

(1997) 09 RAJ CK 0039
In the Rajasthan High Court
Case No : Civil Special Appeal No. 776 of 1997

Deenbandhu Parmar

APPELLANT

Vs

Rajasthan State Mineral Development Corporation Ltd. and
Another

RESPONDENT

Date of Decision : 09-09-1997

Acts Referred:

Rajasthan State Mineral Development Corporation (Recruitment and Promotion) Rules,
1980 — Rule 13

Citation : (1998) 2 RLW 710 : (1998) 2 WLC 246 : (1997) 2 WLN 528

Hon'ble Judges : M.P. Singh, J;B.S. Chauhan, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

B.S. Chauhan, J.—The instant appeal has been filed against the judgment and order dated 21.5.1997 passed by the learned Single Judge in S.B. Civil Writ Petition No. 13/1991 by which the claim of the appellant for substantive appointment on the post of Accountant has been rejected.

2. The factual matrix of the case reveals that appellant was appointed as a Time Keeper on 11.2.1970 in the respondent Corporation and thereafter he was promoted as Junior Assistant with effect from 1.1.1972. Subsequently he was promoted as Senior Assistant with effect from 1.10.1972. Vide order dated 7th October, 1982, contained in Annex. 1 to the writ petition. The appellant was appointed as Accountant on adhoc basis for a period of six months or till a candidate duly selected by the Selection Committee was available, which ever was earlier. The appellant was promoted as Group Officer vide order dated 12.12.1990 contained in Annex 3 to the writ petition. Appellant being aggrieved and dissatisfied, filed the writ petition asserting that though his appointment to the post of Accountant had been for a maximum period of six months as he was allowed to continue till 12.12.90 as Accountant, he was entitled for substantive appointment on the said post.

3. Respondents filed the counter affidavit contending that the continuation on the appellant after a period of six months was in flagrant contravention of Rule 13 of the Rajasthan State Mineral Development Corporation (Recruitment and Promotion) Rules, 1980 (hereinafter called the Rules) and, thus, he could not claim any benefit, if he had illegally, been allowed to hold the said post after the expiry of six months. It was further contended by the respondent Corporation that appellant did not possess the requisite qualification for the post of Accountant. A graduate with three years experience as Senior Assistant was eligible to be considering being appointed as Section Incharge but for the appointment to the post of Accountant, an additional qualification was provided as under:

Till such time the cadre of Senior Assistants is not bifurcated between Sr. Assistant (Accounts) and Sr. Assistants, the promotion will be granted after departmental test comprising of two papers i. e. Book Keeping and Accounts (for non-commerce Graduates) and Departmental Rules and Procedures (for all).

4. The learned Single Judge, after hearing counsel for parties came to the conclusion that the appellant was neither possessing the requisite qualification for the post of Accountant nor he passed the tests as required under the said rules. Rule 14 of the said rules empowered the Managing Director to relax the educational qualification but no order granting such relaxation was ever passed in favour of the appellant. The learned Single Judge vide impugned judgment and order dismissed the writ petition holding that after expiry of six months period, the appellant had no right to continue on the post and as he did not possess the requisite qualification and no relaxation order was ever passed in his favour nor the appellant had passed the departmental examination, he could not be held entitled for substantive appointment to the said post. Being aggrieved and dissatisfied, appellant preferred the instant appeal.

5. Heard Sri. M. Mridul, Sr. Advocate, assisted by Sri. Salil Trivedi, for the appellant.

6. Sri Mridul has stoutly urged that eligibility criteria or requisite qualification loses its significance if an employee is appointed and allowed to work for a fairly long period. To fortify his submission, he placed reliance upon the judgment of the Hon'ble Supreme Court in Bhagwati Prasad Vs. Delhi State Mineral Development Corporation, wherein it has been observed that the question of requisite qualification has to be seen at the time of initial appointment and not at the time of confirmation as by that time the employee gains sufficient experience by working for several years. The learned Single Judge found the aforesaid judgment inapplicable in this case for the reason that officiating appointment could not have been allowed to continue beyond a period of six months as provided under Rule 13 of the said rules and on the completion of the said stipulated period, the appellant had no right to continue on the post of Accountant inspite of the fact that no reversion order was passed. We are in respectful agreement with the said reasoning. In Director, Institute of

Management Development, U.P. Vs. Smt. Pushpa Srivastava, , the Hon"ble Apex Court has categorically held that a contractual and adhoc appointment comes to an end by efflux of time and incumbent on such a tenure post ceases to hold the post automatically as per the terms and conditions of his appointment and he has no right to continue in the post and claim regularisation in absence of the rules providing for regularisation.

