
(2003) 04 RAJ CK 0056
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1210 of 2003

Brij Kishore Ranga

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 18-04-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 4 RLW 2177 : (2003) 3 WLC 234

Hon'ble Judges : P.C. Tatia, J

Bench : Single Bench

Advocate : P.P. Choudhary, for the Appellant; R.L. Jangid, A.A.G. and M.S. Singhvi, for the Respondent

Final Decision : Dismissed

Judgement

Tatia, J.—Heard learned counsel for the parties.

2. This Court issued notice for final disposal by order dated 26.3.2003. The interim order was passed by this Court relying upon the judgment of this Court in the case of Bahadur Singh v. State of Rajasthan and Ors. (1), and the respondents were directed to consider the case of the petitioner for grant of promotion to the post of Addl. Director (Mines) in the meeting which was to be held on the same day i.e. 26.3.2003. However, it was ordered that the result be kept in a sealed cover till further orders from this Court.

3. An application for being impleaded as a party on behalf of Shri D.S. Maru was submitted by the learned counsel Shri M.S. Singhvi on 27.3.2002. The said application of Shri D.S. Maru was allowed by this Court on 28.3.2003 as the learned counsel for the petitioner had no objection in impleading Shri D.S. Maru as party in the writ petition.

4. Another application was filed by Shri A.K. Kothari for being impleaded as party-respondent through his counsel Shri M.S. Singhvi on 31.3.2002. On 10.4.2003, when counsel for Shri A.K. Kothari raised objection against the continuation of

the stay order dated 26.3.2003, the petitioner's counsel submitted that the petitioner has not sought relief against the applicant Shri A.K. Kothari and Shri A.K. Kothari cannot be impleaded as party respondent despite the fact that because of the interim order in this petition recommendations of D.P.C. were kept in sealed envelope and Shri A.K. Kothari was also candidate whose candidature was considered by the D.P.C. and his fate is also sealed in sealed cover. After considering objection of the learned counsel for the petitioner and the facts of the case Shri A.K. Kothari was impleaded as a party.

5. The interim order which was passed on 26.3.2003 was clarified and modified by order dated 28.3.2003 by saying that the petitioner himself sought the relief with respect to the post for General Category only and the petitioner had intention to seek relief for order to keep the result of the D.P.C. in a sealed cover for general category and it was not disputed by the learned counsel for the petitioner. It was made clear that the respondent will be free to proceed with the matter of promotion with respect to the post of Addl. Director (Mines) reserved for SC/ST candidates and the decision with respect to General Category post may be kept in sealed cover.

6. The learned Addl. Advocate General appearing on behalf of the State submitted an application under Article 226(3) of the Constitution of India on 4.4.2003.

7. The petitioner submitted an application for amendment of the writ petition on 10.4.2003 along with the proposed amended writ petition.

8. On 10.4.2003, the learned Addl. Advocate General raised serious objection with respect to adjourning the matter in view of the fact that the Division Bench of this Court for this very post declined to grant stay order and there is no justification for extension of the stay order by this Court. The matter was adjourned as the court time was over and fixed today as first case, therefore, this case was listed as first case and heard.

9. The learned counsel for the petitioner vehemently submitted that S.B. Civil Writ Petition No. 2306/1999 filed by Shri A.K. Kothari, newly added party respondent, is pending before this Court and, therefore, this petition be heard along with S.B. Civil Writ Petition No. 2306/1999. The learned counsel for the petitioner even relied upon the order passed by me in entirely different matter Babu Singh Shekhawat and Anr. v. The State of Rajasthan and Anr. (2), having no relevance with controversy involved in this petition and submitted that "since there was similarity of dispute in those two writ petitions, therefore, this Court passed the order to list those two writ petitions together for final disposal. Therefore, similarly, this petition be heard along with writ petition No. 2306/1999 filed by Shri A.K. Kothari.

10. The learned counsel for the petitioner addressed on merit of the writ petition and submitted that in this writ petition, the petitioner is seeking relief of consideration of his candidature by the D.P.C. for promotion on the post of Addl.

