

(2017) 02 RAJ CK 0103
In the Rajasthan High Court
Case No : 5084 of 2015

Rajat Sharma S/o late Shri Narendra Kumar Sharma	APPELLANT
Vs	
District & Sessions Judge, Sawai Madhopur	RESPONDENT

Date of Decision : 20-02-2017

Acts Referred:

Constitution of India, Article 14, Article 16 -
Rajasthan Police Subordinate Services Rules, 1989, Rule 10(1)(a) -
Rajasthan Subordinate Civil Courts Ministerial Establishment

Citation : (2017) 02 RAJ CK 0103

Hon'ble Judges : Alok Sharma

Bench : SINGLE BENCH

Advocate : Lokendra Singh Shekhawat, Ashok Guar, Ashwani Jaiman

Judgement

1. The petitioner claims appointment to the post of Lower Division Clerk (LDC) on basis of his merit ascertained pursuant to recruitment process therefor completed following notification dated 10-3-2014 issued by the District & Sessions Judge Sawai Madhopur (hereinafter `the respondent").

2. The respondent issued notification dated 10-3-2014 for recruitment to 19 existing vacancies of LDC and 8 anticipated vacancies on the posts of LDC in 2014 in Sawai Madhopur judgeship. Of the 19 vacancies advertised, 9 were for the general category, and 10 for various reserved categories. No break up of 8 anticipated vacancies was detailed. Recruitment was by way of written examination followed by a computer typing test referable to Rule 22 of the Rajasthan Subordinate Courts Ministerial Establishment Rules, 1986 (hereinafter `the Rules of 1986"). The petitioner having the requisite eligibility applied for the said vacancies to the post of LDC, wrote the examination and participated in the computer typing test. He was placed at serial No.11 in the general category, in the select list issued by the respondent, but was however not appointed. A demand of justice notice through his counsel being of no avail, the petitioner has approached this court for direction to be considered for appointment on the

vacancies obtaining on the post advertised as per his merit on the select list.

3. The respondent has filed a reply of denial. It has been submitted that against the 9 vacancies in general category on the post of LDC in the year 2014 only 7 appointments have been made as there were in fact that number of existing vacancies. 9 existing vacancies on the post in issue for general category were in fact wrongly computed and advertised in the first instance for reason of a computing error which included 2 vacancies in the general category in the court of Additional Chief Judicial Magistrate Gangapur City, which the High Court had directed not to be filled up. The petitioner being at serial No.11 in the select list could not be and was not appointed therefore. It was submitted that 8 anticipated vacancies on the post of LDC advertised in the notification dated 10-3-2014 pertained to vacancies likely to arise in the course of the year 2014, for reasons of anticipated promotions. The said vacancies were therefore uncertain, and hence could not be filled up in terms of Rule 15 of the Rules of 1986. They were wrongly advertised and can be of no avail to the petitioner. No candidate less meritorious than the petitioner has been appointed. The petitioner thus has no cause of action to approach this court. It was further submitted that appointments to vacancies on the post of LDC as per select list dated 25-6-2014 having been made in June, 2014, the panel has since expired in June, 2015 entailing lapsing of the remainder select list and no relief can be granted to the petitioner also on this ground.

4. Rule 15 of the Rules of 1986 reads as under: "15. Frequency of examination.-- Early in each year or as the circumstances may require, each District Judge shall recruit as many candidates for his judgeship as required for the vacancies likely to arise in the course of the year."

5. Rule 15 of the Rules of 1986, on its plain language requires reckoning not just of existing vacancies in a year, but also anticipated vacancies in the said year. The notification dated 10-3- 2014 issued by the respondent in fact so provided clearly indicating that there were 19 existing vacancies (9 for general category and 10 for reserved categories) for the year 2014, aside of 8 anticipated vacancies in the said year. Obviously likely to be available in 2014 for reason of promotion of incumbent LDCs to the next higher post of UDC in the said year.

