
(2015) 07 RAJ CK 0098
In the Rajasthan High Court
Case No : Civil Writ Petition No. 383 of 1997

Ram Narayan Choudhary

APPELLANT

Vs

State of Rajasthan ad Ors.

RESPONDENT

Date of Decision : 21-07-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2015) 07 RAJ CK 0098

Hon'ble Judges : Jaishree Thakur, J

Bench : Single Bench

Advocate : Varun Singhvi, for the Appellant; Rishabh Tayal for K.L. Thakur, A.A.G., Advocates for the Respondent

Final Decision : Dismissed

Judgement

Jaishree Thakur, J—The present writ petition has been filed by the petitioner seeking issuance of a writ of mandamus against the respondents to determine seniority of the Assistant Engineer (Civil) in terms of the directions given by the Division Bench Judgement rendered in the case of Govind Narain Goyal vs. State of Rajasthan & Ors., D.B. Civil Writ Petition No. 432/1986 decided on 16.4.1991 and with a further direction to provide for assignment of seniority to direct recruits from the date of availability of vacancies.

2. Briefly put the petitioner was initially appointed as Junior Engineer (Civil) in the year 1980 in Public Works Department. The Rajasthan Public Service Commission invited applications for selection to the post of Assistant Engineer (Civil) in the Public Works Department in the year 1981. As the petitioner was eligible for selection to the said post, he applied in pursuance of this advertisement and was selected. He received a communication dated 3.11.1982 from the Commission regarding his selection however was offered appointment on the said post only on 4.2.1984. Thereafter in 1986 a writ petition came to be filed at Jaipur wherein an issue was raised regarding the total number of vacancies available in the department pertaining to the post of Assistant

Engineer (Civil) in the Public Works Department and apportionment of the same year-wise maintaining the quota of 50% for direct recruits and 50% for promotion. The case was disposed of with the following directions:-

"We, therefore, deem it proper to give the following directions and do hereby direct as under:-

(1) The respondents would take into account the total number of vacancies for the period after 1st April, 1978 and apportion the same year-wise maintaining the quota of 50% for direct recruits and 50% for promotion in the light of the observations made herein above.

(2) In doing so, if it is found that the vacancies against which any appointment had been made by direct recruitment and such direct recruitment was not availed by the concerned incumbent and he preferred to avail the appointment by promotion, such vacancy will not be counted towards the quota of direct recruitment.

(3) As a result of the exercise, as aforesaid, if it is found that appointments had been made in any year in excess of the prescribed promotion quota, the seniority of such promotees shall be pushed down to the extent it is found necessary to maintain the prescribed quota and the seniority list dated 13th Feb., 1987 in respect of promotees and direct recruits may be re-drawn accordingly, and as a result thereof if the petitioner and other similarly situated direct recruits Assistant Engineers are found to be entitled to any consequential benefits may also be granted to them, including the seniority, promotion etc. to the next higher post of Executive Engineer.

(4) The directions as aforesaid shall be carried out as early as possible, but in no case later than a period of three months from today."

3. The department thereafter prepared a seniority list of Assistant Engineers (Civil) on 4.2.1992 in which the name of the petitioner was reflected at S.N. 418. A note was appended to this seniority list wherein it was mentioned that the same had been prepared in compliance of the judgment of the Division Bench of the Rajasthan High Court, Jaipur Bench, Jaipur dated 16.4.1991 in Govind Narain Goyal v. State of Rajasthan & Ors., D.B. Civil Writ Petition No. 432/1986. Since the seniority list of the Assistant Engineers (Civil) was not recast as per the judgment dated 16.4.1991, the petitioner issued a notice for demand of justice on 6.8.1996 followed by another notice dated 14.10.1996.

4. It is contended by the writ petitioner that under the Rules of 1954, the post of Assistant Engineer (Civil) is required to be filled up by 50% direct recruitment and 50% by promotion and this rule has been violated by making excess promotions on the post of Assistant Engineer (Civil) and the excess posts of Assistant Engineer (Civil) by promotion have been filled in comparison to the post to be filled by direct recruitment. It is further contended that the petitioner was selected in pursuance to the advertisement issued in the year 1981 and was

offered the appointment only in the year 1984 on account of the fact that there was no vacancies available at that time. If the ratio of Govind Narain Goyal's case, which has attained finality, is to be followed and then vacancies are to be determined in the ratio of 50%, for promotee and 50% for direct recruitment quotas. Aggrieved by not calculating the vacancies correctly and treating the petitioner as an appointee against the vacancies in the year 1981-1982, the present writ petition has been filed.

