

(2006) 03 DEL CK 0186

In the Delhi High Court

Case No : Writ Petition (C) 5971 of 1999

Pradeep Kumar and Another

APPELLANT

Vs

Slum and JJ. and Others

RESPONDENT

Date of Decision : 09-03-2006

Acts Referred:

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

Citation : (2006) 03 DEL CK 0186

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : Apurb Lal, for the Appellant; G.K. Srivastava, for the Respondent

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J.—In these writ proceedings, the petitioner has sought for direction to re-fix his seniority list in the grade of Junior Engineer. The seniority list in question was issued on 27.11.1987.

2. The undisputed facts are that the respondent Slum and J. J. Department of the Municipal Corporation of Delhi (hereafter referred to as " the MCD") advertised to fill vacancies in the post of Junior Engineer (Civil) in the year 1984. The petitioner, a diploma holder applied and participated in the recruitment process.

3. It appears that in January 1984, a panel of 55 candidates was prepared, for filling vacancies which were then stated to be 50. In February 1984, the MCD issued appointment letters to 22 candidates. Out of those 22 candidates only 14 joined the posts. In June 1984, the MCD drew a panel of degree holder candidates against the existing vacancies. It is alleged that this was done without exhausting the first panel of 18 candidates. Those degree holders joined the service of MCD. Some persons who were in the first list from the same panel, also joined services in October 1984. It appears that in January 1984 the MCD again drew another list and issued appointment letters to certain other persons.

4. The petitioner and 33 other persons who were part of the selection process which had been initiated originally were issued with appointment letters and allowed to join services of the respondent in January 1985.

5. When the petitioner was working as Junior Engineer, the MCD issued a tentative seniority list on 30.7.1987. That list is however, not on record. Subsequently on 27.11.1987 the final seniority list as approved by the competent authority, was published. The petitioner's name figured at Serial no. 159. The date of his appointment was shown as 7.1.1985.

6. Mr. Apurab Lal contends that the seniority assigned to the petitioner was wrong and contrary to settled principle of law, since his name was included in the first merit list and he ought to have been appointed as per the order of merit. Instead the respondent adopted a completely arbitrary criteria of picking and choosing from amongst degree holders while making appointments. This is clearly contrary to Article 14 and 16 of the Constitution of India. Counsel relied upon the representation dated 23.11.1995 addressed to Additional Commissioner of MCD alleging that seniority list had been prepared in an arbitrary manner. The representation which is on record alleges that the petitioner became aware of the correct position only in 1995.

7. Learned counsel contended that in spite of repeated representation, the MCD took no action. He has also relied upon a note said to have been prepared and approved by the competent authority directing the petitioner to be assigned proper seniority as per his merit position in the list.

8. Counsel for petitioner has relied upon the judgment of the Supreme Court report as *Dalilah Sojah Vs. State of Kerala and Others*, , to say that where recruitment is resorted to fixation of inter se seniority strictly depends on the ranking obtained by the candidate and that where employees are appointed on the basis of more than one recruitment processes, those recruited or selected in the previous processes would rank senior to those recruited in the subsequent process.

9. Mr. Srivastava learned counsel for the respondent MCD submitted that the petition is not maintainable because of delay and laches. He strongly relied upon the circumstance that the seniority list issued on 27.11.1987 was preceded by a tentative seniority list which had been issued on 30.7.1987. It is contended that the petitioner did not at any stage, object to his ranking in the tentative seniority list nor has he disclosed any cogent or convincing reasons as to why he approached the Court 12 years after finalisation of the seniority list. Learned counsel also endeavored to the state that the MCD was within its rights to screen candidates and chose only those it perceived as most suitable to hold the post. Counsel for respondent lastly contended that the petitioner's claim if acceded to, at this stage, would result in impairing or prejudicing the rights of several officials who had been recruited and whose seniority position as remained undisputed for the last 19 years. It was claimed that the petition is bad for

misjoinder.

10. The petitioner might have justifiable ground for grievance, since it is not disputed that the recruitment process for appointing the candidates to the post of Junior Engineer was a common one in which both the graduate as well diploma holder participated. In such a situation, ordinarily, the appointing authority concerned has to issue appointment letters strictly as per the merit of the candidate unless provided otherwise, by the recruitment regulations or guidelines. Whilst the selected persons can have no indefeasible right to claim appointment, nevertheless, the appointing authority cannot arbitrarily depart from the normal principle; exceptions have to be justified by reasons should withstand the test of non arbitrariness.

11. In these proceedings, however, before adjudicating on the merits, the question of delay cannot be lost sight of by the Court. The petitioner has questioned his ranking in the seniority list which was finalised in the year 1987. A look at that said list would disclose that a tentative seniority list was published in July 1987. Nothing has been mentioned as to why the petitioner did not object to his ranking then or even subsequently. The earliest document placed on record in this regard is representation of 23rd November 1995. The petitioner recites that his wrongful seniority came to his notice at that time. Neither in the subsequent representation nor indeed in the pleadings has any justification for the delay in approaching the Court been made out.

12. This Court as well as the Supreme Court have often ruled in decisions that in matters concerning seniority and promotions, delay would defeat the rights if any, of slumbering litigants. One added feature in this case which would temper the exercise of its discretionary jurisdiction under Article 226 is the petitioner's omission to implead the parties who are likely to be affected if the claims have to be acceded to. Just as in the case of delay, it is well settled that absent, in a challenge to a policy, Rule/Regulations, in the matters pertaining to seniority and promotions, the parties likely to be affected or prejudiced by the Court's order, have to be necessarily been impleaded in the proceedings. That course of action has not been resorted to. These proceedings are, Therefore, not maintainable.

13. For the above reasons, I am of the opinion that no relief can be granted in these writ proceedings. The writ proceedings are accordingly dismissed. Rule discharged.