(2015) 04 RAJ CK 0126

In the Rajasthan High Court

Case No : Civil Special Appeal No. 7/2009 and Civil special appeal (writs) No. 97 of 2009

Rajasthan Tourism Development Corporation Ltd. and Others APPELLANT

Vs

Ajay Kumar Saxena and Others RESPONDENT

Date of Decision : 20-04-2015

Acts Referred:

Citation : (2015) LabIC 3363

Hon'ble Judges : Sunil Ambwani, C.J;Veerender Singh Siradhana, J

Bench : Division Bench

Advocate : Vinendra Agarwal, Manoj Goyal and Ram Singh Bhati, for the Appellant; Sandeep Saxena, H.S. Khandelwal on behalf of Rajat Ranjan, Advocates for the Respondent

Final Decision : Allowed

Judgement

1. We have heard learned counsel appearing for the parties.

2. This intra-court Special Appeal arises out of the judgment of learned Single Judge dated 10.09.2008, by which he has allowed the writ petition filed against the seniority list dated 18.03.1991, and has issued directions, as follows:--

"27. Consequently, this writ petition deserves to be allowed and it is hereby allowed with the following directions:--

1. That the respondent-Corporation and its General Manager (Personal) is directed to modify the seniority list dated 18.03.1991 (Annexure-3) by placing the petitioner higher to Rajendra Kumar Saxena (respondent No. 3) which has been shown at serial No. 23.

2. Respondents are directed to hold/convene Review D.P.C. so as to consider the petitioner for promotion on the post of Accountant from the date from which respondent No. 3 Rajendra Kumar Saxena was so promoted. 3. In case, the petitioner is promoted to the post of Junior Accountant on 13.05.1991 i.e. the

date from which respondent No. 3 was promoted on the post of Junior Accountant, then he shall be entitled to all consequential benefits."

3. The selections on the post of Junior Accountant in the Rajasthan Tourism Development Corporation, under the Rajasthan Tourism Development Corporation (Recruitment, Selection and Promotion) Rules, 1980, by way of direct recruitment, were held in pursuance to the advertisement dated 22.02.1983. The Selection Committee prepared a panel of 16 persons, out of the list of 26 persons i.e. 22 (General) and 04 (SC/ST), for appointment. A reserve list was prepared on 07.10.1981, and remained in existence, under the Rules, for a period of six months. The persons at serial Nos. 12 to 22 in the seniority list dated 18.03.1991, which was subject matter of challenge in the writ petition, were appointed in pursuance to the same selection between 20.10.1981 to 31.10.1981. They have been placed in the seniority list, under the Second proviso to Rule 18, in accordance with the merit list prepared by the Selection Committee.

4. It appears that there was shortage of Junior Accountants in the Corporation, and thus, a note was prepared by the General Manager (Personnel) on 30.09.1982, for consideration of the persons, from the reserve list, for ad hoc appointment on the post of Junior Accountants, as well as Junior Office Assistants, who were Commerce Graduates, some of them were already working against the post of Junior Accountant, for ad hoc appointment.

5. The Board of Directors, by its decision dated 30.10.1982, considering the shortage and the urgency to fill up the vacancies, accepted the note, to the extent, that the persons, who were in the reserve list, were proposed for ad hoc appointment on the post of Junior Accountant. The Board of Directors also decided to consider those, who were serving as Junior Office Assistants, as Commerce Graduates, and some of them, who were already working on the post of Junior Accountant, for ad hoc appointment, by seniority.\\ in pursuance to the decision of the Board of Directors dated 30.10.1982, the petitioner- Shri Ajay Kumar Saxena, Shri Pankaj Tiwari, Shri Yashpal Singh, Shri Om Prakash Bansal and Shri Shankar Lal Gupta, in the Reserve List, which had outlived its life, were appointed on ad hoc basis, vide appointment order dated 08.03.1983. They joined on 14.03.1983. Prior to their appointment, the petitioner in the writ petition, alongwith Shri Pankaj Tiwari, Shri Yashpal Singh, Shri Om Prakash Bansal and Shri Shankar Lal Gupta, from the reserve list, serving as officiating Junior Accountants, were given ad hoc appointment on 16.10.1982.

6. Rule 19 of the Rules provides for urgent temporary appointment and Rule 18 provides for seniority. Rules 19 and 18 are quoted as below:--

"19. URGENT TEMPORARY APPOINTMENT:

Notwithstanding anything contained in these Rules, the Appointing Authority may appoint a person eligible for direct recruitment or promotion, on an urgent/ temporary basis for a period not exceeding one year or till a candidate regularly selected by direct recruitment or promotion/selection according to the procedure prescribed in Rule 13 and 14 is available, whichever is earlier. Period of such urgent/temporary appointments shall be extended beyond one year with the approval of the Managing Director.

18. SENIORITY:

Seniority of persons appointed to a particular 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 appointment by direct recruitment in the same 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 follow 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 en bloc senior to persons appointed to that category on or after 1-4-79."

7. The seniority list dated 18.03.1991 under challenge before learned Single Judge, was drawn in accordance with the date of appointment of the persons from serial Nos. 23 to 31, on the basis of the date of their joining, in accordance with Rule 18.

