
(2011) 10 CHH CK 0019
In the Chhattisgarh High Court
Case No : Writ Appeal No. 29 of 2011

D.S. Paroha

APPELLANT

Vs

State of C.G. and Others

RESPONDENT

Date of Decision : 18-10-2011

Acts Referred:

Citation : (2011) 2 CGBCLJ 472

Hon'ble Judges : Sunil Kumar Sinha, J; R.S. Sharma, J

Bench : Full Bench

Advocate : L.S. Singh, with Mr. P.S. Koshy and Mr. N. Naha Roy, for the Appellant; A.S. Kachhawaha, Dy. Advocate General for the State for Respondent No. 1. Mr. Sumesh Bajaj, Advocate for Respondent No. 2, Mr. P.K. Verma with Mr. P.R. Patankar, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Sunil Kumar Sinha, J.—Respondent No. 3/petitioner, after completing his B.E. (Civil) in the year 1978, was appointed as Junior Engineer in Raipur Development Authority (for short "RDA") on 19.10.1979. The appellant was appointed as Assistant Engineer in RDA on 28.05.1980. Respondent No. 3 claimed before the writ Court that the State Government, by order dated 27.05.1980, took a decision to treat all the graduate Junior Engineers as Assistant Engineers and Diploma holders as Sub-Engineers. The local bodies of the State Government adapted the aforesaid decision of the Government. The RDA also resolved on 04.09.1981 to abolish the post of Junior Engineer and to have the post of Assistant Engineer and Sub-Engineer by fixing the cut-off date to the said nomenclature on 27.05.1980. Further, an order dated 10.09.1981 was also passed treating respondent No. 3 as Assistant Engineer. Respondent No. 3 therefore, was senior to the appellant as he became Assistant Engineer on 27.05.1980 and the appellant was appointed as Assistant Engineer on 28.05.1980. Later on, by an order dated 31.12.1987, the appellant and respondent No. 3 both were promoted to the post of Executive Engineer, but the

name of respondent No. 3 in the gradation list of Assistant Engineer was below the name of the appellant. Therefore, a representation was filed and when no action was taken on the representation and there was likelihood of further promotion to the post of Chief Engineer, respondent No. 3 filed the writ petition for grant of promotion to the post of Chief Engineer by treating his seniority as Assistant Engineer w.e.f. 27.05.1980. On 29.06.2006 the representation of respondent No. 3 was rejected. Thereafter by amendment dated 18.11.2006 the order of rejection of the representation was also challenged by respondent No. 3. The writ Court held that respondent No. 3 was promoted as Assistant Engineer w.e.f. the date, the cadre of Junior Engineer came to an end. The writ Court further held that by order dated 27.05.1980 (Annexure-P/2 in writ petition), the post of Junior Engineer was abolished and the graduate Engineers were directed to be treated as Assistant Engineer with immediate effect. The writ Court also held that on combine reading of the circular dated 27.05.1980 (Annexure-P/2) and subsequent order dated 10.09.1981 (Annexure-P/4 in writ petition), it was evident that respondent No. 3 was born in service as Assistant Engineer on 27.05.1980 and the appellant born as Assistant Engineer on 28.05.1980, and thus, respondent No. 3 was senior to the appellant. Respondent No. 3 became Assistant Engineer immediately on 27.05.1980 when the cadre of Junior Engineer was closed and all graduate Engineer started working as Assistant Engineer. The writ Court, thus, quashed the order dated 29.06.2006, i.e. order rejecting the representation and directed the respondent authorities to consider the case of respondent No. 3 as well as appellant for selection and promotion on the post of Chief Engineer, in accordance with law.

2. Mr. L.S. Singh, learned Sr. Counsel appearing on behalf of the appellant, would submit that the circular dated 27.05.1980 (Annexure-P/2 in writ petition) was exclusively for Irrigation Department, therefore, it cannot be made applicable to RDA/local bodies. It was on 04.09.1981, a decision was taken by RDA for promotion of respondent No. 3 from the post of Junior Engineer to the Assistant Engineer, but there was no decision either to adapt the circular of the Irrigation Department or to give or treat the promotion w.e.f. any earlier date, therefore, on account of circular of the Irrigation Department no benefit could have been extended to respondent No. 3 and the decision of the learned Single Judge, based on the above circular was not justified. He also argued that thereafter by a subsequent order 10.09.1981 a promotion order was issued to respondent No. 3 and thus, respondent No. 3 was promoted to the post of Assistant Engineer on 10.09.1981 and he cannot be held to be Assistant Engineer w.e.f. 27.05.1980. On the above argument, he also supported the decision taken on the representation of respondent No. 3.

