
(1983) 08 RAJ CK 0003
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1297/74

H.K. Purohit

APPELLANT

Vs

University of Jodhpur and Others

RESPONDENT

Date of Decision : 08-08-1983

Acts Referred:

Constitution of India, 1950 — Article 16, 226

Citation : (1983) WLN 327

Hon'ble Judges : D.P. Gupta, J

Bench : Single Bench

Judgement

D.P. Gupta, J.—The petitioner was initially appointed as a Upper Division Clerk in the University of Jodhpur with effect from August 27, 1962. The petitioner holds the post graduate degree in Arts and the Bachelor of laws degree from the University of Rajasthan. He also passed "Sahitya Ratna" examination of the Hindi Sahitya Sammelan, Prayag.

2. Respondent No. 3 T.P. Singh is a graduate in Arts and he was appointed as a U.D.C. in the Univeesity of Jodhpur with effect from October 6, 1962 In the final seniority list of Upper Division Clerks, as on January 1, 1964, published by the University on January 11, 1967, petitioner was placed at serial No. 14 and the respondent No. 3 was at No. 23. Similarly, in a subsequent seniority list as on October 1, 1972 issued by the University on September 26, 1972 the petitioner was placed at serial No. 8 while the respondent No. 3 was placed at serial No. 15. Thus, the case of the petitioner is that he was senior to the respondent No. 3 as he was appointed on the post of Upper Division Clerk in the University earlier to the respondent No. 3. The University promoted respondent No. 3 to the post of Senior Assistant with effect from June 14, 1968 ignoring the claim of the petitioner. The petitioner thereupon filed a writ petition in this Court being S.B. Civil Writ petition No 477/1968. The writ petition was allowed by a learned Judge of this Court on March 10, 1970 and the appointment of respondent No. 3 and three other persons promoted as Senior Assistants along with him was set aside.

The University thereafter by its order dated March 30, 1970 reverted the non petitioner No. 3 as Upper Division Clerk with effect from the date of order of this Court namely, March 10, 1970.

3. On October 15, 1970, the Syndicate of the University passed a resolution to the effect that the promotions in the Secrecy Branch of the University upto the level of Superintendent may be made from amongst the staff working in that branch on the normal basis of seniority-cum-merit. On March 7, 1973 the Syndicate of the University passed yet another resolution stating that promotions to all posts upto the level of the Section Officer may be made internally, partly by seniority and partly by merit. It was also stated that the exact distribution of posts and the manner of promotion would be determined by the Syndicate later on. Subsequently by another resolution dated April 28, 1973 the Syndicate constituted a committee to frame rules regarding the distribution and manner of promotion of nonteaching staff upto the level of Section Officer. The University, under the garb of Syndicate resolution dated October 15, 1970, promoted respondent No. 3 by its order dated April 7, 1973 to the still higher post of Section Officer.

4. The petitioner, having felt aggrieved against the promotion of the respondent No. 3 to the post of Section Officer, filed the present writ petition in this Court on May 2, 1974. The case of the respondent University is that as the respondent No. 3 was working in the secrecy branch, he was promoted on the post of Section Officer from the post of Upper Division Clerk, as the intervening post of Senior Assistant in the secrecy branch was also vacant. However, realising the weakness of its stand, the University reverted the respondent No. 3 from the post of Section Officer by its order dated September 10, 1975 firstly, to the post of Senior Assistant and then to the post of Upper Division Clerk by another order issued on the same date. Thus, after the filing of the writ petition the grievance of the petitioner, so far as it related to the illegal or unlawful promotion of respondent No. 3 to the post of Section Officer has already been redressed. The prayer for a writ of mandamus made by the petitioner has thus become infructuous as it is no longer necessary to direct the reversion of the respondent No. 3 to the post of Upper Division Clerk because he has already been reverted to the post of Upper Division Clerk by the order of the University dated September 20, 1975. The further prayer made by the petitioner that the promotions to the post of Section Officer may be made according to seniority-cum-merit has also become infructuous, in view of the subsequent events which have taken place during the pendency of the writ petition. It is undisputed that the petitioner was appointed as Section Officer on April 21, 1977 and thereafter the respondent No. 3 was appointed as Section Officer on April 26, 1977. Thus, in the cadre of Section Officers, the petitioner is senior to the respondent No. 3, and the seniority of the petitioner vis a vis respondent No. 3 which existed in the cadre of Upper Division Clerk, is still maintained on the higher post of Section Officer as well.

5. However, by an amendment made in the writ petition, the petitioner has made a further prayer that it may be declared that the experience earned by the respondent No. 3 on the post of Section Officer was illegal and the said respondent be restrained from taking any advantage of the experience earned by him by working on the post of Section Officer from April 7, 1973 to September 20, 1975, for any purpose what so ever. The petitioner argued his case in person and placed reliance upon the decision of this Court in *Dr. Swyambar Prasad Sudrania v. State of Rajasthan* RLW 971 397. In *Dr. Sudrania's* case RLW1971 397 it was held that a declaratory relief can be given in proper case although it cannot be granted as a matter of course. The court has to examine each case with necessary care and caution. Two factors prevailed with the learned judge in *Dr. Sudrania's* case RLW1971 397 in declaring the appointment of the respondents in that case as invalid, namely that the said appointment was made in violation of the fundamental rights of the petitioner Under Article 16 of the Constitution of India and in derogation of the specific provisions of the relevant rules. The other factor which considerably weighed with the learned judge was that the petitioner approached the court with all possible expedition for the grant of relief which was then within his reach and it was held that the petitioner should not be denied a declaration merely because for the reasons beyond his control, mandamus was no longer an appropriate remedy. In that case also the appointment of a junior person was made in a leave vacancy without considering the case of his senior for promotion to the post of lecturer in a Medical College, After the expiry of the period for which the vacancy existed the order spent itself and it was urged that the writ petition should be dismissed as infructuous.

