
(2002) 05 RAJ CK 0051
In the Rajasthan High Court
Case No : Civil Writ Petition No. 709 of 1992

Madan Lal

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 13-05-2002

Acts Referred:

Engineering Subordinate Service (I.B.) Rules, 1967 — Rule 27

Citation : (2003) 3 RLW 1442 : (2002) 4 WLN 645

Hon'ble Judges : Sunil Kumar Garg, J

Bench : Single Bench

Advocate : R.S. Saluja, for the Appellant; R.L. Jangid, A.A.G., Umed Singh and Gopal Krishna Vyas, for the Respondent

Final Decision : Dismissed

Judgement

Garg, J.—This writ petition under Article 226 of the Constitution of India has been filed by the petitioner on 31.1.1992 against the respondents with the prayer that by an appropriate writ, order or direction, the respondents be directed to assign seniority to the petitioner for the date when he was initially appointed i.e. 6.11.1973 and the seniority list dated 29.10.1991 (Annex.5) be declared illegal and be quashed and the respondents be further directed to give selection grade to the petitioner on and from the date when he has completed 15 years of service and also the arrears which had so accrued to the petitioner.

2. It arises in the following circumstances:

The petitioner, after having passed matric with Drawing got himself registered with the Employment Exchange, Jodhpur on 21.7.72 and his registration number is C/2533/72. It was submitted by the petitioner that on a requisition having been sent to the Employment Exchange, his name was forwarded to the respondents for selection on the post of Field Assistant-cum- Tracer, pursuant where to the petitioner was interviewed by the Appointing Authority on 28.5.73 alongwith all such persons, who were eligible to be appointed on the post at that

time. Pursuant to said interview, the petitioner was appointed on the post of Field Assistant-cum-Tracer vide order dated 6.11.73 (Annex.1) and in that order annex.1 it was mentioned that the appointment was on officiating basis for a period of six months or till selected hands were made available, whichever was earlier. It was further submitted by the petitioner that though appointment was described to be on officiating basis, but the fact is that the same was given after following the Rules and considering candidature of all persons eligible at that time. Pursuant to said interview, the petitioner was appointed on the post of Field Assistant-cum-Tracer vide order dated 6.11.73 (Annex. 1) and in that order Annex. 1 it was mentioned that the appointment was on officiating basis for a period of six months or till selected hands were made available, whichever was earlier. It was further submitted by the petitioner that though appointment was described to be on officiating basis, but the fact is that the same was given after following the Rules and considering candidature of all persons eligible at that time. The petitioner resumed duty on 19.11.73 and continued on the post of Field Assistant-cum- Tracer uninterruptedly. It was further submitted by the petitioner that thereafter on a advertisement having been issued bearing No. 1/78 calling applications for appointment on the posts of Field Assistant-cum-Tracer, the petitioner applied for the said post and was selected and he has been shown to be substantively appointed with effect from 5.2.1980. It was further submitted by the petitioner that persons, namely, Pukhraj and Amar Singh, who were appointed after the petitioner have been absorbed substantively from an earlier date.

It was further submitted by the petitioner that he received a seniority list including the names of Tracers substantively appointed upto 31.3.1979 in the year 1988 alongwith office order No. P/16/15/seniority/C.E.Irring/3466-79 dated 7.4.1988. Since the names of persons, who were appointed after petitioner was initially appointed, were included in the said seniority list while petitioner's name was not included in it, therefore, he made a representation to the Chief Engineer, Irrigation Department, Jaipur on 25.4.1988, a copy of which is marked as Annex.2. The said representation of the petitioner was rejected by the Chief Engineer, Irrigation Department, Jaipur vide order dated 30.6.1988 (Annex.3) stating that the said seniority list includes the names of such persons only who were substantively appointed till 1977 and since the petitioner was substantively appointed in 1980, therefore, his name has not been included in it.

It was further submitted by the petitioner that thereafter, another seniority list dated 17.7.1990 (Annex.4) was issued in continuation of earlier seniority list dated 12.6.1989 and 24.10.1989 and representations/objections were invited against the said proposed seniority list within a month's time and after considering the representations/objections, a copy of which is marked as Annex.5. It was submitted by the petitioner that a number of persons, who were initially appointed after petitioner, but absorbed substantively before him have been shown to be higher in seniority list.

It was further submitted by the petitioner that on 18.11.1989, he made a representation to the respondent No. 2 Additional Chief Engineer, Irrigation Zone, Jodhpur for grant of selection grade as he had completed 15 years of service on the post of Tracer from the date of his initial appointment i.e. 6.11.1973. A copy of the said representation is marked as annex.6. The said representation of the petitioner was turned down by the Chief Engineer vide order dated 9.1.1990 (Annex.7) stating that selection grade is given only to such employees who are working either on the lowest post of the services or on such posts from which there is not promotional avenues.

