

(2010) 10 RAJ CK 0013

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 09279 of 2010 in Civil Writ Petition No. 1778 of 2006

State of Rajasthan and Another

APPELLANT

Vs

Rama Kant Vijay

RESPONDENT

Date of Decision : 04-10-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Limitation Act, 1963 — Section 5

Rajasthan Engineering Subordinate Service (B and R Branch) Rules, 1973 — Rule 6

Citation : (2011) 2 RLW 1734

Hon'ble Judges : Satya Prakash Pathak, J;Arun Kumar Mishra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

S.P. Pathak, J.—Heard learned Counsel for the Appellants on the application u/s 5 of the Limitation Act for condonation of delay.

2. For the reasons stated in the application u/s 5 of the Limitation Act supported by an affidavit, the delay in filing the special appeal is condoned.

3. Heard learned Counsel for the Appellants on the merits of the special appeal.

4. The present special appeal has been filed on behalf of the State of Rajasthan against the order dated 21.8.2009 passed by the learned Single Judge in S.B. Civil Writ Petition No. 1778/2006 (Rama Kant Vijay v. State of Rajasthan and Ors.) whereby the writ petition filed by the Petitioner has been allowed and the order dated 6.3.2003 has been quashed and set aside with the direction to the Respondents to review the D.P.C. for promotion against the vacancies of 2004-05 in relation to the Petitioner-

5. Briefly stated the facts for the disposal of this special appeal are that the Respondent (hereinafter to be referred in short as, "the Petitioner") filed a writ petition feeling aggrieved by the order dated 6.3.2003 by which the category of

the Petitioner was changed from Junior Engineer (diploma holder) to that of Junior Engineer (degree holder) in exercise of the powers under Rule 6(d) of the Rajasthan Subordinate Engineering (B & R Branch) Rules, 1973 (hereinafter to be referred in short as, "the Rules of 1973"). It was also prayed in the petition that" the order dated 12.10.1995 passed by the Respondents by which the Petitioner was assigned to the category of Junior Engineer (diploma holder) be restored and the Respondents be directed to review the D.P.C. to the year 2004-05 and grant him promotion from the date the said promotion was granted to his junior in the category of Junior Engineer (diploma holder) to the post of Assistant Engineer (Civil) with all consequential benefits.

6. The Petitioner was appointed as Sub-Engineer (Civil) in Public Works Department under the Rules of 1973 on 23.9.1982. At the time of appointment the Petitioner was holding diploma qualification in Civil Engineering. In the year 1991 he did AMIE and this fact was intimated to the Respondents on 14.11.1991. The competent authority under the provisions of Rule 6(d) of the Rules of 1973 assigned category as Junior Engineer (degree holder) on vacant post on 9.4.1994 by way of transfer w.e.f."28.11.1991. The order of transfer provided that the pay was to be drawn at the rate of Rs. 1850/- from the date of such appointment as the Petitioner was getting more than Rs. 1850/-, therefore, as far as pay was concerned, he was getting more pay. In view of above, the Petitioner submitted an other application on 29.5.1995 with the request that his name be deleted from the list of Junior Engineers (degree holder) and he may be allowed to retain his appointment as Junior Engineer (diploma holder). The provisional seniority list of Junior Engineers (diploma holder) was also issued on 9.6.1995 wherein the name of the Petitioner was mentioned. The Petitioner's case is that the Chief Engineer, Public Works Department vide letter dated 26.7.1995 required the Petitioner to file an undertaking on a non-judicial stamp of Rs. 5/- that in case his application is allowed to retain his appointment as Junior Engineer (diploma holder) in the seniority list then he will not stake any claim as Junior Engineer (degree holder). In compliance of the letter of the Chief Engineer, PWD, the Petitioner filed an undertaking as required. The -Chief Engineer, thereafter passed an order on 12.10.1995 in relation to the Petitioner and others also and put the Petitioner in the category of Junior Engineer (diploma holder) on the basis of affidavit and the orders previously issued for appointment as Junior Engineer (degree holder) on acquiring qualification of B.E./A.M.I.E. was cancelled. The case of he Petitioner further is that thereafter the Petitioner was always recorded in the seniority list of Junior Engineer (diploma holder) such as in the seniority list dated 18.10.1995 he was shown at S. No. 664, in the list dated 12.10.1998 at S. No. 549, in the list dated 7.2.2002 at S. No. 442 and in the list dated 24.9.2002 at S. No. 294.

