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(2014) 11 RAJ CK 0030

In the Rajasthan High Court

Case No : Special Appeal (Writ) Nos. 1085 of 2014, 61/2013, 62/2013, 277/2013, 322/2013, 323/2013, 338/2013, 548/2013, 549/2013, 554/2013, 555/2013, 556/2013, 603/2013, 1338/2013, 1362/2013, 1388/2013, 1389/2013, 1390/2013, 1391/2013, 1392/2013, 1393/2013, 144

State of Rajasthan and Others — APPELLANT

Vs

Jai Kishan Bhatiya — RESPONDENT

Date of Decision : 26-11-2014

Acts Referred:

Citation : (2015) 2 CDR 578

Hon'ble Judges : Sunil Ambwani, Acting C.J.;J.K. Ranka, J

Bench : Division Bench

Advocate : Abhinav Sharma, AAG, Jagdish Nagar, Deven Pareek, Rajendra Prasad, AAG and Saurabh Saraswat, Dy. G.C, Advocates for the Appellant; Lokesh Sharma, Vinod Kumar Sharma, Madhu Sudan Sharma and Gayatri Rathore, Counsel, Advocates for the Respondent

Judgement

1. The formal defects, pointed out by the office, are waived. All these Special Appeals, arising out of the judgments passed by learned Single Judge, are categorized as the matters relating to employment of respondents as "Store Munshis". The Special Appeals have been filed with substantial delay, for which delay condonation applications have been filed.

2. After hearing learned AAG appearing for the State of Rajasthan and learned counsel for the respondents, we are of the view that considering the special facts and circumstances the delay, which even otherwise has been satisfactorily explained, is liable to be condoned. All the delay condonation applications are consequently allowed.

3. In a batch of special appeals, led by D.B. Civil Special Appeal (Writ) No. 546/2014 (State of Rajasthan & Ors. v. Anil Acharya), filed at the Principal Seat of this Court at Jodhpur challenging similar orders with little variation of facts

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with regard to the date and the status of initial appointment and the category of posts, the issues raised are almost the same, by the judgment dated 20.11.2014, the entire batch of special appeals was decided by a detailed order, holding that all the writ petitioners, who were respondents in the Special Appeals, were not entitled to the benefits of the judgment dated 03.02.2012 passed at the Principal Seat of this Court at Jodhpur in D.B. Civil Special Appeal (Writ) No. 845/2011 (State of Rajasthan & Ors. v. Hem Singh & Ors.) as well as the judgment dated 23.08.2012 passed by this Court at Jaipur Bench in D.B. Civil Special Appeal (Writ) No. 970/2012 (State of Rajasthan & Ors. v. Lal Chand Sharma), and that each case requires scrutiny.

4. It was pointed out in the hearing at Jodhpur that both at the Principal Seat of this Court at Jodhpur and Bench at Jaipur, a large number of writ petitions were filed, in which unauthorised concessions were given by counsels appearing for the State of Rajasthan and on which, orders were passed similar to that of Hem Singh and Lal Chand''s cases, whereas the facts, in each case, are different. It was pointed out that an exercise of screening was carried in the year 2007, in which it was found that many persons, who appointed as Beldars and Helpers in lower grade were given permanent and semi permanent status and were also promoted in their own trade, were not entitled to the benefits of promotions and arrears treating their initial appointment as ''Store Munshi''. After the judgment in Hem Singh''s case (supra) and Lal Chand Sharma''s case (supra), all categories of employees rushed to the Court seeking the same benefits as in those cases for promotions, upgradation and arrears, on the ground that they were initially appointed on the post of Store Munshi. Learned Single Judges, in almost all the writ petitions, without adverting the facts of the case, have granted the reliefs in the same terms as in Hem Singh''s case (supra) and Lal Chand Sharma''s case (supra).

5. After taking into consideration the relevant rules, qualification, pay scale as well as the entire previous litigation including the order dated 03.02.2012 in Special Leave to Appeal (Civil) No. 18046/2012, arising out of the judgment in Hem Singh''s case (supra), in which the Supreme Court had issued notices limited to the question whether arrears payable to the respondents, can be limited to the year 2007 onwards, when they were screened, in that batch of cases, the High Court has noticed that the State Government is conscious of the number of cases, and has, by its order dated 01.07.2013, initiated a process of screening for 1147 posts unit/subdivision wise in the same manner, in which it had earlier screening, the petitioners, for verifying their initial appointment and eligibility for original documents from the units/subdivisions.

6. The Division Bench in State of Rajasthan & Ors. v. Anil Acharya (supra) considered the deficiencies in the adjudication of the writ petitions and orders, which have been passed in the past, and further considering the fact that each case requires examination of facts by screening with the help of the original documents, issued following directions on 20.11.2014:

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"19. From the aforesaid letter dated 1.7.2013 issued by the Government of Rajasthan, we find that the State Government has, in principle, accepted the upgradation of 1147 posts of Store Munshi with the conditions of screening each and every applicant. The conditions stated in the letter proposed to screen out all those persons, who were not eligible and those who have been promoted in their own trade other than Store Munshi. The State Government also proposes to examine the case of each and every applicant, with the original documents being produced by the Assistant Engineer/Executive Engineer of the unit/subdivision.

