
(2020) 03 RAJ CK 0115
In the Rajasthan High Court
Case No : Civil Writ Petition No. 2285 Of 2020

Shikha Makkar

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 03-03-2020

Acts Referred:

Citation : (2020) 03 RAJ CK 0115

Hon'ble Judges : Dinesh Mehta, J

Bench : Single Bench

Advocate : J.S. Bhaleria, Kunal Upadhyay, Sunil Beniwal

Final Decision : Allowed

Judgement

1. At the outset, a preliminary objection has been raised by Mr. Kunal Upadhyay, learned counsel for the respondents that the writ petition at hand is not maintainable for two reasons; firstly, that petitioners had earlier filed a writ petition being S.B. Civil Writ Petition No.2286/2013, which had been disposed of by this Court on 29.05.2013 and secondly because it suffers from delay.

2. Inviting Court's attention towards prayer clause of the earlier writ petition vis-a-vis prayer made in the present writ petition, learned counsel argued that for the very same reliefs, petitioner had filed earlier writ petition, which had been decided by this Court, the present petition is, thus, barred by principal of resjudicata.

3. Elaborating the arguments regarding laches, learned counsel contended that pursuant to earlier order dated 29.05.2013, the petitioner made a representation for issuance of experience certificate, which request was turned down in the year 2013. According to learned counsel, the writ petition raising grievance regarding rejection of request for issuance of experience certificate, is highly belated, as the same was done way back on 10.06.2013.

4. In support of his arguments, Mr. Kunal Upadhyay relied upon the judgment

passed by Hon'ble the Supreme Court in Pradeep Kumar Maskara & Ors. Vs. State of West Bengal & Ors. (2015) 2 SCC 653 to contend that even if there is subsequent change in law, fresh proceedings taken by a party, once earlier proceeding has attained finality, is barred by the principle of resjudicata.

5. Learned counsel for the petitioner submitted that though the prayers made in the present writ petition are identical to that of earlier writ petition, but a perusal of pleadings of the present writ petition, reveals that the petitioner is essentially aggrieved of denial of grant of experience certificate by the concerned Chief Executive Officer on 10.06.2013. While conceding that the petitioners ought to have made a specific prayer to quash noting dated 10.06.2013, inscribed on Annex.P/12, he urged that the same can be quashed at the oral request of the petitioner, inasmuch as, all requisite facts are on record.

6. With regard to respondents' preliminary objection in relation to delay, Mr. Bhaleria submitted that it is true that petitioner was denied grant of experience certificate in June, 2013, but since the process of selection was in abeyance, consequent to pendency of litigation before Hon'ble the Supreme Court and the process of selection has been restarted only recently, the petitioner is justified in approaching the Court in the year 2019, when necessity to take legal action has arisen.

7. Learned counsel for the petitioners submitted that exactly in identical facts, a Co-ordinate Bench of this Court has allowed the writ petition, being S.B. Civil Writ Petition No.2998/2016, Smt. Sangeeta Choudhary Vs. State of Raj. & Ors. and held the petitioner to be entitled for grant of experience certificate for the period between the date of interim order and the date when the petitioner was taken back on duties.

8. Having heard learned counsel for the parties, this Court is of the view that the preliminary objections raised by the respondent State, though appears to have substance, cannot take away petitioner's right of getting an experience certificate.

9. So far as maintainability of writ petition on the basis of principle of res-judicata is concerned, it is clear from the record that the petitioner's earlier writ petition was disposed of by this court on 29.05.2013, whereafter petitioner moved a representation for issuing/grant of experience certificate, which request had been turned down by the respondent No.2 vide his order/noting dated 10.06.2013. It is the rejection of grant of experience certificate, which has given fresh cause of action to the petitioners. Indisputably, petitioner's rights were not decided in the earlier writ petition and the same was disposed of by this Court with the direction to the respondents to decide petitioner's representation in relation to experience certificate.

10. The prayer made in both writ petitions are almost identical, but on a scrutiny of record, this Court finds that the petitioner has in essence invoked writ jurisdiction of this Court, being aggrieved of the order dated 10.06.2013 - refusing to issue experience certificate.

11. That being the position, this Court is of the view that the petition at hand is not barred by principle of res-judicata, particularly when the earlier writ petition was not decided on merit and the petitioner's right of getting experience certificate for the period between 01.03.2010 to 03.11.2011 was not decided by this Court.

12. Adverting to objection regarding delay, this Court is of the view that the petitioner ought to have challenged rejection of issuance of experience certificate dated 10.06.2013, within reasonable time, but in view of explanation furnished by learned counsel for the petitioner that selection process was in abeyance for considerable period and the same has been restarted, after the decision of Hon'ble the Supreme Court, this Court deems it expedient to ignore or condone the delay in filing the writ petition.

13. So far as the judgment of Hon'ble the Supreme Court cited by learned counsel for the petitioner (Pradeep Kumar Maskara) is concerned, there cannot be any dispute, about the legal position, however, as noticed above, the order dated 10.06.2013 has given a fresh cause of action to the petitioner, when request for issuance of experience certificate has been turned down, hence the judgment of Pradeep Kumar Maskara (supra) is clearly distinguishable.

14. As a result of the discussion above, preliminary objections raised by the respondents are repelled.

15. Learned counsel for the petitioner submitted that the issue involved in the present writ petition is covered in petitioner's favour by the judgment dated 05.12.2016, rendered by this Court in S.B. Civil Writ Petition No.2998/2016; Smt. Sangeeta Choudhary Vs. State of Raj. & Ors., which has been confirmed by the Division Bench of this Court on 01.05.2018.

16. Mr. Kunal Upadhyay, learned counsel for the respondent State is not in a position to dispute the aforesaid factual and legal position.

17. The writ petition is, therefore, allowed. The respondents are directed to count the period from 01.03.2010 to 03.11.2011 as experience for the purpose of awarding bonus marks to the petitioner.

18. Needless to observe that after considering the above referred period for experience and accordingly calculating petitioner's bonus marks, in case petitioner fall in merit list, they shall be forthwith given appointment, in accordance with law.