

(2013) 01 RAJ CK 0192
In the Rajasthan High Court
Case No : Civil Writ Petition No. 5772 of 2005

Manglaram Choudhary

APPELLANT

Vs

Chairman, J.V.V.N. Ltd. and Others

RESPONDENT

Date of Decision : 29-01-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 2 CDR 805 : (2013) 2 LLN 790 : (2013) 3 RLW 2300 : (2013) 3 SCT 822

Hon'ble Judges : Nirmaljit Kaur, J

Bench : Single Bench

Advocate : C.P. Trivedi, for the Appellant; Manoj Bhandari, for the Respondents No. 1 to 3 and Mr. R.S. Saluja, for the Respondent No. 4, for the Respondent

Final Decision : Dismissed

Judgement

Nirmaljit Kaur, J.—The prayer in the present petition is for a direction to the respondents to promote the petitioner on the post of Assistant Engineer from the date on which his juniors were promoted with all consequential benefits. The facts, in short, are that a final seniority list of Junior Engineers was published on 23.11.1986 showing the seniority as on 31.03.1984. The petitioner's name was shown at S. No. 125 and one Mr. Suresh Chouhan was shown at S. No. 126. The respondents issued promotion order on 17.01.1991. The name of the petitioner was not considered for promotion on the post of Assistant Engineer as a Criminal case was pending against the petitioner. Subsequently, the petitioner was acquitted of the charges levelled against him. Accordingly, he was reinstated vide order dt. 02.09.1993. As per the said order, the period during which the petitioner remained suspended was to be treated as on duty. Accordingly, the petitioner was promoted on the post of Assistant Engineer vide order dt. 31.12.1993. It is contended that as and when he joined his duty, the petitioner came to know that other persons junior to him were promoted to the post of Assistant Engineer in the year, 1991 but his name was not considered in the said

year. As such, his seniority was disturbed and the persons junior to him had been placed senior to the petitioner. He immediately made a representation in the year 1993 itself, in which he prayed that his promotion to the post of Assistant Engineer be treated from the year 1991 when the junior persons were promoted. It is further contended that the petitioner personally represented to the respondent but there was no response. He submitted various representations but no one paid any heed to the said representations and ultimately, on 8.08.2007, the respondents issued seniority list of the Assistant Engineers, in which name of the petitioner was placed at S. No. 49 and a person junior to him Mr. Suresh Chouhan was placed at S. No. 27. After the publication of the Seniority list, the petitioner submitted the representation to the respondents in which he once again prayed that his name be considered for promotion on the post of Assistant Engineers with effect from 1991. Reply has been filed by the State as well as by the Private Respondent No. 4

2. While disputing the claim of the petitioner, learned counsel for the Respondents-State and Private Respondent raised a preliminary objection that the writ petition filed in the year 2005 suffers from delay and laches. On merit, it was contended that under the Engineers Service Regulations, 1969, there is a provision under Schedule I of the Regulations of 1969 that the post of Assistant Engineer can be filled up 25% by way of direct recruitment and 75% by way of promotion from Junior Engineer. The said clause underwent an amendment from 15.07.1990 to the effect that Note 3 was inserted after the existing Note 2 under the heading "Junior posts" of Schedule 1 attached with the Regulations. The same reads as under:-

Note.-Provided that if in a particular year after filling up the posts in the manner prescribed under proviso (iii) of Regulation 16, if it is not possible to fill up the posts by direct recruitment to the extent of 25%, the remaining number of posts under direct recruitment quota may be filled in from amongst the existing J.En-I (Electrical/Mechanical) on the basis of merit. Such Junior Engineers Gr.I appointed against the post of Asstt. Engineer will be treated at par with the candidates appointed by direct recruitment for all purposes and their appointment will not be treated as promotion. The procedure & other conditions for filling up of these posts will be same as prevailing for a other category of posts being filled up by merit/selection under these Regulations.

