

(2015) 02 RAJ CK 0174

In the Rajasthan High Court

Case No : DB Civil Special Appeal (Writ) No. 664 of 2011

Rajasthan Paryatan Vikas Nigam Ltd. and Others

APPELLANT

Vs

Sidharth Dev and Others

RESPONDENT

Date of Decision : 02-02-2015

Acts Referred:

Citation : (2015) 02 RAJ CK 0174

Hon'ble Judges : Ajay Rastogi, J;J.K. Ranka, J

Bench : Division Bench

Advocate : Kapil Bardar, Counsel, for the Appellant; A.K. Pareek and Narendra Kumar Pareek, Counsels, Advocates for the Respondent

Final Decision : Dismissed

Judgement

1. Instant intra-court appeal has been preferred against order of the Id. Single Judge Dt. 29/09/2008.

2. It is not disputed that services of the employees are governed by the Rajasthan Tourism Development Corporation (Recruitment, Selection and Promotion) Rules, 1980 (for short, "Rules 1980") and seniority of the employees are to be governed in terms of R.18 of Rules 1980 and that clearly postulates that seniority of an employee has to be determined from the date of his regular appointment on the post but at the same time, regular appointment is nowhere defined under the Scheme of Rules but one thing can be noticed from the Scheme of Rules that Part-III lays down the procedure for Recruitment and Promotion and the procedure for direct recruitment is provided u/R. 13 and at the same time, procedure for recruitment by promotion/selection u/R.14 of the Rules, 1980 and such of the recruitment which was made after undergoing the procedure for direct recruitment or by promotion/selection, as the case may be, can be considered as a regular appointment and may be relevant for determination of seniority u/R.18 of the Rules, 1980. The impleaded respondents herein, namely; Sidhrath Dev, Anil Ranawat and Satya Narain Sandhwat (writ petitioners), on the basis of the date of their alleged regular appointment, were

placed in the seniority list Dt. 23/04/1999 by the appellant-Corporation.

3. They being aggrieved, jointly filed writ petition and it was prayed that their initial appointment in the establishment was after their regular recruitment as provided under the Scheme of R. 13 of Rules and each of them held regular appointment and became entitled for determination of seniority u/R. 18 of the Rules, 1980 treating their initial appointment to be a regular appointment.

4. Reply to writ petition was filed by the appellant before the Id. Single Judge and it was averred that their initial appointment was not regular appointment and as they were confirmed on completion of two years" probation w.e.f. 01/04/1987 vide order Dt. 23/01/1991, each of them would be considered to be regularly appointed w.e.f. 01/04/1985 and accordingly seniority be assigned to them in terms of R. 18 of Rules 1980. As regards impleaded respondents before the Id. Single Judge are concerned, they were appointed on contract basis and after screening they were regularized w.e.f. 01/04/1984 and 01/04/1985 respectively and accordingly confirmed on completion of their two years of service w.e.f. 01/04/1986 and 01/04/1987 respectively.

5. The bone of contention of writ petitioners before the Id. Single Judge was that once they have gone through the procedure prescribed for regular appointment under the Scheme of Rules, 1980, their appointment would be considered to be regular appointment and that makes them entitled to claim seniority from the date of their initial regular appointment in service in terms of R.18 of Rules.

6. After examining the Rules 1980 and the procedure for direct recruitment, in particular, the Id. Single Judge arrived to a conclusion that once appointment offered to the writ petitioners was after going through the procedure prescribed for direct recruitment contemplated u/R. 13 of Rules, 1980, the appointment of each of the writ petitioners be treated to be regular appointment and that makes them entitled to claim seniority under the Scheme of Rules, 1980.

