(1980) 08 RAJ CK 0027

In the Rajasthan High Court

Case No : Civil Writ Petition No''s. 1321/1497 of 1979

Rewat Singh — APPELLANT

Vs

State of Rajasthan and Others — RESPONDENT

Date of Decision : 22-08-1980

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (1980) WLN 594

Hon'ble Judges : G.M. Lodha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

G.M. Lodha, J.—These two writ petitioner have been filed by Rewat Singh and Kan Singh. Since the learned Counsel Mr. M. Mridul prayed that the point involved in both the cases being identical, they may be considered together, I am deciding both the cases by one common judgment. Both the petitioners were appointed as Amins in the Settlement Department in the year 1955. They were then transferred to the post of Surveyor in the Consolidation Department by order dated 12th August, 1957.

2. On 22nd August, 1963, both the petitioners were declared surplus by the Settlement Commissioner cum Director of Consolidation, Rajasthan.

3. The above are the undisputed facts of these two cases but hereinafter the dispute arises on the question of future developments in the service carrier of these two petitioners.

4. The petitioners'' case is that the Absorption Committee absorbed them as Patwari in the Loand Records Department in the year 1963 and against that a representation was sent. These representions were rejected. The petitioners were then appointed as Inspectors on temporary basis in the year 1975.

5. The respondents'' case is that when the petitioners were declared as surplus

from the post of Surveyor, the Absorption Committee took decision that non-matric surplus Surveyors may be absorbed as Settlement Inspectors or in the next lower grade according to their inter se seniority vis-a-vis existing Inspectors of the department. The petitioners were posted as Ameens, according to petitioner''s inter se seniority. A decision was taken on some representations on the instructions of the Chief Minister, by the Absorbing Committee that if any of the surplus employee can be absorbed by making them Patwari under the Board of Revenue, they may be allowed to do so. The Board of Revenue made it clear that they were having vacancies of Patwari and there was no other vacancy under them. In pursuance there of both the petitioners gave the applications that instead of Settlement Department, they should be posted in the Revenue Department. The Revenue Secretary and the members of the Absorption Committee made it clear to the petitioners that the only post that government can offer to them in the Board of Revenue was that of Patwari. It was thus on account of the petitioner''s own insistence and option to remain in the Revenue Department that they were sent to the Revenue Department, where they voluntarily, willingly and deliberately accepted the available posts of Patwari.

6. The respondents'' case is that if the petitioners would not have insisted for being sent to the Revenue Department by accepting the post of Patwari, they would have been absorbed in the Settlement Department.

7. The respondents'' contention is that after their voluntary offer, they have been absorbed as Patwaries and it was in fact, on the petitioner''s initiating, there was no occasion to make any protest and the petitioners did not make any protest in fact during last 16 years.

8. The respondents seriously contend that any representation was made and their case is that no representation was made at all. So called rejection of it, by government on 7-9-70 is the rejection of the appeal against the order of the Board of Revenue dated 7-5-69 for not exempting the Surveyors from passing the Patwari Examination.

9. It would thus be seen that from the very outset, there is no serious controversy and on a careful and thoughful consideration of the facts, circumstances and the submissions of the learned Counsel for the parties, I am convinced that the version of the respondents that the petitioners themselves gave option to become Patwari in the Revenue Department and thus, did not avail of the benefit to become Ameen in the Settlement Department is borne out by the facts established on the record. In fact Mr. Mridul has not contested it seriously. All that he has stated is that his client has no other option and, therefore, it is not to be treated as a voluntary offer.

10. The petitioners'' main grievance is that other persons like Chunnilal, Shantilal and Arjun Singh, who were similarly declared surplus and absorbed have been promoted as Inspectors and the government has passed orders on 24-5-78 and 14-7-68 in respect of Chhunilal & Arjunsingh and, therefore, the petitioners who

were similarly situated, should be treated equally and promoted to the same post of Inspectors with retrospective effect from the date of absorption.

11. In this respect, the respondents, case as contained in para no. 10 of the short reply, is as under :

That Government has no doubt passed orders dated 24-5-78 and 14-6-78 in respect of Sarv Shri Chunni Lal and Arjun Singh but the Board of Revenue has not implemented these orders because of the fact that the point of treating the post of Surveyor equivalent to that of Inspector Land Records is under dispute in the writ petition of Shri Shanti Lal Ojha versus State (36 of 1978) and the Board of Revenue has explained to the Government that the case of Shri Arjun Singh will be decided according to the decision of the Hon''ble High Court in the said writ petition. As regards Shri Chunni Lal, the order dated 25-5-78 given by the Government cannot be implemented as he had also given his option in writing for being absorbed in the Revenue Department and his case is fully analogous to the case of petitioner. Besides this, the petitioner cannot take advantage of the case of Arjun Singh and Shantilal as the facts of their cases are entirely different from those of the case of the petitioner.

