

(2016) 07 RAJ CK 0095

In the Rajasthan High Court

Case No : Special Appeal (Writ) No. 1095 of 2015 and Civil Misc. Stay Appl. No. 15293 of 2015 with Civil Misc. Appl. No. 854 of 2015 in Civil Writ Petition No. 6992 of 2010

State of Rajasthan

APPELLANT

Vs

Ashok Kumar Trivedi

RESPONDENT

Date of Decision : 15-07-2016

Acts Referred:

Citation : (2016) 2 WLCRajUC 346

Hon'ble Judges : Mr. Mohammad Rafiq and Mr. Dinesh Chandra Somani, JJ.

Bench : Division Bench

Advocate : Shri Inderjeet Singh, Addl. Advocate General, for the Appellants; Shri Alok Garg, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Mohammad Rafiq, J.—The application under section 5 of the Limitation Act seeking condonation of delay is allowed for the reasons stated therein. Delay in filing the appeal is condoned.

2. This appeal is directed against the judgement of the learned Single Judge dated 6.4.2015 whereby the writ petition filed by the appellant-State of Rajasthan against the judgement of Rajasthan Civil Services Appellate Tribunal dated 20.01.2009 has been dismissed. The Tribunal by the aforesaid judgement has allowed the appeal filed by the respondent holding that he has already been deprived on account of penalty of censure as against the vacancies of the year 1996-97, therefore, he could not be denied benefit of selection scale on completion of 18 and 27 years of service in terms of the Circular of the Government dated 25.1.1992 as the same would amount to double jeopardy.

3. Shri Inderjeet Singh, learned Additional Advocate General has assailed the judgement reiterating the same arguments, which he advanced before the learned Single Judge and relied upon the judgment of State of Rajasthan v.

Shanker Lal Parmer, 2011 (14) SCC page 235, wherein it was held that the employee who has earned censure in the past year through service record would not be entitled to selection grade along with those, who have clean and unblemished record and that they would be granted selection grade only one year thereafter.

4. On perusal of the impugned judgement, we find that the learned Single Judge has taken note of the fact that the respondent was inflicted penalty of censure and on that basis, he was deprived of promotion when his case was considered against the vacancies of the year 1996- 97. Later on, he was granted promotion against the vacancies of the year 1997-98, but when his turn came for grant of benefit of selection grade on completion of 18 and 27 years of service, the same penalty of censure was again sought to be relied by the department to deny such benefit. The learned Single Judge has relied on judgment of the Supreme Court in *Lt. Governor Delhi & Ors. v. HC Narinder Singh*, 2004 (13) SCC 342 and rejected the aforesaid contention. The Supreme Court in *Lt. Governor Delhi*, *supra* while dealing with somewhat identical matter held that since the respondent in that case was awarded penalty of reduction of pay by one stage without cumulative effect for dereliction of duty in a disciplinary proceeding, he was served with a second show cause notice proposing to remove his name from the promotion list. He approached the Central Administrative Tribunal, which allowed his petition. The Delhi State Administration went in appeal before the Supreme Court. The Supreme Court has held that the second proposed action based on the same cause of action proposing to deny promotion or reversion would amount to double jeopardy. The learned Single Judge in the present case, therefore relying on that analogy held that when already benefit of promotion has been denied to the writ petitioner against the vacancies of the year 1996-97, owing to the penalty of censure inflicted upon him and that his promotion delayed for one year, therefore, the same penalty of censure cannot be relied to again deny the benefit of selection grade, which is virtually granted in lieu of promotion when next promotion would not be granted to him during the span of nine years.

5. We, therefore, do not find any infirmity in the judgment of learned Single Judge dated 6.4.2015 and find ourselves in agreement with the view taken by the learned Single Judge. The impugned judgment dated 6.4.2015 does not suffer from any infirmity so as to warrant interference by this Court.

6. The appeal is dismissed. Stay application also stands disposed of accordingly.