

(2018) 05 RAJ CK 0264
In the Rajasthan High Court
Case No : Civil Writs No. 9630 of 2018

Kamlesh Sain @APPELLANT@Hash State of Rajasthan & Ors.

Date of Decision : 25-05-2018

Acts Referred:

Rajasthan Education Subordinate Service Rules, 1971 — Rule 20, 21

Citation : (2018) 05 RAJ CK 0264

Hon'ble Judges : VEERENDR SINGH SIRADHANA, J

Bench : Single Bench

Final Decision : Disposed Off

Judgement

Representative of the petitioners submits that the controversy raised in the instant writ application is no more resintegra in view of the adjudication

made in the case of Suman Bai & Anr. Vs. State of Rajasthan & Ors.: 2009 (1) WLC (Raj.) 381, wherein the Coordinate Bench of this Court

observed thus:

â??5. Upon consideration of the arguments aforesaid and the judgment of the Division Bench in Hari Ram and the subsequent order dated 21.7.2001

whereby clarification application of the State Government was dismissed, I find that the entitlement of the petitioner for appointment on the basis of

originally prepared merit list cannot be denied. If admittedly the candidates, who are lower in merit, have been granted appointment, those who are

above them in the merit cannot be denied such right of appointment. Seniority as per the rules in the case of direct recruitment on the post in question

is required to be assigned on the basis of placement of candidates in the select list and when the selection is common and the merit list on the basis of

which appointments were made is also common, right to secure appointment to both the set of employees thus flows from their selection which in turn

is based on merit. Regard being had to all these facts, merely because one batch of employee approached this Court later and another earlier, and both of them having been appointed, the candidates who appeared 6 lower in merit cannot certainly be placed at a higher place in seniority. It was on this legal analogy that Division Bench of this Court in Niyaz Mohd.Khan (supra) held that the petitioner therein entitled to be placed in seniority in order of merit of common selection amongst persons appointed in pursuance of the same selection with effect from the date person lower in order of merit than the petitioner was appointed with consequential benefits.

6. I am not inclined to accept the argument of the learned counsel for the respondents No.4 to 8 that the judgment of the learned Single Judge should be so read so as to infer therefrom that though the petitioners would be entitled to claim appointment but not seniority above the candidates who are already appointed even though they admittedly are above them in the merit list. Infact, the judgment of the learned Single Judge merely reiterated the direction of the Division Bench in Hari Ram (supra) in favour of the petitioners. But construction of that judgment in the manner in which the respondents want this Court to do, would negat the mandate of the Rules 20 and 21 of the Rajasthan Education Subordinate Service Rules, 1971, which requires seniority to be assigned as per the inter-se merit of 7 the candidates in the merit list based on common selection. Even otherwise, no such intention of the Court is discernible from reading of that judgment. Mere appointment of the petitioner was a sufficient compliance of the judgment and not total compliance was the view taken by this Court also when contempt petition filed by the petitioners was dismissed. Question with regard to correct and wrong assignment of seniority having arisen subsequent to appointment of the petitioners would obviously give rise to a afresh cause of action. The writ petition filed by the petitioners, therefore, cannot be thrown either barred by resjudicata or otherwise improperly constituted.

7. In the result, this writ petition is allowed and therespondents are directed to treat the petitioners senior to respondents No.4 to 8 as per their placement in the merit list.â??

Applying the principle, as extracted herein-above, to the facts of the case at hand the factual position emerges is that the petitioners participated in the recruitment process in response to advertisement issued by Zila Parishad in the

year 2012, inviting the applications from the eligible candidates for appointment on the post of Teacher Grade III. It is also not in dispute that the petitioners earlier instituted writ applications and as a consequence of directions issued by this Court, the result was revised in the month of November, 2016; resulting into appointment of the petitioners on the post of Teacher Grade III (Level I/Level-II).

Undeniably, the petitioners have already been accorded appointment. However, State-respondents have declined seniority and other benefits to the petitioners from the date the petitioners became entitled on account of revision of the result while candidates lower in merit to the petitioners have been accorded those benefits. Thus, the petitioners have claimed benefit of pay fixation and seniority on notional basis from the date juniors to the petitioners, have been accorded in the same recruitment process of the year 2012.

Accordingly, the State-respondents are directed to extend the benefit of pay fixation and seniority on notional basis to the petitioners from the date junior(s) to the petitioner(s) has/have been accorded with reference to the same recruitment process of the year of 2012.

With the observations and directions, as indicated above, the writ application stands disposed off.