It was further submitted by the petitioner that his case was again forwarded by the respondent No. 2 Addl. Chief Engineer, Irrigation Zone, Jodhpur to the Chief Engineer, but the same was again rejected by the Chief Engineer vide order dated 9.1.1991 (Annex.8).

Thus, this petition has been filed by the petitioner with the prayer as stated above.

A reply to the writ petition was filed by the respondents on 4.7.1992 stating that the petitioner was appointed vide order dated 6.11.1973 on the post of Field Assistant-cum-Tracer purely on officiating basis for a period of six months or till selected hands were made available, whichever was earlier and since at that time, no formalities for regular appointment such as issuing of advertisement on large scale, selling of forms through postal order, prescribed fee etc., were observed as per Rule 16 to 20 of the Rajasthan Engineering Subordinate Service (I.B.) Rules, 1967 (hereinafter referred to as "the Rules"), therefore, that appointment of the petitioner cannot be termed as regular appointment as per the Rules of 1967. It was further submitted by the respondents that the petitioner was selected regularly in the year 1980 and Pukhraj and Amar Singh were selected regularly in 1978 and, therefore, these two persons were treated senior to the petitioner. It was further submitted by the respondents that advertisement for regular appointment was issued in the year 1979 and in that, the petitioner applied and was selected in the year 1980 on the post of Tracer and regular appointment order was issued vide No. F.2(20)12045 dated 5.2.1980. Thus, the case of the respondents is that the seniority will be assigned to the petitioner not from the date of his initial appointment, but from the date of his substantive regular appointment i.e. 5.2.1980. It was further submitted by the respondents that there is a clear provision for urgent temporary appointment under Rule 27 of the Rules of 1967, whereas in regular appointments, formalities such as advertisement on large scale, selling of forms through postal order alongwith prescribed fee were observed as per Rules 16 to 20 of the Rules of 1967. Therefore, the regular appointment of the petitioner was made with effect from 5.2.1980 and not from his initial appointment which was purely on officiating basis and not made after following the due selection process under the Rules of 1967. Hence, this petition be dismissed.

A rejoinder to the reply was filed by the petitioner on 20.8.1992.

3. In this petition, the following submissions have been made by the learned counsel appearing for the petitioners

(1) That the petitioner should be assigned seniority from the date when he was initially appointed i.e. 6.11.1973 because his initial appointment was described to be officiating and it was made against the vacant post and furthermore, it was made under the Rules of 1967. The petitioner should not be denied benefits of his officiating services.

(2) That giving seniority to the petitioner from the date when he was substantively appointed on 5.2.1980 after regular selection is wrong one and, therefore, seniority list dated 29.10.1991 (Annex.5) should be set aside.

(3) That in all respect, the petitioner should be deemed to have been substantively appointed from the date of his initial appointment and action otherwise is violative of Articles 14 and 16 of the Constitution of India and thus, a legal right has accrued in favour of the petitioner.

4. I have heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents and gone through the materials available on record.

5. In this case, there is no dispute on the point that through order dated 6.11.1973 (Annex.1), the petitioner and some other persons were appointed as Field Assistant-cum-Tracer on officiating basis for a period of six months or till selected hands were made available, whichever was earlier. In the terms and conditions as contained in the said order Annex. 1 dated 6.11.1973, it was clearly mentioned that the services being temporary would be terminable on one month's notice on either side. There is also no dispute on the point that since then no extension of period of services of the petitioner was ever made by the respondents, but he was continuing on the same post till he was regularly selected on 5.2.1980 though his initial appointment was only for six months.

6. In Rule 27 of the Rules of 1967, there is a provision for urgent temporary appointment, which was earlier known as temporary or officiating appointments and proviso to that Rule clearly provides that such an appointment will not be continued beyond a period of the year without referring the case to the Commission for concurrence, where was concurrence is necessary and shall be terminated immediately on its refusal to concur. In the present case, this aspect has not taken place meaning thereby the petitioner was continuing in service even after the expiry of period of one year without further extension of period of his services and without any concurrence of the Commission etc. etc.

7. There is also no dispute on the point that the petitioner was regularly appointed after due selection process on 5.2.1980.

8. It may be stated here that as per seniority list dated 29.10.1991 (Annex.5), the seniority of the petitioner was counted from 5.2.1980 because he was regularly appointed on that date and his earlier appointment was found irregular

and against the Rules of 1967, as according to Rules of 1967, urgent temporary appointment at the most could be of one year, but the petitioner continued in service for more than one year without any concurrence of the Commission.

9. The question for determination in this petition is whether the seniority of the petitioner should be counted from the date when he was initially appointed i.e. 6.11.1973 or from the date when he was regularly appointed on 5.2.1980.

