
(2001) 04 RAJ CK 0065

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1251 of 2001

Chief Engineer and Another

APPELLANT

Vs

Premchand and Another

RESPONDENT

Date of Decision : 20-04-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2002) 2 RLW 1104

Hon'ble Judges : B.J. Shethna, J

Bench : Single Bench

Advocate : Abdul Latif, for the Appellant;

Final Decision : Dismissed

Judgement

B.J. Shethna, J.—Only contention raised in this petition by learned counsel Abdul Latif for the petitioners was that the learned Tribunal without considering the Notifications dated 31.1.1980 and 13.5.1981, which were annexed to the reply filed by them before the Tribunal, allowed the appeal filed by the respondent-appellant. He submitted that the regularisation of an employee can be done from the date of passing performance test as per the aforesaid notifications and in the instant case the respondent No.1 original appellant before the Tribunal had passed his performance test on 23.12.80, therefore, his regular appointment can only be counted from 23.12.1980 on the post of LDC and not from 1977 as ordered by the Tribunal.

2. From the impugned order at Annex. 6, passed by the learned Tribunal, it appears that this point was never argued or pressed into service. However, learned counsel Shri Abdul Latif for the petitioners states that though this point was specifically argued but the same was not dealt with. There is no averment made in the writ petition to this effect, therefore Mr. Abdul Lalif was asked that on what basis he made the submission, thereupon, he submitted that a concerned clerk from the department who came to entrust the file of this case staled this. Such submission cannot be accepted. It may be that this point might

have been taken in the reply filed to the appeal before the Tribunal but the contentions raised in the reply has to be specifically argued before the Court. If the point was really argued and not dealt with by the learned Tribunal in the impugned order then they should have first approached the learned Tribunal by way of a review as per the judgment of the Supreme Court in case of State of Maharashtra v. Ramdas Shrinivas Nayak (1). However, this Court cannot permit such contentions to be raised in the writ petition.

3. From the order of the learned Tribunal, it also appears that the appeal was allowed by the Tribunal relying upon the judgment of this Court in case of State of Rajasthan v. Rajendra Kumar Verma, (2). The aforesaid judgment of the learned Single Judge of this Court squarely covers the matter against the present petitioners.

4. Except the aforesaid contention, no other contention was raised.

5. In view of the above, this petition fails and is dismissed.