
(2003) 09 RAJ CK 0059

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 707 of 2002

State of Rajasthan

APPELLANT

Vs

Chand Mal Chayal and Others

RESPONDENT

Date of Decision : 24-09-2003

Acts Referred:

Citation : (2004) 101 FLR 388 : (2004) 1 RLW 469 : (2004) 1 WLC 618

Hon'ble Judges : Anil Dev Singh, C.J.;H.R. Panwar, J

Bench : Division Bench

Advocate : R.L. Jangid, Addl Advocate General, for the Appellant; M.R. Singhvi and R.P. Dave, for the Respondent

Final Decision : Allowed

Judgement

Singh, C.J.—This appeal is directed against the order of the learned Singh Judge dated September 17, 2002 in S.B. Civil Writ Petition No. 2920/99 whereby the writ petition was allowed and the State Government was, inter alia, directed to pass appropriate order to facilitate the re-employment of the first respondent from November 4, 1992. The facts giving rise to the appeal are as follows.

2. The first respondent was posted as Reader in the Court of Judicial Magistrate, Merta, District Nagaur. On January 27, 1990 he tendered his resignation from the post of Reader on the ground that he was to contest Assembly Elections, the resignation was accepted by the District & Sessions Judge, Merta on January 29, 1990. Consequent to the acceptance of his resignation he was immediately relieved of the charge of his office/Subsequently, due to certain reasons the first respondent, who had filed his nomination paper, withdraw the same.

3. On February 12, 1990, the first respondent submitted an application to the District Judge, Merta with the request that he may be reinstated in service as he had withdrawn his nomination papers and was not able to fight the election. In the application it was prayed that the order accepting his resignation be cancelled. By another application dated February 13, 1990 the first respondent

requested the District Judge, Merta to take him back in service. He also prayed that he be treated to have continued in service without a break. By yet another letter dated March 29, 1990, the first respondent repeated his aforesaid request to the District Judge.

4. The District Judge, Merta by his order dated May 25, 1990 rejected the request of the first respondent for being taken back in service and for cancellation of the order accepting his resignation.

5. Not satisfied with the order of the District Judge, the first respondent filed an appeal on the administrative side of the High Court. The Appellate Authority, a learned Single Judge of this Court allowed the appeal in part and remanded the matter to the District Judge, Merta with the direction to decide whether or not the first respondent was fit to be reemployed in view of his service record of past 14 years. It was also observed that in case the District Judge was convinced that the first respondent deserved to be re-employed, then alone his case was to be recommended to the High Court for taking concurrence of the Finance Department of the State. It needs to be noticed that in the appeal filed by the first respondent it was stated that he tendered his resignation from service on January 27, 1990 with the condition that his lien should be kept with the Department for a period of two years. The plea was taken by the first respondent in consonance with his claim that his lien remained intact in the department inspite of the acceptance of the resignation. The appellate authority did not accept the contention of the first respondent and held that the District Judge was perfectly justified in not retaining his lien on the post in question. The appellate authority observed that it was not possible to retain lien of an employee who tenders his resignation from service once his resignation is accepted. Besides, it was pointed out that in case an employee tenders his resignation from service to contest an election and in case his lien is retained, he will be disqualified to contest the same under Article 19(1)(a) of the Constitution on the ground that he will still be considered to be holding the offence of profit.

6. On remand the District Judge, Merta by his order dated November 5, 1992 recommended the case of the first respondent for re-employment. The case of the first respondent with the recommendation of the District Judge was sent to the State Government for further necessary action. On February 1, 1993, the Finance Department informed the Registrar of this Court that the Finance Department does not concur with the proposal to take the respondent back in service. The department, however, asked the High Court to do the needful as its own level. Thereafter, the District Judge vide letter dated March 22, 1993 informed the first respondent that the Finance Department has not given its concurrence to the proposal to take him back in service. At the same time the District Judge inquired from the first respondent as to whether he will be willing to waive the benefits of service for the period he remained absent. In response to the letter of the District Judge, the first respondent vide his letter dated March 22, 1993 agreed to forego the benefit for the period he remained absent from

duty, provided he is taken back in service.

