
(2007) 01 RAJ CK 0092
In the Rajasthan High Court

Madan Singh

APPELLANT

Vs

State of Raj. and Others

RESPONDENT

Date of Decision : 12-01-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 107

Citation : (2007) 3 RLW 2685 : (2006) 3 WLC 704

Hon'ble Judges : R.S. Chauhan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.S. Chauhan, J.—The appellant-plaintiff is challenging the order dated 13.7.2004 passed by the Additional District Judge, No. 1, Alwar whereby he has remanded the case back to the trial Court after setting aside the judgment and decree dated 16.5.2001.

2. The brief facts of the case are that appellant is a Member of O.B.C. Community. He did his B.Sc. and B.Ed, from a recognized University. In April, 1994 the Zila Parishad, Alwar advertised vacancies for the post of Teacher Gr. III. In all, there were 480 vacancies for the said post. Since the appellant was hopeful, he applied for the same. According to the merit list prepared by the Government, the appellant had secured 83.74% marks. However, when the merit list was published, name of one Hazari Lal was shown at Serial No. 2 and also at Serial No. 3. Thus, the same name was repeated twice. After the publication of the said list, the candidates were called for interview. Although, the appellant was eligible to be called for interview, but because of repetition of the name of Shri Hazari Lal at two different places, the appellant was not called for interview. He, therefore, filed a civil suit on 24.4.1995 for declaration and permanent injunction along with an application for temporary injunction. He sought an interim direction that he may be allowed to appear in the interview. The learned trial court granted the temporary injunction; the appellant was permitted to appear in the interview. Finally, on 26.4.1995, the respondents published the

selection list. However, Serial No. 38 was shown as blank, as the appellant would have been placed at Serial No. 38. Since the appellant should have been included at S. No. 38, he requested the trial Court to issue direction for his inclusion and appointment. Vide order dated 20.1.1997, the learned trial Court directed the respondents to include the appellant's name at Serial No. 38 and to appoint him within a period of seven days. Consequently, on 27.1.1997, the appellant was appointed as Teacher Grade-III and he was posted at Panchayat Samiti, Bansur, District Alwar.

3. Despite the repeated opportunities given to the respondent to file their written statement, they miserably failed to do so. Therefore, vide order dated 26.3.1998, the right of filing of the written statement was closed. No appeal or revision was preferred by the respondents against the order dated 26.3.1998. Thus, the said order achieved finality. After hearing both parties, vide judgment and decree dated 16.5.2001, the suit was finally decreed in favour of the appellant. Since the respondents were aggrieved by the said judgment and decree, they filed an appeal before the first appellate Court. Vide judgment dated 13.7.2004, the learned Judge quashed and set aside the order dated 16.5.2001 and remanded the case back to the learned trial Court while directing it to accept the written statement after payment of Rs. 5,000/- by the respondents and also to consider the appellant's application under Order 6 Rule 17 C.P.C. Hence, this appeal before this court.

4. Mr. Manish Bhandari, the learned Counsel for the appellant, has vehemently argued that power to remand has been prescribed by Section 107 of the Code and has been elaborately dealt with under Order 41, Rules 23 to 26A. However, the learned Judge has failed to exercise the power vested in him, instead of finally deciding the case himself, under Order 41 Rule 24 of the Code, the learned Judge has remanded the case back after quashing and setting aside the judgment of the learned trial Court. He has further argued that the learned trial Court had given ample opportunities to the respondent to submit its written statement. However, despite the repeated opportunities, the respondent singularly failed to do so. Therefore, the learned trial Court was justified in closing the defence. Hence, the first appellate Court is unjustified in permitting the respondent to submit its written statement after paying a cost of Rs. 5000/-. Moreover, the learned Counsel has argued that merely because there were other candidates who were higher in merit according to the selection list, the appellant cannot be denied the appointment. For, those who were higher in the merit list never approached the court of law for redressal of their grievance for non-appointment. Since they failed to exercise their right, the appellant cannot be deprived of his legal remedy. Furthermore, in order to do substantial justice with the appellant, the learned trial Court was within its power to direct the respondents to appoint the appellant. There was no need for it to pass a formal order with regard to the application moved by the appellant under Order 6, Rule 17. Since the appellant was appointed on the post of Teacher Grade III during the pendency of the suit, the judgment dated 16.5.2001 was legal and valid.

Therefore, there was no occasion for the first appellate court to direct the trial court to consider the application. Lastly, that the case has been hanging fire since 1995, the appellant has been working for the last nine years. To upset his service after almost nine years would be most unjust to the appellant.

5. On the other hand, Mr. S.N. Gupta, the learned Deputy Government Advocate for the State, has strenuously argued that the power to remand is a discretionary power vested in the appellate Court. The said power has been exercised rightly. He has further reiterated the contention that the Government Advocate had colluded with the appellant and had failed to submit the written statement on time. Therefore, the State cannot be forced to suffer because of the omission on the part of their counsel. Moreover, since there were others who were more meritorious than the appellant, the appellant does not have a right to be appointed on the post of Teacher Gr. III. Therefore, he has supported the impugned order.

6. We have heard both the learned counsels and have perused the impugned order and have also gone through the order dated 16.5.2001 passed by the learned trial Court.

