
(2015) 01 RAJ CK 0106

In the Rajasthan High Court

Case No : Civil Special Appeal Nos. 783, 784, 793, 794, 795, 796, 865, 889 and 977/2014

Mohan Lal Kadwasra

APPELLANT

Vs

Raj. State Road Transport Corp.

RESPONDENT

Date of Decision : 08-01-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Citation : (2015) LabIC 1401 : (2015) 1 LLJ 674

Hon'ble Judges : Sunil Ambwani, Acting C.J.; Jaishree Thakur, J.

Bench : Division Bench

Advocate : Nupur Bhati, Ravindra Singh, N.S. Charan, Rahul Bhati and Vikas Bijarnia, for the Appellant; Harish Purohit, Advocates for the Respondent

Final Decision : Allowed

Judgement

Sunil Ambwani, Actg. C.J.—We have heard learned counsel for the parties.

2. In pursuance to the advertisement dated 23.3.2012 for recruitment on 718 posts of Conductor in the Rajasthan State Road Transport Corporation (fort short, "the Corporation"), the appellants-petitioners amongst 56 candidates, whose services have been subsequently terminated, were appointed on 26.6.2013. It appears that some representations were made with regard to the correctness of the questions in the objective type examination, held for recruitment under the Rajasthan State Road Transport Corporation Employees Standing Order 1976. A committee was formed by the Corporation to look into the representations and the matter was referred to the experts. The experts reported and made recommendation regarding one erroneous question and for deletion of five questions. The recommendation was accepted by the Corporation, on which the results were revised and in which 56 persons including the appellants-petitioners were found to be erroneously selected. The Corporation took corrective measures, in which show cause notices were given to the 56 persons including the appellants-petitioners and their services were terminated on various dates in

the month of October, 2013, giving rise to the writ petitions filed by them.

3. Learned Single Judge by his judgment and order dated 20th May, 2014, following the judgment dated 20.12.2013 delivered in the similar matters at Jaipur Bench of this Court in Bhag Prakash and Ors. V/s. RSRTC and Ors. (S.B. Civil Writ Petition No. 18940/2013 and four other connected writ petitions), dismissed the writ petitions on the ground that the petitioners had no right to continue in service, after the results were revised on the basis of the expert opinion, in which their merit fell below 56 candidates, who were entitled to be included in the select list.

4. Learned Single Judge expressed his sympathies with the appellants-petitioners, but did not grant any relief on the ground that in exercise of the jurisdiction under Article 226 of the Constitution of India, the services of the appellants-petitioners could not be protected after they were terminated on the ground of revision of the merit list.

5. Learned counsel appearing for the appellants have relied on the latest judgment of the Supreme Court in Rajesh Kumar and Others etc. Vs. State of Bihar and Others etc., , laying down the principle that where the candidates, who were innocent parties and had not contributed in any manner in the preparation of the erroneous key or the distorted result, their services should not be terminated only on the ground of re-evaluation process and the revised results. The judgment has been followed in Vikas Pratap Singh and Others Vs. State of Chhattisgarh and Others, , in which, reiterating the principles of equity, it was held that the persons, who were selected and appointed should not be terminated for no fault of theirs. The Supreme Court held in paragraphs 21 to 28 as follows:-

"21. Shri Rao would submit that the case of these appellants requires sympathetic consideration by this Court, since the appointment of appellants on the basis of a properly conducted competitive examination cannot be said to have been affected by any malpractice or other extraneous consideration or misrepresentation on their part. The ouster of 26 appellants from service after having successfully undergone training and serving the respondent State for more than three years now would cause undue hardship to them and ruin their lives and careers. He would further submit that an irretrievable loss in terms of life and livelihood would be caused to eight appellants amongst them who have now become overaged and have also lost the opportunity to appear in the subsequent examinations. He would place reliance upon the decision of this Court in Rajesh Kumar and Others etc. Vs. State of Bihar and Others etc., wherein this Court has directed the respondent State to re-evaluate the answer scripts on the basis of correct model answers key and sympathetically considered the case of such candidates who, after having being appointed in terms of erroneous evaluation and having served the State for considerable length of time, would not find place in the fresh merit list drawn after re-evaluation and directed the respondent State against ousting of such candidates and further that

they be placed at the bottom of the fresh merit list.

