(1984) 11 RAJ CK 0006

In the Rajasthan High Court

Case No : Civil Writ Petition No. 45 of 1978

Shanti Lal Ojha APPELLANT

Vs

The State of Rajasthan and Another RESPONDENT

Date of Decision : 28-11-1984

Acts Referred:
Constitution of India, 1950 — Article 14, 16, 309

Citation : (1984) WLN 499

Hon'ble Judges : P.K. Banerjee, C.J

Bench : Single Bench

Judgement

Pradyot Kumar Banerjee, C.J.—In this rule the petitioner has challenged the order of seniority as also the provisional list published on the ground that Rule 171(1) of the Rajasthan Land Revenue (Land Records) Rules, 1957 be declared ultra-vires and illegal and that the petitioner should get seniority computed as per the Rajasthan Civil Services (Absorption of Surplus Personnel) Rules, 1969 and for other reliefs namely, restraining the respondents from effecting the reversion of the petitioner from the post of Naib Tehsildar to post the of Inspector (Land Records) and for quashing the order of reversion. Mr. Mridul argued that in consequence of his prayers in (a) and (b) the petitioner may not be reverted.

2. The facts leading to the rule are as follows. The petitioner was appointed as Amin on October 2, 1954 and was promoted as Surveyor with effect from August 14, 1957 in the Consolidation Department after passing the Surveyhr examination. It Appears that every time the seniority list was being prepared and the petitioner moved this Court and obtained the stay order, but every time the rule was disposed of as being infructuous. It was further alleged that the petitioner was declared surplus due to economy eut effected by the Government and came to be absorbed as Inspector Land Records by transfer in Jalore district vide order dated November 4, 1963 of the Board of Revenue for Rajasthan, The petitioner joined the post on November 14, 1963. The petitioner also obtained a

Diploma from the Ail-Purpose Revenue Training School, Tonk, as required by the Rajasthan Land Revenue (Land Records) Rules, 1957, on July 20, 1964, when he was asked to take the training referred to herein above by the competent authority. On September 21, 1966 the Collector, Jalore, proceeded to order mentioning therein that for existing 9 clear vacancies in the scale of Rs. 90-4-170 the names be arranged in order of seniority-cum merit of the incumbent concerned and the petitioner''s name came to be mentioned at serial No. 9. The date of his continuous service as Kanugo came to be shown as November 14, 1963 and was also shown to be a trained Kanugo. The petitioner filed objections stating inter-alia that he was appointed as Surveyor, a post equivalent to the cost of Inspector, Land Records on August 14, 1957 and was absorbed by transfer from that post and he should be treated as Inspector, Land Records with effect from that day and assigned seniority accordingly. But by order dated April 23, 1971, the Collector, Jalore confirmed the petitioner with 9 other Inspectors, Land Records with effect from September 28, 1967. The petitioner again objected to such confirmation, but no order for confirming the petitioner with effect from August, 14, 1957, however, as passed. The petitioner was promoted as Naib Tehsilder by order dated May 27, 1968 and was ordered to be posted as Famine Naib Tehsildar in Jaisalmer district, which appointment was, however, on temporary and ad-hoc basis. By order dated September 26, 1970 the petitioner, however, was reverted from the post of Naib Tehsildar to the post of Inspector, Land Records. Aggrieved from this order, the petitioner filed a writ application and this Hon''ble Court was pleased to stay the order of reversion and the petitioner thereafter was transferred as Naib Tehsildar Chauttan Tehsil, District Barmer and presently holding the post of Naib Tehsildar, Ajmer District, Ajmer. On September 24, 1973 an order was made by the Board of Revenue, Rajasthan, Ajmer reverting the petitioner from the post of Naib Tehsildar to the post of Inspector, Land Records in District Sirohi. In the writ petition filed by the petitioner, a statement was made on behalf of the Board of Revenue for Rajasthan that new Rules have been made in regard to the promotion of the post of Naib Tehsilders and a seniority list has also been prepared once again and that the petitioner will not be reverted till his case has been considered according to the new Rules and new seniority. On such statement being made, it is alleged, the petitioner withdrew the writ petition on September, 12, 1973. But unfortunately it is alleged that the seniority list which came thereafter also contained the same vice and the seniority list was again challenged. It appears that as many as 165 persons, who were Surveyors of the Consolidation Department and were declared surplus in the year 1962 and the petitioner, who was senior to all 165 persons who were declared surplus, was made junior to those persons. It is further stated that all these persons were holding the same scale of pay and same type of work and responsibilities which was being discharged by the Surveyors of the Consolidation Department and the Inspectors, Land Records at that relevant time. With this and in view in so far as seniority is concerned, it is alleged, that in view of the provisional seniority list of confirmed Inspectors, Land Records the petitioner''s name was not shown, though according to him, the petitioner''s name should have been shown above serial No. 380. Subsequently another seniority list was published in 1972, wherein the petitioner''s name appears at serial No. 592. In the circular dated September 21, 1973 notifying the seniority list it was stated that seniority list is determined on the basis of date of continuous officiation on the post of Inspector, Land Records and it was further said that the seniority of persons who were said to have held the post equivalent to that of Inspector, Land Records has also been determined on the basis of their continuous officiation on that post prior to their appointment as Inspector, Land Records by transfer and or absorption. On these grounds the petitioner has challenged the provisional seniority list, because according to him the principle has not been properly applied to.

