
(2017) 03 RAJ CK 0165
In the Rajasthan High Court
Case No : 11994 of 2015

Bajrang Lal Meena

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 02-03-2017

Acts Referred:

[Constitution of India](#), [Article 226](#) -
Power of High Courts to Issue certain writs

Citation : (2017) 03 RAJ CK 0165

Hon'ble Judges : Nirmaljit Kaur

Bench : SINGLE BENCH

Advocate : S.S. Rathore, Manish Patel

Judgement

1. The prayer in the present writ petition is to allow the petitioner to join on the post of Lower Division Clerk (L.D.C.) in pursuance to the appointment Order dated 01.07.2013 with a further prayer to set aside the Order dated 17.10.2014 vide which the posts of L.D.C. in pursuance to the advertisement dated 14.02.2013 have been abolished.

2. The facts in short are that the petitioner was granted appointment on the post of L.D.C. vide Order dated 01.07.2013. He was required to join by 15.07.2013. The petitioner did not join by the said date. Thereafter, the present writ petition has been filed on 12.10.2015 i.e. after almost 2-1/2 years seeking a direction to allow him to join on the said post.

3. While praying for the relief, learned counsel for the petitioner contended that the order granting appointment was dispatched on 15.07.2013 itself i.e. on the date when he was required to join. Hence, he could not have joined on the same day. Accordingly, he went to join on 18.07.2013 but he was not permitted to join. It is stated that he has also filed his representation on 18.07.2013 itself but neither he was allowed to join nor his representation has been decided till date.

4. Reply has been filed. In the reply, it is denied that the respondents ever

received the representation of the petitioner or that he ever came to join. It is own case of the petitioner that he received the appointment order on 18.07.2013. In case that is so, it is not understood as to why he took 2-1/2 years to approach this Court. Not a word is mentioned in the petition explaining the said delay.

5. Learned counsel for the petitioner has relied on the Order dated 15.02.2017 passed by this Court in the case of Sunil Choudhary Vs. State of Rajasthan & ors. (S.B. Civil Writ Petition No. 745/2015) stating that the petitioner in that case was allowed to join as the selection was still going on and that the selection in pursuance to the advertisement dated 14.02.2013 was still being conducted as the respondents had not made the appointment on the ground that Civil Appeal Nos. 11406-11407 of 2016 (State of Rajasthan & ors. VS. Archana etc.) and other connected appeals were pending before the Apex Court, in which the stay was operating. Thus, the case of the petitioner too should be considered in view of the fact that the selection is still going on.

6. The order passed by this Court in the case of Sunil Choudhary (supra) does not help the petitioner inasmuch as in that case, the petitioner was denied appointment on the ground that the case was still pending and it was clarified that the posts of L.D.C. shall be filled after the matter regarding the bonus marks is decided by the Apex Court. Hence, it was incumbent in the said case upon the respondents to consider the petitioner after the appeal was dismissed by the Apex Court. The petitioner therein came to the Court after the respondents refused to appoint him even after the SLP stood dismissed. In the present case, the petitioner himself did not approach the Court for almost 2-1/2 years even after he was refused permission to join. There is no explanation coming forward for the delay in approaching this Court.

7. While dealing with the question of delay in filing the writ petition, the Apex Court in the case of Ex. Capt. Harish Uppal vs. Union of India reported in 1994 SCC, Supl. (2) 195 in para 8 held that : "8.The petitioner sought to contend that because of laches on his part, no third party rights have intervened and that by granting relief to the petitioner no other person's rights are going to be affected. He also cited certain decisions to that effect. This plea ignores the fact that the said consideration is only one of the considerations which the court will take into account while determining whether a writ petition suffers from laches. It is not the only consideration. It is a well-settled policy of law that the parties should pursue their rights and remedies promptly and not sleep over their rights. That is the whole policy behind the Limitation Act and other rules of limitation. If they choose to sleep over their rights and remedies for an inordinately long time, the court may well choose to decline to interfere in its discretionary jurisdiction under Article 226 of the Constitution of India and that is what precisely the Delhi High Court has done. We cannot say that the High Court was not entitled to say so in its discretion.

8. The relief under Article 226 of the Constitution of India is discretionary and

taking into account the unexplained delay of 2- 1/2 years in filing the writ petition, the same is dismissed on the ground of delay and laches.