

(2013) 10 RAJ CK 0061

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No"s. 1473 and 1522 of 2012

Lalit Kishore Sharma

APPELLANT

Vs

Chariman Raj Khadi Ors.

RESPONDENT

Date of Decision : 01-10-2013

Acts Referred:

Citation : (2013) 10 RAJ CK 0061

Hon'ble Judges : J.K. Ranka, J;Ajay Rastogi, J

Bench : Division Bench

Advocate : V.B. Srivastava, Mr. Ajay Kumar Bajpai, for the Appellant; J.M. Saxena, for the Respondent

Final Decision : Dismissed

Judgement

1. Instant intra-court appeals have been filed by the Board & so also by the respondent in writ petition, jointly assailing order of learned Single Judge dt. 20.09.2012 directing the Board to hold meeting for promotion to the post of Development Officer (Cooperative) against the vacancies determined as on 01.04.1995 and consider candidature of the respondent (writ petitioner) in accordance with Rules as it was invogue at the time of determination of the vacancy. The brief facts which in nut-shell emerges from the material on record & relevant for present consideration are that under the scheme of Rules existing prior to the Rules, 1977 notified on 15.11.1997, the post of Inspector (Coop.)-I and Accountant were the feeder post for promotion to the post of Development Officer (Cooperative) and as per the schedule appended to the Rules, seven years experience on the post of Inspector (Coop.) & Accountant and in addition to it as regards the Accountant training in cooperation was the condition of eligibility for promotion to the post of Development Officer (Cooperative). Indisputably there was no training ever conducted by the Board and the respondent promoted as Accountant much before the appellant as Inspector (Coop)-I and the vacancy of Development Officer (Cooperative) was determined as on 01.04.1995 for promotion by the Board.

2. It further reveals from the records that the respondent was promoted on the post of Accountant w.e.f. 24.12.1987 and the appellant Lalit Kishore Sharma the respondent before the learned Single Judge was promoted as Inspector (Coop)-I on 29.02.1988 and there was no interse seniority list prepared by the Board and the appellant was promoted as Development Officer (Cooperative) vide order dt. 20.02.1996 and that came to be challenged by the respondent by filing writ petition before the learned Single Judge in July, 1998 and his sole grievance was that training was never conducted by the Board and being senior to the appellant in the feeder cadre as such his right of fair consideration for promotion to the post of Development Officer (Cooperative) has been denied by the Board while the post of Development Officer (Cooperative) was filled vide order dt. 20.02.1996 and the learned Single Judge after examining the materials on record observed that if the Board failed to conduct the training for Accountant which was considered to be the condition of eligibility for an incumbent for promotion to the post of Development Officer (Cooperative)), indisputably the respondent (petitioner) before the learned Single Judge being senior in the feeder cadre and promoted as Accountant on 24.12.1987, his right of fair consideration for promotion on the post of Development Officer (Cooperative) has been denied to him and accordingly directed the Board to conduct DPC and consider his candidature for promotion to the post of Development Officer (Cooperative) against the vacancy determined as on 01.04.1995.

3. It has also come on record and which could be noticed by us that the appellant board after 1996 amended the service Rules and notified on 15.11.1997 namely the Rajasthan Khadi & Village Industries Board Employees Service Rules, 1977 and under the amended schedule appended thereto the post of Development Officer (Cooperative) became available only for Inspector (Cooperative) having five years experience on the post and as regards the Accountants they were provided a separate channel of promotion but here before us is the consideration for promotion to the post of Development Officer (Cooperative) against the vacancy determined as on 01.04.1995 prior to the amended schedule came into force and thus it goes without saying that the Rules as invogue has to be applied when the vacancy of Development Officer (Cooperative) was determined and indisputably the Board has not considered the candidature of the respondent primarily on the premise and the defence which has come on record that he was not holding training in cooperation as Accountant which makes him ineligible and to be considered for promotion but this contention was repelled by the learned Single Judge holding that when the Board failed in discharge of its obligation holding training (cooperation) and considering the incumbent as ineligible for promotion to the post of Development Officer (Cooperative) was unjustified and the incumbent has been deprived of his fair right of consideration.

4. The main thrust of submissions of counsels Sh. V.B. Srivastava & Sh. A.K. Bajpai, appearing for appellants, is that the writ petition was filed almost after two years of the order of appointment dt. 20.02.1996 and which could be

considered to be fatal in detaining the person who was holding higher post for sufficient long time and which the respondent failed to satisfactorily explain and that was not been considered by the learned Single Judge in the right earnest.