Director (Mines). The petitioner is not challenging the recommendations of the D.P.C. as at the time of the filing of the writ petition the meeting of the D.P.C. was not convened but the petitioner had strong reasons to believe that candidature of the petitioner will not be considered by the D.P.C. as the petitioner's candidature will not be sent to the D.P.C. for consideration. According to the learned counsel for the petitioner, petitioner is eligible candidate and the respondents cannot refuse to consider petitioner's candidature for promotion to the post of Addl. Director (Mines) and non-consideration will result into promotion of a person junior to the petitioner and the petitioner will have to work under him, therefore, the petitioner can certainly maintain the writ petition at this stage to safeguard his rights.

11. The learned counsel for the petitioner also submitted that respondents are not considering the candidature of the petitioner on the ground of adverse entry, which was conveyed to the petitioner by letter dated 19th/20th Feb., 2003. Petitioner's representation against the above adverse entries is pending. The respondents cannot count said adverse entry against the petitioner because of the reason that as per Sub-rule 11-A of Rule 23-A of the Rules of 1960, ACRs up to the 1st April 2002 only are relevant and adverse entry communicated to the petitioner in the year 2003 cannot be looked into for grant of promotion in consideration, It is also submitted that the said adverse entry has not attained the finality, therefore, also respondents are required to ignore this adverse entry while considering the case of promotion of the petitioner.

12. The learned counsel for the petitioner also submitted that in view of the interim order passed by this Court on 26.3.2003, the sealed cover may be opened in court to find out whether the candidature of the petitioner has been considered or not in accordance with the direction issued by this Court in its interim order dated 26.3.2003. According to the learned counsel for the petitioner, from the reply and the application of the State, it is clear that the petitioner's candidature was wrongly considered which is in violation to the order passed by this Court on 26.3.2003.

13. The learned counsel for the petitioner referred the pleas which the petitioner wants to raise by amending the writ petition and tried to substantiate his pleas given in the proposed amended petition by relying upon the judgment of the Hon'ble Supreme Court delivered in the case of U.P. Jal Nigam and Ors. v. Prabhat Chandra Jain and Ors. (3).

14. The learned counsel for the respondent State vehemently submitted that the writ petition of the petitioner deserves to be dismissed as the petition has no merit. It is also submitted that the interim order passed on 26.3.2003 deserves to be vacated. The learned counsel Shri M.S. Singhvi seriously objected to the prayer of the petitioner to hear the present writ petition along with S.B. Civil Writ Petition No. 2306/1999 filed by the respondent Shri A.K. Kothari on the ground that there is no identity of facts or law or issue involved in the two writ petitions. The learned counsel Shri M.S. Singhvi, on merits submitted that this Court in a

subsequent judgment to the judgment relied upon by the learned counsel for the petitioner in the case of Manmohan Singhal v. The State of Rajasthan (4), held that cause of action for the petitioner to challenge the recommendations made by the D.P.C. can arise only when the State Government acts upon such recommendations and issues an order in accordance with the recommendations to the prejudice of the petitioner and till then the petitioner cannot have any cause of action to challenge the action of the respondent. The learned counsel for the respondent Shri M.S. Singhvi further relied upon the judgment of this Court delivered in Ram Gopal v. State of Rajasthan and Ors. (5), wherein, after considering the judgments of the Hon'ble Supreme Court, this Court held categorically that "it cannot be held that communicated ACR cannot be acted upon unless it has attained finality." This Court held that if that be held then Sub-rule 11B of Rule 28-A will become redundant and judgment relied upon by the learned counsel for the petitioner is a judgment delivered prior to introduction of Sub-rule 11-B of Rule 23-A of the rules of 1960, therefore, the judgment relied upon by the learned counsel for the petitioner has no application to the facts of this case.

