
(2008) 05 RAJ CK 0090
In the Rajasthan High Court

Kamlesh Kumar Sharma

APPELLANT

Vs

Jaipur Vidyut Vitaran Nigam Ltd. and Others

RESPONDENT

Date of Decision : 30-05-2008

Acts Referred:

Citation : (2008) 3 RLW 2598 : (2009) 6 SLR 291

Hon'ble Judges : Narayan Roy, C.J.; Mohammad Rafiq, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Mohammad Rafiq, J.—Heard learned Counsel for the parties.

2. The appellant in this appeal has challenged the judgment dated 16/5/2008 by which his writ petition was dismissed on the ground of delay and laches. In the writ petition, the writ-petitioner challenged the seniority list dated 29/5/2007 and prayed for consideration of his case for promotion to the post of Executive Engineer in preference to the private respondents.

3. The learned Single Judge on consideration of the matter held that seniority list dated 29/5/2007 was in fact reiteration of the seniority list which was issued way back on 30/5/2001 and which was later on again issued on 19/2/2004. The writ petitioner failed to challenge the seniority lists which were issued on 30/5/2001 and 19/2/2004 and now at this belated stage, he could not be permitted to challenge the recently issued seniority list on 29/5/2007 after a lapse of 7 years of issuing the earlier seniority list dated 30/5/2001.

4. Learned Counsel for the appellant has argued that cause of action to challenge the seniority list dated 29/5/2007 arose only because respondents issued tentative seniority list on 16/4/2007 inviting objections and when objections of the appellant were not accepted, he had to file writ petition. It was argued that even if the appellant did not challenge the seniority list earlier issued on 30/5/2001 and 19/2/2004, that cannot preclude him from challenging it later because respondents are now going to undertake the exercise of making

promotions of the private respondents and few others, who ought to be ranked junior to him in the lastly issued seniority list. In support of his aforesaid arguments, learned Counsel cited the judgments of Supreme Court in *R.M. Ramual Vs. State of Himachal Pradesh and Others*, and *Dinkar Anna Patil and Anr. v. State of Maharashtra and Ors.* 1991(1) SCC 354. On the strength of these judgments, learned Counsel argued that in the facts of the present case, filing of writ petition in 2008 soon after issuance of the last seniority list on 29/5/2007, cannot be said to suffer from delay and laches. Learned Counsel argued that seniority list dated 29/5/2007 was void ab initio because no final seniority list can be issued by the respondents without regular appointment and that seniority could not be counted on the basis of appointments made on ad-hoc basis. It was argued that Degree-Holder Junior Engineer becomes eligible for promotion to the post of Assistant Engineer immediately after 2 years of service experience while Diploma- Holder Junior Engineer becomes eligible after serving 7 years. Similarly, Degree-Holder Assistant Engineer becomes eligible for promotion for the post of Executive Engineer after 5 years of service and Assistant Engineer Diploma-Holder becomes eligible for promotion after 12 years of service. The respondents never made yearwise determination of vacancies to the post of Assistant Engineer. Had they done so, the appellant would have been promoted much before the private respondents. Learned Counsel argued that respondents vide order dated 21/8/1993 granted ad-hoc promotion to the persons which included both the appellant and respondents No. 2 to 4. No steps however were taken by the respondents to fill up the vacancies of Assistant Engineer of years 1990-91 and 1991-92 on regular basis. They cannot therefore treat such ad-hoc promotions as the basis for assignment of seniority list. It was argued that since the appellant was liable to be promoted in the quota of direct recruitment prior to promotion given to the private respondents, even if they were all promoted by a common order on ad-hoc basis, the private respondents would not be entitled to be placed above the appellant in the seniority list. In this connection, learned Counsel for the appellant placed reliance on the judgments of Supreme Court in *K. Madalaimuthu and Another Vs. State of Tamil Nadu and Others*, and *Union of India Vs. M.P. Singh and others*,

5. Learned Counsel for the appellant further argued that even when the tentative seniority list was issued on 2/3/2001, appellant made representation on 16/3/2001 and when the final seniority list was issued on 30/5/2001, he filed appeal before the Chairman-cum-Managing Director on 29/6/2001 followed by representations dated 10/9/2002, 31/10/2002, 12/12/2002, 9/9/2003 and 10/3/2004. Thus, it is evident that writ-petitioner had all along been agitating the grievance and had never acquiesced with the seniority list issued by the respondents.

6. Per contra, Shri Alok Sharma and Shri Ashok Bansal, learned Counsel appearing for private respondents No. 2 to 4 by way of caveat opposed the appeal and argued that learned Single Judge was justified in dismissing the writ petition as suffering from delay and laches. The substantial issue was with

