

(2014) 07 RAJ CK 0097

In the Rajasthan High Court

Case No : Civil Writ Petition No. 5866 of 1996

Sandeep Mohan Johri

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 01-07-2014

Acts Referred:

Citation : (2015) 1 CDR 303 : (2014) LabIC 4447 : (2015) 1 RLW 111 : (2015) 1 WLN 82

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Advocate : Reashm Bhargava, Advocate for the Appellant; R.K. Agarwal, Senior Counsel and Yogesh Pujari, Advocate for the Respondent

Judgement

Mohammad Rafiq, J.—This writ petition was filed by the petitioner Sandeep Mohan Johri way back in the year 1996 with the prayer that the respondents be directed to appoint him on the post of L.D.C. and the appointment of Respondents No. 3 to 8 may be quashed and set aside. Further prayer is that the State be directed to delete words and figures "31" from the Rajasthan Subordinate Courts Ministerial Establishment Rules, 1986 (hereinafter referred to as "the Rules of 1986") and increase the upper age limit up to 33 years instead of 31 years for appointment on the aforesaid post and take appropriate steps to suitably amend Rule 9 of the Rules of 1986 in this behalf. During pendency of me writ petition, the petitioner was appointed on the post of LDC, albeit on ad hoc basis, under the orders of Hon'ble the Chief Justice of this Court on administrative side, therefore, the petitioner got the writ petition amended and inserted additional prayer seeking direction to Respondent No. 2, i.e. the District and Sessions Judge, Jaipur District, Jaipur to regularize his services on the post of L.D.C. from the date of his initial appointment on ad-hoc basis i.e. on 20.10.1997 with all consequential benefits. Facts of the case are that the District and Sessions Judge, Jaipur District, Jaipur issued an advertisement on 06.10.1993 inviting applications from eligible candidates for appointment on the post of L.D.C. The petitioner also submitted application for his appointment.

Written examination for the said post was held on 12.12.1993. The petitioner appeared in the written examination and was declared pass. The petitioner, thereafter, appeared in type test, which was held on 23.10.1994. Final result was declared on 09.01.1995. A panel of 42 candidates was prepared in which name of the petitioner was shown at Serial No. 40. Respondent No. 2, in the first instance, issued appointment order in favour of 25 candidates in the month of January, 1995. It is the case of the petitioner that Respondent No. 2, thereafter in July 1995 issued appointment order in favour of three candidates out of the select list so prepared and then issued appointment order to 10 more candidates on 02.01.1996 also. Candidates appearing at Serial No. 26 to 38 were thus appointed and there remained only four candidates in the select list who could not be appointed. In the meantime, one Rajesh Jaif, who was working in Dausa Judgeship was transferred to Jaipur District Judgeship vide order dated 13.10.1995. Thereafter, one Gajendra Singh, who was working in Tonk Judgeship was transferred to Jaipur District Judgeship vide order dated 07.10.1995 and one Dharmendra Singh Parmar, who was posted in Tonk Judgeship, was transferred to Jaipur District Judgeship vide order dated 02.08.1995.

2. Mr. Reashm Bhargava, learned counsel for the petitioner has at the outset submitted that he does not press the prayer clause (d) and (e) with regard to amendment in Rule 9 of the Rules of 1986. Therefore, consideration of the writ petition may be confined to rest of the prayers. Contention of learned counsel for the petitioner is that the posts so advertised were required to be filled up during the validity of the select list and therefore, instead of transferring LDCs from other districts, the candidates remaining in the select list ought to have been offered appointment. It is submitted that action of the respondent No. 2 in transferring the candidates from other judgeship was contrary to the specific circulars of the High Court dated 21.01.1976 and 07.07.1997. Learned counsel has placed for perusal of the Court recent circular issued by the Registrar General of the High Court on 06.02.2014 reiterating the same conditions. It is contended that aggrieved by the action of the respondent No. 2, the petitioner submitted a detailed representation to the then Hon"ble The Chief Justice of this Court on 05.09.1997. The Hon"ble Chief Justice vide order dated 09.09.1997 called for the report from Respondent No. 2, who in turn sent the report on 22.09.1997 conveying that all the three transfers were made by his predecessor District Judge without keeping in mind the fact of currency of the select list. If had these three transfers were not made, the petitioner had a chance of appointment. Subsequently, however, the petitioner having approached the age of 31 years became over age, therefore, he was not offered appointment. However, the District Judge recommended that the minimum age of 31 years is required to be enhanced to 33 years at par with the upper age applicable to the appointees of the other departments of the Government of Rajasthan. It was thereafter, the Hon"ble the Chief Justice vide order dated 17.10.1997 directed that if there was any vacancy available, the petitioner may be considered for appointment on ad-hoc basis. The petitioner was accordingly appointed on the post of LDC on ad-hoc

