

(2018) 04 RAJ CK 0066

In the Rajasthan High Court

Case No : Civil Misc. Application No. 165 of 2018, S.B. Civil Writ Petition
No.5554 of 2018

Bhupesh Kumar And Ors @APPELLANT@Hash State Of Rajasthan Ors.

Date of Decision : 11-04-2018

Acts Referred:

Citation : (2018) 04 RAJ CK 0066

Hon'ble Judges : VEERENDR SINGH SIRADHANA, J

Bench : Single Bench

Advocate : Raj. Kumar Goyal

Judgement

Matter comes up on a Misc. Application, with a prayer for correction of the clerical error in extraction of text of adjudication made in the case of

Babu Lal Meena & Ors. Vs. State of Rajasthan & Ors.:SBCWP No.144/2015, decided on 1st September, 2015. It appears that on account of clerical

error text extracted is of a different case though with the same cause title i.e. Babu Lal Meena & Ors. Vs. State of Rajasthan & Ors.

Upon hearing the counsel for the applicants and on a perusal of the order in the case of Babu Lal Meena & Ors. Vs. State of Rajasthan & Ors. in

SBCWP No.144/2015; the prayer merits acceptance.

Consequently, the extracted portion in the order dated 15th March, 2018, shall be read thus:

17. The fact regarding the petitioners' selection as L.D.Cs. in the recruitment process initiated in the year 2013 is not disputed. It is also an

admitted case of the parties that just a few days after issuance of the advertisement for direct recruitment of L.D.Cs., the Government issued another

advertisement for direct recruitment in subordinate services including the posts of Accounts Assistants which carry a higher pay scale than a L.D.C.

The petitioners were holding the requisite qualifications for appointment on both the posts and thus, applied at both the places. The Government realized the possibility of complications arising because of the overlapping selections and thus, consciously issued the letter dated 28.6.2013 whereby, the candidates selected as L.D.Cs. were given permission to apply for extension of joining time till the issuance of the appointment orders in the recruitment process for subordinate services. The authorities concerned, upon receiving such applications, were directed to ensure that the joining time is extended. The language of the letter carries an unexceptional direction to the concerned officer to extend the joining time of the applicant. The petitioners thus were absolutely justified in entertaining a genuine belief in their minds that upon the application for extension of joining time being submitted, they would be allowed such extension and they could join on the post of L.D.C. in case of non-selection in the subsequent recruitment process. It is further the undisputed case of the parties that the applications submitted by the petitioners have not been rejected by the concerned authorities till date. The selection process for subordinate services is still facing a road block of litigation.

The result has not been declared and no appointment orders have been issued. As per the letter dated 17.8.2015 placed on record by Mr.Panwar, numerous candidates viz. Sudarshan Shandilya, Prakash Garasiya, Vishal Kumar Vyas, etc. were given extension of joining time in reference to the letter dated 28.6.2013.

In the file of SB Civil Writ Petition No.9556/2014, the petitioners have placed on record a copy of the order dated 11.7.2013 whereby, the concerned B.D.O. has allowed deferment of joining to Ms.Anita Vijayvargiya, Mr.Surendra Kumar Vijayvargiya and Ms.Dimple Soni.

18. Learned AAG Mr.Panwar tried to stress upon the fact that the petitioners have breached the mandatory condition of the appointment order in as much as, they did not join on their post by the last date mentioned therein. As per him, since the appointment orders were issued subsequent to issuance of the letter dated 28.6.2013, the terms and conditions of the appointment order would supersede the above letter and consequently, such persons who did not join the post by the last date mentioned in the appointment order, would be deemed to have forfeited their right of appointment.

The appointment orders which were issued to the petitioners required them to join on different dates in the month of July, 2015. It was stipulated that

in case, the candidates concerned failed to join the post by the last date mentioned in the order, his/her appointment would stand cancelled.

This argument on the face of it is fallacious. The joining time could undoubtedly be stipulated with the issuance of the appointment orders and not prior

thereto. Thus, before the appointment orders were issued, there was no occasion for the candidates to seek extension of joining time. Hence, this

Court has no hesitation in holding that the requirement to extend the joining time would arise only after the issuance of the appointment orders and not

before that. Thus, the argument advanced by learned AAG Mr.Panwar that the order dated 28.6.2013 became non est and as the petitioners did not

comply with the terms of the appointment order, they cannot be allowed extension of joining time is noted only to be rejected.