22. The pristine maxim of *fraus et jus nunquam cohabit* (fraud and justice never dwell together) has never lost its temper over the centuries and it continues to dwell in spirit and body of service law jurisprudence. It is settled law that no legal right in respect of appointment to a said post vests in a candidate who has obtained the employment by fraud, mischief, misrepresentation or mala fide. (See: *District Collector and Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram and Another Vs. M. Tripura Sundari Devi*, , *S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others*, and *Union of India and others Vs. M. Bhaskaran, G. Radhakrishnan and C. Devan*, . It is also settled law that a person appointed erroneously on a post must not reap the benefits of wrongful appointment jeopardizing the interests of the meritorious and worthy candidates. However, in cases where a wrongful or irregular appointment is made without any mistake on the part of the appointee and upon discovery of such error or irregularity the appointee is terminated, this Court has taken a sympathetic view in the light of various factors including bonafide of the candidate in such appointment and length of service of the candidate after such appointment (See: *Vinodan T. and Others Vs. University of Calicut and Others*, ; *State of U.P. Vs. Neeraj Awasthi and Others*, .

23. In *Girjesh Shrivastava and Others Vs. State of M.P. and Others*, , the High Court had invalidated the rule prescribing selection procedure which awarded grace marks of 25 per cent and age relaxation to the candidates with three years' long non-formal teaching experiences as a consequence of which several candidates appointed as teachers at the formal education institutions under the said rule stood ousted. This Court while concurring with the observations made by the High Court kept in view that upon rectification of irregularities in appointment after a considerable length of time an order for cancellation of appointment would severely affect economic security of a number of candidates and observed as follows: (SCC p.714, para 31)

"31....Most of them were earlier teaching in non-formal education centers, from where they had resigned to apply in response to the advertisement. They had left their previous employment in view of the fact that for their three-year long teaching experiences, the interview process in the present selection was awarding them grace marks of 25 %. It had also given them a relaxation of 8 years with respect to their age. Now, if they lose their jobs as a result of the High Court's order, they would be effectively unemployed as they cannot even revert to their earlier jobs in the non-formal education centers, which have been abolished since then. This would severely affect the economic security of many families. Most of them are between the age group of 35-45 years, and the prospects for them of finding another job are rather dim. Some of them were in fact awaiting their salary rise at the time of quashing of their appointment by the High Court."

Therefore, mindful of the aforesaid circumstances this Court directed non-ouster of the candidates appointed under the invalidated rule.

24. In *Union of India (UOI) and Another Vs. Narendra Singh*, this Court considered the age of the employee who was erroneously promoted and the duration of his service on the promoted post and the factor of retiring from service on attaining the age of superannuation and observed as follows: (SCC p.758, paras 35-36)

"35. The last prayer on behalf of respondent, however, needs to be sympathetically considered. The respondent is holding the post of Senior Accountant (Functional) since last seventeen years. He is on the verge of retirement, so much so that only few days have remained. He will be reaching at the age of superannuation by the end of this month i.e. 31.12.2007. In our view, therefore, it would not be appropriate now to revert the respondent to the post of Accountant for very short period. We, therefore, direct the appellants to continue the respondent as Senior Accountant (Functional) till he reaches the age of superannuation i.e. upto 31.12.2007. At the same time, we hold that since the action of the authorities was in accordance with statutory rules, an order passed by the Deputy Accountant-General cancelling promotion of the respondent and reverting him to his substantive post of Accountant was legal and valid and the respondent could not have been promoted as Senior Accountant, he would be deemed to have retired as Accountant and not as Senior Accountant (Functional) and his pensionary and retiral benefits would be fixed accordingly by treating him as Accountant all throughout.

36. For the foregoing reasons, the appeal is partly allowed. Though the respondent is allowed to continue on the post of Senior Accountant (Functional) till he reaches the age of retirement i.e. 31.12.2007 and salary paid to him in that capacity will not be recovered, his retiral benefits will be fixed not as Senior Accountant (Functional) but as Accountant. In the facts and circumstances of case, there shall be no order as to costs."