6. Learned Counsel for the respondent University urged that in the present case the petitioner came after a considerable delay of more than one year and as such the case does not fall within the four corners of the decision of *Dr. Sudrunia's* case. The order of promotion of respondent No. 3 to the post of Section Officer was passed on April 7, 1973 while the writ petition was filed in this Court by the petitioner on May 2, 1974. Learned Counsel for the respondent also relied upon the decision of their Lordships of the Supreme Court in *P. S. Sadasivaswamy v. State of Tamil Nadu* 1976 (1) SIR 53, wherein it was held that a writ petition in a matter relating to seniority or promotion should normally be filed within six months or at the most within a year, so that the settled matters may not be unsettled after a long time. Their Lordships of the Supreme Court observed as under in the aforesaid case:

A person aggrieved by an order of promoting a junior over his head should approach the court at least within six months or at the most a year of such promotion. It is not that there is any period of limitation for the Courts to exercise their powers under Article 226 nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the courts to refuse to exercise their extra ordinary powers Under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by

and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters. The petitioner's petition should, therefore, have been dismissed in limine. Entertaining such petitions is a waste of time of the Court. It clogs the work of the Court and impedes the work of the Court in considering legitimate grievances as also its normal work. We consider that the High Court was right in dismissing the appellant's petition as well as the appeal.

7. There is no doubt that one of the considerations which prevailed with this court while deciding Dr. Sudrania's case RLW 1971 397 was that the petitions in that case had approached the High Court with utmost expedition. In that case the impugned order promoting the junior over head of his senior was passed on March 13, 1970 and the writ petition was filed in this Court only after a few days on March 16, 1970. If petitioner would have approached this Court with utmost expedition, as was done in Dr Sudrnia's case RLW 1971 397 soon after the impugned order was passed on April 7, 1973, then respondent No. 3 would not have gained experience on the post of Section Officer, which he was able to gain because of the delay in filing the writ petition. The petitioner should blame himself for the experience which was gained by the respondent No. 3 on the post of Section Officer, because he himself approached this Court after a lapse of more than one year. It would not be proper, in the aforesaid circumstances, to grant a declaration in the wide form desired by the petitioner that the experience earned by respondent No. 3 as Section Officer cannot be utilised by him for any purpose whatsoever. At the same time, it cannot be lost sight of that the respondent No. 3 was junior to the petitioner in the cadre of Upper Division Clerk, right from the beginning since the year 1962, and continued to remain junior to him in the cadre of Section Officer and as such it would be unjust and improper if the respondent No. 3 is allowed to utilise the experience gained by him on the post of Section Officer as against the petitioner. The petitioner earlier filed a writ petition against respondent No. 3 and was successful in that writ petition, when the respondent No. 3 was unlawfully promoted to the post of Senior Assistant. When respondent No. 3 was promoted as Section Officer, the petitioner again came to this Court and the University had to revert the respondent No. 3 to the post of Upper Division Clerk, realising the strength of the petitioner's contention. I, therefore, think it proper that the ends of justice would be met if a limited declaration is granted in favour of the petitioner that the respondent NO. 3 T.P. Singh would not be entitled to use the experience gained by him on the post of Section Officer for the period from April 7, 1973 to September 20, 1975 qua the petitioner. However, the respondent No. 3 would be free to utilise the experience so gained by him qua other persons who may be strangers to this writ petition and for all of her purposes. It is necessary to give a limited declaration because it was submitted by the petitioner that appointments to the next higher post to that of Section Officer in the University of Jodhpur, namely the post of Assistant Registrar are going to be made shortly by direct recruitment and one of the conditions for eligibility is experience of 7 years, in

supervisory capacity, which include experience gained on the post of Section Officer. Thus, if the petitioner and the respondent No. 3 are candidates for the same post at the same section, the respondent No. 3 would not be entitled to utilise the experience gained by him earlier between April 7, 1973 and September 20, 1975 on the post of Section Officer as against the petitioner. But in case the petitioner is not an eligible candidate for such a post, there is no reason why the experience gained by respondent No. 3 may not stand in good stead to him against other petitions, who may compete with him as candidates for the post of Assistant Registrar.

8. In the result, the writ petition is partly allowed and a limited decoration is granted in favour of the petitioner to the effect that the experience gained by the respondent No. 3 between April 7, 1973 and September 20, 1975 on the post of Section Officer shall not be availed of by him vis-avis petitioner. In other respects the writ petition is dismissed. The parties are left to bear their own costs.