
(2014) 10 RAJ CK 0067

In the Rajasthan High Court

Case No : Civil Special Appeal (Writs) No. 1232 of 2014

State of Rajasthan and Others

APPELLANT

Vs

Mohan Lal Swami

RESPONDENT

Date of Decision : 14-10-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 120-B, 409, 467, 468, 471 — Prevention of Corruption Act, 1988 - Section 13(1)(d), 13(2), 19

Citation : (2015) LabIC 1559

Hon'ble Judges : Govind Mathur, J;Vijay Bishnoi, J.

Bench : Division Bench

Advocate : Mukesh Dave, Deputy Government Counsel, for the Appellant; C.S. Kotwani, for the Respondent

Final Decision : Allowed

Judgement

1. To challenge the order dated 3.3.2014, passed by learned Single Bench in SB Civil Writ Petition No. 3823/2013, this appeal is preferred. By the order aforesaid learned Single Bench while admitting the writ petition passed an interim order in the terms that "by way of interim relief, it is directed that the promotions in pursuance of the DPC meeting held on 28.12.2012 shall remain subject to final decision of the present writ petition and subject to that, the sealed cover of the petitioner may be opened by the respondents and if the petitioner is found otherwise eligible to be promoted, he may be so promoted". The facts necessary to be noticed are that the respondent petitioner while holding the post of Assistant Engineer in public Works Department of the Government of Rajasthan was found to be involved in some corruption practices, thus, two criminal cases were lodged against him for the offences punishable under sections 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 read with Sections 467, 468, 471, 409 and 120-B, Indian Penal Code. Out of two cases mentioned above the respondent petitioner came to be acquitted after undergoing trial. In other case the authority competent granted necessary sanction for prosecution of the respondent petitioner and he was also placed under suspension by an order

dated 26.5.2009. The respondent petitioner by way of filing a petition for writ (SBCWP No. 7559/2010) challenged the order passed by the authority competent granting sanction for prosecution and by an order dated 13.8.2010 Single Bench of this Court stayed the order granting prosecution sanction and also the order placing the petitioner under suspension. During pendency of the writ petition aforesaid a Departmental Promotion Committee met on 28.12.2012 to consider candidature of eligible candidates for promotion to the post of Executive Engineer. The candidature of the petitioner too was considered by the Departmental Promotion Committee but the recommendations made in relation to him were kept in sealed cover due to pendency of a criminal case pertaining to the offences punishable under the Prevention of Corruption Act, 1988. Being aggrieved by the same the respondent petitioner preferred a petition for writ wherein the order impugned has been passed.

2. The submission of learned counsel for the appellants is that the order impugned deserves to be quashed on several counts including that--

"(1) no opportunity was given to the respondents even to file a reply to the stay petition;

(2) the order passed is of a mandatory nature and that amounts to acceptance of the writ petition without adjudication on merits;

(3) the candidature of the respondent petitioner was considered by Departmental Promotion Committee and the recommendations thereof were kept in sealed cover in accordance with the settled procedure of law; and

(4) the Court made all the promotions accorded in pursuant to the recommendations of the Departmental Promotion Committee that met on 28.12.2012, though the persons promoted are not party to the writ proceedings."

3. While contesting the appeal, it is submitted by Shri C.S. Kotwani, learned counsel for the respondent petitioner that by order impugned learned Single Bench passed an interim order and that do not suffer from any wrong that may warrant interference in appellate jurisdiction, it is also stated that the respondent petitioner for all purposes is eligible to be considered for promotion, therefore, the appellant respondents erred while keeping recommendations of the Departmental Promotion Committee in sealed cover.