5. Reply to the writ petition has been filed wherein it is categorically submitted that the seniority list prepared is in conformity and that the year-wise vacancies have been determined as per Rule 9 of the Rules of 1954 and accordingly the vacancies have been determined and seniority was recast in terms of the directions given in Govind Narain's case. It was further submitted that against the 42 posts of Assistant Engineer advertised by the R.P.S.C. the petitioner was not selected as he did not come in the merit. 42 persons were appointed in 1982 and thereafter on 26.3.1983 with availability of posts, 13 more persons were appointed. Thereafter the petitioner was appointed in the year 1984 and thus cannot be appointed from the date claimed in the writ petition as the petitioner was given appointment in terms of his merit after exhausting the regular list. Rejoinder to the said written statement has been filed reiterating the stand taken in the writ petition.

6. I have heard learned counsel for the parties and have perused the record of the case with their assistance.

7. It is submitted by Mr. Varun Singhvi, learned counsel appearing on behalf of the petitioner that there was a specific direction given in Govind Narain's case to the effect that the respondents would take into account total number of vacancies for the period after 1.4.1975 and apportion the same year-wise maintaining the quota of 50% for direct recruits and 50% for promotion and if as a result of the exercise of aforesaid it is found that appointments have been made in any year in excess of the prescribed quota, the seniority of such promotees shall be pushed down to the extent it is found necessary to maintain the prescribed quota and the seniority list dated 13.2.1987 may be re-drawn accordingly and as a result thereof, if the petitioner and other similarly situated direct recruits are found to be entitled to any consequential benefits, the same should be granted to them including seniority, promotions etc. It has been stated that the vacancies that have been determined for the year 1981-1982 is 119 with 60 vacancies for quota of direct recruitment and 59 vacancies were in the quota of promotion. As per the petitioner this is wrong determination of the vacancies. In the alternative it has been argued that even if 60 vacancies are to be filled up for the year 1981-1982, he would still be entitled to be considered for vacancy in the year 1981-1982 as his name was reflected at Sr. No. 57 in the select list for direct recruitments. Resultantly the action of the respondents in offering appointment to the petitioner as recruited for the year 1983-1984 is illegal and bad in law and that his appointment and seniority should be counted

in the year 1981-1982.

8. Per contra, learned counsel on behalf of the respondents has submitted that the writ petition has been filed in the year 1997 seeking to challenge non-compliance of the direction issued in Govind Narain Goyal's case which came to be passed in the year 1991. It is further contended that even if the petitioner was selected in the year 1982, he was given appointment only on 4.2.1984. Further more, it has been argued that the petitioner was given appointment on 4.2.1984 and cannot seek appointment retrospectively against the vacancies which had occurred in the year 1981-1982. Relying upon the judgment rendered in *Jatinder Kumar and Others Vs. State of Punjab and Others*, AIR 1984 SC 1850 : (1984) 49 FLR 412 : (1984) 2 SCALE 513 : (1985) 1 SCC 122 : (1984) 2 SLJ 477 : (1985) 17 UJ 73 , it is argued that no right accrues to a person to seek appointment against the post which were vacant prior to the date of appointment.

9. I am unable to agree with the submissions as made by the counsel for the petitioner.

10. Admittedly, the petitioner was selected to the post of Assistant Engineer (Civil) in Public Works Department in the year 1981 pursuant to an advertisement issued. He was offered appointment in the direct recruit quota as determined at that time in the year 1984. As per the record available, the department had re-determined the vacancies vis a viz direct recruitments and promotees pursuant to the directions given in Gopal Narain's case. As per the annexure on the record in the year 1981-1982, 119 vacancies had been determined which were split in the ratio of 60:59, i.e. sixty vacancies were in existence in the quota of the direct recruitments and 59 vacancies were in the quota of promotion. Even though the vacancies were available, the respondents did not fill the entire vacancies which were in existence, even though the candidates were available. The writ petitioner was offered an appointment as Assistant Engineer (Civil) only in the year 1984. The question that arises for determination by this Court is whether the petitioner who was selected candidate pursuant to the advertisement, should have been appointed against the vacancies that arose in the year 1981-1982 and whether it is incumbent upon the respondents to comply with the directions as given in Govind Narayan Case?

11. Strong reliance has been placed by the learned counsel for the petitioner on a judgment reported as *Govind Narain Goyal supra* to contend that the respondents have not adhered to the directions given therein wherein it was specifically held that:

"As a result of the exercise, as aforesaid, if it is found that appointments had been made in any year in excess of the prescribed promotion quota, the seniority of such promotees shall be pushed down to the extent it is found necessary to maintain the prescribed quota and the seniority list dated 13th Feb., 1987 in respect of promotees and direct recruits may be re-drawn accordingly, and as a result thereof if the petitioner and other similarly situated direct recruits

Assistant Engineers are found to be entitled to any consequential benefits may also be granted to them, including the seniority, promotion etc. to the next higher post of Executive Engineer."

