

(2021) 03 RAJ CK 0008

In the Rajasthan High Court

Case No : Civil Writ Petition No. 4034 Of 2021

Hari Shanker Sharma And Ors

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 04-03-2021

Acts Referred:

Citation : (2021) 03 RAJ CK 0008

Hon'ble Judges : Dinesh Mehta, J

Bench : Single Bench

Advocate : OP Sangwa

Final Decision : Disposed Of

Judgement

Learned counsel for the petitioners submits that the issue raised in the present writ petition is squarely covered by judgment of this Court in Manoj

Khandelwal & Ors. v. State of Rajasthan & Ors. : S.B.C.W.P. No. 7283/2014, decided on 16.07.2014 at Jaipur Bench and the said judgment has

been followed in Krishan Lal & Ors. v. The State of Rajasthan & Ors. : S.B.C.W.P. No. 19179/2017, decided on 30.10.2017 at Jaipur Bench. The

petitioners are also entitled to the same relief as granted in the case of Manoj Khandelwal (supra) and Krishan Lal (supra) claims learned counsel.

In view of the submissions made, the writ petition filed by the petitioners is disposed of with the similar directions as given in the case of Manoj

Khandelwal (supra), which read as under:-

This Court in Suman Bai and Another Vs. State and Others - 2009 (1) WLC (Raj.) 381, held that candidates in lower order of merit cannot become

entitled merely because they had approached court earlier. Petitioners had a fresh cause of action for approaching in such situation and their writ

petition not barred either as res judicata or as being him in properly constituted. This directed the respondents to treat petitioners senior to respondents, who were in lower order of merit.

It is further contended in the writ petition that in the matter of School Lecturers (English) in the same Department, where appointments were delayed because of the fault of the State authorities, the candidates were accorded appointment from the date the candidates stood lower in merit were appointed and they have been granted all consequential benefits of services.

The petitioners approached the respondents by way of representations for extending them same benefits of service which have been granted to the candidates who stood lower in merit than the petitioners, but till date nothing has been done. Hence, this writ petition on behalf of the petitioners for a direction to the respondents to treat their appointment from the date the candidates lower in merit, were given, with all consequential benefits of service, such as seniority, continuity of service, pay fixation, grant of annual grade increments.

Having regard to the facts of the case, writ petition is disposed of requiring the petitioners to make a representation to respondent no.2 - Director, Secondary Education, Bikaner, alongwith a copy of this order, who shall, after verifying the facts stated above, consider and decide the same by a speaking order within a period of three months from the date of its making, addressing the grievance of the petitioners for extending them the relief as prayed for, as the candidates, who stood lower in merit, are getting benefit of higher pay, seniority, annual grade increments and other service benefits including the selection scales. If the respondent no.2 decides to place the petitioners above in seniority than the candidates who stood lower in merit, then the petitioners would be entitled to all benefits of seniority but they would be entitled only to notional benefits.

For the purpose aforesaid, the petitioners shall file representation before the competent authority giving out the requisite details along with certified copy of the order instant within a period of four weeks from today. On receipt of the representation, the concerned respondent shall decide the same, in accordance with law within a period of eight weeks from the date of receipt of the representation and accord notional benefits to the petitioners from the

date persons similarly situated to them and lower in merit were given appointment.

Upon consideration of the representation so filed, if respondents find the case of the petitioner to be covered by the judgment(s) aforesaid, before giving actual benefits, an undertaking shall be procured from the petitioners to the effect that his rights/entitlements shall be subservient to the fate of the judgment(s) aforesaid and in case the same is reversed or modified in any manner, they shall also be liable for restitution of any benefits/emoluments so received.

The stay petition also stands disposed of accordingly.