20. We find that since the exercise of screening and to weed out those persons, who were not entitled to the benefits as have been given in Hem Singh''s case, has already been initiated and that the list of eligible persons, after screening, has already been forwarded to the State Government, it is not necessary for this Court to examine each and every case for his/their entitlement to the benefits to be given in accordance with judgment of Hem Singh.

21. We make it clear that Hem Singh''s case was decided on the findings that the petitioners in those cases were either employed initially on the post of Store Munshi in Work Charge Establishment of Public Health & Engineering Department or they were allowed to work subsequently as Store Munshi and that they were entitled to be granted semi permanent status after completing two years of service and permanent status after completing 10 years of service. On the facts, as they were given in Hem Singh''s case, it was decided that all such persons were entitled to consequential benefits of working on the post of Store Munshi. The benefits, however, had to be given from the date, they were working as Store Munshi and for which, they should be eligible and have not received any promotion in their field, such as Pump Driver or Fitter.

22. Now since the screening is in process and the report of the Screening Committee is under consideration of the State government, we do not propose to examine each and every case for ascertaining the facts as to whether the respondents are entitled to be given benefits and whether they will be entitled to any arrears. Any decision taken by the State Government will abide by the judgment of the Hon''ble Supreme Court in the Special Leave to Appeal, in which, notices have been confined to payment of arrears prior to 2007 or of any orders, which the Supreme Court, pass on an application, which the State Government proposes to move.

23. We are informed that the Work Charge Rules of 1964 have, since, been repealed and that the Work Charge Establishments have been abolished, and thus, the State Government must, find out the corresponding employment and pay scales to be applicable to Store Munshi, in which the respondents, if they are entitled and eligible after screening, may be absorbed or regularised, in terms of the judgment of Hem Singh''s case.

24. On the aforesaid discussion, all these special appeals are disposed of with directions that the respondents will be entitled to the benefit of Division Bench

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judgment in Hem Singh''s case, only after and subject to the Screening to be carried out for weeding out the persons, who were either not eligible or have received promotions in their own trade other than the trade of Store Munshi. It goes without saying that this judgment will be subject to the judgment of Hon''ble Supreme Court in Special Leave to Appeal (Civil) No. 18046/2012. There shall be no orders as to costs.

25. All the stay applications stand dismissed.

26. A copy of this order be placed in the files of all the connected appeals."

7. The judgment in Hem Singh and Lal Chand Sharma''s case (supra) were rendered on the facts pleaded and replied of those cases, in which the petitioners were either employed initially on the post of Store Munishi in the Work-charge Establishment of the Public Health & Engineering Department, or they were allowed to work, subsequently as Store Munshis and were entitled to be given semi permanent status after completing two years of service and permanent status after completing ten years service. The facts of initial appointment are not common in all the cases, and it is not feasible to examine the facts of each and every case, individually. It is submitted by learned Additional Advocate General that in most of the cases, it is admitted that the respondents had initially joined and were working as Helpers or Beldars, which are group ''D'' posts, and for which, lower pay scale was admissible to them than that the Store Munshi. A large number of certificates were issued by the Assistant Engineers fraudulently verifying that the petitioners were working as Store Munshi''s, which should not give them any advantage of grant of semi-permanent status or permanent status under the Workcharge Establishment, inasmuch as, they were not entitled to hold the post they were appointed initially in the lower grade. We are also informed that a large number of such persons, admittedly appointed as Helpers and Beldars in lower grade, were given promotion as Pump Operator-II and thereafter as Fitters. They have filed the writ petitions on incorrect facts seeking advantage of Hem Singh and Lal Chand Sharma''s case (supra). It was found that since the screening committee has been constituted and is considering the facts of each case, with the help of the original document, it will be appropriate to leave the matters, at the first instance, to be examined by the State Government to ascertain the facts of initial appointment, and to find out whether on that basis, they are entitled to be given any benefits as well as the arrears of pay as Store Munshis.

8. In this batch of Special Appeals, learned Single Judge did not call for the reply and where reply was filed, the Court did not record any findings, that the petitioners were initially appointed as Store Munshis and were entitled to be given semi permanent or permanent status and thereafter consequential upgradation of pay and the arrears. It would thus be appropriate, that for the reasons recorded in the matter decided at Jodhpur, to follow the same reasoning and conclusion as in the judgment in State of Rajasthan & Ors. v. Anil Acharya (supra) rendered on 20.11.2014 at Jodhpur. All these Special Appeals are

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disposed of with the same directions as were given in Anil Acharya''s case (supra).

A copy of this order be placed in all connected files.

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