

(1970) 11 RAJ CK 0005

In the Rajasthan High Court

Case No : Civil Writ Petition No's. 340 of 1967 and 51 and 57 of 1969

M.L. Goyal and Others

APPELLANT

Vs

State of Raj. and Others

RESPONDENT

Date of Decision : 25-11-1970

Acts Referred:

Constitution of India, 1950 — Article 226, 32

Citation : (1972) WLN 469

Hon'ble Judges : P.N. Shinghal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

P.N. Shinghal, J.—It is admitted that the facts relating to writ petitions No. 340 of 1967 & No. 57 of 1969 are quite similar questions of law that arise in them because both the petitioners were recruited to the Rajasthan Administrative Service by a common competitive examination held in 1956 under the Rajasthan Administrative Service Rules, 1954. The petitioner in writ petition No. 51 of 1969 was recruited by the competitive examination held in 1959. All the three petitioners may therefore be said to be "regular recruits", and I shall refer to them as such during the course of this judgment. The facts relating to writ petition No. 51 of 1969 are common with the other two petitions to a large extent. The three petitions have therefore been argued together by the learned Counsel for the parties and I shall, at their instance, deal with them by a single judgment as they are virtually companion petitions raising common questions of fact and law.

2. The contentions of the petitioners, and the replies thereto, need not be stated in any detail, because the petitions can be disposed of on the admitted facts, which are stated as follows in a chronological order.

3. Rule 7 of the Rajasthan Administrative Service Rules 1954, specifies the various sources of recruitment to the service. Recruitment by a competitive

examination is one of them, as stated in Clause (a) of sub Rule (1) of Rule 7 Rule 33 deals with the determination of seniority.

4. The first competitive examination was held in December, 1954, and the first regular recruits were appointed in July 1955. The next competitive examination was held in January, 1956, and the appointments were made in August, 1956. It appears that the State Government thought of making what has been described as an emergency recruitment, to the Rajasthan Administrative Service, and made the Rajasthan Administrative Service (Emergency Recruitment) Rules 1956, hereinafter referred to as "the Rules of 1956" which were notified in the State Gazette dated June 4, 1956. Rule 23 of the Rules of 1956 dealt with the question of seniority of the emergency recruits. Appointments on the basis of the competitive examination held in January, 1956, were made after the publication of the Rules of 1956, in August, 1956. The first emergency appointments under the Rules of 1956 were made on July 10, 1957. An interlaced seniority list of the officers of the Rajasthan and Ajmer States, including the regular recruits, was issued on September 30, 1957. The name of petitioner M.L. Goyal appeared in that list at No. 267, while the name of petitioner S.C. Pagoria appeared at No. 288. The list did not contain the names of the emergency recruits appointed on July 10, 1957. An amendment was then made in the aforesaid Rule 23 of the Rules of 1956 on February 11, 1958, by which the word "respectively" was added in Clause (c) of the proviso after the word "shall" and before the words "be placed". A combined seniority list of all the officers of the Rajasthan Administrative Service, including regular recruits and the emergency recruits of 1957, was published on August 14 1958, as on July 15, 1958. In that list the name of petitioner M.L. Goyal was down graded to No. 319 and that of S.C. Pagoria to No. 310. It appears that another seniority list was released on April 26, 1961. Then the Government issued Appointment Department's order No. F 3(11) Appts(A)/60 dated August 22, 1961, determining the final seniority and the initial pay of the persons who were appointed to the Rajasthan Administrative Service by another emergency recruitment in 1960. This was followed by the seniority list of July 1, 1964. The petitioner M.L. Goyal submitted his first representation (Ex. P/IV) on October 4, 1958 and a second representation (Ex. P/V) on December 9, 1963. Both the representations were rejected on February 4, 1964. He again made a representation (Ex. P/VII) some time after February 4, 1964 for reconsideration of the earlier decision. The State Government have taken the plea that this last representation is not available on their record. Petitioner S.C. Pagoria submitted his representation (Ex. V) on October 4, 1958, and Anr. representation (Ex. VI) on December 9, 1963. Both of them were rejected by the Government by order Ex. VII dated February 4, 1964. Petitioner M.L. Goyal filed the present writ petition on July 3, 1987, while petitioner S.C. Pagoria did so on January 3, 1969.