basis vide order dated 20.10.1997 for a period of three months subject to the condition that his services were liable to be terminated if his services were not found to be satisfactory or any otherwise order is passed in the writ petition filed by him before this Court. It is contended that in this manner the petitioner is continuously discharging his duty with the respondents for the last 17 years. Respondents also appointed Kamal Kumar Sharma and Saurabh Sharma at S. No. 41 and 42 of the panel, on ad-hoc basis on 20.04.1996, much after expiry of the select panel. Had all those three illegal transfers not been made and select list operated in time, the petitioner would have secured appointment within the age of 31 years. Expiry of select list cannot be made basis of defeating right of appointment of the petitioner.

3. Learned counsel for the petitioner, in support of his arguments, has placed reliance upon the decisions in the cases of Narayan Singh v. State of Raj. & Anr., 1990 (1) Rajasthan Law Reporter, 137; Smt. Manju Bhatnagar Vs. Secretary to Government, Mahila and Bal Vikas Vibhag, Govt. of Rajasthan); State of Rajasthan & others v. Smt. Manju Bhatnagar, 2006 WLC (UC) 415; Dir. S.C.T.I. for Med. Sci. and Tech. and Another Vs. M. Pushkaran, ; Santosh Kumar and Others Vs. G.R. Chawla and Others, ; Rajeev Tiwari Vs. State of Rajasthan and Others,); R.S. Mittal Vs. Union of India (UOI), ; Purushottam Vs. Chairman, M.S.E.B. and Another, ; State of U.P. Vs. Ram Sawrup Saroj, ; Anita Chopra Vs. State of Rajasthan, ; Pukhraj Singh Vs. State of Rajasthan and Others, ; Sumer Singh Vs. State of Rajasthan and Others, ; Ghanshyam Singh Rathore v. The State of Rajasthan and another, 2010 (2) WLC 443; State of Orissa and Others Vs. Bhikari Charan Khuntia and Others etc., .

4. While relying upon the decision rendered by Division Bench of this Court in the cases of Narain Singh v. State of Rajasthan (supra) and State of Rajasthan v. Manju Bhatnagar (supra) learned counsel argued that the petitioner was within the age limit on the date of submitting application and became over age by the time of issuing appointment order in pursuance of the selection, then he could not be treated age barred. Action of the respondents, therefore, deserves to be declared illegal and arbitrary. Learned counsel for the petitioner has also relied upon the decision rendered by this Court in the case of Ghanshyam Singh Rathore v. the State of Rajasthan & another (supra) and submitted that there was no order or decision for not operating the waiting/select list. The select list/waiting list thus being in operation, the petitioner should have been offered appointment, rather than transferring three LDCs from other districts.

5. Mr. R.K. Agarwal, learned Senior Counsel appearing on behalf of the respondents opposed the writ petition and submitted that appointment orders have been issued out of the select list strictly in accordance with merit against the vacancies, which were available and which could be filled in up to 08.01.1996. Therefore, no writ can be issued in favour of the petitioner after select list has already lapsed. Appointments to the post of LDC were given under the Rules of 1986 which enables Respondent No. 2 to appoint LDCs out of the