3. In the affidavit in opposition filed by the respondents it has been stated inter-alia that the petitioner was no doubt declared surplus on the post of Surveyor in the Consolidation Department on "August 31,1963 (A.M.), but he was taken on transfer on the post of Inspector, Land Records from the post of Inspector, Consolidation, Ajmer vide Board of Revenue''s order dated November 4, 1963 and not through process of absorption through the Absorption Committee (Central Administration Department). Rajasthan Jaipur. It is stated that the petitioner was not confirmed on the post of Inspector, Land Records along with the confirmation of 7 other Inspectors, Land Records as the petitioner''s work was unsatisfactory. Moreover, it is alleged that the post of Surveyor in Consolidation Department is equivalent to that of Inspector, Land Records is entirely unfouded as it has not been declared to be so, under Sub-rule (2) of Rule 171-A of the Rajasthan Land Revenue (Land Records) Rules, 1957. It was submitted by the respondents that in these circumstances the petitioner was reverted from the post of Naib Tehsildar. The seniority list of Inspectors, Land Records issued in 1973 was superseded by the new list issued in 1975 as Rule 171A of the Rajasthan Land Revenue (Land Records) Rules 1957 was amended on July 11, 1974. The petitioner was assigned seniority at proper place in the new list at serial No. 553. It is stated that the affected seniority list of 1973 was superseded by the seniority list published in Rajasthan Rajpatra on April 24, 1975. It is stated that the Rajasthan Land Revenue Act and Rules applied in the facts and circumstances of the case and the Rajasthan Subordinate Service (Recruitment and other Service Conditions) Rules, 1960 are not applicable to the petitioner. It is further asserted that the petitioner was not absorbed on the post of Inspector, Land Records on his being declared surplus, but was on transfer on his own request routed through the Settlement Commissioner and ex-officio Director of Consolidation, Rajasthan, Jaipur on January 14, 1963. Thus, his seniority in the cadre of Inspectors, Land Records would be determinable under Rule 171-A of the Rajasthan Land Revenue (Land Records) Rules, 1957 and not under the Rajasthan Civil Services (Absorption of Surplus Personnel) Rules, 1969. No reply seems to have been given about the validity or otherwise of the reversion order from the post of Naib Tehsildar to the post of Inspector, Land Records.

4. The petitioner, however, filed a rejoinder to the affidavit in opposition filed by the Board of Revenue. He has stated the same thing what has been stated in the writ petition.

5. Mr. Mridul, on behalf of the petitioner, contended three points for my consideration. Firstly, it was contended that the Rajasthan Civil Services (Absorption of Surplus Personnel) Rules, 1969 are applicable in the case of the petitioner. The petitioner seniority should have been considered with affect from January 1, 1954 from which date the Absorption Rules under Rule 2 were made applicable. If it is argued that Rule 171-A applies, then it cannot be retrospective. Secondly, the Rajasthan Civil Services (Absorption of Surplus Personnel) Rules, 1969 being special Rules will prevail over the general Rules. Thirdly, the Constitutional Rules framed under proviso to Article 309 of the Constitution of India will prevail over the statutory Rules. Assuming all these questions fail, still by the seniority list has made 165 persons junior to the petitioner as senior to him and, therefore, similarly situate persons are being differently treated under the Rules and as such violative of Articles 14 and 16 of the Constitution of India. It is argued by Mr. Mridul that this was an appointment by transfer and Rule 7(2) of the Rajasthan Subordinate Service (Recruitment and Other Service Conditions) Rules, 1960 will be applicable. Then even the seniority must be under Rule 21(iii) of the said Rules still prevail and applying that rule the petitioner must be given seniority at least from the date when he was promoted as Surveyor on August 14, 1957.