5. Petitioner Gurmukusingh Narwani is a regular recruit of 1959. His appointment was notified on November 13, 1959, with effect from November 23, 1959. The Government decided to hold another emergency recruitment to the Rajasthan

Administrative Service, and published the Rajasthan Administrative Service (Emergency Recruitment) Rules, 1959, hereinafter referred to as "the Rules of 1959." Rule 23 of those Rules made provision for the determination of seniority of the emergency recruits. An emergency recruitment examination was held in 1960. and appointments thereunder were made by an order Ex. (3) dated September 20, 1960. The criterion for determining the seniority was stated in notification Ex. 12 dated March 17, 1961. A combined seniority list of all the Rajasthan Administrative Officers (Ex. 4) was issued as on January 1, 1961. In that list, the seniority of the emergency recruits of 1960 was stated to be provisional. The names of Bhawani Shanker and Sawai Singh, who were emergency recruits of 1960, were shown above petitioner Gurumukh Singh. As has been stated, the seniority list of the emergency recruits of 1960 was finalised on August 22, 1961, and it was notified in the State Gazette. Thereafter as will be recalled, a seniority list was issued on July 1, 1964, but it was similar to the list of April 26, 1961. Petitioner Gurumukh Singh made a representation (Ex. 5) in regard to his seniority on July 1, 1961. He filed another representation (Ex. 7) on July 12, 1968. He filed the present writ petition on January 2, 1969. The representations of Gurumukh Singh were rejected by the State Government on September 24, 1969.

6. Proviso (c) to Rule 23 of the Rules of 1956 was deleted by an amendment dated July 25, 1967, according to which it was always to be deemed to have been deleted. No order was however issued by the State Government making any change in the seniority of the petitioners as a result of that amendment,

7. These are all the facts which bear on the controversy, and are not in dispute before me

8. It has been strenuously argued on behalf of the respondents that the petitions should be dismissed for the reason that they have been made with such inordinate and unexplained delay that on the date when they were presented any suit on the basis of the contentions made in the petitions would have been barred by limitation.

9. It is not in dispute that Article 120 of the First Schedule of the Limitation Act of 1908 and there after Article 113 of the Limitation Act of 1963, would have governed these suits if they had been filed. As the argument goes to the root of the petitions and assails the petitioner's claim to relief in the exercise of the court's extraordinary jurisdiction, it looms large in all these three cases and requires careful examination. In fact I have been at pains in stating the facts in a chronological order for the purpose of ascertaining the date or dates when the cause of action for any suits which the petitioners might have instituted would have arisen.

10. It will appear from the facts stated above that the combined seniority list of the officers of the Rajasthan Administrative Service, including the regular recruits of 1956 and the emergency recruits of 1957, was published on August 14, 1958,

as on July 15, 1958. That list was detrimental to petitioner M.L. Goyal whose seniority was brought down to No. 318, and to petitioner S.C. Pagoria whose seniority was brought down to No. 319 as aforesaid. They were dissatisfied with the seniority which was assigned to them, and their dissatisfaction related not only to the rules bearing on the seniority, but also their factual implementation. A cause of action therefore arose to these two petitioners on the release of the said seniority list on August 14, 1958. The Limitation Act of 1908 was then in force and, according to Article 120 of the First Schedule of that Act, the period for the filing of a suit was six years from the date when the right to sue accrued. Petitioners M.L. Goyal and S.C. Pagoria did not, however, file any such suit, and did not approach this Court for the exercise of its extraordinary jurisdiction under Article 226 of the Constitution for, as has been stated, petitioner M.L. Goyal filed the present writ petition on July 3, 1967, while petitioner S.C. Pagoria did so on January 3, 1969. It is therefore quite clear that they have asked for a redress of their grievances far beyond the period of limitation.

11. So far as the case of petitioner Gurmukh Singh Narwani is concerned, it will be recalled that the seniority list of the emergency recruits of 1960 was finalised on August 22, 1961, and it was notified in the State Gazette. A cause of action therefore arose to petitioner Gurmukh Singh Narwani on August 22, 1961 but he also did not file a suit to obtain a redress of any grievance which he thought was justiciable in a court of law. As has been stated, he filed the present writ petition on January 2, 1969, which was again far beyond the period of limitation.