19. The principle of promissory estoppel on which the learned counsel for the petitioners have banked upon for claiming relief is a doctrine based on

fairness. Admittedly, the petitioners were and even now are serving the respondent State on contractual basis on the posts of L.D.C. or equivalent

post for last number of years. It is not disputed that the State is in requirement of their services even as on date. The State, in order to avoid possible

future complications on account of overlapping selections in the two contiguous recruitment procedures, took a conscious decision of allowing

extension in joining time to the candidates who had applied and were successful in the direct recruitment process on the post of L.D.C. Thus, the State

is estopped from taking steps for de-sanctioning the remaining unfilled posts on which the petitioners are selected and in claiming that they have

forfeited their right to the posts. The judgment relied upon by the learned AAG in the case of Jitendra Kumar (supra) is entirely distinguishable on

facts because in that case, the writ petitioners therein were claiming appointment on the posts beyond the number of the posts advertised by the

Government. The Honâ??ble Apex court in the said situation held that if the State is right in its contention that the selection process being in cloud, no

appointment can be made, the Court by invoking any doctrine cannot ask the State to do so unless it arrives at a positive and definite finding that the

Stateâ??s stand is fraught with arbitrariness. Such is not the situation in the case at hand. There is no contention on behalf of the State that the

selection process is under a cloud. A major share of the vacancies have already been filled in with the joining of no less than 7765 successful

candidates. Thus, the petitioners who also are amongst the list of selected candidates, cannot be deprived of their right to be appointed.

In Jitendra Kumar's case (supra), the Hon'ble Supreme Court further observed that a legitimate expectation is distinct and different from an

anticipation or desire and hope. It was held that legitimate expectation is based on a right. It is grounded in the rule of law as requiring regularity,

predictability and certainty with the Government's dealings with the public. The doctrine of legitimate expectation operates both in procedural and

substantive matters. Considering the fact that the petitioners before the Hon'ble Supreme Court were claiming appointments beyond the posts

advertised for, the Hon'ble Supreme Court held that the doctrine of legitimate expectation could not operate in their cases.

The scenario in the cases at hand is entirely different and as a matter of fact, the ratio of Jitendra Kumar's case (supra) also helps the petitioners

to the hilt. The petitioners were successful in the recruitment initiated vide advertisement dated 14.2.2013 against the vacancies of L.D.Cs. which the

State itself has determined. A contiguous advertisement for selection in the subordinate services particularly, the post of Accounts Assistant was

issued by the State. The petitioners were having requisite qualifications for being inducted as Accounts Assistant and thus, they applied in the

subsequent selection process also. The State itself realized the possibility of complications in case overlapping selections were made in both the

selection procedures. Thus, by letter dated 28.6.2013 the authorities concerned were directed that if candidates selected on the post of L.D.C. desired

and applied for extension they shall be given extension of joining time till the issuance of appointment orders in subsequent advertisement in

subordinate services. The petitioners herein all applied for deferment of joining time. None of the applications has till date been rejected as per the

admitted case of the respondents. Some of the applications have even been expressly accepted as noted above. Thus, having applied for deferment of

joining time in terms of the State Government's letter dated 28.6.2013, the petitioners were totally justified in entertaining the legitimate

expectation that the extension of joining time would be granted to them and in the event of being unsuccessful in the endeavor of selection in

subordinate services, they could join on the post of L.D.C. The expectation was legitimate as the same was grounded on the State's own

letter/circular dated 28.6.2013.

In this background, the State cannot be permitted to retrace its steps and cannot be allowed to de-sanction the posts on which the petitioners have

virtually established a lien. The principle of promissory estoppel totally debars the State from taking such a step.

20. As a result of the aforesaid discussion, the instant writ petitions deserve to be and are hereby allowed. The respondents shall allow the petitioners

to join on their respective posts pursuant to their selection as L.D.Cs. in the questioned direct recruitment process of the year 2013. However,

(i) such of the petitioners who did not apply for extension of time shall not be entitled to join the post;

(ii) the petitioners shall not be entitled to claim seniority over and above the candidates who have already joined their posts pursuant to their selection.

Their names shall be placed at the bottom of the select list;

(iii) the petitioners shall be entitled to notional benefits from the date of the appointment order till the date of their joining. They shall join their

respective posts within a period of two months from the date of this order, failing which their appointment shall stand cancelled automatically.

With the corrections as indicated hereinabove; rest of the order dated 15th March, 2018, shall be maintained as such.

The respondents would do the needful in the backdrop of correction as indicated above.