8. Learned Single Judge allowed the writ petition, on the ground that there is no rule of promotion from Office Assistant to Junior Accountant, and that, since the persons, who were given urgent temporary appointment on the basis of their working as Junior Accountant, and had Degree in Commerce, had not faced any selections, they should have been placed below the persons, who were picked up from the reserve list, for giving ad hoc appointments. The reasoning given by learned Single Judge in allowing the writ petition, and holding that the petitioner-Shri Ajay Kumar Saxena is senior to the Junior Office Assistants, who were given ad hoc appointment as Junior Accountants, is as follows:--

"23........ Therefore, the respondents who were posted as Junior Office Assistants, had never faced any process so as to adjudge their suitability for appointment on the post of Junior Accountant. The appointment order dated 16.10.82 neither discloses the relevant rule under which the appointment was given to the Junior Office Assistant nor it discloses the process under which they had undergone before such appointment."

9. It is submitted by learned counsel appearing for Shri Rajendra Saxena and others, who were serving as Junior Office Assistants and were given urgent

temporary appointment as Junior Accountants on 16.10.1982, that the seniority has to be arranged in accordance with Rule 18. Learned Single Judge has erred in law in holding that since the appellants did not face any selections, they should be ranked junior to the respondents, even if they were appointed earlier. It is submitted that both the appellants and the respondents were appointed by way of urgent temporary appointment under Rule 19, which was initially made for a period of one year, and was continued beyond one year. The petitioners in the writ petition did not challenge the appointment of the appellants. They were not selected on the basis of one and the same selection, nor their combined list was prepared in accordance with Rule 13, which provides for drawing the seniority list of those, who are directly recruited, and in case there is rule of promotion, were appointed by way of promotion. Both the appellants and the respondents were selected for urgent temporary appointment under Rule 19, from different sources, namely, whereas the respondents were drawn out of the reserve list, which had since expired. In the exigencies of service, in which the vacancies on the post of Junior Accountant, were required to be filled in urgently, the appellants were given an opportunity for direct appointment on urgent temporary basis, on the ground that they were eligible, and while working as Junior Office Assistants. They were allowed to work as Junior Accountants.

10. The Second proviso to the Rule was not applicable, nor the validity of their appointment, or as to whether they faced any Selection Committee, was necessary to be considered by learned Single Judge, while deciding the matter of seniority, which is to be governed in accordance with Rule 18, strictly in accordance with the date of their regular appointment on the post, subject to the three provisos.

11. It is submitted by learned counsel appearing for the respondents, who were petitioners, in the writ petition, that the petitioner and others, who were picked out of the reserve list, had faced selection process, and were placed in the reserve list, they also underwent the Selection Committee, subsequent to their urgent temporary appointment. The appellants have not faced any selections and were given opportunity for urgent temporary appointment, only on the basis that they were eligible and were serving as Junior Office Assistants, and were allowed to work on the post of Junior Accountants.

12. There was no challenge made by the petitioner in the writ petition to the appointment of those, who are appellants before us, nor we are inclined to enquire into the question, which has been raised at that stage, that the petitioners could not get the approval of the Managing Director to work beyond one year, inasmuch as all of them are working, and thus, the presumption can be safely raised that both the category of urgent temporary appointment had received the approval of the Managing Director to continue, and have been regularized. In the circumstances, the seniority had to be determined strictly in accordance with Rule 18.

13. We are of the view that the enquiries into the question of the validity of the

appointment or the manner, in which the appointments were made, is not relevant for the purposes of considering the seniority. Once both the categories are appointed, and have been regularized, the seniority among them is to be determined strictly in accordance with the rule of seniority in the statutory rules, and not according to the perception of the Court. Rule 18 clearly provides that seniority of persons appointed to a particular post, shall be determined from the date of their regular appointment on the said post.

14. The appellants were appointed on 16.10.1982 on urgent temporary basis, and have continued to serve as Junior Accountants in the Corporation. Since their date of appointment is earlier to the date of appointment of Shri Ajay Kumar Saxena and three others, who were given appointment on urgent temporary basis from out of the reserve list, which had expired, the appellants were rightly shown to be senior to the respondents in the seniority list dated 18.03.1991.

15. In the end, it is submitted that Shri Ajay Kumar Saxena, the petitioner in the writ petition, was placed at serial No. 1 among the five candidates in the office order dated 08.03.1983, by which they were appointed, and thus, in accordance with the second proviso to Rule 18, Shri Ajay Kumar Saxena will rank senior to the other four persons.

16. Learned counsel appearing for Shri Shankar Lal Gupta, respondent No. 5 submits that the office order dated 08.03.1983 provided that their appointment will be effective from the date, on which they join, and since the five persons, named in the order dated 08.03.1983 were not appointed by way of direct recruitment, and were appointed on urgent temporary basis, under Rule 19, their inter se seniority will be governed from the date of appointment, i.e. the date when they joined, and accordingly, the seniority list has placed them at serial No. 28 to 31 from the date of joining.

17. We find considerable force in the submission that the second proviso would be applicable, only if the inter se seniority among the persons, who were appointed by way of direct recruitment in a particular calendar year. In case of urgent temporary appointment, their seniority will be counted according to the main rule, namely, from the date of their regular appointment on the post, and since the appointment order dated 08.03.1983 provided that they will be appointed with effect from the date of their joining, the inter se seniority among those, who were named in the office order dated 08.03.1983, will be governed by the date of their joining, and which has been correctly reflected in the seniority list dated 18.03.1991.

18. In view of the above discussion, the Special Appeals are allowed and the judgment of learned Single Judge dated 10.09.2008 is set aside. The seniority list dated 18.03.1991 is correctly showing the seniority of the persons, and is accordingly upheld.

19. A copy of this judgment will be placed in the connected file.