15. The learned counsel for the respondent Shri N.S. Singhvi seriously opposed the opening of the recommendations of the DPC kept in sealed cover as per the interim order of this court, on the ground that since the petitioner was not entitled for any interim relief and merely because the candidature of the petitioner was considered in pursuance of the directions issued by this Court in interim order, this itself will not make the petitioner entitled for a relief flowing from the interim order unless and until the petitioner proves his case for the interim relief and further he is required to prove his right for getting relief of opening of proceedings of the D.P.C. kept in sealed cover. The petitioner is not entitled to take benefit of ex parte order in a manner to deprive the respondents from showing that the petitioner was not entitled for the interim order which was passed without hearing the respondents. If this mode is permitted then the petitioner will get entire relief without determination of his right to maintain even writ petition. It is also submitted that the petitioner has no right to challenge the action of the respondents before any decision is taken and thereby he has no right to know the result kept in sealed cover. It is also submitted that this Court in its interim order, to safeguard the interest of the parties, ordered to keep the recommendations in a sealed cover then unless a case is made out by the petitioner, there is no reason to open sealed cover. The learned counsel for the respondents also opposed the writ petition on merit by referring the judgments referred to above.

16. After hearing the arguments of learned counsel for the parties, I deem it proper to look into the conduct of the petitioner first. The learned counsel for the petitioner tried his best to avoid hearing of this writ petition after obtaining the stay order dated 26.3.2003 by saying that this petition be heard along with S.B. Civil Writ Petition No. 2306/1999 Just contrary to what has been argued vehemently by the learned counsel for the petitioner, the petitioner in his writ

petition, in para 15 very specifically submitted that Shri A.K. Kothari also filed S.B. Civil Writ Petition No. 2306/1999 and challenged the order of the Rajasthan Civil Service Appellate Tribunal passed on 23.4.1999 regarding consideration for promotion to the post of Superintending Mining Engineer. In this very para, the petitioner very specifically stated as under:-

"...but again the controversy involved in that case (S.B. Civil Writ Petition No. 2306/99) is nothing to do with the controversy involved in this case."

17. In the entire arguments, the learned counsel for the petitioner did not point out that this was the stand taken by the petitioner in the writ petition. When the learned counsel for the petitioner was asked to explain the stand of the petitioner taken in the writ petition and the contrary arguments advanced before the Court, the learned counsel for the petitioner admitted that the facts as well as the point of law involved in S.B. Civil Writ Petition No. 2306/1999 are entirely different and are not relevant for the purpose of deciding any point involved in this writ petition nor any point if decided in this petition will have any effect on the fate of the writ petition No. 2306/99. Such a conduct of the petitioner in court itself clear proof of abuse of process of the court by the petitioner. If petitioner, because of any reason, thought it a fit case to be heard with S.B. Civil Writ Petition No. 2306/99 then, misled this court by stating in the writ petition that controversy involved in above writ petition has nothing to do with the controversy involved in this petition and in case, what has been stated in the writ petition is true then the petitioner without pointing out that petitioner in his writ petition took a different stand and is making a request just contrary to the stand taken in the writ petition made a request for postponing the hearing of this petition since interim exparte order is in favour of the petitioner. This is not the end of the matter here. The petitioner submitted application for permission to amend the writ petition whereby he wants to add pleading to the effect that this writ petition be heard along with writ petition No. 2306/99. By this application, the petitioner sought permission to plead that A.K. Kothari is not eligible to be promoted to the post of Addl. Director (Mines), the post involved in this writ petition. Despite seeking permission to plead the facts challenging the A.K. Kothari's entitlement to promotion, despite the request of hearing of A.K. Kothari's writ petition along with this petition, learned counsel for the petitioner vehemently submitted that A.K. Kothari cannot be impleaded as party in this petition. Therefore, it is clear that petitioner can taken any stand may it be against his own pleadings, or may it be against oral submissions may it be against the nature of submission in the application to amend the writ petition. This conduct of the petitioner is sufficient to disentitle the petitioner from seeking any relief from this court.

