

(1996) 09 RAJ CK 0010

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2164 of 1996

M.M. Sharma and Others

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 18-09-1996

Acts Referred:

Rajasthan Services (Recruitment by Promotion against Vacancies of Earlier years)
Rules, 1972 — Rule 5

Citation : (1997) 2 RLW 1166 : (1996) 2 WLN 254

Hon'ble Judges : V.K. Singhal, J

Bench : Single Bench

Judgement

V.K. Singhal, J.—All these writ petitions are disposed of by this judgment and for the sake of convenience, the fact of Ramjilal Sharma are taken into consideration.

2. The dispute in all these writ petitions is with regard to the seniority list prepared by the respondents in pursuance of the "directions of this Court. The dispute is between the promotees and direct recruits. The writ petition No. 3170/1987, was filed by Dhanraj Sharma which was decided on 7th Oct. 1992. In the said writ petition the court observed that the respondents failed to act in accordance with the provisions of the rules in the matter of determination of seniority and keeping this failure on the part of the State Government Labour & Welfare Service Rules, 1958 it was directed that the respondents shall determine the yearwise vacancies in accordance with the provisions of Rule 9 of the Rules of 1956 and second direction was given that the apportionment of the vacancies so determined shall be on yearly basis maintaining the quota between direct recruits and promotees in the ratio prescribed by the rules which is 50-50. The third direction which was given was that if it is found that the appointment in any particular year have been given in excess of the present quota to the promotees then the seniority of such promotees shall be determined by pushing them down beyond the quota prescribed for the promotees. Even if the promotion has been made with reference to the year in which direct recruitment has been made, the promotee shall be entitled to seniority only with reference to the year in which

the direct recruitment has infact been made. The observations was also made that this shall not effect the emoluments etc. of the promotees which they have already "drawn during the last many years.

3. Against this Judgment, Special appeal was preferred and the Division Bench in Special Appeal No. 870/93, observed that the learned Single Judge was absolutely justified in his observation that there is an obligation to make yearwise determination of vacancies for direct recruits as well as promotees and that the competent authority cannot avoid this responsibility by sheer inaction or mission and failure on the part of the competent authority to do so, cannot be used as a basis for denying eligibility to those who are eligible in a particular year but for becoming ineligible subsequently on account of absence of determination of vacancies on yearly basis. It was also observed that the rule daste a statutory duty and obligation upon the competent authority to modify the appointment order of the concerned candidate by specifying the year in which they were entitled to promotion which shall correspond to the year in which vacancies against direct recruitment quota of the relevant year were filled up so that there is no difficulty in giving promotion to the deserving candidates. The directions for determination of the vacancies and appointment of the quota as well as the observation that the promotion shall correspond to the year in which vacancies against direct recruitment quota of the relevant year were filled up, were also made. This entire observations of the learned Single Judge were approved and no infirmity or error was found in the Judgment.

4. Beside the above observations, directions were given to the State Government to maintain the quota system in the ratio of 50- 50 as required by Rule 4 of the Rules 1958 as well as Rule 9 of the rules 1972, and a fresh seniority list was directed to be drawn up in accordance with the Rule 26(3) of the Rules of 1970; There was one special appeal filed by Gopal Lal Sharma and 7 others, having No. 352/1993, for which it was observed that they were not party to the writ petition filed in this writ petition and has come to know the impugned order at a later stage. It was observed that their seniority position should not be disturbed by the State Government since they had already been promoted as Labour Welfare Officer as per the requirement of the State and their due seniority should be determined by the Department. It is pointed out by Mr. Rastogi that with regard to the observations of this para, an application for clarification has already been moved by him which is pending before the Division Bench and the review petition has been moved by these petitions which is pending before the Division Bench.

5. In SLP filed by the State Government, the same was dismissed with the observations leaving it open to the petitioner-state to move the High Court for any further clarification or alteration which may be found necessary in the interest of justice.

6. The arguments of Mr. Sharma is that a great injustice has been done to his client because earlier he was allotted the year 1979 then it was changed to 1980 and in the list of 6th Nov. 1995, he has been placed delay in 1987-88. It is also

stated that if the relief has been given to the 7 persons in the Special Appeal No. 352/93, then the similar relief should be given to the petitioners and that the vested right of the petitioners are being effected if they seniority is disturbed.

7. Mr. Kewal Ram has relied on the decision given by the Apex Court in the case of Udit Narain Singh v. Board of Revenue reported in 1963 SC 786, where a distinction has been drawn between necessary and proper party and on the basis of this decision, it is stated that since the rights of the petitioners were effected, they should have been impleaded as respondents. The decision given in the case of Union of India and Ors. v. Madan Lal Ganga Bishan reported in 1971 Lab IC 142, has also been relied wherein the Punjab & Haryana High Court has held that the order involving civil consequences and confirmation to the rules of natural justice and if any detrimental order is passed then it should not be without issuing notice. It is stated that the petitioner was neither afforded any opportunity at the time when this seniority list was prepared or the vested rights of the petitioners were effected. Reliance has also been placed on the decision of Ghanshyam Singh Rajoria v. The State of Rajasthan and Ors. reported in 1994(3) WLC (Raj) 738 and the decision in the case of Limba Ram Tripathi v. State of Rajasthan reported in 1994 Lab IC 1147, where the order of reversion without notice was considered against the principles of natural justice. It is stated that any order passed without hearing the person is bad in law as held by the Punjab & Haryana High Court, in the case of Mahinder Singh Void v. The Union of India and Ors. reported in 1982(1) SLR 242.