6. Mr. H.N. Calla, on behalf of the respondents, contended that the Rajasthan Subordinate Service (Recruitment and Other Service Conditions) Rules, 1960 will not apply in view of Rule 2 of the said Rules. It is argued that Rule 171-A framed u/s 261 of the Rajasthan Land Revenue Act will apply and the Rajasthan Civil Service (Absorption of Surplus Personnel) Rules, 1969 are not at all applicable.

7. It appears to me, as I look into the matter, the facts are patent that the petitioner applied on January 8, 1963 for his transfer from Consolidation Department to the Land Records Department. In pursuance of that application made on January 8, 1963 it has been stated by the authorities concerned that Shanti Lal Ojha may be posted as Inspector, at Jalore district against 167th Inspector appointed to Jalore district, who has not joined. It is true that after this order was made, a circular order (Annexure-5) dated August 22, 1963 was made that the staff of the Consolidation Department mentioned in the departmental circular dated August 20, 1963 are declared surplus and they will be relieved for absorption to the Absorbing Authority. It appears, however, by order dated November 4, 1963 (Annexure-7) it has been stated that Shri Shanti Lal Ojha, Surveyor in the office of the Settlement Officer (Consolidation), Ajmer is hereby taken on transfer from the Consolidation Department and absorbed as Inspector, Land Records in Jalore District against the vacancy caused by the retention of Shri Suraj Mai, Inspector, Land Records at Kola; By reading all these documents together it is clear that though by Anntxure-5 the petitioner was said to have

been declared surplus on August 31, 1965 and was directed to report to the Absorbing Authority, he was not relieved from the Consolidation Department. Long thereafter i.e. on November 4, 1963 this order of transfer and absorption on the post of Inspector Land Records could not have been made in favour of Shanti Lal Ojha on his application being made on January 8, 1963, which was disposed of on January 29, 1963. In the background as herein before stated and by Mr. Calla also it was stated that on his own instance the transfer was made. It is the case of the respondents that this is a transfer from the Consolidation Department to the Land Records Department and not the new appointment. It is the case of the respondent that Rule 171 of the Rajasthan Land Revenue (Land Records) Rules in terms apply in the facts and circumstances of the case and the Rajasthan Civil Services (Absorption of Surplus Personnel) Rules, 1969 do not apply. I will assume for a moment, as argued by Mr. Mridul that the Rajasthan Civil Service (Absorption of Surplus Personnel) Rules, 1969 do apply, in the facts and circumstances of the case. The Rajasthan Civil Service (Absorption of Surplus Personnel) Rules, 1969 makes it clear that they will apply with effect from January 1, 1954 regulating recruitment and conditions of service of persons appointed to the various service or posts in connection with the affairs of the State, surplus personnel shall be eligible for recruitment and appointment by absorplion to such service or posts in accordance with these rules subject to the availability of vacant posts. ''Surplus personnel'' has also been defined in Rule 3(1) of the Rajasthan Civil Service (Absorption of Surplus Personnel) Rules, 1969 as under:

(1) ''Surplus Personnel'' or ''Surplus Employee'' means the Government servant to whom the Rajasthan Service Rules, 1951 apply and who are declared surplus by the Government or by the Appointing Authority, under directions of the Government, on their being rendered surplus to the requirements of a particular department of the Government due to the reduction of posts or abolition of offices therein as measures of economy or on administrative grounds but in whose case the Government decides not to terminate their services but to retain them in service by absorption on other posts.