panel of selected candidates within one year from the date of declaration of the result. The Rule 19 of the Rules of 1986 neither cast duty on the Respondent No. 2 to make the appointment of LDCs out of the select list nor it entitles the petitioner to claim appointment on the post of LDC merely on the basis that his name finds place in the select list. Mere selection does not confer any right on a candidate to claim appointment. Writ of mandamus cannot be issue on the basis of placement of the petitioner in the select list. So far as validity of Rule 9 of the Rules of 1986 is concerned, the same has been upheld by Division Bench of this Court vide order dated 16.04.1993 passed in D.B. Civil Writ Petition No. 7064/1991. The petitioner attained the age of 31 years on 15.11.1995 much before the expiry of the select list and therefore, he was not entitled for appointment. As regards the appointment orders issued after expiry of the panel in favour of Kamal Kumar Sharma and Saurabh Sharma on 20.04.1996, it is contended that only Kamal Kumar Sharma joined the service but he will have to appear in fresh recruitment because his appointment was on ad hoc basis. Saurabh Sharma did not join. Since the petitioner was appointed on ad hoc basis under the order of Hon"ble the Chief Justice, he may not be entitled to regularization. Though he has completed 17 years of service, as his appointment in any case has to be taken subject to writ petition. His appointment was initially made for three months but thereafter it has been extended from time to time. The order was made subject to out come of the writ petition.

6. Learned Senior Counsel referred to Rule 19(iii) of the Rules of 1986 and argued that according to that rule name of the petitioner automatically stood removed from the panel after 08.01.1996. Reference is made to Advertisement dated 06.10.1993 to argue that it was clearly stipulated therein that some of the available posts can be filled by appointing the candidates promoted from Class IV or by transfer of employees from other districts. Rule 6(3) of the Rules of 1986 provides that 10% of the total number of vacancies of the Lower Division Clerks in each judgeship shall be reserved for being filled in by promotion from amongst the Class IV employees, who have put in five years service in the Judgeship concerned and possess the academic qualification prescribed by these rules for the post of Lower Division Clerk. Therefore, there was nothing illegal in transferring three candidates. It is contended that after the ad hoc appointment was given to the petitioner, two candidates below the petitioner in merit list; namely Kamal Kumar Sharma and Saurabh Sharma at Serial Nos. 41 and 42 respectively were appointed on ad hoc basis under Rule 23(3) of the Rules of 1986. However, the petitioner could not be appointed on regular basis as he crossed upper age limit of 31 years.

7. On hearing learned counsel for the parties and perusing the material on record, especially the report of the District and Sessions Judge, Jaipur District, Jaipur submitted to this Court on representation of the petitioner, it is evident that panel of 42 candidates was prepared pursuant to the process of selection started on the basis of advertisement dated 06.10.1993. Name of the petitioner was mentioned at serial No. 40 in the select list as per own showing of the

respondents. The panel was prepared on 09.01.1995 and was to remain operative for a period of one year, i.e. up to 08.01.1996. The respondents do not dispute the fact that the candidates up to Serial No. 38 in the select list were appointed from that panel within the validity period of the aforesaid panel. Respondents also do not dispute the fact that three candidates namely Rajesh Jaif, Gajendra Singh and Dharmendra Singh Parmar were transferred to Jaipur Judgeship in October, 1995 and August, 1995, during the validity/currency of the aforesaid panel. Had those three transfers not been made and selection list operated further, the petitioner, who was at Serial No. 40, could have been appointed. In fact in the report that was called for by the High Court on representation of the petitioner, it has been mentioned by the District Judge that his predecessor District and Sessions Judge gave consent for transfers of those three candidates and if those three transfers had not been made, not only the petitioner, but Kamal Kumar Sharma and Saurabh Sharma also, who were at Serial Nos. 41 and 42 respectively, could have been accommodated/appointed on regular basis within the validity of the aforesaid panel. Life of the panel came to an end on 08.01.1996. Looking to the aforesaid facts, Hon"ble the Chief Justice of this Court considered the case of the petitioner also. Apart from this, one Hari Kumar Mishra, who was placed at Serial No. 43, became over age and therefore, he could not be appointed, whereas Kamal Kumar Sharma, who was at Serial No. 41 and Saurabh Sharma who was at Serial No. 42 in the select list were appointed on ad hoc basis. While Saurabh Sharma did not join, only Kamal Kumar Sharma joined.