6. Mr. Ashwani Jaiman, counsel for the respondent relied upon a judgment of this court in the case of DGP of Police Vs. Sanjiv Chauhan [2015(3) WLC (Raj.) 467] to submit that future vacancies arising in a given year for reason of expected promotions in the said year cannot be construed to be "vacancies likely to occur/ arise in the course of the said year". He submitted that the court therein held that while determining vacancies for the post of Inspector for a particular year, vacancies on account of promotion of inspectors to the post of RPS (Junior Scale) in that year itself could not be taken, as such vacancies uncertain as to their existence could not be considered as vacancies "likely to occur". Mr. Ashwini Jaiman pointed out that the Apex Court held that unless the actual promotions on the post of RPS (Junior Scale) took place from the feeder post of Inspectors,

vacancies on the post of Inspector from such promotion could not be reckoned for in the recruitment process of a given year. Mr. Ashwini Jaiman submitted that on the aforesaid authority it cannot be held that the 8 anticipated vacancies advertised vide notification dated 10-3-2014 related to the year 2014 to which the petitioner would have a rightful claim of consideration.

7. Mr. Lokendra Singh Shekhawat, counsel for the petitioner however relied on the judgment of the Supreme Court in the case of Sri Kant Tripathi Vs. State of UP [(2001)10 SCC 237] to contend that the expression "vacancy likely to occur" has been construed to mean the vacancy which in all probability would occur, as distinguished from actual/ existing vacancies in respect of a year. He submitted that the Apex Court held that vacancies which could arise from absolutely uncertain events in a given year such as death, termination, compulsory retirement or even elevation to High Courts from amongst District and Sessions Judges in a state could not be covered by the expression "likely to occur" in a given year as all such vacancies were not an outcome of a normal process but incapable of ascertainment with any degree of assuredness. Counsel submitted that contradistinguished from the situations noted by the Apex Court, statutory promotions to the next higher post even if not by a statutory rule but by practice, made year to year, cannot be held to be accidental or otherwise so extremely uncertain as to exclude them from the ambit of the words "vacancies like to arise in the course of year" as set out in Rule 15 of the Rules of 1986. It was submitted that in fact the stand taken by the respondent in his reply to the petition is contrary to his own earlier understanding of the matter as evident from the notification dated 10-3-2014, which provided for clear existing 19 vacancies on the post of LDC on the one hand and 8 anticipated vacancies on the other. Further, counsel submitted, if clear actual/ existing vacancies in a given year alone are to be taken to be alone included within the scope of Rule 15 of the Rules of 1986, it would be doing violence to its language by reading the words "actual vacancies" for the words in the section i.e. "likely vacancies". It was submitted that in the instant case aside of 9 vacancies on the post of LDC, 4 vacancies (2 for general category, 1 for SC and 1 for OBC) were available in the year 2014 on account of promotions of LDCs to the post of UDC which were made on 12-12- 2014. And albeit selected candidates have no indefeasible right to appointment on vacant posts, their appointment cannot be withheld on the ipse dixit of the appointing authority without good/ valid reasons disclosed. None has been in the instant case, submitted counsel. Only a dishonest defence taken on an ill advised misapplication and misreading of the law.

8. Heard. Considered.

9. The words in Rule 15 of the Rules of 1986 which require construction of are "vacancies likely to arise in the course of year". "Likely" means "might well happen, or be or prove true, or turn out to be the thing specified, probable". "Probable" in turn means that "may be expected to happen or prove true, or likely. I am of the considered view that, in the instant case, the word "likely to

arise" in Rule 15 aforesaid cannot be equated to "actual/ existing vacancies". The Rules 10(1)(a) of the Rajasthan Police Subordinate Service Rules, 1989 construed by this court in the case of DGP of Police Vs. Sanjiv Chauhan (supra) was differently worded and read as under: "10. Determination of Vacancies.-(1) (a) Subject to the provisions of these Rules, the Appointing Authority shall determine on 1st April every year, the actual number of vacancies likely to occur during the financial year."