8. On the facts as stated herein before, it is clear that the petitioner was not declared surplus and he was transferred from the Consolidation Department to the Land Records Department by the Board of Revenue''s order and, therefore, in my opinion, Rule 171-A will in turn apply as has been contended by Mr. Calla on behalf of the respondents. I further hold that in the facts and circumstances of the case, the Rajasthan Subordinate Service (Recruitment and Other Service Conditions) Rules, 1960 do not apply, inasmuch as Rule 171 of the Rajasthan Land Revenue (Land Records) Rules, 1957 makes it clear that a person appointed to the subordinate service post in various departments other than the posts for which Subordinate Service Rules were promulgated will not be governed by these Rules. In the present case, however, the Service Rules have been promulgated and amended in 1974. The relevant Rules which governs our case in this matter is Rule 171(1) and (2) along with its provisos and Explanation, which reads as

under:

171(1)(2) : The seniority of the Inspectors Land Records will be determined from the date of their continuous officiation on the post of Inspector, Land Records in the Land Records Department and/or Inspectors in the Settlement/Consolidation/ Colonisation Departmeni or any other equivalent post in such Departments provided such officiation was not fortuitous or adhoc in nature and subject to the condition that they possess a diploma of having passed that Girdawar Konunga Examination.

Provided that the inter-se seniority of the surplus employees of the various Departments shall be maintained in accordance with the provisions of the Rajasthan Civil Services (Absorption of Surplus Personnel) Rules, 1969.

Provided further that the seniority of Inspectors, Land Records finding place in seniority list issued as on 1st November, 1956, and the predetermined seniority within the service/carde/circle unit as on the aforesaid date will not be disturbed inter-se and the persons whose names did not find place in the above said list will rank junior to the persons appearing in the list.

Explanation - "Equivalent post" shall mean a post carrying an identical scale of pay and similar duties and responsibilities and shall be determined by the authority determining the seniority and in case these conditions are not fulfilled then by the administrative department in consultation with the Department of Personnel.

9. From the rule itself, in my opinion, it is clear that proviso No. (1) will only apply in respect of inter se seniority of the surplus employees of verious departments, which should be maintained according" to the provisions of the Rajasthan Civil Service (Absorption of Surplus Personnel) Rules, 1969. It is clear, therefore, that proviso (1) is not applicable in se far as the petitioner is concerned, as I am of the opinion, the petitioner was not declared surplus in view of the facts and circumstances of the case, but he was absorbed by way of transfer as will be clear from the order dated November 4, 1963 on the petitioner''s own application dated January 8, 1963 as pointed out by Mr. Calla himself. Rule 171 proviso (2), however, will be applicable the facts and circumstances of this case. In determining the seniority of the petitioner vis-a-vis others transferred personal from Consolidation Department, this proviso is to be considered. I make it clear that Explanation also is explicit on the point that the petitioner is holding the post of Inspector vis-a-vis Inspectors in the Consolidation Department are equivalent post. From the letter dated January 8, 1963 the petitioner stated that as both the grades which are identical i.e. grade of surveyor in the grade of 90-4-170 is identical to the grade of Inspector of Land Records Department. It is further accepted that due to the economy cut in the Consolidation Department some surveyors are absorbed in the Revenue Department as Land Records Inspectors. It was pointed out in the said order that such transfer is not permissible, but still by the order of the Board of Revenue

the petitioner was transferred from one post to another for absorption. In order to fix seniority of such person, therefore, in my opinion. Rule 171, proviso (2) read with Explanation will have to be considered. I am, therefore, of the opinion that the petitioner was appointed and confirmed as Surveyor as on April 1, 1957. The petitioner''s seniority will be determined with reference to that date and taking any other date namely, absorption as Inspector, Land Records on being declared surplus in Consolidation Department will make the order of absorption and fixation of seniority which come within the mischief of vice of Articles 14 and 16 of the Constitution of India. An artificial fixation of date in the facts and circumstances of the case will make the whole list liable to be set aside and similarly placed persons may be said to be unequally treated.

10. In that view of the matter, in my opinion, the respondents must fix the seniority of the petitioner in a way I have observed in the body of the judgments. The stay will continue pending the fixation of seniority, but if it is otherwise, the stay will not be affected, but it is for the Department to consider whether the reversion was only on the ground of seniority or otherwise.

11. The rule is made absolute to the extent indicated above. There will be no order as to costs.

