
(2019) 05 RAJ CK 0074

In the Rajasthan High Court

Case No : Civil Writ Petition No. 4356 Of 2019

Sandeep Kumar Agrawal

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 09-05-2019

Acts Referred:

Finance Act, 2017 — Section 9A, 184

Citation : (2019) 05 RAJ CK 0074

Hon'ble Judges : Alok Sharma, J

Bench : Single Bench

Advocate : Rajendra Prasad, Karan Tiberawal, R.D. Rastogi, C.S. Sinha, Akshay Bhardwaj, Amitosh Pareek

Final Decision : Dismissed

Judgement

A challenge has been made to the eligibility prescribed under the advertisement issued in the employment news on 28.04- 04.05.2018 for the post of Judicial Member of the Railways Claims Tribunal.

Mr.Rajendra Prasad, Senior Advocate for the petitioner has submitted that Condition no.5 (1) (b) (c) of the advertisement in issue is the cross-hair of Clause 6 (4) of the Schedule appended to the Tribunal, Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members) Rules, 2017 (hereinafter 'the Rules of 2017'). He submitted that albeit a civil writ petition relating to the Rules of 2017 is pending before the Apex Court in the case of Kudrat Sandhu Versus Union of India & Another, Writ Petition (Civil) No.279/2017, where an interim order was passed on 09.02.2018 and reiterated by the Apex Court on 22.02.2018, the directions therein have no bearing on the issue of eligibility for appointment as Members of the Tribunals including the Railway Claims Tribunal. Mr.Rajendra Prasad submitted that consequently recruitment of Members of various Tribunals including that of Judicial Members of the Railway Claims Tribunal has to abide by Clause 6 (4) of the Schedule to the Rules of 2017. He submitted that yet contrary thereto the

respondents are illegally proceeding with the recruitment of Judicial Members of the Railway Claims Tribunal with reference to the Railway Claims Tribunal Act, 1987 (hereinafter 'the Act of 1987') which in view of the Section 9 A of the Finance Act, 2017 and the Rules of 2017 made pursuant to Section 184 of the Said Act stands modified on the issue of eligibility. Mr.Rajendra Prasad further submitted that the petitioner had applied for being considered for the post of Judicial Member in the Railway Claims Tribunal pursuant to the advertisement issued in the employment news on 28.04-04.05.2018 and despite his requisite 10 years practice in law which made him eligible to be appointed a High Court Judge, and was accordingly eligible to be appointed a Judicial Member of the Railways Claims Tribunal, he has been excluded from consideration on a misdirection of the respondent holding that as he did not have the minimum net income of Rs.7 lacs per annum in the four preceding years he was ineligible. Mr.Rajendra Prasad submitted that the income criteria does not form part of eligibility under the Rules of 2017 nor infact it did form a condition of eligibility under the Act of 1987. It has been submitted that consequently the petitioner has been deprived of fair consideration for appointment on the post of Judicial Member with the Railway Claims Tribunal while others ineligible in terms of Clause 6 (4) of the Schedule to the Rules of 2017 are being so considered. Mr.Rajendra Prasad submitted that by resort to illegal shortlisting (prior to inclusion of all eligible candidates) on the income criteria the invidious effect has been that of the 41 candidates shortlisted 26 candidates belonging to the administrative and judicial services have been included for consideration while only 15 advocates have been included for consideration for appointment as Judicial Members of the Railway Claims Tribunal.

Mr.R.D. Rastogi, ASG counsel for the respondents submitted that this petition is not maintainable before this court as it seeks to agitate the issue of appointment to the post of Judicial Member in the Railway Claims Tribunal even while the said issue is pending active consideration before the Apex Court in the case of Kudrat Sandhu Versus Union of India & Another (supra). He submitted that the Apex Court has reserved the judgment in the aforesaid writ petition on 02.04.2019 and it would be undesirable for this court to take a view independent of the proceedings before the Apex Court. Mr.R.D. Rastogi submitted that in any event the case of the petitioner will entail an interpretation of the interim orders dated 09.02.2018 and 22.02.2018 passed by the Apex Court inasmuch as, Mr.Rajendra Prasad asserts that "conditions of service" referred to in the said orders does not include the issue of eligibility. That contention would be a matter for the Apex Court alone to address and not for this court. Aside of the aforesaid, Mr.R.D. Rastogi, ASG submitted that writ petition also deserves dismissal for the petitioner lacking locus standi, estoppel and delay.

Heard. Considered.

The argument of Mr.R.D. Rastogi, ASG that the petition is liable to be dismissed on the ground of laches is without any merit as the case of the petitioner is that

the petition has been laid following inquiries by him qua his qualification for appointment as Judicial Members under the Right to Information Act, 2005 (hereinafter 'the Act of 2005') when it transpired that his application was rejected on the basis of certain income norms formulated by the selection committee extraneous to conditions of eligibility statutorily prescribed for the post in issue. The petitioner's case is that the relevant income norms can at best relate to shortlisting in the selection process if the facts of the case so warranted but cannot constitute a ground for holding the petitioner ineligible. It has been submitted that no sooner the petitioner came to know of the rejection of his application, for the reasons aforesaid, towards the end of December 2018 he filed the petition on 25.02.2019. I am therefore not inclined to accept that the writ petition is hit by laches.

On the issue of locus standi, I am of the considered view that being an applicant for appointment to the post of Judicial Member and excluded from the process therefore despite statutorily prescribed eligibility, the petitioner certainly has locus standi to challenge the said exclusion. I am also not inclined to accept Mr.R.D. Rastogi's argument based on estoppel. Estoppel is a doctrine in equity and has to be rooted in the fact of a petitioner's acceptance a state of affairs at one stage and reneging therefrom subsequently. In the pleadings in the case I do not find that the petitioner had at any point accepted the validity of income criterion as eligibility for consideration for appointment as Judicial Member of the Railway Claims Tribunal. No estoppel to the challenge by the petitioner can therefore be plausibly pleaded.

Be as it may, on the merits of the petition I am however of the considered view that as the matter with regard to the appointment of Members of various Tribunals is pending before the Apex Court in the case of Kudrat Sandhu Versus Union of India & Another (supra), where judgment is stated by Mr.R.D. Rastogi, to have been reserved on 02.04.2019 it would not be appropriate for reason of judicial discipline to address the issue agitated in this petition on merit.

On the above sole ground, I am disinclined to entertain this petition. It is accordingly dismissed.

The petitioner, if so advised shall be free to take his remedy before the Apex Court.