
(2024) 09 RAJ CK 1136

In the Rajasthan High Court, Jaipur Bench

Case No : Civil Writ Petition No. 13204 Of 2024, Connected With Civil Writ Petition No. 11757 Of 2024, No. 1390 Of 2024, No. 14195 Of 2024, No. 14259 Of 2024, No. 14438 Of 2024

Krishna Shekhawat

APPELLANT

Vs

The State Of Rajasthan

RESPONDENT

Date of Decision : 23-09-2024

Acts Referred:

Legal Services Authorities Act, 1987 — Section 21
Code of Civil Procedure, 1908 — Section 96

Citation : (2024) 09 RAJ CK 1136

Hon'ble Judges : Anoop Kumar Dhand, J

Bench : Single Bench

Advocate : Sumit Kumar Jain, G. L. Sharma, Ankul Gupta, R. N. Mathur, Anubodh Jain

Final Decision : Disposed of

Judgement

Vinit Kumar Mathur, J

Heard learned counsel for the parties.

The question involved in the present writ petition pertains to the criteria of preparing the seniority list of the LDCs (Junior Assistants) appointed in the Panchayat Samities under the Rajasthan Panchayati Raj Act, 1994 & Rajasthan Panchayati Raj Rules, 1996.

The petitioner in the present case has prayed that while preparing the seniority list of LDCs' (Junior Assistants), merit position should be considered and not the date of appointment when the petitioner actually joined her duties in the concerned Panchayat Samiti/Zila Parishad. It is further prayed that the seniority list of the petitioner who is working on the post of LDC (Junior Assistant) should be prepared in consonance with Rule 285 of the Rajasthan Panchayati Raj Rules, 1996.

Briefly noted the facts in the present writ petition are that the petitioner being an eligible candidate applied for appointment to the post of LDC (Junior Assistant) under the respondent department. Subsequently, in the merit list dated 25.06.2013 prepared by the respondent department, the name of the petitioner was reflected at S.No. No.163. In pursuance of the same, the petitioner was appointed vide order dated 25.06.2013. Accordingly, she joined her duties on 01.07.2013 (Annex.4).

The petitioner rendered her services for the probation period of two years to the utmost satisfaction of the respondents. After completion of her probation period, vide order dated 17.12.2015, she was declared permanent on the post of LDC w.e.f. 27.06.2015. The respondents prepared a seniority list of LDCs' (Junior Assistant) for promotion to the post of UDC (Senior Assistant) and while preparing the said seniority list, the respondents have taken into consideration the date of appointment/joining instead of merit position of the selected candidates. Hence, aggrieved against the same, the petitioner has preferred the present writ petition before this court.

Learned counsel for the petitioner vehemently argued that seniority list of the petitioner is required to be prepared by the respondents by taking into consideration her position in the merit list prepared by the District Establishment Committee for appointing the petitioner on the post of LDC. He submits that date of joining of the petitioner cannot be taken into consideration while preparing the seniority list in the present case as date of joining of the candidates could be different and for different reasons, the same could vary. Therefore, preparation of the seniority list on the basis of date of joining can lead to uncertainty, unreasonableness and arbitrariness in the present case. Learned counsel submits that the seniority list otherwise also is required to be prepared by respondents in consonance with Rule 285 of the Rajasthan Panchayati Raj Rules, 1996 (for short 'the Rules of 1996'). Learned counsel also submits that the controversy involved in the present case is squarely covered by a judgment rendered by this court in S.B.Civil Writ Petition No.472/2023 Bimla V/s State of Rajasthan & Ors. decided on 21.08.2024. He, therefore, prays that preparation of the seniority list on the basis of date of joining of the petitioner may be quashed and set aside. It is also prayed that the respondents may be directed to prepare a fresh seniority in accordance with Rule 285 of the Rules of 1996 by taking into consideration merit position of the petitioner as per her position in the merit list prepared by the District Establishment Committee while giving appointment to the petitioner.

Per contra, Mr. Manish Patel, learned Additional Advocate General appearing on behalf of the respondent State vehemently argued that preparation of the seniority list can only be made by taking into account the date of appointment of the petitioner. He submits that the District Establishment Committee, selects the candidates, however, the actual appointment is given by the concerned Panchayat Samiti/Zila Parishad, therefore, the date on which actual appointment order is issued by the concerned Panchayat Samiti/Zila Parishad that should be

taken into consideration while preparing the seniority list. By relying upon Section 90 of the Rajasthan Panchayati Raj Act, 1994 and Rule 259, 270, 276 & 285 of the Rajasthan Panchayati Raj Rules, 1996, he has tried to justify that date of actual appointment granted by the concerned Panchayat/Zila Parishad shall be the actual date on which petitioner has been appointed as LDC and therefore, the date of appointment/joining has to be taken into consideration while preparing the seniority list. He, therefore, prays that the seniority list prepared by the respondents does not call for any interference by this court and therefore, the writ petition filed by the petitioner may be dismissed.

I have considered the submissions made at the bar and also gone through the relevant rules.