10. The words "actual number of vacancies" in the said rules are absent from Rule 15 of the Rules of 1986. Additionally the factual matrix of the aforesaid case was also different from the facts which obtain in the present case. There while vacancies in the cadre of Inspectors arising from promotion to the post of RPS (Junior Scale) pertained to 2010-2011, actual promotions had been made in 2013. Not so here-where 4 of the 8 anticipated vacancies of 2014 actually accrued in 2014. They have to be reckoned for while making appointment to the post of LDCs from the select list prepared following ascertainment of merit on the basis of the advertisement dated 10-3-2014. In the case of Sri Kant Tripathi Vs. State of UP (supra) the Apex court has only held that fortuitous and wholly unexpected vacancies arising in a given year such as by way of resignation, death, termination, removal or even elevation to the High Court could not be held to be the vacancies of the concerned year, for the reason that none of the aforesaid events could be construed to be an event which could have been anticipated (with any reasonable probability). Promotion to next higher post under Rule 15 of the Rules of 1986 can not be said to be such an absolutely unexpected or fortuitous event. Contrarily promotion to a vacant promotional post in a given year is a likely event-More so when it is axiomatic that the right of a candidate to be considered for promotion is part of a fundamental right guaranteed under Article 16 of the Constitution of India and that the guarantee of a fair consideration in the matter of promotion under Article 16 of the Constitution flows from guarantee of equity under Article 14 of the Constitution of India as in fact observed in the case of DGP of Police Vs. Sanjiv Chauhan (supra) itself. It is also not in dispute that by way of practice promotions to various posts in each District Judgeships including Sawai Madhopur are made year to year and resulting vacancies on the feeder post clearly anticipated. Indeed Rule 15 of the Rules of 1986 at the time relevant to the dispute in this petition was not happily worded for failure to record the periodicity of promotions to vacant higher posts. That lacunae has since been removed by notification dated 1-12-2015, which amended Rule 15.

11. The said rule now reads as under:- "15. Determination of Vacancies- The District Judge shall determine the actual number of existing and vacancies likely to occur in the course of the year on a regular basis at least once a year early and send the requisition of same to the Recruiting Authority for recruitment."

12. The aforesaid amendment vide notification dated 1-12-2015, in the context of past practice and *pari materia* provisions for promotion in other service rules

in the State of Rajasthan as also the right to consideration for promotion against obtaining vacancies to the next higher cadre has to be necessarily construed as a clarificatory amendment. In the aforesaid context, I am of the considered view that vacancies to result from promotion of incumbents in feeder posts to higher posts in service in a given year are "vacancies likely to occur in the year" as provided for under Rule 15 of the Rules of 1986.

13. In the case of Asha Kaul (Mrs.) Vs. State of Jammu and Kashmir [(1993)2 SCC 573] the Apex Court held that those selected after due process cannot be abandoned by the appointing authority on its whims and caprice without any good reason. Appointment on a post advertised when vacancy in respect thereof obtains has thus ordinarily to be made. No authority of the Apex Court or of this court has been brought to my notice which holds to the contrary and negates the right of a selected candidate to be appointed as per merit against the vacant posts advertised. The selection process is not a futile exercise to be carried only in form and then abandoned on the mere whims and caprice of the appointing authority. In the case of Shankarsan Das Vs. Union of India [(1991)3 SCC 47] the Apex Court held that although no selected candidate has an indefeasible right to be appointed, yet it does not mean that the appointing authority has the licence to act in an arbitrary manner. Consequently the decision not to fill up the vacancies by the candidates selected has to be taken bona fide for appropriate reasons. In the case of Lala Raghuraj Swarup (dead) by LRs Vs. Hardwari Lal [AIR 1991 SC 2272] the Apex Court held that candidates in select list, prepared after due process, are entitled to appointment on vacancies available during the currency of such a list. In the instant case the petitioner has approached this court during the currency of the select list. The lapsing of the select list during the pendency of the petition is thus of no event.

14. Consequently, the respondent is directed to take requisite steps to consider the petitioner for appointment as LDC as per his merit and category, with reference to the select list dated 25-6-2014 reckoning for the 2 vacancies in the general category which became available on 12-12-2014 on promotion of LDCs in Sawai Madhopur judgeship to the next higher post of UDC. The observation of this court with regard to the select list not lapsing visa- vis the petitioner be taken into account. Requisite steps be taken within three months from the date of presentation of a certified copy of this order.

15. The writ petition stands disposed of accordingly.