

(2006) 05 DEL CK 0071
In the Delhi High Court
Case No : LPA 695 of 2006

Pradeep Kumar

APPELLANT

Vs

Addl. Comm. Slum and J.J. and Others

RESPONDENT

Date of Decision : 15-05-2006

Acts Referred:

Citation : (2006) 05 DEL CK 0071

Hon'ble Judges : T.S. Thakur, J;S.N. Dhingra, J

Bench : Division Bench

Advocate : S.K. Gupta, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

T.S. Thakur, J.—This Letters Patent Appeal arises out of an order passed by a learned Single Judge of this Court whereby a writ petition filed by the petitioners seeking a mandamus for re-fixation of their seniority as Junior Engineers (Civil) has been dismissed.

2. To fill up fifty vacancies available in the cadre of Jr. Engineer (Civil) available with the respondent MCD, a panel of fifty five candidates including the writ petitioners, appellants herein, was prepared in the year 1984. Twenty Nine candidates out of the said panel were appointed, out of whom only fourteen appear to have joined. While the first panel had yet to be exhausted, a second panel for degree holder candidates was prepared by the respondents in which another fifty five candidates were enlisted for appointment. Eighteen out of the said panel were also appointed. This was followed by some more appointments made in the month of October, 1984 from the first panel. In December, 1984, a third panel was drawn up, out of which also some candidates were appointed in the month of January, 1985. The petitioners, who were enlisted in the first panel, were eventually appointed in March-April, 1985.

3. A tentative seniority list was two years later circulated by the respondents in which the petitioners were shown below the candidates whose appointments had

come earlier than them in point of time. The said list was finalized in November, 1987. Aggrieved by the position assigned to them, the petitioners filed Writ Petition No. 5971/1999 seeking a mandamus directing the respondent MCD to re-fix their seniority by showing the petitioners above those appointed from the second and the third panel. The prayer part of the writ petition was as under:

It is Therefore prayed that Your Lordships may graciously be pleased to issue Rule Nisi and direct the respondents to show cause as to why a mandamus or any other writ/order/direction be not passed re-fixing the Seniority as contained in the Seniority List dated 27.11.1987 as to why a direction be not made for placing petitioners above the name of second and third panelist with all consequential benefit and as to why any other benefits for the end of justice.

4. The petition was contested by the MCD and eventually dismissed by a learned Single Judge of this Court in terms of the order impugned in this appeal. The learned Single Judge was of the opinion that the petition was not only barred by unexplained delay and laches of over 12 years since the seniority list was finalized but also because no relief could be given to the petitioner in the absence of those who were likely to be affected by the grant of the relief prayed for. The present appeal assails the correctness of the said order.

5. We have heard learned Counsel for the appellants and perused the record. There is, in our opinion, no manner of doubt that the writ petition was barred by unexplained delay and laches. Learned Counsel for the appellants however argued that the petitioners had no knowledge about the finalization of the list till the year 1999 and that there was no delay or lack of diligence on their part in agitating the matter before the court. Alternatively he submitted that the delay, if any, stood explained by the repeated representations which the petitioners-appellants had filed before the authorities for re-fixation of their seniority. Reliance in support was placed by learned Counsel on the decisions of the Supreme Court in Ramchandra Shankar Deodhar and Others Vs. The State of Maharashtra and Others, and G.P. Doval and Others Vs. Chief Secretary, Government of U.P. and Others, . There is, in our opinion, no merit in the submissions urged on behalf of the appellants. We say so for more than one reasons. In the first place, the petitioners have not made any averments in the writ petition to the effect that they were ignorant about the finalization of the seniority list. If the petitioners were ignorant about the finalization of the list and wanted this Court to believe that version, they ought to have made a specific averment to that effect. Nothing of that sort has, however, been done by the petitioners. There is no averment in the writ petition suggesting ignorance of the petitioners regarding the final seniority list. As a matter of fact, the petitioners have wrongly described the list circulated on 27th November, 1987 as a tentative list. The respondents have, in the counter affidavits filed by them, clearly stated that the list circulated on 22.11.1987 was a final list. Rejoinder filed by the petitioners does not dispute that position nor does it allege ignorance about the finalization of the list. All that the petitioners have stated is that they had come

to know about the subsequent two panels only in the year 1995 where after they started pursuing the matter. Even assuming that to be the position, there is no Explanation forthcoming from the petitioners for the intervening delay. The representations allegedly made by the petitioners also do not support the version of the petitioners that they were ignorant about the list or the position assigned to them in the same. There is, in that view, no escape from the conclusion that the challenge to the seniority list published on 27th November, 1987 was inordinately belated.

6. The alternative ground that has found favor with the learned Single Judge is also legally unexceptionable. In the absence of the parties who were likely to be affected by the grant of relief prayed for by the petitioner, no such relief could be granted, nor was the petition maintainable.

7. Leaving apart the two grounds on which the learned Single Judge has dismissed the writ petition, the prayer for re-fixation of the seniority was, in the absence of a challenge to the appointment of those from the second and the third panels, misplaced. Learned Counsel for the appellants fairly conceded that there was no challenge in the writ petition to the appointment of the candidates from out of the second and the third panel. That being so, the said appointments have, by passage of time, become final and cannot Therefore be disturbed. It follows that seniority of those appointed from out of the said panels shall have to be determined by reference to the date the appointments were made. Since those appointments were admittedly prior to that of the appellants, there is no question of placing the appellants above them. Any direction to that effect would in substance amount to ignoring the appointment orders and denying to the appointees the advantage which they have acquired by reason of their appointments remaining unchallenged all these years. If the appellants were aggrieved of the appointment of candidates from the second and the third panel without exhausting the first panel, they ought to have approached the Court at the opportune time and sought appropriate redress. Having failed to do so and having remained content with an appointment subsequent to the said appointments, they cannot belatedly turn around and seek relief against the said appointment in the garb of re-fixation of their seniority. The appellants cannot achieve indirectly what they have failed to claim directly. There is no merit in this appeal which fails and is hereby dismissed. No Costs.