12. I have, in this connection, taken account of the representations which were made by the petitioners to which reference has been made above. The representations of petitioners M.L. Goyal and S.C. Pagoria were rejected by the Government on February 4, 1964, so that it is quite futile on their part to contend that they could not file their suits because of the pendency of these representations. It will be enough to say in this connection that the period of limitation could not stop running merely because of the pendency of the representations. But even it, for the sake of argument, it is assumed that the petitioners awaited the result of their representations, there was no justification for them to do so after February 4, 1964 when those representations were rejected. And it cannot avail them to take shelter behind their subsequent requests for reconsideration of the earlier representations, for it has been held by their Lordships of the Supreme Court in *Rabindranath Bose and Ors. v. The Union of India* and *Ors.* 1970 SLR 330 that the making of another representation on similar lines would not enable the petitioners to explain the delay. The petitioners have filed the present petitions after the expiry of the period of three years prescribed in Article 113 of the Schedule of the Limitation Act, 1963, even if the period of limitation is calculated from February 4, 1964.

13. As regards the representation of Gurmukh Singh Narwani, it was rejected on September 24, 1969. But the important fact which stands out against him is that he took no action after filing his representation on July 1, 1961. He made the

other representation some 7 years thereafter on July 12, 1988. The cause of action in his case certainly arose on August 22, 1961 when the seniority was determined, but he also did not seek a redress of his grievance by means of a suit or a writ petition within the period of limitation.

14. It is true that limitation as such is not a bar to the consideration of a petition under Article 226 of the Constitution. But its impact on such petitions has been well established in a number of decisions of their Lordships of the Supreme Court. Thus in *State of Madhya Pradesh Vs. Bhailal Bhai and Others*, it has been observed by their Lordships as follows:

Learned Counsel is light in his submission that the provisions of the Limitation Act do not as such apply to the granting of relief under Article 226. It appears to us however that the maximum period fixed by the legislature as the time within which the relief by a suit in a civil court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Article 226 can be measured. This Court may consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil action for the remedy, but where the delay is more than this period, it will almost always be proper for the Court to hold that it is unreasonable.

This view has been taken by their Lordships even though it was urged before them that the impugned legal provision was invalid and the grievance of the petitioners related to the infringement of a Fundamental Right.

15. I may next refer to the decision of their Lordships of the Supreme Court in *M/s Tilokchand and Motichand and Ors. v. H.B. Munshi and Anr.* 1969 (I) SCC 116, in which a reference was made to *State of Madhya Pradesh Vs. Bhailal Bhai and Others*, and it was held that the party claiming Fundamental Rights must move the court before other rights come into existence and that the action of courts cannot harm innocent parties "if their rights emerge by reason of delay on the part of the person moving the Court". It has further been held that the petition should be moved with utmost expedition, at the earliest possible time, and the petitioner should explain satisfactory all semblance of delay.

16. Then there is the decision of their Lordships of the Supreme Court in *Rabindranath Bose and Ors. v. The Union of India and Ors.* 1970 SLR 330. It was a case in which the seniority list was prepared on August 1, 1953, under the rules of 1952, and it was challenged by a petition under Article 32 of the Constitution some 15 years thereafter. It was held by their Lordships that they could not be expected to go into stale demands after a lapse of years. The following observations of their Lordships bear directly on the controversy in the present case:

33. We are not anxious to throw out petitions on this ground, but we must administer justice in accordance with law and principles of equity, justice and good conscience. It would be unjust to deprive the respondents of the rights which have accrued to them. Each person ought to be entitled to sit back and

consider that his appointment and promotion effected a long time ago would not be set aside after the lapse of a number of years.

17. The only other case which I may refer in this connection is K.V. Rajalakshmiah Setty and Anr. v. State of Mysore and Anr. AIR 1967 SC 993 In that case the petition was filed after about 13 years, and it was brought to the notice of their Lordships of the Supreme Court that the Chief Engineer had espoused the case of the petitioners and was writing letters to the State Government from time to time to redress their grievances Even so, their Lordships held that the petitioners were guilty of laches.