The learned Dy. Govt. Advocate has contended that since Rewat singh and Kan Singh gave option to go to Revenue Board on a lower post in 1963, neither under any law nor in equity, they can now be allowed to take a somersault and submit that on account of the events, which have taken place in 1978, they should be reconsidered from the year 1963 onwards. It was made clear by the respondents that Chunnilal''s case is different as in his case, dispute is about seniority as Revenue Inspector. So far as Shanti Lai and Arjun Sidgh''s case is concerned, they are subjudice before this Court and they have been absorbed as Inspectors from the Post of Surveyors treating them as analogous, for the time being an subject to the decision of the writ application in this case.

11. The learned Dy. Government Advocate also submitted that the writ petition should be dismissed even on the ground of inordinate delay because whereas the absorption was made in 1963 and the petitioners voluntary became Patwaries in that year now, they want that with effect from 1963 till now they should be treated as Inspectors.

12. I have given my thoughtful consideration to the vital aspect of the case and I am of the opinion that there is great force in the objection raised by the respondents in these two cases. The petitioner in 1963 voluntary offered to go to Revenue Department under the Revenue Board even on a lower post of Patwari. Having done that, it is not open to them in law to now plead violation of Articles 14 or 16 of the Constitution and claim that they should be treated as Inspectors, right from the date of their absorption because, in 1978 in some matters, the government has in a few cases passed the orders for treating some of the persons equivalent to Shantilal and Arjun Singh. The petitioners are, therefore, guilty of serious laches and undue, unexplained, inordinate delay.

13. Apart from the above, they cannot be allowed to approbate and reprobate and blow hot and cold together in the same breath. It is true, as submitted by Mr. Mridul that at that time they could not have fore seen that in 1978 or at some other point of time latter on, the other employees, who were declared surplus in the same manner, would be placed at a very high pedestral in a high place on high office, to the detriment of the petitioners, but an action of 1963 as alleged in both the petitioners'' case, cannot be questioned now and set naught in the year 1980. When options are given or taken by the employees, they cannot be allowed to become wiser now, even the plea that something has happened after 10 years or 15 years by which some other persons, who did not give such option, have been given advantage.

14. In this view of the matter, the prayer of the petitioners to make them as Inspectors by absorption and treat them as such from the date, they were absorbed in the Revenue Department, cannot be accepted. The petitioners were absorbed as Patwaries, in the Revenue Department on the basis of their conscious and voluntary options and insistence, and that cannot be undone now.

15. It is to be noted that Shantilal Ojha came by way of transfer on the post of Inspector Land Records in November, 1963 by the Board of Revenue on the basis of an application routed by him to the Board of Revenue in January, 1963. The question of his seniority is pending consideration, in writ petition no. 46/1978. Shri Arjun Singh was declared surplus after the year 1963 and not along with the petitioners in 1963. The question of treating Surveyors equivalent to the Inspector Land Records is pending consideration in writ petition no. 46/1978 and, therefore, the government''s decision dated 2(sic)th May, 1978 and 14th June, 1978 in respect of Chunnilal and Arjun Singh have not been implemented as the decision of Shantilal Ojha''s writ petition would effect decision in that case. The respondents Shri Chunni Lal''s case is analogous to the petitioner'' case and, therefore, the government''s decision is being not implemented in his case, on that count also.

16. It would thus be seen that so far as the petitioners are concerned, after giving a voluntary option to go in the Revenee Department on the lower post of Patwari in 1963, now they cannot invoke Article 14 and 16 of the Constitution on the hypothesis what would have happened, if they would have not been given this option, and for what has happened now in 1978 to the case of Arjun Singh or Shantilal when they insisted for being made Parwaries in the Board of Revenue. The petitioners, therefore, cannot successfully invoke Articles 14 and 16 of the Constitution, after a lapse of 16 years in the facts and circumstances of this case.

17. The result is that both these writ petitions of Rewat Singh and Kan Singh have got not substance and, consequently, they are dismissed without any order as to costs.