regard to grant of promotion on ad-hoc basis vide order dated 21/8/1993 and non- grant of promotion to the appellant prior to that date and earlier than the promotions of the private respondents. The writ petition has enormously been filed after 17 years from that event. Even otherwise, if the period is counted from the date of issuance of seniority list issued on 30/5/2001, it is filed more than 7 years thereafter. Learned Counsel for the respondents argued that appellant cannot question the correctness of the order dated 21/8/1993 whereby he also along with the private respondents were promoted on the post of Assistant Engineer though on ad-hoc basis. The appellant in the writ petition concealed the facts about the earlier seniority lists dated 30/5/2001 and 19/2/2004 and he did not utter a single word thereabout in whole of the writ petition nor did he make any mention about his having filed representations and thereafter appeal referred to supra. Learned Single Judge though has not dismissed the writ petition of the appellant on account of concealment and suppression of material facts in the writ petition which he has himself admitted in rejoinder to reply but nevertheless, that is a factor which should now be considered by this Court in appeal. Learned Counsel for the respondents referring to the three seniority lists dated 30/5/2001, 19/2/2004 and 29/5/2007 argued that seniority list dated 29/5/2007 was infact reiteration of the intense seniority of the Assistant Engineers as reflected in the seniority lists dated 30/5/2001 and 19/2/2004. Mere issuance of provisional seniority list for the purpose of updating the list issued on 29/5/2007, would not give rise to any fresh cause of action to the appellant as against the private respondents who have all along been treated senior to him. It was argued that in fact, respondents have not only issued tentative seniority list on 30/5/2001 but also acting thereupon, made promotions of Sudhir Kumar Sharma and Mukesh Kumar Sharma to the post of Executive Engineer in the past against the vacancies of 2007-08. No steps were taken by the appellant to challenge such promotions. Seniority list has been finalised on the basis of provisions contained in Regulation 27 of the Engineers Service Regulations of 1969 which inter alia provides that seniority shall be determined from the date of the order of appointment in the service and inter-se seniority of two or more persons promoted from the lower post by the same order or orders of the same date shall be the same as their seniority in the lower cadre. Since respondents are senior to the appellant in lower cadre of Junior Engineer, they have rightly been assigned higher seniority. Appellant having not challenged the validity and correctness of Regulation 27 supra, cannot even otherwise be permitted to question the seniority assigned to the respondents.

7. We have given our thoughtful consideration to the rival submissions of the parties made at the bar and scanned the material available on record as also studied the cited case law.

8. Learned Single Judge dismissed the writ petition on the ground of delay and latches because the seniority issued on 29/5/2007 was merely reiteration of the inter-se seniority as already reflected in the final seniority lists of the parties dated 30/5/2001 and 19/2/2004. On perusal of the inter-se seniority from those

lists which are on record, we find that factual aspects are correct. Merely because the appellant filed some representations against the seniority lists dated 30/5/2001 and 19/2/2004 and, thereafter, appeal in the year 2001, would not improve case of the appellant in so far as filing of writ petition in 2008 is concerned. Learned Single Judge supported his view on the question of delay with the judgment of the Supreme Court in *State of Punjab v. Balkaran Singh* (2006) 12 SCC 709 and *P.S. Sadasivaswamy Vs. State of Tamil Nadu*, . Even otherwise, what is being questioned by the appellant in substance is that he should have been given promotion on regular basis on the post of Assistant Engineer earlier than the private respondents because he becomes eligible for promotion with only 2 years of service earlier than private respondents Degree Holders who became eligible for promotion after rendering service for 7 years. But that question was relate to the year 1993 when both, the appellant and the respondents were promoted on ad-hoc basis by a common order dated 21/8/1993 to the post of Assistant Engineer. The appellant accepted that promotion and he has all along been working on the post of Assistant Engineer till the final seniority list was issued in the year 2007. However, filing of representations or appeal against the seniority list dated 30/5/2001, would not mean that present writ petition belatedly filed in 2008 after a delay of 7 years would be maintainable. Seniority list of 2001 should have been challenged in 2001 itself and appellant was not prevented in approaching this Court. Now, at this stage, it is not open to the appellant to challenge the correctness of the said seniority list because basis for issuance of such seniority list has rightly been explained by the respondents as per Regulation 27 of the Regulations of 1969 and the appellant has not questioned the validity of such Regulations in the writ petition.

9. Moreover, no mention of the facts about the earlier issued two seniority lists was made anywhere by the appellant writ-petitioner in whole of the writ petition. The appellant while filing writ petition in 2008 has made an innocent plea that it sought to challenge the seniority list dated 29/5/2007 which was preceded by tentative seniority list dated 17/4/2007 to which he filed objections and now when objections were not accepted, he was constrained to file writ petition. He however did not make any mention about the seniority list dated 30/5/2001 and 19/2/2004. It is only when the respondents in their reply came out with facts about those two seniority lists that the appellant filed rejoinder in the writ petition admitting issuance of the aforesaid two seniority lists,, filing of representations and appeal against said seniority lists. There was thus an attempt on the part of the appellant to cover up period of delay by merely questioning, the correctness of seniority list dated 29/5/2007.

10. Judgment of Supreme Court in *R.M. Ramual supra*, on which reliance has been placed therefore in the facts of the present case would not in any manner help the appellant as the facts of the aforesaid case are entirely different than that of the present case. In that case, seniority list was prepared in 1971 but proforma promotion was given to the appellant in the year 1973 and government

by accepting representation of the respondents therein vide order dated 28/4/1982 directed the inter-se seniority list to be revised. On the law and in the facts of that case, Supreme Court found that cause of action arise to the appellant in the writ petition after communicating the rejection of representation on 28/4/1982.

11. The facts in the case of Dinkar Anna Patil *supra*, were also entirely different where appellants had raised objections about the seniority list published in 1991 and 1993 and soon thereafter when final seniority list was issued in 1994, they filed Original Application, before the Central Administrative Tribunal. However, the facts of the present case are entirely different and the judgments of Supreme Court on which reliance has been placed by the respondents before the learned Single Judge are closure to the facts herein. Moreover, ratio of the judgments of Supreme Court in *State of Punjab* and *R.M. Ramual* *supra*, on which learned Counsel for the appellant has placed reliance, is also not applicable to the facts of the present case and it does not help the appellant in any manner whatsoever.

12. In view of the discussion made above, we do not find any merit in this appeal.

13. The appeal is accordingly dismissed with no order as to costs.