
(2020) 02 RAJ CK 0127

In the Rajasthan High Court

Case No : Civil Writ Petition No. 14736 Of 2019

Debilal Upadhyay

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 05-02-2020

Acts Referred:

Rajasthan Education Subordinate Service Rules, 1971 — Rule 20, 21

Citation : (2020) 02 RAJ CK 0127

Hon'ble Judges : Dinesh Mehta, J

Bench : Single Bench

Advocate : Pawan Singh Rathore, Piyush Bhandari, Sunil Beniwal

Final Decision : Disposed Of

Judgement

1. Pursuant to order of appointment dated 05.07.2013, the petitioner was required to join by 19.07.2013.
2. Before petitioner could join, this Court vide interim order dated 15.07.2013, restrained the respondents from granting appointment and proceeding further in the process of recruitment for the post of LDC.
3. According to the petitioner, he was not allowed to join in face of the above interim order dated 15.07.2013.
4. When the controversy pending before the Supreme Court was settled, the respondents took up the process and petitioner was allowed to join on 23.08.2018.
5. Claiming that he is entitled for seniority and notional benefits from the date of order of appointment, the petitioner preferred a writ petition being S.B. Civil Writ Petition No.6675/2019, which came to be disposed of by this Court vide order dated 29.05.2019 with the following directions:

"6. I am not inclined to accept the argument of the learned counsel for the respondents No.4 to 8 that the judgment of the learned Single Judge should be

so read so as to infer therefrom that though the petitioners would be entitled to claim appointment but not seniority above the candidates who are already appointed even though they admittedly are above them in the merit list. Infact, the judgment of the learned Single Judge merely reiterated the direction of the Division Bench in Hari Ram (supra) in favour of the petitioners. But construction of that judgment in the manner in which the respondents want this Court to do, would negat the mandate of the Rules 20 and 21 of the Rajasthan Education Subordinate Service Rules, 1971, which requires seniority to be assigned as per the inter-se merit of 7 the candidates in the merit list based on common selection. Even otherwise, no such intention of the Court is discernible from reading of that judgment. Mere appointment of the petitioner was a sufficient compliance of the judgment and not total compliance was the view taken by this Court also when contempt petition filed by the petitioners was dismissed. Question with regard to correct and wrong assignment of seniority having arisen subsequent to appointment of the petitioners would obviously give rise to a afresh cause of action. The writ petition filed by the petitioners, therefore, cannot be thrown either barred by resjudicata or otherwise improperly constituted.

7. In the result, this writ petition is allowed and the respondents are directed to treat the petitioners senior to respondents No.4 to 8 as per their placement in the merit list."

6. In furtherance of the judgment dated 29.05.2019, passed by this Court, the petitioner moved a representation dated 17.06.2019 and requested the Chief Executive Officer, Zila Parishad, Dungarpur to accord seniority from the date of initial appointment.

7. Petitioner's aforesaid representation has been rejected by the respondent No.5, vide order impugned dated 17.09.2019 inter alia observing that petitioner himself was at fault in not joining by the date provided in the appointment order dated 05.07.2013.

8. It will be apt to reproduce relevant para of the order dated 17.09.2019, which reads thus:-

"याचिकार्थी द्वारा प्रस्तुत वर्ष 2013 से काल्पनिक लाभ के संबन्ध में प्रस्तुत अभ्यावेदन में परीक्षण करने पर यह पाया गया की याचिकार्थी को विभाग द्वारा वर्ष 2013 में चयन किया गया था, किन्तु उनके द्वारा कार्यग्रहण नहीं किया गया जो की श्री देबीलाल उपाध्याय के स्वयं की गलती थी, उन्होंने वर्ष 2013 में कार्यग्रहण नहीं किया इसमें विभाग द्वारा कोई लापरवाही नहीं की गई तथा जिसके लिए याचिकार्थी स्वयं जिम्मेदार हैं।

अतः याचिकार्थी के स्वयं की लापरवाही के कारण इनको वर्ष 2013 से वरिष्ठता निर्धारण एवं काल्पनिक लाभ देने संबंधी अभ्यावेदन को निरस्त किया जाता है।"

9. Mr. Pawan Singh, learned counsel for the petitioner argued that the appointment order dated 05.07.2013 required the petitioner to join by 19.07.2013, however, as this Court had stayed the recruitment process on 15.07.2013, the petitioner could not give his joining.

10. Learned counsel argued that the impugned order dated 17.09.2019, passed by the respondent No.5 is not only contrary to facts and law, but also in defiance of the judgment dated 29.05.2019, passed by this Court.

11. Mr. Piyush Bhandari, learned counsel for the respondents submitted that the petitioner ought to have joined prior to 15.07.2013, as has been done by many other candidates instead of waiting until last date. He added that petitioner cannot take advantage of his own fault of not joining on the post in furtherance of the appointment order.

12. Having heard learned counsel for the parties and upon perusal of the record, this Court is of the firm opinion that the order impugned dated 17.09.2019 is arbitrary and vindictive. The stand taken by the respondent No.5 that the petitioner himself was at fault in not joining on the post shows stubbornness of the officer concerned.

13. The facts duly reflected in petitioner's representation makes it clear that the petitioner was not at fault.

14. The petitioner could not have dreamt that this Court would stay the entire process of selection. By 15.07.2013, he had four days at his disposal, hence, the petitioner was justified in not offering his joining.

15. The reasoning given in the impugned order unravels vindictiveness and disregard for the adjudication made by this Court. All what has been prayed by the petitioner was notional benefits from the date of appointment i.e. 05.07.2013.

16. As an upshot of the discussion foregoing, the writ petition is allowed with a cost of Rs.5000/-.

17. It is declared that the petitioner's date of joining shall be notionally counted from 19.07.2013.

18. The petitioner shall not claim any pecuniary benefits for the period 19.07.2013 till the actual date of joining i.e. 23.08.2018.

19. The respondent No.5 is directed to carry out requisite entries in petitioner's service record.

20. The cost of Rs.5,000/- has been imposed for undue harassment meted out to the petitioner and same shall be personally borne by the respondent No.5.

21. The Principal Secretary, Department of Rural Development and Panchayati Raj, Government of Rajasthan, Jaipur is directed to deduct a sum of Rs.5,000/- from the salary of Mr. Chandmal Verma, RAS, author of the order impugned dated 17.09.2019 and pay it to the petitioner. A compliance report be filed within six weeks from today.

22. Registry is directed to send a copy of the order to Principal Secretary, Department of Rural Development and Panchayati Raj, Govt. of Rajasthan, Jaipur for doing the needful.

23. Stay petition also stands disposed of accordingly.

24. The matter, though, stands disposed of for statistical purposes, however, the same be listed in Court on 03.04.2020 at 2.00 PM with the compliance report.