7. On July 3, 1993 the Registrar of this Court sought a clarification from the Law Department of the State of Rajasthan as to whether or not the High Court was competent to re-employ the first respondent without the concurrence of the Finance Department; In reply, the Law Department by its letter dated September 19, 1994, inter alia/opined that the High Court itself was empowered to take a decision in regard to the question of re-employment of the first respondent, if it was permissible under rules. Thereafter the High Court considered the matter and by its letter dated June 5, 1999 to the Secretary, Law Department, Government of Rajasthan, pointed out that since the rules relating to re-employment have been framed under Article 309 of the Constitution, it is only the State Government which is competent to relax the rules for the re-employment of the respondent. Accordingly, the State Government was requested to accord concurrence so that the first respondent could be re-employed. In reply, the State Government informed the High Court that it was not feasible to re-employ the first respondent. Consequently, the Registrar General by letter dated July 5, 1999 informed the first respondent accordingly. The respondent being aggrieved by the failure of the State Government and the High Court to re-employ him in service preferred a writ petition. The writ petition was allowed by the learned Single Judge by its judgment and order dated September 17, 2002 with the following directions:

"The State Government is directed to pass appropriate order, within period of one month from today, to facilitate the reemployment of the petitioner from 4.11.1992 and the petitioner shall not be entitled to the benefits which he agreed to forego by submitting undertaking dated 22.3.1993 (Annexure 13). The petitioner is also entitled for the costs."

The State Government not being satisfied with the order passed by the learned Single Judge, filed the instant special appeal.

8. We have heard learned counsel for the parties.

9. Learned counsel appearing for the appellant submitted that the learned Single Judge was not right in allowing the writ petition and holding that the State Government or its Department was not justified in refusing to accept the recommendation of the High Court for according sanction for the re-employment of the first respondent. The learned counsel pointed out that the State Government refused to grant sanction for reemployment of the first respondent in the year 1993 and 1994. The learned counsel contended that the writ petition is barred by laches as the same was filed in the year 1999. On the other hand, the learned counsel for the first respondent submitted that the matter remained pending till the year 1999 when the District Judge finally, on July 20, 1999, communicated the decision of the appellant that the first respondent cannot be reemployed. The first respondent without any loss of time filed the writ petition challenging the action of the appellant. It was also submitted by the learned

counsel for the respondent that the recommendation made by the District Judge and concurred by the High Court was binding on the State and, therefore, the learned Single Judge was right in allowing the writ petition.

10. We have considered the rival submissions made by the learned counsel for the parties. In so far as the submission of the learned counsel for the appellant that the writ petition is barred by laches is concerned, we are unable to accept the same. The final decision of the appellant refusing the request of the first respondent was communicated to him by the letter of the District Judge dated July 20, 1999 and immediately on receipt thereof he filed the writ petition. Therefore, by no stretch of imagination it can be contended that the filing of the writ petition was inordinately delayed.

11. In order to appreciate the other submissions of the learned counsel for the parties it needs to be noted that it is not in dispute that the first respondent tendered his resignation on January 27, 1990 to the Judicial Magistrate, Merta. His resignation was accepted with immediate effect by the order of the District Judge, Merta dated January 28, 1990. As a consequence of the acceptance of his resignation he was relieved from the charge of the post held by him. The order accepting his resignation is not under challenge. After the first respondent resigned from service he ceased to be in employment of the appellant. No right or claim of the first respondent to the post held by him survived.

