

(2015) 12 RAJ CK 0034

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 764/2015

Rakesh Sharma

APPELLANT

Vs

RSRTC and Others

RESPONDENT

Date of Decision : 02-12-2015

Acts Referred:

Citation : (2015) 12 RAJ CK 0034

Hon'ble Judges : Ajit Singh, Actg. C.J. and Arun Bhansali, J.

Bench : Division Bench

Advocate : Salil Trivedi, for the Appellant; Sunil Purohit, for the Respondent

Final Decision : Allowed

Judgement

1. This intra court Appeal is directed against the order dated 09.07.2015 passed by the learned Single Judge, whereby the writ petition filed by the petitioner has been dismissed.

2. The petitioner filed the petition, inter alia, seeking direction to the respondents to extend the benefit of regular appointment from the date of initial entry in the service i.e. 22.12.1994 and to extend all benefits admissible to the petitioner from the said date. The said relief was sought on the basis that the petitioner's father died while in service of the respondents on 31.03.1994. The respondents appointed the petitioner on compassionate basis on the post of Conductor on daily wages, which the petitioner joined on 22.12.1994. Whereafter, the petitioner was posted as LDC again on daily wages basis w.e.f. 30.05.1995. Whereafter, the appellant was regularized on the post of LDC w.e.f. 01.06.1996 vide order dated 26.07.1996. The petitioner continued to pursue with the respondents for granting regularization from the date, he was initially appointed. Whereafter, a writ petition was filed by one Dharamveer Sen, who was similarly situated, which was decided by this Court on 24.07.2003 and he was granted the relief i.e. regularisation from the date of entry into the job with all consequential benefits; whereafter, the present writ petition was filed by the petitioner.

3. The respondents filed their response and contested the writ petition.
4. After hearing the respondents, the learned Single Judge by his order dated 09.07.2015, in absence of counsel for the petitioner, came to the conclusion that appointment on compassionate ground cannot be claimed as a matter of right on a particular post, the writ petition was filed after a lapse of nine years, and that as no vacancy was available on 22.12.1994, the petitioner was not entitled to any relief.
5. It is submitted by learned counsel for the appellant that the learned Single Judge was not justified in dismissing the writ petition filed by the petitioner. It was submitted that the respondents themselves have in the reply to the writ petition clearly conceded that the services can be regularized w.e.f. the date of joining as LDC i.e. w.e.f. 01.07.1995 and at least to that extent, the appellant was entitled to grant of relief.
6. It was further submitted that though the judgment in the case of Dharamveer Sen applied on all force, the same was not considered and, therefore, the judgment impugned deserves to be set aside and the appellant may be granted relief as prayed for.
7. Learned counsel for the respondent-Corporation supported the order impugned. It was submitted that the writ petition was filed with much delay and as such the learned Single Judge was justified in dismissing the writ petition. It was further submitted that as no vacancy was available for the post of LDC, looking to the status of the petitioner, he was accorded appointment as a daily wager as Conductor at his own request and, therefore, the order passed by the respondent-Corporation granting regularization w.e.f. 01.06.1996 does not call for any interference and the appeal also deserves to be dismissed.
8. We have considered the submissions made by learned counsel for the parties and have perused the material available on record.
9. The appellant claimed relief for regularization w.e.f. 22.12.1994, when he was permitted to join on daily wages basis as Conductor. However, it is the specific case of the respondents that as no vacancy was available on the post of LDC, at the request of the appellant-petitioner, he was allowed to join on daily wages basis as Conductor and having worked in the position of Conductor, the appellant cannot claim regularization as LDC from the date, he joined as a Conductor.
10. However, there is substance in the prayer made by learned counsel for the appellant that the respondents themselves in their reply have clearly admitted that the petitioner-appellant was entitled to grant of regularization w.e.f. 01.07.1995.
11. In reply to the contentions raised in the writ petition, the respondents in reply to ground (E & F) of the writ petition responded as under:-

"(E & F) That the contentions raised in these paras of the writ petition are denied

and in reply, it is respectfully submitted that the petitioner has joined the duties on the post of Conductor w.e.f. 22nd Dec., 1994 and on the request, the petitioner was later on appointed on the post of L.D.C. w.e.f. 1st July, 1995, therefore, his services cannot be regularised prior to the date of joining on the post of L.D.C. and his services can only be regularised w.e.f. The date of joining as L.D.C. w.e.f. 1st July, 1995. It will be relevant to mention here that the services of the petitioner have been regularized on the post of L.D.C. w.e.f. 1st June, 1996 as per the decision taken by the Corporation on 28th May, 1996. Therefore, the action of the respondents is absolutely just, proper and correct and there is no violation of any of the articles of the Constitution of India."

12. From a bare perusal of the response, it is apparent that the respondents had clearly conceded that the petitioner was entitled to regularization with effect from the date of joining as LDC i.e. 01.07.1995 and, therefore, to that extent, the petitioner is entitled to grant of relief.

13. The submission made by learned counsel for the respondents that the writ petition was filed belatedly, and which ground was upheld by the learned Single Judge has no basis, inasmuch as, no such plea was raised in the reply. Further the petitioner clearly indicated that he was pursuing his case with the respondents and when a similarly situated person Dharamveer Sen was granted relief by this Court, he also filed the writ petition, the delay, if any, clearly stands explained and, therefore, in view of the stand of the respondents as noticed hereinbefore, the writ petition could not have been thrown out only on account of delay.

14. In view of the above discussion, the appeal is allowed. The judgment of the learned Single Judge dated 09.07.2015 is set aside. The appellant is held entitled to regularization on the post of LDC w.e.f. 01.07.1995 with all consequential benefits.

15. The needful may be done by the respondents within a period of three months from the date a certified copy of this order is placed before them.

16. No order as to costs.