5. Counsel further submits that respondent was also later promoted as Assistant Accountant Officer and thereafter as Accounts Officer and thus he by his conduct forgave his right to question the promotion offered by the Board to the appellant vide order dt. 20.02.1996 and Sh. V.B. Srivastava further submits that after the representations & legal notice of demand for justice were rejected by the Board there was a remedy of appeal but that was not availed by the respondent and the learned Single Judge was not justified in entertaining the writ petition while exercising its discretionary jurisdiction u/Art. 226 of the Constitution and placed reliance upon the recent judgment of the Apex Court in 2013 (1) SCT 745.

6. On the other hand while supporting the impugned judgment of the learned Single Judge Sh. J.M. Saxena, submits that merely holding higher post may not deprive the respondent from his fair consideration and as regards the delay he submits that after the respondent availed all departmental remedies by submitting representations and legal notice for demand of justice, he availed discretionary jurisdiction of this Court for infringement of his legal right by filing writ petition u/Art. 226 of the Constitution.

7. He further submits that the preliminary objection before this Court are never came up before the learned Single Judge and could not now be permitted to be considered in the intra-court appeal and even there is no such averment made by either of the appellants in the memo of appeal nor such preliminary objection was raised at the relevant point of time, they are not justified in raising preliminary objection in the intra court appeal.

8. We have taken note of the submissions made and also perused order of the learned Single Judge.

9. The fact remains undisputed that the respondent was promoted on the post of Accountant on 24.12.1987 and the appellant as Inspector (Cooperative) I on 29.02.1988 and there was no interse seniority prepared by the Board while promotions were made to the post of Development Officer (Cooperative) vide order dt. 20.02.1996 and it is not the case of the Board that there was any interse seniority list of the feeder post and the appellant could not have been placed higher in seniority.

10. However, the case of the Board before the learned Single Judge was that the respondent was not holding training in cooperation which was one of condition for an incumbent to be considered as eligible for promotion to the post of Development Officer (Cooperative) but this fact cannot be taken note of since the Board indeed failed to hold training for plenty long time for which the employee could not be blamed & deprived of his legitimate right of consideration for the fault of the Board or the employer as the case may be and the learned Single Judge after examining the records and taking note of the submissions made

observed that if the respondent being admittedly senior in the feeder cadre on the basis of his substantive appointment as Accountant in December, 1987 in comparison to the promotion of the appellant as Inspector (Cooperative) vide order dt. 29.02.1988 certainly fair right of consideration for promotion of the respondent in February, 1996 against the vacancies determined as on 01.04.1995 of Development Officer (Cooperative), his rights have been jeopardized and we are also of the view that the respondent herein stands deprived of his fair right of consideration.

11. As regards the submissions made by counsel for appellant regarding delay in filing the writ petition and also later promotion on the post of Assistant Accounts Officer & Accounts Officer, suffice it to say that the respondent availed departmental remedies by filing representations & legal notice for demand of justice and that is what being expected from a man of ordinary prudence and only thereafter he approached to this Court by filing writ petition u/Art. 226 of the Constitution and more so the latches in no manner could be said to be fatal which could deprive him of right of fair consideration to the post of Development Officer (Cooperative) against the vacancy of 01.04.1995.

12. As regards the submission made that after the employee has been given promotion as Assistant Accounts Officer and Accounts Officer he has forgiven his right, suffice it to say that if the Board has failed to consider his case for promotion to the post of Development Officer (Cooperative) in our considered view mere promotion in the Accounts cadre could not deprive him of his right of fair consideration against the vacancy of 01.04.1995 and the learned Single Judge has examined the material on record and we do not find any manifest error in the order which may require interference by this Court.

13. Sh. V.B. Srivastava has pointed out that since the writ petition was filed in 1998 which came to be decided by the learned Single Judge in September, 2012 much water has flown during the intervening period and the appellant got further promotion and stood retired from the post of Assistant Secretary on attaining the age of superannuation.

14. Taking note of what has been stated above, we would like to observe that the appellant since retired from service no prejudicial action may be taken against him and shall not be deprived of rights availed during the term of service. Consequently, both the appeals stand dismissed with the observations made here-in-before. No costs.