The admitted position in the present case clearly depicts that the petitioner was selected by the District Establishment Committee and a merit list was prepared by the District Establishment Committee on 25.06.2013 wherein the name of the petitioner was reflected at serial No.163. In pursuance of the merit list prepared by the District Establishment committee, she was given appointment by the concerned Panchayat Samiti/Zila Parishad. In pursuance of the appointment order, she joined her duties on 01.07.2013. The petitioner rendered her services to the utmost satisfaction of the respondents. After completion of her probation period, she was confirmed on the said post vide order dated 17.12.2015. For consideration of promotion on the post of UDC (Senior Assistants), the respondents prepared a provisional/final seniority list. While preparing the seniority list of LDCs (junior Assistants), the respondents have taken into consideration her date of appointment/joining. For preparation of seniority list, section 90 of the Rajasthan Panchayati Raj Act, 1994 and Rules, 259, 270, 274, 276 and Rule 285 of the Rajasthan Panchayati Raj Rules, 1996 were taken into consideration. The relevant provisions of Section 90 of the Act of 1994 and Rule 259, 270, 274, 276 and Rule 285 of the Rules of 1996 are reproduced as under:-

"Section 90 : Constitution and Functions of the District Establishment Committee:-

(1).....

(2) The District Establishment committee shall –

(a) make selection or the posts in different grades and categories [except the posts specified in clauses (I), (iii), (iv) and (v) of Sub-Section (2) of Section 89] [Substituted by Notification No.F.2(2), dated 9.4.2016 (w.e.f.23.4.1999).] existing in the service in the Panchayat Samiti and the Zila Parishad in the District in accordance with the rules made by the state government in this behalf;

(b) regulate the mode of temporary appointment and recommend the names of persons for extending such appointments beyond six months;

(c) prepare lists of persons for promotion in the prescribed manner; and

(d) advise the Panchayat Samitis of the district and Zila Parishad all disciplinary matters affecting the officers and other employees thereof other than those referred to in Secs.79 and 82, which may arise under Section 91."

Rule 259, Methods of Recruitment :-

259. Methods of Recruitment's.-

(1) The posts of state service may be filled in by transfer on deputation from appropriate service.

(6) Recruitment of posts encadred in Panchayat Samiti and Zila Parishad Services as per Sub-Section (2) of Section 89 shall be made district wise through District Establishment Committee as per provisions of Secs. 80 and 90 of the Act.

Procedure for Direct Recruitment

Rule 270. Inviting of applications -On a requisition for direct recruitment to the service having been made by the Panchayat Samiti or the Zila Parishad to the District Establishment Committee, applications shall be invited by the Committee through open advertisement in daily news paper having wide circulation.

Rule 274 Preparation of a merit list by the Committee.

(1) The committee shall prepare a merit list of candidates considered suitable for appointment to [each grade or category of posts except the post specified in clause (iii) of sub-section (2) of Section 89 of the Act in the district] and shall on receipt of requisition from the Panchayat Samitis or Zila Parishads allot candidates from the list in the order in which their names occur in the list:

Provided that: -

(i) the number of candidates in the merit list prepared by the Committee shall not exceed one and a half time the number of vacancies actually available at the time such merit list is prepared; and

(ii) the merit list of candidates so prepared shall remain valid for a period of one year in general and up to end of academic session for teachers. After expiry of such period, it will be deemed to have lapsed.

(2) The Panchayat Samitis or Zila Parishads shall take into consideration the requirement of Rule 261 while sending their requisitions to the Committee.

Rule 276. Appointment by Panchayat Samiti or Zila Parishad.- The Panchayat Samiti or Zila Parishad shall appoint the candidates allotted by the Committee in the order in which their names are forwarded by the Committee.

Rule 280. Allotment and Appointment:- (1) On receipt of requisition from the Panchayat Samitis or Zila Parishad, the committee shall allot persons from the list, in the same order in which their names occur in the list.

(2) The Panchayat Samitis or Zila Parishad shall, on receipt of the allotment from

the Committee, appoint the persons so allotted to the posts for which they are selected by the Committee.

Rule 285. Seniority. - Seniority in lowest grade or category of the service shall be determined by the date of confirmation and in other higher posts filled by promotion shall be determined from the date of regular selection :

Provided :-

(i) that if two or more persons are appointed to posts in the same grade or category under the same order or orders of the same date, their seniority shall be in the same order in which their names appear in the list prepared by the Committee,

(ii) that the seniority of persons appointed by transfer shall be fixed below the persons substantively appointed and he will be the junior most though his pay will be protected as personal pay.

(iii) that persons appointed by promotion in a particular year shall be senior to persons appointed by direct recruitment”.