8. Admittedly, petitioner's appointment was made on the basis of his placement in the select list. When the process of selection started and select list was prepared, the petitioner was within age limit of 31 years. Besides, there is another fact that upper age limit under the Rules of 1986 was 31 years, but in other government services of the State it was raised to 33 years. Looking to all these facts, the Hon"ble Chief Justice was persuaded to direct appointment of the petitioner, but still on ad hoc basis. The petitioner was accordingly appointed on ad hoc basis, although subject to outcome of the writ petition vide order dated 20.10.1997. The petitioner was within age limit when the advertisement was issued. He was within age limit when he applied for the post. He was within age limit at the time of preparation of select list i.e. on 09.01.1995 and lastly, but most importantly, he was within age limit at the time three vacancies were filled in by transfer of three employees from other districts. These vacancies would be available for accommodating the petitioner on 02.01.1996, the date on which last batch of 10 candidates were offered appointment. This is because the life of the select list was going to expire on 08.01.1996, such appointments were made on 02.01.1996. The respondents could argue that the petitioner crossed the age of 31 years on 15.11.1995, but the fact is that the vacancies which the respondents have filled on 02-01-1996 were very much available on 15.11.1995, because earlier to that, appointments were offered to three candidates from the select list in July, 1995, and the respondents did not proceed to make

appointments for as long as six months thereafter.

9. The District Judge in his report sent to the High Court on 22.09.1997 has acknowledged this fact that had those three transfers not been made, not only the petitioner but the last two candidates in the select list namely Kamal Kumar Sharma at Serial No. 41 and Saurabh Sharma at Serial No. 42 could have also been accommodated. The District Judge in the report has also mentioned that while giving consent for the transfers of three candidates to Jaipur District Judgeship, the then District Judge had not taken note of the life of the select list and the claim of those candidates placed on such select list. This thus proves that the transfer of three candidates was made in breach of specific instructions of the High Court on administrative side. Reference in this connection may be made to part (iv) of the Circular dated 21.01.1976 which inter alia reads as under:

"(iv) If a panel of successful candidates already exists in a Judgeship then no application for transfer from other Judgeship should be forwarded to the High Court unless the panel is completely exhausted/expires."

10. Said condition was reiterated in subsequent circular dated 07.07.1997 in condition No. (iv) in verbatim which reads as under:

"(iv) If a panel of successful candidates already exists in a Judgeship then no application for transfer from other Judgeship should be forwarded to the High Court unless the panel is completely exhausted/expires."

11. Even Clause No. 5(iii) of the Part II of recent circular of the Rajasthan High Court dated 06.02.2014 reads as under:

"(iii) If a panel of successful candidates of a recruitment held earlier already exists in a Judgeship then no application for transfer from other Judgeship should be forwarded to the High Court unless the panel is completely exhausted/expires."

12. It has thus been the consistent approach of the High Court not to let any outside employee enter the Judgeship where select panel is alive and not to permit transfer of any employee from outside the district during the currency of the select list. It is clearly mentioned that no other application for transfer to that judgeship shall be forwarded, unless panel is completely exhausted/expires. The District Judge, Jaipur District, Jaipur was, therefore, perfectly justified in observing in its report dated 22.09.1997 that his predecessor District Judge had given consent for transfer of three candidates referred to above in breach of rights of the petitioner and that the note sheet, in which the case was dealt, did not make any reference to the life of select list. The petitioner has thus been able to make out a case for issuance of writ of mandamus to treat him to have been regularly appointed on the date on which last batch of 10 candidates was appointed i.e. 02.01.1996. In the result, the writ petition is allowed. Respondents are directed to treat the appointment of the petitioner as having been regularly

made on 02.01.1996 and accordingly, grant him all the consequential benefits. His seniority shall be fixed as per his placement in the merit immediately below the candidates higher to him in the said select list. All consequential benefits including promotion on the basis of such seniority shall be granted to the petitioner. The compliance of this judgment be made by the respondents within a period of three months from the date copy of this judgment is produced before them.