3. On the other hand, learned appearing on behalf of respondent No. 3, opposed these arguments and supported the judgment and order passed by the writ Court.

4. Learned counsel for the State has supported the contention raised by learned

counsel for the appellant, whereas learned counsel for respondent No. 2 has supported the case of respondent No. 3.

5. We have heard learned counsel for the parties at length and have also perused the records of the writ petition.

6. A perusal of the order dated 27.05.1980 (Annexure-P/2 in writ petition and Annexure-A/6 in writ appeal) would make it clear that the above order was with relation to the employees of the Irrigation Department and not with relation to the employees of local bodies or the Raipur Development Authority (RDA). Neither the language of the order nor the contents or endorsements anywhere communicate that it shall also be made applicable to the other departments of the State Government particularly local bodies or bodies like RDA. The learned Single Judge has held as if the order/circular dated 27.05.1980 was applicable with equal force to the RDA also and the Junior Engineers, like respondent No. 3, working in the RDA would become Assistant Engineer w.e.f. the date of said order i.e. from 27.05.1980. This cannot be held to be correct. This order was exclusively with relation to Irrigation Department and it was not automatically applicable to the RDA and respondent No. 3 cannot be treated as Assistant Engineer w.e.f. 27.05.1980 by virtue of the said order/circular dated 27.05.1980 issued by the Irrigation Department. RDA had decided to promote his two Junior Engineers including respondent No. 3 as Assistant Engineers by its meeting dated 04.09.1981 (Annexure P/3 in writ petition and Annexure-A/8 in writ appeal) and thereafter an order of promotion dated 10.09.1981 (Annexure-P/4 in writ petition and Annexure-A/9 in writ appeal) was issued in favour of respondent No. 3 who joined on the promoted post of Assistant Engineer on 10.09.1981 (Annexure-A/10). Neither in the decision dated 04.09.1981 nor in the order dated 10.09.1981, it was mentioned that the promotion of respondent No. 3 shall be effective retrospectively i.e. w.e.f. 27.05.1980 as has been held by the writ Court. Therefore, the finding of the writ Court that respondent No. 3 born in the cadre of the Assistant Engineer w.e.f. 27.05.1980 cannot be sustained. In fact. The State Government on 31.08.1982 (Annexure-P/7 at page 42 of the paper book of appeal) issued an order/circular to all the local bodies/Special Area Development Authorities etc. for converting the post of Junior Engineers to Assistant Engineers. It is clearly mentioned in this order/circular that the above order/circular would be made applicable from the date of its issuance. Be that as it may, since these are not under challenge before us, we are not going to examine the effect of circular dated 31.08.1982, but in any case, it cannot be held that respondent No. 3 was promoted or he would be treated or his post was held to have been converted as Assistant Engineer w.e.f. 27.05.1980.

7. The State Government has also recorded similar findings while rejecting the representation of respondent No. 3 on 29.06.2006 (Annexure-P/12). It has held that when respondent No. 3 became Assistant Engineer on 10.09.1981, he would not have been shown as Assistant Engineer from 27.05.1980 in the gradation list showing the position as on 01.07.1995, because since 25.10.1979 i.e. date of

joining as Junior Engineer in RDA by appointment order dated 19.10.1979 (Annexure-P/1 in writ petition) till 10.09.1981 (prior to the passing of the promotion order) he was Junior Engineer. Merely on account of such entry, which was wrong, he cannot seek advantage on it. On the above facts, we do not find fault so as to quash the order dated 29.06.2006 (Annexure-P/12) passed on representation of respondent No. 3. We are of the view that the writ Court fell into error while quashing the said order dated 29.06.2006 (Annexure-P/12).

8. On due consideration of the entire facts and circumstances of the case, the impugned judgment and order passed by the writ Court on 12th of November, 2010 cannot be sustained and the same deserves to be set-aside. Accordingly, the Writ Appeal is allowed. The impugned judgment and the findings recorded by the writ Court in W.P. No. 2816/2005 are set-aside. The above writ petition filed by respondent No. 3 stands dismissed with no order as to cost.