18. It will thus appear that the law on the point has been declared by their Lordships of the Supreme Court beyond all controversy, and it goes against the petitioners.

19. I have considered the cases cited on behalf of the petitioners, but they are all clearly distinguishable. Thus in Sat Pal Sharma and Anr. v. State of Punjab 1968 SLR 848 there was some delay in filing the writ petition. The views of their Lordships of the Supreme Court were not, however, brought to the notice of their Lordships of the Punjab and Hariyana High Court. Even so, they observed that if the learned Single Judge, against whose judgment they were hearing the appeal, had dismissed the petition merely on the ground of delay, they would have declined to go into the merits of the controversy. The judgment in P.C. Bahl v. Union of India and Ors. 1968 2 SLR 291 also does not refer to the decision of their Lordships of the Supreme Court in State of Madhya Pradesh Vs. Bhailal Bhai and Others, , and the case was decided on its peculiar features. B.S. Brar v. The State 1970 SLR 889 also does not notice the pronouncements of their Lordships of the Supreme Court and was decided on the peculiar circumstances created by the conduct of the Government. The cases cited on behalf of the petitioners are of no avail to them.

20. It will thus appear that there has been inordinate and unexplained delay in filing the writ petitions.

21. An attempt was made to get round the difficulty by arguing that a fresh cause of action arose to petitioners M.L. Goyal and S.C. Pagoria when proviso (c) to Rule 23 of the Rules of 1956 was deleted with retrospective effect. I have already made a reference to that amendment of July 25, 1967. I am however not at all persuaded that it could be said to have given rise to a fresh cause of action to the petitioners. The reason is that they have not been able to show that any seniority list was issued, whether provisionally or finally, after the aforesaid amendment, in which their position was brought down or was otherwise adversely affected. Moreover, the basic Rule 23 (excluding the proviso) of Rules of 1956, against the validity of which a grievance has been made in the petitions, has remained unaltered even after the amendment of 1967. That rule, as it stood before the amendment, read as follows:

23. Seniority.-Seniority of persons appointed to the service by Emergency

Recruitment shall be determined Ad Hoc by Government on the recommendations of the Recruitment Board; provided that:

(a) Names of persons, may, if necessary, be placed any where within the R.A.S. seniority list published in the Rajasthan Gazette Extraordinary dated 12-11-1955, vide Apptts Department (c) Notification No. F. 4(7) Int. 53, dated the 9th November, 1955.

(b) Persons in the employment of the Government of Rajasthan, appointed during the cause of the integration of service to posts carrying pay in a scale lower than the scale of 250-25-400 EB-25-500, shall not be placed within the said seniority list published on 12-11-1955,

(c) Persons who were eligible to appear at the Competitive Examination held in December, 1954 and in January, 1956 for recruitment to the service, shall respectively be placed junior to those who were appointed to the service as a result of those examinations.

The amendment removed Clause (c) of the proviso with retrospective effect as if it never existed in the rule from its inception. Nonetheless, the basic provision of Rule 23 always required that the seniority of the emergency recruits shall be determined ad hoc by the Government on the recommendations of the recruitment board, so that it was always open to determine the seniority on an ad hoc basis vis-a-vis those who had already been appointed to the Rajasthan Administrative Service by integration or otherwise. When this was so, the deletion of proviso (c) did not create any such alteration in the situation as to give rise to a fresh cause of action. And what is more, the petitioners have not, as has already been stated, been able to contend that their seniority has adversely been affected by any order of the State Government made because of the deletion of Clause (c) of the proviso. It is, on the other hand, admitted that nothing whatsoever has happened after the amendment to affect the petitioners adversely. So far as the Rules of 1959 are concerned, the argument regarding the amendment made in the Rules of 1956 in 1967 is of no relevance for the reason that Rule 23 of those Rules did not contain any proviso at all.

22. The fact therefore remains that there has been inordinate delay in filing the writ petitions and the delay has not been explained. The petitions are therefore dismissed, but there will Be no order as to the costs.