

(2014) 12 RAJ CK 0142
In the Rajasthan High Court
Case No : Civil Writ Petition No. 3501/2001

Naresh Kumar

APPELLANT

Vs

Rajasthan State Industrial Development and Investment
Corporation Ltd.

RESPONDENT

Date of Decision : 16-12-2014

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2015) 2 CDR 787 : (2015) 2 RLW 1652 : (2015) 2 SCT 293

Hon'ble Judges : Sandeep Mehta, J

Bench : Single Bench

Advocate : Rakesh Arora, Advocate for the Appellant; Ravi Bhansali, Advocate for the Respondent

Judgement

Sandeep Mehta, J.—By way of the instant writ petition, the petitioner seeks a relief that the respondents be directed to appoint the petitioner on the post of Junior Assistant and to grant him regular pay scale from the date of his initial appointment with all consequential benefits and arrears of salary with interest thereon @ 20% per annum.

2. The petitioner was appointed as a temporary Accounts Clerk/Junior Assistant in the respondent department on 15.9.1984 on hourly payment basis. The petitioner's services were terminated upon which he raised an industrial dispute. The learned Labour Court, Jodhpur by order/award dated 2.1.1993 accepted the claim and directed that the petitioner be reinstated in service treating his service to be continuous. The respondent department was further directed to make payment of Rs. 4000/- as compensation to the petitioner.

3. The petitioner being dissatisfied with the said award, instead of joining duties, preferred a Writ Petition No. 3535/1993 before this Court with a prayer that the respondents be directed to regularise the services of the petitioner and also to pay salary to him in the regular pay scale on the principle of equal pay for equal work.

4. The respondents defended the writ petition with a specific stance that the petitioner was not a regularly recruited employee. He was engaged on hourly basis to assist the overburdened staff. A specific plea was taken by the respondents that the petitioner was permitted to take the qualifying departmental examination for being appointed as a regular Junior Assistant but he failed and thus, he was not entitled to be regularised and granted pay scale. It was pleaded on behalf of the respondents that the petitioner did not hold the requisite qualifications upon having failed in the departmental examination and thus he could not be granted the relief of regularisation. This Court whilst deciding the aforesaid writ petition by order dated 1.2.1999 held as below:--

"But in the instant case the respondents have clearly disputed that the petitioner had worked on what he alleges and have also said that as and when an opportunity was given to the petitioner to qualify the departmental examination he failed. In this back-ground he was not granted regularisation. The employee who has failed in the departmental examination and has not proved his worth to the employer cannot claim regularisation and to that extent the claim of the petitioner that he should be granted regularisation and regular scale of pay cannot be entertained and these pleas of the petitioner are, therefore, declined."

5. The petitioner thereafter preferred a special appeal being D.B. Civil Special Appeal (Writ) No. 382/1999 against the order passed by the learned Single Judge. The special appeal too was dismissed vide order dated 18.4.2001 giving liberty to the petitioner to avail appropriate remedy for seeking the relief of regularisation.

6. It appears that the petitioner submitted an application Annexure-12 dated 1.2.1993 to the respondent department with the following conditions/stipulations :--

7. Admittedly, the petitioner never resumed his duties in pursuance of the award of reinstatement passed in his favour by the Tribunal.

8. Nonetheless, the respondents were benevolent enough and permitted him to appear in the departmental examination held in the year 1998. Thereafter the petitioner was also subjected to interview but ultimately a communication Annexure A/2 dated 26.2.2002 was sent to the petitioner mentioning that the State Government had imposed a ban on fresh recruitments by circular dated 10.6.1999, and therefore, the petitioner could not be given regular appointment on the post of Junior Assistant. The communication also reads that the entire panel prepared after the process of departmental examination stood cancelled and no person would be appointed from the said panel in future.

9. The petitioner has approached this Court by way of instant writ petition seeking relief of being granted regular appointment in the department.

10. Mr. Rakesh Arora, learned counsel for the petitioner vehemently contended that the petitioner submitted the letter Annexure-12 dated 1.2.1993 under the

direction of the departmental officials that is why he was permitted to appear in the departmental examination held in the year 1998. He submits that the petitioner is ready to forego the back wages but the respondents be directed to grant him regular appointment on the post of Junior Assistant even now. He submits that the action of the respondents in not offering regular appointment to the petitioner even after he passed the departmental exam and also succeeded in the interview is unjust and unfair. He further submits that the persons junior to the petitioner have been given appointment and regularisation in the department, and therefore, the petitioner is entitled to the relief on the ground of parity and as the action of the respondents is violative of the right of equality guaranteed under Article 14 of the Constitution of India.