4. Heard learned counsel.

5. By the order impugned learned Single Bench by issuing interim orders disposed of the stay application itself. The writ petition as such now is required to be heard in due course. It shall be appropriate to mention that on 3.3.2014 the matter came up before the Court for admission of the writ petition and orders on stay application. The writ petition was admitted and post admission notice was given to the advocate of the respondent department who was appearing against the respondent petitioner in his earlier writ petition. The stay application was heard and disposed of on the same day. From perusal of the order, we are

satisfied that no opportunity as a matter of fact was available for the respondents to contest the stay application. As already stated, the writ petition being already admitted is now required to be heard in due course. We are of the considered opinion that the stay application could have not been disposed of by learned Single Bench without providing adequate opportunity to the respondents to contest the same.

6. We also found force with the argument advanced by learned counsel for the appellants that the interim directions issued are of mandatory nature and virtually amounts to acceptance of the writ petition without examining merits. A Division Bench of this Court in *State of Rajasthan & Ors. v. Green Touch Developers private Ltd.*, D.B. Civil Special Appeal No. 1402/2014, decided on 9.10.2014, while examining eventualities and circumstances in which a mandatory interim direction can be passed, held as under:--

"It is well settled that in normal course the court should not grant an interim relief that amounts to acceptance of the cause sought to be agitated by the party aggrieved. Having considered the argument advanced and in view of the law laid down by Hon"ble Supreme Court in the case of *Deoraj Vs. State of Maharashtra and Others*, , on which heavy reliance is placed by learned counsel for the respondent petitioner, the power to grant any interim relief that amounts to granting a final relief should be exercised in rare and exceptional cases, and should not grant such relief unless being satisfied that withholding of it would prick the conscience of the court, and do violence to the sense of justice, resulting in injustice being perpetuated throughout the hearing. An interim order of mandatory nature can be granted by the Court on arriving at the conclusion that non-granting of interim order would result in causing extreme hardship and irreparable loss on account of not following the settled position of law. in usual course no final relief at interim stage by way of interim order should be granted. The grant of interim relief of mandatory nature or of the nature that amounts to grant of final relief would depend upon rare, exceptional and compelling circumstances which are required to be spelt out by the court while granting such relief."

7. Whether the writ petitioner was entitled to any relief in the writ petition has to be adjudicated at the time of final disposal of the writ petition and in normal course the final relief sought for should not be granted at an interim stage. (See *State of Uttar Pradesh and Others Vs. Ram Sukhi Devi*, and *Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others*, .

8. In the case in hand it is not in dispute that the respondent petitioner is facing a serious charge for commission of offences punishable under Sections 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988. Necessary sanction to prosecute him too was granted by the authority competent as per section 19 of the Prevention of Corruption Act, 1988, though the prosecution is not taking place in view of the interim directions issued by this Court. Looking to this factual background the Departmental Promotion committee considered case of the

petitioner for promotion but recommendations of that were kept in sealed cover. The procedure adopted by the Departmental Promotion committee is quite usual in such circumstances, if anything was wrong with such procedure, then the appropriate course was to dispose of the writ petition at admission stage instead of granting any interim order of mandatory nature as passed in the instant matter.

9. We are also in agreement with learned counsel for the appellant that the respondent petitioner has not given challenge to entire proceedings of the Departmental Promotion Committee but only the decision for keeping the recommendations with regard to his promotion in sealed cover, thus, no interim direction could have been passed keeping all the promotions made in pursuance to the recommendations of the Departmental Promotion committee that met on 28.12.2012 subject to final decision of the writ petition, we are of considered opinion that in ordinary course no interim order can be passed beyond the relief claimed for in the main petition. In the case in hand all the promotions made in pursuance to the recommendations made by the Departmental Promotion Committee that met on 28.12.2012 though no challenge is there to the process, concerned. It is also pertinent to notice that the persons effected are also not made party to the writ proceedings and rightly so as the petitioner is having no grievance with regard to promotions of other eligible persons. For the reasons-given above, the appeal deserves acceptance. Accordingly, the same is allowed. The order dated 3.3.2014 passed by learned Single Bench in SB Civil Writ Petition No. 3823/2013 is set aside. No order to cost.