
(2000) 09 RAJ CK 0002

In the Rajasthan High Court

Case No : Civil Special Appeal No. 877 of 1999

State of Rajasthan and Others

APPELLANT

Vs

Yatish Sharan

RESPONDENT

Date of Decision : 12-09-2000

Acts Referred:

Citation : (2001) 4 RLW 120 : (2001) 4 WLC 701 : (2007) 3 WLN 541

Hon'ble Judges : Sunil Kumar Garg, J;B.J. Shethna, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

B.J. Shethna, J.—The original petitioner, Yatish Sharan filed a writ petition No. 3280/96 against the three respondents (1) State of Rajasthan (2) The Chief Engineer and (3) N.K. Dutta and prayed that he should also be considered for promotion from the date on which his junior respondent No.3 Shri N.K. Dutta was promoted. Though served, respondent No.3, Shri Dutta had not entered his appearance and in his absence, the writ petition was decided by the learned Single Judge on 6.5.1999.

2. It must be stated that earlier Shri Dutta had filed S.B. Civil Writ Petition No. 2444/98 wherein the original petitioner Shri Yatish Sharan filed an application for impleading himself as party - respondent. However, it was conceded by the learned Counsel Shri Dutta that Shri Yatish Sharan was senior to Shri Dutta in the seniority list. The same petition was later on dismissed on 13.1.1993. That order became final.

3. Thereafter, in the year 1996, Shri Yatish Sharan filed writ petition No. 3280/96 before this Court and prayed that the promotion order issued in favour of Shri N.K. Dutta - respondent No.3 be quashed and respondents No. 1 and 2 (present appellants) be directed to promote him as Assistant Engineer with effect from 16.5.1996, the date on which his immediate junior Shri Dutta was promoted and to grant all consequential benefits.

4. That the. learned Single Judge allowed the writ petition by the judgment and order dated 6.5.1999 and quashed the promotion order dated 16.5.1996 passed in favour of respondent No.3 and ordered the present appellants to reconsider the case of the petitioner for promotion for the vacancies of the year 1991 and to grant him all the consequential benefits if he is otherwise found to be eligible and suitable for promotion. The learned Single Judge directed the present appellants to complete the exercise within a period of three months from the date of passing of the order. The same period has expired on 6.8.1999. The said order is challenged by the present appellants in this special appeal without joining Mr. N.K. Dutta, respondent No.3 whose promotion order was quashed and set aside. Therefore, only on that ground, this appeal is liable to be dismissed.

5. On merits also, there is no substance in this appeal. Once it was conceded in the earlier petition filed by the respondent No.3 that he was junior to the present respondent, then later on merely because there was bifurcation Mr. Dutta could not have been promoted. In fact, we are surprised that why the present appellants have challenged this order passed by the learned Single Judge. If anyone was really aggrieved, it was Shri N.K. Dutta, who was respondent No.3 in the writ petition. By not challenging the said order, he had accepted the order passed by the learned Single Judge.

6. Mr. Khatri submits that a notification came to be issued in the year 1990, therefore, the learned Single Judge was wrong in directing the appellants to reconsider the case of the original petitioner - present respondent for promotion for the vacancies of the year 1991. He submits that merely because notification dated 6.7.1990 was published in gazette on 19.11.1992 would not help the original petitioner. This very argument was advanced before the learned Single Judge which was not found favour with him in view of the Hon'ble Supreme Court's judgments reported in I.T.C. Limited Vs. Collector of Central Excise, Bombay, , State of Maharashtra Vs. Hans George, , M/s. Pankaj Jain Agencies Vs. Union of India and others, , and B.K. Srinivasan and Others Vs. State of Karnataka and Others,

7. In our considered opinion, the notification becomes effective only from the date of its publication in the gazette and not from the date of its issuance. Thus, the learned Single Judge has not committed any error in directing the present appellants to reconsider the case of the respondent for promotion for vacancies of the year 1991.

8. In view of above, we do not find any substance in this appeal and accordingly, it is hereby dismissed.