7. Counsel for the appellant submits that each of the writ petitioner was appointed on contract basis and confirmed w.e.f. 01/04/1987 and two years could be the period of probation, as such, they can be considered to be regularly appointed and become member of the Rules 1980 w.e.f. 01/04/1985 and therefore, they were entitled to claim seniority w.e.f. 01/04/1985 and in support of his submission, placed reliance on the judgment rendered by Hon"ble Supreme Court in the case of State of Haryana and Others Vs. Vijay Singh and Others, AIR 2012 SC 2901 : (2012) 135 FLR 191 : (2012) 7 JT 577 : (2012) 7 JT 575 : (2013) LabIC 98 : (2012) 7 SCALE 484 : (2012) 8 SCC 633 : (2012) 3 SLJ 435 : (2012) AIRSCW 5444 : (2012) AIRSCW 4713 : (2012) 6 Supreme 161

8. In counter, counsel for the respondents, on the other hand, while supporting order of the Id. Single Judge, submits that appointment of the respondents-writ petitioners being substantive in nature, as held by the Id. Single Judge, that makes them entitled to claim seniority in terms of R.18 of the Rules, 1980 from the date of initial regular appointment and this what the Id. Single Judge has

considered in the facts of the instant case and may not require any further interference in the instant intra-court appeal.

9. We have heard counsel for the parties and also perused the material available on record.

10. Indisputably, a finding has been recorded by the Id. Single Judge that each of the writ petitioners were initially appointed after going through the procedure for regular appointment provided under the Scheme of Rules, 1980 and their initial appointment being substantive in character, makes them entitled for seniority in terms of R. 18 of the Rules 1980. It will be appropriate to quote R.18 of Rules 1980 which provides ad-infra:--

"18. Seniority:

Seniority of persons appointed to a regular post shall be determined from the date of their regular appointment on the said post. Provided that:

(1)The persons appointed by promotion shall rank senior to those appointed by direct recruitment in the calendar year.

(2)The seniority inter se of persons appointed to a post by direct recruitment in a particular calendar year on the basis of one and the same selection, shall to low the order in which their names have been placed in the list prepared under rule 13.

(3)The seniority inter-se of persons appointed in the service of the Corporation by absorption as prescribed in proviso (ii) to Rule 11 shall be the same as assigned to them by the Department of Tourism of State Government and all such employees shall rank enbloc senior to persons appointed in that category on or after 1-4-79."

11. The Rule, referred to herein above, clearly postulates that the seniority shall be determined only on the basis of regular appointment and regular appointment is nowhere defined under the Scheme of Rules, 1980 but as already considered/observed, such of the appointment, made after going through the procedure prescribed for recruitment u/R. 13 or 14, as the case may be, provided for direct recruitment/promotion or selection, can be considered to be regular appointment.

12. In the instant case, a finding has been recorded by the Id. Single Judge that each of the writ petitioner has been appointed after undergoing the procedure prescribed under the Scheme of Rules and that being a regular appointment, makes them entitled for seniority in terms of R. 18 of the Rules, 1980 from the date of induction into service and their initial induction into service cannot be considered to be ad-hoc/fortuitous/contract appointment as prayed by the appellant employer and the presumption which has been drawn by the appellant employer of the writ petitioners being confirmed vide order Dt. 23/01/1991 w.e.f. 01/04/1987, reverting back for two years treating them on probation, is absolutely ill founded and as regards their seniority is concerned, it only relates

to their regular appointment and the date from which the employee has been confirmed is a fortuitous circumstances may have any relevance as regards for determination of seniority of the incumbent.

13. As regards judgment on which counsel for the appellant placed reliance, referred to supra, is of no assistance for the reason that the Hon"ble Supreme Court observed that the person/incumbent, who is ad-hoc/fortuitous appointee, is not entitled to claim seniority from the date of initial appointment and in the instant case, finding has been recorded by the Id. Single Judge obviously after going through the records treating initial appointment of the writ petitioners to be a regular appointment and each of them has been appointed after going through the procedure prescribed for direct recruitment u/R. 18 of Rules, 1980, certainly that can be considered to be the regular appointment to be taken note of for the purpose of assigning seniority u/R.18 of Rules, 1980.

14. After going through the judgment of the Id. Single Judge, we do not find any error being committed which may require interference by this Court in the instant intra-court appeal.

15. Consequently, the instant intra-court appeal, being without substance, is accordingly dismissed.