7. In the meeting of the-Departmental Promotion Committee convened for promotion to the post of Assistant Engineer up to the year 2001-02, the name of the Petitioner was included in the eligibility list and by order dated 18.4.2001 the Petitioner was granted second selection scale on completion of 18 years from the

date of appointment i.e. 23.9.1982. The dispute arose when promotions were granted to the Junior Engineer (Civil) (diploma holder) against the vacancies of the year 2004-05 by order dated 15.4.2005. the case of the Petitioner further is that at this point of time he came to know that six persons junior to him were promoted on the post of Assistant Engineer (Civil) from the quota of Junior Engineer (diploma holder) while their names were mentioned at S. Nos. 295, 296, 297, 298, 299 and 300 respectively in the seniority list dated 24.9.2002. The Petitioner came to know that he was superseded and his name was not considered by the DPC held on 19.3.1995, therefore, he submitted a representation to the Chief Engineer on 28.3.2005 and also filed an appeal before the Rajasthan Civil Services Appellate Tribunal. In the meantime, to update the seniority list in respect of Junior Engineer (Civil) (degree holders), seniority list was issued and it was for the first time after 20 years name of the Petitioner was included in the list of Junior Engineer (degree holders).

8. In the above facts, another representation was submitted by him on 20.1.2006. It has also been the case of the Petitioner that one Sita Ram Sharma, Junior Engineer on 16.1.2006 received information under the Right to Information Act and also obtained certain documents. On perusal of the documents, the Petitioner was shocked and surprised that an order dated 6.3.2003 was passed by the Respondent whereby the earlier order passed in favour of the Petitioner keeping him in the category of Junior Engineer (diploma holder) was cancelled and the Petitioner's name was ordered to stand deleted from the list of Junior Engineer (diploma holder). In the above circumstances, the Petitioner withdrew the appeal filed before the Rajasthan Civil Services Appellate Tribunal and filed writ petition before this Court.

9. A reply to the writ petition was filed by the Appellants-Respondents. Mainly, it was asserted in the reply that under the Rules of 1973 when Petitioner was assigned category of Junior Engineer (degree holder) on his application then subsequent change in the category as Junior Engineer (diploma holder) in the year 1995 was only a mistake which was corrected by an order dated 6.3.2003 and the Petitioner was not entitled to retain his seniority in the list meant for Junior Engineer (diploma holders).

10. The learned Single Judge after hearing both sides vide order dated 21.8.2009 allowed the writ petition and set aside the order dated 6.3.2003 in relation to the Petitioner and order dated 12.10.1995 was restored qua the Petitioner and Respondents were directed to review the D,P.C. against the vacancies of the year 2004-05 so as to consider his case for promotion from the date persons immediately junior to him have been promoted in the seniority list dated 15.4.2005. Hence, feeling aggrieved, the State has preferred the present special appeal.

11. We have heard learned Additional Advocate General appearing on behalf of the State at length and also carefully perused the impugned order under challenge passed by the learned Single Judge as well as the material available on

record.

12. It has been the contention of Mr. S.N. Kumawat, learned Additional Advocate General that in exercise of the powers under proviso (d) to Rule 6 of the Rules of 1973 on the basis of qualification possessed by the Petitioner of AMIE, his category was changed to one in the category of Junior Engineer (degree holder) by the Chief Engineer. It is also contended that at the initial stage, the Petitioner himself submitted an application informing the department that he has obtained degree and it is in pursuance of that application his category was changed and his name was included in the category of Junior Engineer (degree holder). It has also been submitted that erroneously an order was passed on 12.10.1995 by the Chief Engineer changing the category of Petitioner as one in the category of Junior Engineer (diploma holder). The learned A.A.G. has invited our attention to proviso (d) to Rule 6 of the Rules of 1973. It is contended that after obtaining degree, the Petitioner cannot claim that he should be kept in the category of Junior Engineer (diploma holder).