3. It was, therefore, contended by the learned counsel for the respondent that pursuant to this, the appointments were made by way of direct recruitment on merit. Accordingly, an order was passed on 17.0.1.1991 after assessing merit of all the persons who were in the zone of consideration at that point of time. The promotions were made on merit basis against the direct recruitment quota from the employees of the RSEB. Subsequently, further promotions were made on 2.04.1991. Thus, the petitioner cannot claim promotion from the date Respondent No. 4 was appointed by promotion on direct recruitment quota through selection as per amended Rules.

4. Learned counsel for the parties were heard at length. There is merit in the preliminary objection raised by the learned counsel for the respondents with respect to the delay. The first representation was made by the petitioner as early as in the year, 1993, The petitioner continued to wait from 1993 till 2005 before filing the present writ petition. The argument that he could only come to this Court after his representations were rejected does not help in the facts of the present case. The said representation is stated to have been decided for the first time in the year 2005. It is the own case of the petitioner that the said representations remained pending and no decision was passed on the said representations. There was nothing to stop him from approaching this Court at that point of time. Moreover, seniority list Annex.R/1 was circulated on 17.07.2001. The said seniority list was endorsed to all the Assistant Engineers. Even at that stage, the petitioner did not deem it proper to challenge the same. A final seniority list was again circulated on 29.03.2003, still the petitioner did not deem it proper to challenge it at that stage. The petitioner was promoted vide order dt. 31.12.1993. As per the said promotion order, he was promoted with effect from the said date itself. The petitioner, after making the representation, did nothing further for another 12 years. It is a settled proposition of law that issue of limitation or delay and laches should be considered with reference to the cause of action. The said cause accrued to the petitioner in the year 1993 itself. The petitioner waited for 12 long years for response from the department. There was no response to the representation except that in the seniority list of the year, 2005, a general observation was made that no representation shall be entertained. Hon"ble the Apex Court in the case of Union of India (UOI) and Others Vs. A. Durairaj (Dead) by L.Rs., held in para 13 as under:-

It is well settled that anyone who feels aggrieved by non-promotion or non-selection should approach the Court/Tribunal as early as possible. If a person having a justifiable grievance allows the matter to become stale and approaches the Court/Tribunal belatedly, grant any relief on the basis of such belated application would lead to serious administrative complications to the employer and difficulties to the other employees as it will upset the settled position regarding seniority and promotions which has been granted to others over the years. Further where a claim is raised beyond a decade or two from the date of cause of action, the employer will be at a great disadvantage to effectively contest or counter the claim, as the officers who dealt with the matter and/ or the relevant records relating to the matter may no longer be available. Therefore, even if no period of limitation is prescribed, any belated challenge would be liable to be dismissed on the ground of delay and laches.

5. Similar view has been taken by the Apex Court in B.S. Bajwa and Another Vs. State of Punjab and Others, reads as under:-

Having heard both sides we are satisfied that the writ petition was wrongly entertained and allowed by the Single Judge and, therefore, the judgments of

the Single Judge and the Division Bench have both to be set aside. The undisputed facts appearing from the record are alone sufficient to dismiss the writ petition on the ground of laches because the grievance was made by B.S. Bajwa and B.D. Gupta only in 1984 which was long after they had entered the department in 1971-72. During this entire period of more than a decade they were all along treated as junior to the other aforesaid persons and the rights inter se had crystallised which ought not to have been reopened after the lapse of such a long period. At every stage others were promoted before B.S. Bajwa and B.D. Gupta and this position was known to B.S. Bajwa and B.D. Gupta right from the beginning as found by the Division Bench itself. It is well settled that in service matters the question of seniority should not be reopened in such situations after the lapse of a reasonable period because that results in disturbing the settled position which is not justifiable. There was inordinate delay in the present case for making such a grievance. This alone was sufficient to decline interference under Article 226 and to reject the writ petition.

6. Thus, there is inordinate delay in filing the present petition. Meanwhile, the respondents have been promoted to the post of Superintending Engineers. In view of the above fact and in the light of the decisions referred to above, the writ petition deserved to be dismissed only on the ground of delay and laches. The writ petition is dismissed accordingly. 2nd stay application No. 3298/2012 also stands dismissed.