8. Mr. Bhandari and learned Additional Advocate General has submitted that the controversy between the direct recruitees and promottees and their inter se seniority was considered by the Apex Court in the case of The Direct Recruit Class-II Engineering Officers' Association and others Vs. State of Maharashtra and others, , wherein it was observed that once an incumbent is appointed to a post according to rule, his seniority is to be counted from the date of his appointment and not according to the date of his confirmation. Seniority cannot be determined on the sole test of confirmation, for, confirmation is one of the inglorious uncertainties of government service. It is further observed that when appointments are made from more than one source, it is permissible to fix the ratio for recruitment from the different source, and if the rules are framed in this regard, they must ordinarily be followed strictly. In case, however, if the quota rule is not followed for a number of year because it was impossible to do so. The inference is irresistible that the quota rule had broken down and the unavoid circumstances brings about its natural demise and there is no meaning that no meeting in pretending that it is still vibrant, with life. Observations were also made that if it becomes impossible to adhere to the existing quota rule, it should be substituted by an appropriate rule to meet the needs of the situation. But merely for the reason that this step is not taken promptly though rule the performance of which has been rendered impossible, cannot be treated to continue as operative and binding.

9. Mr. Rastogi, appears on behalf of the respondents submits that if a decision has been given by the Division Bench with further liberty of clarification by the Apex Court then the only remedy available to the petitioner is to move the Division Bench by way of review petition as was observed by the Apex Court in the case of Ram Janam Singh Vs. State of Uttar Pradesh and another, , and infact the remedy of review has already been availed by most of the petitioners. The decision of State of Maharashtra and another Vs. Prabhakar Bhikaji Ingle, , has also been relied that if the order of the Administrative Tribunal is confirmed by the Supreme Court, by refusing to grant leave to appeal the Tribunal cannot review its order thereafter. Though dismissal of SLP without speaking order does not constitute res judicata.

10. It is also stated that the matter with regard to the theory of pushing down, the Apex Court has held in the case of Madan Gopal Garg Vs. State of Punjab and Others, , that if the appointment of promotees have been given in excess of the quota fixed then the same is invalid and any such appointment in excess of the quota has to be pushed down in a later year when it is regularised as per the quota and as such an appointment prior to regularisation cannot confer any right as against a person who is directly appointed within the quota prescribed for direct recruitment. Attention has also been drawn towards the provisions of Rule 5 of the Rajasthan Services (Recruitment by Promotion against Vacancies of Earlier years) Rules, 1972, where it is observed that:

5. Where any vacancy existed in the promotion quota in a year earlier than that in which an appointment by promotion was made on the recommendation of the Departmental Promotion Committee, the appointing authorities shall modify the appointment order by specifying the year in which such promotion shall be deemed to have been made.

11. Mr. Joshi has raised the arguments that the learned Single Judge or the Division Bench have not taken into consideration the quota with regard to reserved category namely the SC / ST quota and that the name of 25 persons are missing from the list prepared and that earlier Raja Ram Meena filed an appeal before the Tribunal wherein Poonam Chand Parmar was held senior to Raja Ram Meena and that order has become final. No appeal was preferred by any party and any seniority which is to be prepared should not disturb the petitioner or in any case he should be placed above Raja Ram Meena.

12. It is pointed out by Mr. Sharma that the service Tribunal has allotted the year 1983 and the order of appointment by the respondents was set-aside against which no appeal was preferred.

13. I have considered over the matter. The law on the point is settled that if the right of any person is affected then he must be heard. Admittedly the petitioners were not heard and in few of cases, even the Judgment of the Tribunal is said to be in their favour. The controversy which was raised has been settled by laying down certain principles and those principles have been approved by the Division

Bench. The grievance mainly now remains that only 7 persons in D.B. Special Appeal No. 352/93, have been directed not to be effected by the Judgment given whereas even the persons senior to them are disturbed and would be junior even from those 7 persons. The application for clarification in this regard is stated to have already been moved by the respondents and according to the submission of Mr. Rastogi, the status could be reserved and not the seniority. I would not like to go on that point but one thing I may observe that if the benefit is to be given to any of the promotee then all similar situated promotees are to be given the same benefit. Even if they have not approached the court, the relief cannot be restricted to 6 of the persons even by the State Government. It would be appropriate that the other persons who have not moved the application for review/clarification may now move before the Division Bench in accordance with the order given by the Apex Court in the case reported in Ram Janam Singh Vs. State of Uttar Pradesh and another, Since the principles as laid down by the learned Single Judge and approved by the Division Bench are binding on me and even the SLP has been dismissed with liberty to move the application for clarification, I consider it proper that the petitioners who were not the party in the judgment of Dharamraj, may now move the review/ clarification before the Division Bench so that similar treatment would be given to all promotees keeping in view the provisions of law. The other contention of the petitioners shall also be considered. The names of those persons who are not included in the list shall also be included in the list and till the decision of reviewed DPC shall not be called for. Final action would be taken by the respondents in accordance with the clarification or the order in review as may be given by the Division Bench.

14. The writ petitions are disposed of with the above observations.