25. This Court in *Gujarat State Dy. Executive Engineers" Association Vs. State of Gujarat and Others*, although recorded a finding that appointments given under the "wait list" were not in accordance with law but refused to set aside such appointments in view of length of service (five years and more).

26. In *Buddhi Nath Chaudhary and Others Etc. Vs. Abahi Kumar and Others*, , even though the appointments were held to be improper, this Court did not disturb the appointments on the ground that the incumbents had worked for several years and had gained experience and observed: (SCC p.331, para 6)

"6....We have extended equitable considerations to such selected candidates who have worked in the post for a long period..."

(See: *M.S. Mudhol and Another Vs. S.D. Halegkar and Others*, and *Tridip Kumar Dingal and Others Vs. State of West Bengal and Others*,

27. Admittedly, in the instant case the error committed by the respondent-Board in the matter of evaluation of the answer scripts could not be attributed to the appellants as they have neither been found to have committed any fraud or misrepresentation in being appointed qua the first merit list nor has the preparation of the erroneous model answer key or the specious result contributed to them. Had the contrary been the case, it would have justified their ouster upon re-evaluation and deprived them of any sympathy from this Court irrespective of their length of service.

28. In our considered view, the appellants have successfully undergone training and are efficiently serving the respondent State for more than three years and undoubtedly their termination would not only impinge upon the economic security of the appellants and their dependants but also adversely affect their careers. This would be highly unjust and grossly unfair to the appellants who are innocent appointees of an erroneous evaluation of the answer scripts. However, their continuation in service should neither give any unfair advantage to the appellants nor cause undue prejudice to the candidates selected qua the revised merit list."

6. In the present case, we find considerable substance in the argument of learned counsel appearing for the appellants that having received the complaints on 13.6.2013, prior to the issuance of appointment letters of the appellants-petitioner dated 26.6.2013, the Corporation did not act promptly in getting the complaints examined. The Committee was constituted on 21.8.2013, and on receipt of the report from such Committee, the results were revised on 19.9.2013. In between, on 6.8.2013, the Corporation had advertised 1428 vacancies on the posts of Conductor, which included 89 vacancies, on which the appointees of 2012 selections, in which the appellants had participated and were selected, had not joined. It is submitted that apart from the benefit of the principle laid down by the Supreme Court that the services of the persons appointed through competitive examination in accordance with the Rules, should not be terminated on the ground of preparation of erroneous results, for which nothing can be attributed to them, the appellants-petitioners were deprived of the chance of applying in the subsequent recruitment to the posts, which were advertised on 6.8.2013, and on which date, they were working with the Corporation in pursuance of earlier selections.

7. We do not find any good ground to deny the appellants-petitioners the benefit of the rule of law, serving principles of equity, developed by the Supreme Court in which it is clearly stated that it will be highly unjust and grossly unfair to terminate the services of those persons, who are innocent appointees of an erroneous evaluation of the answer scripts. Their continuation in service should neither give any unfair advantage to them nor cause any undue prejudice to the candidates selected qua the revised merit list.

8. In the present case, we find from the averments made in the pleadings that 89 persons did not join in the selections for 718 advertised vacancies and these

vacancies were subsequently included in the subsequent selections, which were advertised on 6.8.2013 when the appellants were already working with the Corporation.

9. We do not find any substance in the contention of the counsel appearing for the Corporation that the judgment in Secretary, State of Karnataka and Others Vs. Umadevi and Others, , providing that all appointments in public services should be made serving the principles of equality under Articles 14 and 16 of the Constitution of India, would in any way deny the appellants the benefit of the principles of equity in allowing them to continue, when they were selected and appointed in the selections under the statutory Rules and were terminated on the revision of the select list.

10. In view of the pronouncement of the law by the Supreme Court, which serves the principles of equity to protect the appointments of those persons, who have no role in the revision of the results, the Special Appeals are allowed. The orders by which the services of the appellants-petitioners were terminated are set aside. The appellants however will not be reinstated in service. They will be given appointment letters and will be placed at the bottom of the select list, after the last appointee in the selections of the revised list, in pursuance to the advertisement dated 23.3.2012. As the appellants-petitioners are still working in pursuance to the interim orders passed by this Court, the pay and allowances, which they have drawn before their re-appointment, shall not be recovered back from them.

11. A copy of this judgment will be placed in all the files.