
(2013) 09 RAJ CK 0144

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 1430 of 2011

Shambhu Dayal

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 26-09-2013

Acts Referred:

Citation : (2013) 09 RAJ CK 0144

Hon'ble Judges : Amitava Roy, C.J.;Veerendr Singh Siradhana, J

Bench : Division Bench

Advocate : Ravi Kasliwal, for the Appellant; Rajvir Sharma and Mr. Jinesh Jain, Government Counsel, for the Respondent

Final Decision : Disposed Off

Judgement

Amitava Roy, C.J.—The instant appeal, delayed by 41 days, has been preferred against the judgment and order dated 10.5.2010 passed in S.B. Civil Writ Petition No. 6652/2010 requiring the respondent/writ petitioner to make an appeal before the Director, Local Bodies, who in turn, was ordered to decide the same within a period of six months therefrom. By the ruling, this official functionary was directed to ensure that till the appeal was finally decided, no further promotion on the basis of the assailed seniority be made. We have heard Mr. Ravi Kasliwal, learned counsel for the appellant/applicant and Mr. Rajvir Sharma & Mr. Jinesh Jain, learned Government Counsel for the respondents.

2. The factual background is this that the respondent/writ petitioner had approached this Court impugning the order dated 2.9.2009, whereby he was relegated below the appellant in inter se seniority in the post of Garden Inspector. According to him, after being appointed in the Garden Section of the Municipal Committee, Kota on 1.6.1976 on daily wages, he was selected as Assistant Garden Inspector vide the order dated 29.11.1978. In the provisional seniority list published by the official respondents on 11.2.1982 under the Rajasthan Nagar Parishad Subordinate and Ministerial Staff Service Rules, 1963, his name appeared at serial No. 1 and that of the present appellant at serial No.

2. This inter se position was finalized and was reflected in the seniority list published on 1.11.1988, wherein their dates of appointment were shown as hereunder:-

3. Subsequent thereto, they were promoted as Garden Inspector, and in the provisional seniority list dated 8.2.2008, their dates of such promotion were indicated as hereunder:-

correctly reflecting the same, having regard to the corresponding orders to that effect.

4. The respondent/writ petitioner asserted that the appellant thereafter on 22.2.2008, submitted representation questioning the correctness of the inter se seniority, and by the impugned order dated 2.9.2009, their positions were interchanged illegally and further, without affording any opportunity of hearing to him. As his representation to restore the correct inter se position failed, he approached this Court.

5. The learned Single Judge, upon hearing the learned counsel for the respondent/writ petitioner and on a consideration of the materials on record, disposed of the writ petition with the following operative directions:-

Having regard to the nature of the controversy and also keeping in view that the matter has been decided by Chief Executive Officer, Nagar Nigam, Kota, I relegate the petitioner to the remedy of making an appeal to the Director, Local Bodies who shall decide such appeal within a period of six months from the date such appeal is made. The Director shall ensure that till the appeal is finally decided, no further promotion on the basis of seniority list which is under challenge is made

6. The appellant is before this Court being aggrieved thereby. To explain the delay, he has contended that as the determination in the writ petition was made ex-parte without issuing any notice to him, he was unaware thereof. Further, though by the impugned judgment and order, the respondent/writ petitioner was required to file an appeal within a period of six months, he did not do so, and as a result, the consideration of his promotion to the next higher post has remained stalled.

7. Whereas the learned counsel for the appellant has reiterated the above, the learned counsel for the respondent/writ petitioner has submitted that the appeal, as required, has meanwhile been filed before the authority concerned.

8. Upon hearing the learned counsel for the parties and on a consideration of the pleaded facts and the documents on record and further, with due regard to the issue needs to be settled, it is considered in the interest of justice to close this appeal by requiring the Director, Local Bodies to ascertain as to whether an appeal, in terms of the order dated 10.5.2010 rendered in S.B. Civil Writ Petition No. 6652/2010, has in fact been filed by the respondent/writ petitioner, as required, and if it has been so done even beyond the period of six months, as

ordered, he would dispose of the same on merits within a period of two weeks from the date of receipt of certified copy of this order. In case the appeal has meanwhile been disposed of, the decision be communicated to the concerned forthwith for necessary follow up steps. If no such appeal has yet been filed by the respondent/writ petitioner, as required, the Director, Local Bodies would not undertake this exercise and the direction to this effect, as contained in the impugned judgment and order dated 10.5.2010, would stand withdrawn. It would be then open for the concerned authorities to act on the impugned seniority list dated 2.9.2009 in accordance with law. The application and the appeal stand disposed in these terms. The stay application also stands disposed of.