7. Sri Mridul referred to and relied upon judgments of the Hon"ble Supreme Court in Khagesh Kumar and others Vs. Inspector General of Registration and others, and State of Haryana and others Vs. Piara Singh and others etc. etc., The aforesaid cases are of no help to the appellant as the said cases deal with the issue of regularisation. In Khagesh Kumar's case (Supra), the Apex Court has categorically held that only those persons, who had been appointed as daily wagers/on adhoc/temporary basis prior to 1.10.1986 would be entitled to be considered for regularisation as per the statutory rules framed for regularisation as the Rules applicable therein provided for regularisation of those employees who had completed three years continuous service on 1.10.1989. Employees appointed subsequent to 1.10.1986 were held not to be entitled to continue in service.

8. The issue of eligibility has been considered by the Supreme Court in Smt. Ravinder Sharma and Another Vs. State of Punjab and Others, Harpal Kaur Chahal (Smt) v. Director, Punjab Instructions State of Madhya Pradesh v. Shyama Pardhi 199...118; Dr. S.K. Kacker v. All India Institute of Medical Sciences and Ors. 1996(8) JT 513 and State of Rajasthan v. Hitendra Kumar Bhatt 1997 (7) J.T. 287, wherein it has been held that appointments made in contravention of the recruitment Rules are illegal and persons so appointed, have been found ineligible even to continue after completing several years, in service. In Harpal Kaur Chahal's case (supra), the Hon"ble Supreme Court rejected the contention of the petitioner therein that she had already worked for sixteen years and should be allowed to continue on the post she was holding.

9. The rules providing the mode of recruitment/promotion have to be followed and cannot be ignored. In Sirsi Municipality v. Cocelia Kom Francis Tellis AIR 1973 SC 856, the Supreme Court observed that "the ratio is that the rules or the regulations are binding on the authorities".

10. Similarly, the Constitution Bench of the Supreme Court in Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, has observed as under:

The statutory authorities cannot deviate from the conditions of service. Any deviation will be enforced by legal sanction of declaration by courts to invalidate actions in violation of rules and regulations. The existence of rules and regulations under statute is to ensure regular conduct with a distinctive attitude to that conduct as a standard. The statutory regulations in the cases under

consideration give the employees a statutory status and impose restriction on the employer and employee with no option to vary the conditions. An ordinary individual in a case of master and servant contractual relationship enforces breach of contractual terms. The remedy in such contractual relationship of master and servant is damages because personal service is not capable of enforcement. In cases of statutory bodies, there is no personal element whatsoever because of the impersonal character of statutory bodies. In the case of statutory bodies, it has been held that the element of public employment or service and the support of statute require observance of rules and regulations.

11. Similar view has been taken by the Supreme Court in *Ambica Quarry Works v. State of Gujarat and Ors.*, (1987) 1 SCC 213

12. It has been canvassed on behalf of the appellant that in a case, like instant, the court should have some sympathetic view towards the appellant. In *Hitendra Kumar Bhatt's case* (supra), the Apex Court has observed that in a case where a person, not eligible to hold a post, is holding a post under some peculiar circumstances, he cannot be given any sympathetic treatment, as it is settled law that relaxing the prescribed requirements in a case of one individual, may cause grave injustice to others. Similarly in the case of *Gurdeep Singh Vs. State of Jammu and Kashmir and others*, Supreme Court observed as under:

We are afraid, unduly lenient view of the courts on the basis of human consideration in regard to such excesses on the part of the authorities, has served to create an impression that even where an advantage is secured by stratagem and trickery. It could be rationalised in courts of law. Courts do and should take human and sympathetic view of matters. That is the very essence of justice. But considerations or judicial policy also dictate that a tendency of this kind where advantage gained by illegal means is permitted to be retained will jeopardise the purity of selection process itself, endanger cynical disrespect towards the judicial process and in the last analysis embolden errant authorities and candidates into a sense of complacency and impunity that gains achieved by such wrongs could be retained by an appeal to the sympathy of the court such instances reduce the jurisdiction and discretion of courts into private benevolence. This tendency should be stopped.

13. The mandate issued by the Hon'ble Supreme Court from time and again does not permit this Court to adopt any lenient view in this matter.

14. In view of the above, the appeal is devoid of any merit and is dismissed accordingly.