them in the cadre of Sub-Inspector (A.P.) according to their merit in O.B.C. category against the vacancies occurring on account of reshuffling undertaken in compliance of the order dated 13.1.2004 passed by this Court in writ petition no.250/1998 (Rao Anand Kumar vs. State of Rajasthan).
2. Facts in brief are that the petitioners herein belong to O.B.C. category. Both of them, having requisite qualifications as stipulated under the Rajasthan Police Subordinate Service Rules, 1989 (referred to herein after as

"the Rules of 1989") applied for selection as Sub Inspectors in pursuance of an advertisement dated 23.1.1996 issued by the respondents. In the advertisement, vacancies were advertised for the posts of Sub Inspector (A.P.) and Platoon Commander, Sub Inspector (R.A.C.). Total of 214 vacancies were advertised for Sub Inspector (A.P.) which were distributed as below :-

109 :- General Category

34 :- Scheduled Caste

26 :- Scheduled Tribe

45 :- Other Backward Class

3. The petitioners submitted their duly filled in application forms wherein they selected their preferences in the order (1) Sub Inspector (A.P.) and (2) Platoon Commander (R.A.C.). Upon appearance in the selection test conducted by the R.P.S.C., the petitioners were declared successful and were recommended for appointment as Platoon Commanders (RAC) as per select list issued by the R.P.S.C. The petitioners claim that two candidates Vinod Singh and Rajendra Kumar whose names are reflected at merit position no.123 and 125 in the select list were selected as S.I. (A.P.) in OBC category despite the fact that they should have been moved to the general category by applying vertical reservation as per Article 16 of the Constitution of India, thereby leaving 2 seats of OBC category to be filled by candidates lower in merit. Be that as it may, appropriate vertical reservation was not applied by the respondents and the petitioners were instead shown selected as Platoon Commanders (RAC) even though they were entitled to stake claim for the posts of Sub Inspector

(AP) in the OBC category. The petitioners have further set up a case that the selections of numerous candidates of general and scheduled caste category were cancelled. A few candidates did not join the posts of Sub Inspector (AP) thus also seats fell vacant and were required to be reshuffled. The petitioners claim to be mainly prejudiced by non-inclusion of the above named two candidates in general category because had they been moved vertically, the petitioners would have become entitled to the two seats of Sub-Inspector (AP) left vacant by the reshuffling.

4. An exactly identical controversy was raised by one Rao Anand Kumar, another OBC Category candidate by filing a writ petition no.250/1998. The petitioners upon coming to know of filing of the said writ petition moved an application for being transposed as petitioners therein. However, such application was rejected on 8.10.2003 with the observation that the petitioners had an independent cause of action and could file a separate writ petition. Pursuant thereto, the petitioners started collecting relevant documents so as to file a separate writ petition. However, before they could do so, the writ petition preferred by Rao Anand Kumar came to be allowed vide order dated 13.1.2004 and the Court directed that Vinod Singh and Rajendra Kumar be considered as belonging to general category and consequently, the resultant two posts would become available for the OBC category candidates and Rao Anand Kumar's case be considered by making appropriate reshuffling taking into account his choice and in accordance with his merit. The petitioners claim that by deemed effect of the aforesaid order dated 13.1.2004 and post reshuffling,

they too became entitled for consideration for selection as S.I. (A.P.) without even preferring an independent writ petition because they stood higher in merit as compared to Rao Anand Kumar. They filed a representation to the competent authority for giving appropriate effect to the judgment dated 13.1.2004. However, the representation thus submitted was not responded to whereupon the instant writ petition came to be filed.

5. The respondents have filed a reply to the writ petition with the assertion that the petitioners have preferred the writ petition with great delay. The directions given by this Court in Rao Anand Kumar's case vide judgment dated 13.1.2004 were in persona and not in rem. The petitioners joined duties as Platoon Commanders in the year 1997 and approached this Court at highly belated stage without any explanation for the inordinate delay. Thus, the claim of the petitioners to be considered for the post of Sub Inspector (AP) on the ground of reshuffling done in the said cadre pursuant to the judgment passed in Rao Anand Kumar's case is countenanced. A further case is set up in the reply that the vacancies occurring in the recruitment process in question were readvertised in the year 1998 and all the posts have since been filled under the fresh selection process conducted by the RPSC. The vacancies on which the petitioners stake their claim no longer exist and thus, they are not entitled to the relief claimed for.

6. Shri Narpat Singh learned counsel for the petitioner vehemently urged that the action of the respondents in not vertically applying OBC reservation in letter and spirit of Article 16 of the Constitution of India has resulted into the

petitioners being unjustifiably deprived of selection on the posts of Sub-Inspector (AP). He submitted that the delay in filing of the writ petition has no bearing on the right of the petitioners because no sooner they became aware of the writ petition preferred by Rao Anand Kumar, they moved an application for being impleaded as petitioners in that writ petition. However, this Court did not entertain the application by observing that the petitioners had their own independent cause to pursue and could do so by filing a separate writ petition. Immediately thereafter, the instant writ petition was filed. Thus, it was submitted that the plea of the respondents regarding the writ petitioner suffering from delay is not sustainable in law and that the petitioners should be extended the relief prayed for.

7. Per contra, Shri S.S. Rathore learned counsel for the respondents vehemently opposed the submissions advanced by the petitioners' counsel. He urged that the recruitment process was completed long back in the year 1998 itself. The petitioners waited for almost 5 years without any reason before raising a challenge to the selection process. Even after the petitioners' application for impleadment in Rao Anand Kumar's writ petition was dismissed by order dated 8.10.2003, the instant writ petition was filed after a delay of nearly 11 months. He further submitted that the specific plea of the respondents in the reply that the questioned recruitment process stands concluded and that the posts left vacant therein were filled in the subsequent selection process is not disputed. Thus, he urged that the writ petition should be rejected as being devoid of any merit and on count of suffering from laches.

8. I have considered the arguments advanced at the Bar and have perused the material available on record.

9. The fact that the petitioners' writ petition suffers from gross unexplained delay cannot be disputed. The petitioners have not even raised a semblance of plea that they were not aware of the so-called illegality in the action of the respondents prior to filing of the writ petition by Rao Anand Kumar. They joined the posts of Platoon Commander pursuant to their selection in the very same selection process. Thereafter, they moved the belated application (after nearly five years) for being transposed as petitioners in Rao Anand Kumar's writ petition. The application came to be rejected on 8.10.2003. Even thereafter, the instant writ petition came to be filed on 4.9.2004 i.e. after nearly eleven months. The selection process admittedly stands concluded long back in the year 1998 itself. The respondents have set up a specific case in their reply that whatever posts were left vacant in the questioned selection process were readvertised and have been filled up thereafter. In this background, this Court is of the opinion that the petitioners are not entitled to the relief claimed for in the instant writ petition which suffers from gross and unexplained laches.

10. In wake of the discussion made herein above, the writ petition is devoid of any merit and is hereby rejected.

11. No order as to cost.