12. The learned counsel on behalf of the first respondent submitted that the letter of resignation of the respondent dated January 27, 1990 (Annex. 1 to the petition) clearly stated that his lien on the post may be kept for a period of two years after acceptance of the resignation. According to the learned counsel the lien of the first respondent survived on the post which he held at the time of submitting his resignation. We do not agree with the submission of the learned counsel for the first respondent. Once an employee tenders his resignation and the same is accepted by the employer, the employee ceases to have any right to or in the post. The relationship of employer and employee between them is severed. The respondent has not pointed out any provision in the Service Rules which entitled him to claim lien against the post in question. He has also not referred to any Rule which entitles him to claim re-employment as a matter of right. It is pointed out by the learned counsel for the appellant that the first respondent faced two departmental enquiries. He was punished in one of the departmental enquiries and the other departmental enquiry was dropped because he had resigned from service. The view of the learned single Judge that the appellant acted arbitrarily in refusing to grant sanction for reemployment of the respondent cannot be sustained. It is not denied that re-employment can only be ordered by relaxing the Rules. No one can claim benefit as a matter of right in case rules have to be relaxed for giving the benefit. In case the request of the first respondent was to be accepted, it could be accepted only by relaxing the rigour of the Rules. Not even a single reason has been advanced as to why the first respondent should be given re-employment. It was open to the State to

consider whether or not to reemploy a person who had faced departmental enquiry and was punished for the blameworthy conduct. The respondent resigned from service in the year 1990. After remaining out of service for several years, he must have lost touch with the job.

13. The learned counsel for the first respondent submitted that the recommendation of the High Court based on the views of the District Judge, Merta was binding on the State and the first respondent ought to have been given re-employment by the latter in relaxation of the Rules. In support of the submission, the learned counsel relied upon the decision of the Supreme Court in *High Court of Judicature for Rajasthan v. Ramesh Chand Paliwal and Anr.* (1), and the decision of this Court in *Babu Lal Sharma v. High Court of Judicature for Rajasthan and Ors.* (2). In the Case of *High Court of Judicature for Rajasthan v. Ramesh Chand Paliwal*, the Supreme Court while dealing with Article 229 of the Constitution, held as follows:

"This Article makes Chief Justice of the High Court the supreme authority in the matter of appointments of the High Court officers and servants. This Article also confers rule-making power on the Chief Justice for regulating the condition of service of officers and servants of the High Court subject to the condition that if the rules relate to salaries, allowances, leave or pensions, they have to have the approval of the Governor of the State. If the Legislature of the State has made any law, the rules made by the Chief Justice would operate subject to the conditions made in that law."

These observations of the Supreme Court do not advance the case of the respondent. It is well settled that the Chief Justice of the High Court has the complete authority in the matter of appointment of the officers/servants of the High Court. We fail to understand as to how this decision helps the respondent.

14. In *Babulal Sharma's* case (supra), the Court was dealing with the issue relating to the recommendation of the High Court with regard to creation of posts of Class IV employees in the High Court. While sanctioning the posts the Finance Department of the State imposed a condition that the work should be got done on contract basis. This was not in keeping with the recommendation of the Chief Justice for creation of the posts. In so far as the appointment of the staff of the High Court is concerned, they are required to be made by the Chief Justice or such other Judge or officer of the court as nominated by the Chief Justice. This is the mandate of Article 229 of the Constitution. In view of the mandatory provisions of Article 229 of the Constitution, the Government is bound by the recommendations made by the Chief Justice or a Judge nominated by him. There is no parity between the case of *Babulal Sharma* case (supra), and the case in hand. In the instant case there is no justification for directing re-employment of the first respondent in relaxation of the Rules. While holding so we are not doubting the proposition that the recommendations made by the High Court in regard to the matters relating to the staff of the High Court are binding on the State Government. However, in the peculiar circumstances of the present case

we see no reason to grant re-employment to the first respondent. In the instant case there is no justification for re-employment of the first respondent in relaxation of the Rules.

15. In the circumstances the appeal is allowed and the order of the learned Single Judge is set aside.