12. Per contra Mr. Bhansali, learned counsel for the respondents submits that the petitioner has himself to blame the situation which has developed in this case. The respondents were always ready to take the petitioner back in service in pursuance of the award (Annexure-7) dated 2.1.1993 and it is the petitioner who adopted a hard headed attitude and did not rejoin duties. He contends that nothing prevented the petitioner from rejoining duties in pursuance to the award passed by the Tribunal. He submits that the very language of the application Annexure-12 goes to show that the petitioner never intended to rejoin the duties and instead wanted to dictate terms and pressurise the respondents to regularise him even though he was not holding the requisite qualification. He further submits that the other persons in relation where to the petitioner claims parity were given regular appointment since they passed the requisite departmental examination way back in the year 1986. The petitioner failed in the examination and that is why his services could not be regularised. The attitude of the respondents was sympathetic towards the petitioner and despite the fact that he did not rejoin duty for almost five years from the date of award, he was still permitted to take the departmental examination. However, since, during the process of recruitment, the State Government imposed a ban on new recruitments, the whole panel prepared after taking the departmental examination in the year 1998 had to be scrapped. Thus he submits that the petitioner has no legal right to insist for appointment and regularisation in the department after a delay of 23 years.

13. I have given my thoughtful consideration to the arguments advanced by the learned counsel for the parties and have gone through the material available on record.

14. On the face of the record, this Court has no hesitation in holding that the petitioner has to blame none else than himself for his woes. The award passed by the Tribunal dated 2.1.1993 was categoric to the effect that the petitioner was permitted to resume his duties on the original position. The award was passed in January, 1993 but instead of rejoining duty, the petitioner waited for almost 11 months and then submitted the application Annexure-12 claiming that if the Corporation gave him a regular appointment, he would forego back wages etc.

He also imposed a condition that the offer was valid for a period of one month. The language of the letter virtually speaks that the petitioner wanted to dictate the terms. The respondents did not accept this offer of the petitioner as the terms of the letter were unacceptable on the face of it as the petitioner was not holding the requisite qualification for being offered a regular appointment on the post. Furthermore, the specific case of the respondents that the petitioner never appeared in the office to rejoin the duties in pursuance of the award is not controverted by the petitioner.

15. Despite all this, the respondent's attitude in permitting the petitioner to appear in the departmental test held in the year 1998 speaks of their sympathetic approach and nothing beyond that. Otherwise, the respondents could have very well refrained from inviting the petitioner to appear in the said examination on account of the lethargy shown by him in joining the duties. Absence from duty without permission is departmental delinquency. After passing the test, the petitioner was also permitted to take the interview. In the meantime and before the selection process could be completed, the State Government imposed a ban on new recruitments and thereafter no option was left with the respondents to induct the petitioner in service.

16. In view of the above facts and circumstances, it is evident that the equities weigh heavily against the petitioner. The petitioner not having joined the duties in pursuance to the award of the Tribunal is not in a position to claim continuance in service because he himself is responsible for the stalemate. It is also relevant to mention here that the competence of the petitioner is also in doubt as he failed in the earlier two departmental examinations held in the year 1986 whereas other persons similarly situated to the petitioner cleared the examination, and therefore, their services were regularised. Whilst dismissing the earlier writ petition of the petitioner, this Court observed in the afore-quoted para of the judgment that the petitioner failed the departmental examination despite opportunities and that is why he was not granted regularisation. Though, these observations cannot be read to the petitioner's prejudice as the Division Bench has observed that the observations made by the learned Single Judge shall not come in the way of the petitioner when he lays claim for regularisation but the fact remains that failure of the petitioner in the earlier departmental examination is admitted and is of significance in view of the subsequent developments noted above. As a consequence, this Court is of the opinion that the petitioner has failed to make out a case for issuance of a writ or direction to the respondents to take him back in service and to regularise him with continuity in service.

17. Accordingly, the writ petition being devoid of any merit is rejected.

18. No order as to costs.