12. Placing reliance on the said directions, it is contended that the vacancies are to be filled up as per determined year-wise and the petitioner being placed at S. No. 57, is entitled to be appointed in the year 1982 itself since there were 60 vacancies available for direct recruitment quota. To understand the background of the directions issued and to see as to whether the same are applicable in the case of the petitioner, it is necessary to refer to the facts of Govind Narain Goyal's case. The petitioners, in the said case, filed a writ petition stating that they are direct recruits on the post of Assistant Engineers and were appointed in the year 1981-1982 on the basis of the recruitment held by the Rajasthan Public Service Commission. A seniority list was prepared on 16.4.1984 and the petitioners were reflected at S. No. 373 upto S. No. 443. It was contended that the seniority had been assigned with reference to the order of regular appointment and while allocating the order of appointment and ascertaining the vacancies falling in promotion and direct recruit quota Rule 9(1)(c) had been wrongly misconstrued. It was a contention of the petitioners that while wrongly interpreting the rule, the excess appointment had been made in the quota of promotion. It was in this background that the court held that the promotees who were appointed in excess of promotion quota by misconception of the Rule, will have to make room for direct recruits. Therefore, while issuing directions to recast the seniority list after apportioning the same year-wise and maintaining the quota of 50% for direct recruits and 50% for promotion, it was further specified that if it is found that the appointment had been made in any year in excess of the prescribed promotion quota, the seniority of such promotees shall be pushed down to maintain the prescribed quota (with respect to the seniority list dated 13.2.1987) and in case it is found that the petitioner and other similarly situated direct recruits are found to be entitled to any consequential benefits like seniority, promotion etc. to the next higher post and Executive Engineer, the same shall be granted to them.

13. It is essential to keep in mind the well settled legal position that even successful candidates have no indefeasible legal right to be appointed and such appointment can be denied for good and rational grounds. This position has been reaffirmed a number of times. Reference may be made to the Constitution Bench decision in Shankarsan Dash Vs. Union of India, AIR 1991 SC 1612 : (1991) 62 FLR 981 : (1991) 2 JT 380 : (1991) LabIC 1460 : (1992) 2 LLJ 18 : (1991) 1 SCALE 848 : (1991) 3 SCC 47 : (1991) 2 SCR 567 : (1991) 2 UJ 212 , wherein, it was observed as under:

"7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to

qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in *State of Haryana v. Subash Chander Marwaha*, *Neelima Shangla v. State of Haryana*, or *Jatinder Kumar v. State of Punjab*."

14. In the present case, the reliance place on the directions issued in *Govind Narain Goyal's* case (*supra*) is highly misplaced. The directions given therein were to recast the seniority list after determination of the vacancies available year-wise keeping the quota of 50% for direct recruits and 50% for promotion. No specific direction has been given in the said order to fill the vacancies year wise by giving retrospective appointment. The petitioner herein came to be appointed only in the year 1984, even though he had been kept on the select list pursuant to the advertisement issued for selection to be made in the year 1981.

15. It is well settled that a candidate's name if appears in the list, will not entitle him to a mandamus to be appointed. If the State Government, makes a deviation from the selection process, only then would the candidate have a legitimate grievance to challenge the action of the Government and this is not so in the present case. The petitioner herein was appointed only in the year 1984. No right accrues to the petitioner to demand that his appointment should be counted as against the vacancies for the year 1981-1982 even if the same was available. The seniority of the petitioner will be counted from the date of entry in a particular service or the date of substantive appointment. Reference may be made to the decision of the Hon'ble Supreme Court in *Pawan Pratap Singh and Others Vs. Reevan Singh and Others*, (2011) 2 JT 248 : (2011) 2 SCALE 327 : (2011) 3 SCC 267 : (2011) 1 SCC(L&S) 481 : (2011) 2 SCR 831 : (2011) AIRSCW 1365 : (2011) AIRSCW 3916 : (2011) 5 Supreme 579 where the Hon'ble Supreme Court after referring to earlier authorities in the field culled out certain principles out of which the following being the relevant are reproduced below:

"(ii) Inter se seniority in a particular service has to be determined as per the service rules. The date of entry in a particular service or the date of substantive appointment is the safest criterion for fixing seniority inter se between one officer or the other or between one group of officers and the other recruited from different sources. Any departure therefrom in the statutory rules, executive js or otherwise must be consistent with the requirements of Articles 14 and 16 of the Constitution.

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(iv) The seniority cannot be reckoned from the date of occurrence of the vacancy and cannot be given retrospectively unless it is so expressly provided by the relevant service rules. It is so because seniority cannot be given on retrospective basis when an employee has not even been borne in the cadre and by doing so it may adversely affect the employees who have been appointed validly in the meantime."

16. In the present case, even though vacancies may have been available, offer of appointment was in the year 1984. Therefore, the petitioner's seniority cannot be reckoned from the date of occurrence of the vacancies because at that point in time, the petitioner was not born in cadre nor can it be said that appointment should be offered to him.

17. Therefore it is held that the petitioner does not have a right to be considered as appointed retrospectively against vacancies that had accrued in 1981-1982. Resultantly, the writ petition is dismissed with no order as to costs.