Perusal of above quoted Rules clearly show that the District Establishment Committee is entrusted with the selection of LDCs for appointment in the Panchayat Samities/Zila Parishads. In the present case, admittedly, the recruitment was made in pursuance of Rule 259 of the Rules of 1996 by the District Establishment Committee after inviting the applications from the candidates under Rule 270 of the Rules of 1996. The Selection Committee i.e. the District Establishment Committee prepared a merit list of the candidates who were considered suitable for appointment on the post and thereafter, the names of the candidates were forwarded to the respective Panchayat Samities/Zila Parishads in furtherance of the requisitions received from them in the order of merit list prepared by the respondents. Further, the candidates whose names were forwarded by the District Establishment committee were given appointments by the concerned Panchayat Samities/Zila Parishads in view of their names forwarded by the Committee under Rule 276 of the Rules of 1996. The process of allotment and appointment of the candidates was done by the Committee as per Rule 280 of the Rules of 1996 in the order in which the names of the candidates occurred in the merit/selection list.

The harmonious reading of the above referred Section and Rules clearly shows that the appointing authority of the LDCs (Junior Assistant) in the respondent Department is District Establishment Committee and after the District Establishment committee selects the candidates on the post of LDCs, the seniority list is prepared by it in order of merit, thereafter, the candidates are sent to the different Panchayat Samities and Zila Parishads on the basis of the recommendations received. The Legislature has made the provision in such a fashion that the selections are made in a most transparent manner. The criteria adopted by the Legislature for selection and appointment of the LDCs by the

different Panchayat Samities and Zila Parishads has been devised with a pious intention to minimize and to avoid different yardsticks in the selection process.

Looked at from another angle, if the date of appointment/joining of a candidate is taken into consideration for preparation of the seniority list, it may lead to discrepancies and chaotic/haphazard situation. For example, if a person who stood higher in the select list/merit list and was directed to join at a particular Panchayat Samiti or Zila Parishad, but for reasons beyond his/her control, he/she is unable to join on the given date and if a person lower in merit joins the place of posting earlier to that person, he will be given seniority above the meritorious person. For no fault of a senior person, he will lose his seniority viz-a-viz a junior person who has joined earlier despite being lower in merit. Such course of action was never intended by the legislature, therefore, the scheme of things as devised by the legislature, clearly shows that the seniority of LDC (Junior Assistant) should be assigned as per the merit list prepared by the District Establishment Committee.

In the considered opinion of this court, in order to maintain transparency and smooth functioning in the Panchayati Raj Department, the procedure of preparing the seniority list on the basis of merit has been devised.

This court is not inclined to take a different view from the view which has been taken by this court in the case of Bimla (supra). In the case of Bimla (supra), in similar set of facts, it was held that while preparing the seniority list of LDCs for promotion to the post of UDC (Senior Assistant), the respondents are required to adhere to Rule 285 of the Rajasthan Panchayati Raj Rules, 1996 and take into consideration merit position of a candidate while preparing the seniority list.

The operative portion of the judgment rendered by this court in S.B.Civil Writ Petition No.472/2023 Bimla V/s State of Rajasthan & Ors. decided on 21.08.2024 is quoted as under:-

"8. Since the petitioner was appointed on the post of LDC (Junior Assistant) on 26.06.2013 and he joined the post of LDC on 27.06.2013, therefore, the name of the petitioner should be reflected in the seniority list as per the merit list prepared by the respondents while giving appointment to the petitioner along with other candidates.

9. The basis for preparing the seniority list of the LDCs should be the merit position of a candidate reflected in the appointment order which should be taken into consideration while preparing the seniority list of the candidates (LDCs). Since learned counsel for the petitioner submits that the date of joining of the petitioner has been taken into consideration while preparing the seniority list, therefore, the respondents are directed to re-examine the matter and if the date of joining has been taken into consideration while preparing the seniority list of the LDCs, then the same is required to be corrected by taking into consideration the merit position of the petitioner in the appointment order and if any person, who is junior to the petitioner in the merit as reflected in the appointment order

has been given promotion, the case of the petitioner should be considered viz-a-viz that person.

10. In view of the discussion made above, the present writ petition is disposed of with a direction to the respondents to reconsider the case of the petitioner in light of the Rule 285 of the Rules of 1996 taking into account the merit position of the petitioner in the appointment order while preparing the seniority list of LDC (Junior Assistant) for promotion to the post of UDC (Senior Assistant), within a period of six weeks from the date of receipt of certified copy of this order.”

In view of the discussion made above, the present writ petition is disposed of with a direction to the respondents to re-frame the seniority list of the petitioner for promotion to the post of UDC (Senior Assistant) taking into consideration her position in the merit list prepared by the District Establishment Committee at the time of her appointment and not her date of joining/appointment, in accordance with law.

The necessary exercise shall be undertaken by the respondents within a period of four months from the date of receipt of certified copy of this order.

S.B. Civil Writ Petition No. 13204/2024

S.B. Civil Writ Petition No. 13901/2024

S.B. Civil Writ Petition No. 14195/2024

S.B. Civil Writ Petition No. 14259/2024

S.B. Civil Writ Petition No. 14438/2024:-

All the above writ petitions are disposed of in terms of the order of even date passed in S.B.Civil Writ Petition No.11757/2024 (Krishna Shekhawat V/s State of Rajasthan & Ors.).

All pending application (s) also stand disposed of.