7. In the case of P. Purushottam Reddy and Another Vs. Pratap Steels Ltd., , the Apex Court had cautioned and had said, "an appellate court should be circumspect in ordering a remand when the case is not covered either by Rule 23 or Rule 23A or Rule 25 CPC. An unwarranted order of remand gives the litigation and undeserved lease of life and, therefore, must be avoided." Even earlier, the Hon'ble Supreme Court in the case Bechan Pandey and Others Vs. Dulhin Janki Devi and Others, , had held as under:

To remand a suit to the trial Court would necessarily have the effect of keeping alive the strife between the parties and prolonging this long drawn litigation by another round of legal battle in the trial Court and thereafter in appeal. It is time, that the final curtain is drawn and the long meandering course of litigation between the parties is put an end to. The courts should be loath to entertain a plea, which would have the effect of condemning succeeding generation of families to spend major parts of their life in the protracted litigation.

8. In the case of Niranjan Lal v. U.I.T. Alwar and Ors. SB Civil Misc. Appeal No. 1253/1998, decided on 21.8.2006 : 2007 (1) RLW 350 this Court had dealt with the power of remand u/s 107 of the Code and under Rules 23 to 26A of the Code. This Court had clearly held that "a bare perusal of Rules 24 and 25 of the Code clearly reveals that the appellate court should endeavor to decide the case at the appellate stage itself." It further held as under:

The purpose behind the Rules is not to initiate de novo trial. The purpose is also not to prolong the disputes between the parties. Since the judiciary must endeavor to decide the dispute as soon as possible, the appellate court is expected to decide the case at the appellate stage itself. Therefore, the tendency to remand the case in toto after setting aside the judgment of the trial Court and

the tendency to direct a de novo trial is against the tenor of law. The appellate Court is expected to exercise its power within the confines of Rules 23 to 26A of the Code. Ample powers have been given to the appellate court under Rules 27, 28 and 29 of the Code to take additional evidence and to decide the issues re-framed by it. Since the trial courts are the most overburdened courts in the judicial hierarchy, the appellate court should refrain from remanding the case in toto in a routine manner. What can be done at the appellate stage, need not be remanded back to the trial court. After all, the buck has to stop somewhere.

The poor litigant cannot be treated as a shuttle-cock and forced to run from pillar to post, from court to court. The litigant expects the judiciary to decide its case at the earliest. The litigant neither has the financial means, nor the energy to go on a roller-coaster ride of litigations. The judiciary has to be sensitive to the financial condition and to the expectation of the litigant. To prolong a dispute endlessly is not only a disservice to the litigant, but is also an injustice to him. Therefore, this trend of remanding the case back to the trial Court in a mechanical and routine manner has to stop. The learned District Judges who are experienced and knowledgeable, are expected to do their duty by the litigant.

9. In the present case, the learned appellate Judge has given three reasons for remanding the case back to the learned trial Court; firstly, that the State counsel had colluded with the appellant for not submitting the written statement. The State cannot be forced to suffer for the omissions on the part of its counsel. Secondly, that others who are more meritorious could not be deprived of their appointment by giving an appointment to the appellant. Thirdly, that the appellants application under Order 6 Rule 17 CPC has not been decided.

10. The State is required to be as vigilant in protecting its interest as any other private litigant in order to defend its interest invariably, the State appoints an officer-in-charge to look after its legal cases. Therefore, it was the duty of the officer-in-charge to ensure that the Advocate has filed the written statement within a reasonable time. It is too easy for a litigant to blame an Advocate. But, such a tendency would create chaos in the functioning of the court. Although, the State may have replaced the alleged erring lawyer, but the State did not take any action against the officer-in-charge. Therefore, the action taken by the State against their counsel may just be an eye-wash.

11. Since the learned trial Court had given ample opportunities, it had rightly closed the defence. The order dated 26.3.1998- by which the learned trial Court has closed the defence-was not even challenged by the State during the pendency of the trial. Therefore, the said order had achieved finality. Once the said order had achieved finality, the learned Judge was unjustified in indirectly setting aside the said order and in permitting the State to submit its written statement after paying a cost of Rs. 5000/-. What the learned Judge could not do directly, he cannot be permitted to do indirectly.

12. It is, indeed, a settled principle of law that the courts come to rescue of only

those who come before the Court. Those who sleep over their rights, the court does not come to their rescue. Although, according to the selection list there were candidates who were more meritorious than the appellant, but none of them approached the court of law for their non-appointment. Therefore, they have waived their right of appointment. It was only the appellant who was vigilant enough to fight for his right. Thus, merely because others were more meritorious, only on this basis, the appellant cannot be denied his appointment. Therefore, the learned trial Court had rightly directed that the appellant be appointed on the post of Teacher Gr. III.

13. Admittedly, the appellant was already appointed on the post of Teacher Gr. III during the pendency of the suit. He had also joined the service and was working when the trial Court pronounced its judgment. Undoubtedly, the duty of every court is to do substantial justice to the parties. It would have been a mere formality for the court to deal with the application under Order 6, Rule 17 of the Code filed by the appellant. In fact, while trying to do substantial justice to the appellant, the learned trial Court had rightly issued a decree for permanent injunction directing the respondents to permit the appellant to continue to work and discharge his duties on the post of Teacher Grade III. Hence, the learned Judge was not justified in directing the learned trial Court to consider the appellant's application under Order 6, Rule 17 of the Code. To direct the learned trial Court to do so would be to unnecessarily prolong the litigation. It would be a futile exercise.

14. In the result, this appeal is allowed and the judgment dated 13.7.2004 is quashed and set aside and the order and decree dated 16.5.2001 passed by the learned trial Court is confirmed. There shall be no order as to cost.