13. We have considered the submissions made before us.

14. In the present matter, it shall be useful to reproduce Rule 6(d) of the Rules of 1973 which, inter alia- provides as under:

Rule 6(d): If a Diploma holder Junior Engineer attains the qualification of B.E. (Civil/Mechanical/Electrical) or AMIE, he shall be entitled on his application and subject to availability of vacancy to be appointed as Junior Engineer (Degree Holder) by transfer against the quota of direct recruitment but in that case his seniority amongst the Junior Engineers (Degree Holders) shall be determined from the date of occurrence of vacancy against which such Junior Engineer has been appointed on the post of Junior Engineer (Degree Holder) and one third of his previous experience shall be counted as experience on the post of Junior Engineer for the purpose of promotion to the next higher post.

15. A perusal of the above Rule 6(d) of the Rules of 1973 indicates that the competent authority has power to change the category envisaged in the Rules of 1973 but this is subject to the condition that a person who obtains degree of B.E. or AMIE subsequently moves an application or change of the category then it can be made provided vacancy in the quota of direct recruitment in the cadre of Junior Engineer (degree holder) and that of Junior Engineer concerned who has opted for change of category would be entitled to be appointed as such on the post of Junior Engineer (degree holder) from the date of occurrence of vacancy and only one third of his previous experience shall be counted as experience for the purpose of promotion to next higher post. The Petitioner soon after informing the Respondents about obtaining the qualification, moved an application and requested the Chief Engineer to restore him back to the category of Junior Engineer (Diploma Holder) and the Chief Engineer accepted the request made by the Petitioner and required the Petitioner to file an affidavit on a non-judicial stamp paper of Rs. 5/-. The Petitioner thereafter filed an undertaking as required

by the Chief Engineer and thereafter the Chief Engineer passed an order dated 12.10.1995 cancelling the previously issued order in relation to the appointment of the Petitioner as Junior Engineer (degree holder) and the Petitioner's name was put in the category of Junior Engineer (diploma holder).

16. Thus, it appears that the Chief Engineer knew it well that the Petitioner has obtained degree of AMIE and he was not willing to be included in the seniority list of Junior Engineer (degree holders), therefore, requested to change his category as Junior Engineer (diploma holder) and that request was accepted on his furnishing undertaking and an order was passed by the Chief Engineer on 12.10.1995 that in future he shall not stake any claim as Junior Engineer (degree holder) then suddenly in the year 2003 without giving any opportunity of hearing to the Petitioner his category was changed from Junior Engineer (diploma holder to Junior Engineer (degree holder). The material available on record clearly indicates that for more than 20 years the Petitioner remained in the category of Junior Engineer (diploma holder) then suddenly the Petitioner's category has been changed which has resulted in loss of his seniority as his juniors have been made senior to him. It also appears from the averments made by the Petitioner in the writ petition that the Appellant-Respondents have allowed some of the persons namely; O.P. Nagar, Rajendra Kumar and Laxmi Chand Goyal to retain the category of Junior Engineer (diploma holder) whereas this benefit has not been allowed to the Petitioner to continue in the category of diploma holder. Thus, the action on the part of the Appellant-Respondents suffers from the vice of discrimination and being arbitrary in nature is violative of Article 14 and 16 of the Constitution of India. The contentions raised by the learned A.A.G. have been considered in detail by the learned Single Judge. There does not appear any illegality in the interpretation made by the learned Single Judge in relation to Rule 6(d) of the Rules of 1973. The special appeal being devoid of merit is liable to be dismissed.

17. In the result, the writ petition stands dismissed summarily.