10. The learned counsel appearing for the petitioner in support of his case has placed reliance on the decision of the Hon''ble Supreme Court in *The Direct Recruit Class-II Engineering Officers' Association and others Vs. State of Maharashtra and others*, and in that case, it was held by the Hon''ble Supreme Court that where that initial appointment not made by following procedure laid down by the Rules, but appointee continues in the post uninterruptedly till regularisation of his service in accordance with the rules, period of officiating service will be counted. In my considered opinion, this authority if read as a whole would not be helpful to the petitioner because in that authority, it was further held by the Hon''ble Supreme Court that but where initial appointment is only ad hoc, made as a stop gap arrangement and not according to the rules, the officiation in such post cannot be taken into account for considering the seniority.

11. Therefore, the above authority would not be helpful to the petitioner, inasmuch as, his initial appointment was only for six months and at the most it can be said to have been made under Rule 27 of the Rules of 1967 and as per Rule 27, the period of such appointment could be at the most of one year and thus, the appointment of the petitioner upto 5.2.1980 (date of his regular appointment) cannot be said to be according to Rules of 1967 and when this being the position, the argument that since the petitioner continued in the post uninterruptedly till regularisation of service, therefore, the period of officiating service should be counted, is not tenable.

12. Law of Hon''ble Supreme Court if initial appointment is not made according to Rules.

(A) In *Masood Akhtar Khan and Others Vs. State of Madhya Pradesh and Others*, the Hon''ble Supreme Court held that seniority should be counted not from the date of initial stop gap appointment but from the date of regular selection under the Rules. It was further held that if the initial appointment is not made according to the Rules, sub sequent regularisation of service of an employee does not entitle him to the benefit of intervening service for seniority.

(B) In *Excise Commissioner, Karnataka and another Vs. V. Sreekanta*, it was held by the Hon''ble Supreme Court that seniority would be counted from the date of regularisation and not from the date of initial appointment on ad hoc basis.

(C) In *Ram Ganesh Tripathi and others Vs. State of U.P. and others*, the Hon''ble Supreme Court held that adhoc employees whose services were subsequently regularised could not for the purpose of promotion or selection grade be treated

as regularly appointed or grade seniority, from a date earlier than the date of their regularisation.

(D) In Union of India (UOI) through Chandigarh Administration (U.T.), Chandigarh and Another Vs. Sh. S.K. Sharma, Professor of Civil Engineering Punjab Engineering College, Chandigarh, it was held by the Hon"ble Supreme Court that adhoc service cannot be counted for determining seniority and the order granting arrears of pay and allowances for actual working on the post on adhoc basis would not confer any right to claim seniority on the post by reckoning the adhoc service.

(E) In State of Tamil Nadu and another etc. Vs. E. Paripoornam and others, the Hon"ble Supreme Court held that temporary service of candidates cannot be counted for determining seniority.

(F) In Chief of Naval Staff and another Vs. G. Gopalakrishna Pillai and others, where the adhoc appointment made without selection by a regularly constituted selection body and it was held by the Hon"ble Supreme Court that such ad hoc appointment even though uninterruptedly followed by regularisation in the same post would not count towards seniority.

13. Thus, from the above rulings of the Hon"ble Supreme Court, it is very much clear that where the adhoc or stop gap emergency appointments are made pending body, such adhoc or stop-gap emergency appointments even though uninterruptedly followed by regularisation in the same post, would not count towards seniority. The seniority would be counted from the date of regular selection and not from the date of initial adhoc or stop gap emergency/temporary appointments.

14. When this being the position, the whole case of the petitioner that the services rendered by him on officiating basis with effect from 6.11.1973 should be counted while determining seniority and he should be assigned seniority from the date of his initial appointment and not from the date of regular appointment, falls to ground.

15. So far as the Division Bench judgment of this Court in Smt. Pushplata Thada and Others Vs. State and Others, the same would not be helpful to the petitioner as the facts of that case and the present case are different one.

16. Similarly, the authority of the Hon"ble Supreme Court in Rudra Kumar Sain and Ors. v. Union of India and Ors. 2000 SCC 1055 would not be helpful to the petitioner as the facts of the present case and that case are totally different one. In that case, it was observed by the Hon"ble Supreme Court that seniority should be reckoned from the date of initial appointment and not from the date of confirmation. But, this ruling would not be helpful to the petitioner, inasmuch as, in that case, the initial appointment though termed adhoc but was regular appointment made under that Rules, but the position in the present case is otherwise in the manner that as the initial appointment of the petitioner was

found not in accordance with the Rules of 1967, therefore, seniority cannot be given to the petitioner from the date of initial appointment.

17. Similarly the ruling of the Hon"ble Supreme Court in Vijay Singh Deora and Others Vs. State of Rajasthan and Another, would not be helpful to the petitioner as the facts of that case and the present case are totally different one.

18. For the reasons stated above, there is no merit in this writ petition and the same is liable to be dismissed.

Accordingly, this writ petition filed by the petitioner is dismissed.