18. Learned counsel for the petitioner further vehemently submitted that Mr. A.K. Kothari "obtained" the stay order in his writ petition No. 2306/99 in the matter of promotion of the petitioner and in this petition respondent submitted that unless promotion order is passed by the Government, action of the state cannot be

challenged. Therefore, in case stay order passed in this petition is vacated and it is held that petitioner's this writ petition is not maintainable then the writ of the A.K. Kothari may also be dismissed and the stay order granted in that writ petition may also be vacated. Learned counsel for the petitioner frankly admitted that the writ petition has been filed against the order passed by the Raj Civil Service Appellate Tribunal. The relevant fact at this stage is that the petitioner has filed this petition straightway in the High Court under Article 226 of the Constitution of India. The writ petition No. 2306/99 was filed in the year 1999 and petitioner is party respondent in that petition. The petitioner could not persuade the High Court to vacate the stay order granted years ago in that writ petition but wants this court not to hear this petition filed about two days before the date for convening the DPC and State is vigilantly opposing the stay order and requesting for vacating the stay order granted in this petition in addition to serious opposition by the private respondent. It becomes glaring example of misuse of technicalities of law when an order to hear two petitions together passed in other petition is sought to be used in different (this) writ petition, knowing it well that, that order was not passed between the parties of this petition, those matters have no relevance to the facts of this case, the order is not a decision on the point of law. This conduct of the petitioner is relevant as the petitioner took this stand after having an interim order of consideration of his candidature and in pursuance of that interim order petitioner's candidature has been considered. Ultimately reason for request to hear the other writ petition No. 2306/99 along with this petition was disclosed by the learned counsel for the petitioner by saying that in case petitioner will not get relief in this petition, he may be able to get the change, if the writ petition filed by the respondent A.K. Kothari is dismissed by this court which is pending since last four years. This conduct of the petitioner shows that the petitioner lost his interest in getting relief in his petition after getting the interim order of consideration of his candidature in pursuance of the interim order of this court and therefore, prayed in court that recommendations of the DPG kept in sealed cover may be opened in court resulting into getting relief of consideration of his candidature and declaration of result of the recommendations of the DPC. Interim order to consider candidature of the petitioner was passed by this court to safeguard the interest of the petitioner but now the petitioner wants this indulgence of the court as a foundation of his right to ask for opening of sealed recommendations of DPC ignoring the fact that the interim order was ex parte order and the rights of the respondents are very much there to show that interim order itself deserves to be vacated. This conduct disentitles the petitioner from seeking relief of opening of recommendation of the .D.P.C. Therefore, sealed recommendations of DPC cannot be opened and the ex parte interim order passed by this Court cannot be permitted to be used for getting unauthorised access to official files (in this case access to the recommendation of the DPC) as held in Manmohan Singhal's case (supra).

19. Before parting with, it will be necessary to examine whether the application

for amendment of the writ petition can be allowed. As held above, the writ petition of the petitioner itself has been found to be not maintainable, therefore, there arises no question of permitting the petitioner to amend the writ petition. The application for amendment of the writ petition further deserves to be dismissed on the ground that if amendment as sought is allowed it will change the nature of the writ petition. Writ seeking relief of consideration of petitioner's candidature by the DPC on the ground that the lis in original petition is only between the petitioner and the State, will stand converted into lis more between petitioner and private respondent that too on entirely new grounds and the grounds, which were not relevant in original petition will become relevant. Not only this but by amendments, the petitioner wants to add that the petitioner came to know from reliable source that he was down graded to two steps below in his APR for the year 2000-2001 by the reviewing authority, though no such communication ever was made to the petitioner. It is also submitted in the proposed amendments that the down grading was never communicated to the petitioner and it is also submitted that this has prejudicially affected the rights of the petitioner for consideration of the petitioner against the writ quota. This amendment will also change the nature of the writ petition and the disputes which are necessarily required to be decided by the statutory appellate authority are raised by the petitioner. Therefore, the amendment application is dismissed.

20. Since in view of the judgments referred above of this Court, the petitioner has statutory remedy available under the Rules of filing appeal in case recommendations of the D.P.C. are accepted by the Appointing Authority/State Government and that goes against the petitioner. Therefore, this Court do not feel inclined to examine the points raised by the petitioner as it may affect the merits of the case of either party before knowing the recommendations of the D.P.C. and without knowing whether the State Government will pass any order and whether that order will go against the petitioner or against the contesting private respondent, in addition to the reason that the petitioner is not entitled for getting any relief as the petitioner has not come with clean hands and his conduct disentitles him for any relief under extra ordinary jurisdiction under Article 226 of the Constitution of India.

21. Hence, the writ petition of the petitioner is having no force and is hereby dismissed.