

(1985) 07 RAJ CK 0062

In the Rajasthan High Court

Case No : Civil Second Appeal No. 501 of 1975

State of Rajasthan

APPELLANT

Vs

Dayal Saran Saxena

RESPONDENT

Date of Decision : 25-07-1985

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (1986) RLW 528 : (1986) 2 WLN 309

Hon'ble Judges : G.M. Lodha, J

Bench : Single Bench

Judgement

Guman Mal Lodha, J.—This Civil Second appeal is directed against the judgment and decree passed by the learned District Judge, Ajmer, confirming the judgment and decree passed by the learned Munsif Magistrate, Ajmer.

2. The plaintiff respondent instituted a suit for declaration that he is entitled to be promoted and confirmed as U.D.C., w.e.f. 27-7-1956 and arrears of pay on that basis upto date, on the allegation that he was appointed as "Taqabi" clerk in the then Dholpur State from 27-7-1949, and on integration he came to be absorbed as L.D.C., in Ayurvedic Department from 2-5-1952. His further case, is that although there were no adverse entries communicated to him in his confidential Report and although he is senior to the various persons detailed in the plaint who have been promoted as UDC still he has not been promoted and confirmed before 26-12-1961. He claimed that he is entitled to be promoted from 1-11-1956 and confirmed on the said post. The defendant State Government submitted that the plaintiff's work was not found satisfactory and he was suspended from 24-2-1957. He was reinstated on 28-5-1957 after inflicting the penalty of censure and stoppage of increments for 3 months. The defendant State Government contested the plaintiff's claim that the seniority list circulated on 18-4-1968 mentioning the seniority as on 18-4-1968 and not 11-1-1966. The defendant State Government further asserted that the plaintiff being a non-matriculate did not possess the minimum qualifications and he was not

considered for promotion. The persons who were promoted had passed various departmental tests and hence they were promoted. The defendant specifically asserted that the promotion cannot be claimed as of right and the plaintiff was considered and promoted when he deserved it. The State Government further asserted that there was no denial of equal opportunity to the plaintiff. The defendant State Government also raises a plea regarding non-joinder of necessary parties and limitation. The learned Munsif after trial came to the conclusion that the persons who were junior to the plaintiff were promoted as UDC after the plaintiff and although there were no extraneous consideration which weighed to the promotions to the junior persons, still the plaintiff was entitled to be promoted earlier and hence the learned trial Judge declared that the plaintiff is UDC w.e.f. 26-6-1958 and his suit is decreed for Rs. 700/- with pendente lite costs. On appeal the learned District Judge, Ajmer confirmed the said finding.

3. Mr. Purohit, learned Counsel for the State, argued that the plaintiff could not have claimed for promotion and the relief cannot be given for promoting an employee but even if a proper case is made out for that, they can be directed to consider the case of plaintiff.

4. I have not been able to persuade myself to interfere in this appeal against a low paid petty employee. The only relief given to him is promotion from LDC to UDC from 1958 instead of 1961.

5. Both the lower Courts have held that the plaintiff had seven years experience and there is nothing to show that his work was not satisfactory and further his juniors were promoted and then he was promoted after them.

6. It is surprising and shocking that mighty State has chosen to file an appeal again at the petitioner who is lowest in the ladder as he was LDC, and the State has taken the plea of limitation.

7. This is avoidable litigation and should be avoided by a state committed to social justice not only in the preamble of the Constitution but in directive principles and further fundamental rights in the forum of Articles 14 and 16 of the Constitution of India.

8. It is a very poor homage to the founding fathers of the Constitution; who articulated and wanted the dream of social justice to come to true; that petty, tiny, small poor employees lowest in the ladder are first not given justice by the hierarchy of bureaucrats and compelled to enter into litigation. As if the judgments of two courts below is not enough, the State has dragged the employee to the High Court where he is unrepresented and cannot afford to come and contest on account of poverty. Consequently, the appeal fails and is hereby dismissed with costs. The costs are assessed at Rs. 500/-