

(1985) 05 RAJ CK 0035
In the Rajasthan High Court
Case No : Civil Second Appeal No. 247 of 1977

State of Rajasthan

APPELLANT

Vs

Kalyan Sahai and Others

RESPONDENT

Date of Decision : 10-05-1985

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Citation : (1987) RLW 333 : (1985) 2 WLN 54

Hon'ble Judges : Guman Mal Lodha, J

Bench : Single Bench

Judgement

Guman Mal Lodha, J.—This appeal as well as the cross-objection are directed against the judgment of Additional District Judge No. 1, Jaipur City, Jaipur partly accepting the appeal of the defendants modifying the decree of the trial Court.

2. The plaintiff is a teacher and he claimed that on July 17, 1953 he District Judge No. 1, Jaipur City, Jaipur was entitled to draw his salary in grade of Rs.70-125 and from July 12, 1963 he was entitled to second grade.

3. The claim was based on the ground that his juniors Shri Ghisilal, Shri Udai Marain and and Shri Nandlal who were less qualified and who were junior in tenure of service also got the equal grade on July 17, 1953, but his case has not been considered on account of the mistake in the seniority list where he has been shown as junior.

4. Both the lower Courts have come to the conclusion that it is correct that in the seniority list the mistake was committed and Shri Ghisi Lai, Shri Udai Narain and Shri Nand Lai were shown senior to the plaintiff.

5. Both the lower Court have held that this seniority list was corrected later on, but inspite of that he has not been promoted by correcting the mistake in the promotions.

6. The trial Court passed a decree directing the defendant-appellants to treat the

plaintiff as being entitled to promotion in trained Intermediate grade of Rs. 70-125 from July 17, 1953 and then to be promoted to Grade-II retrospectively from July 12, 1963.

7. This decree was modified by the first appellate Court holding that instead of promoting him the Court's direction should be limited to consideration for promotion. Both the State and claimant have come in this appeal.

8. It is surprising and shocking that the State has filed appeal instead of considering the question of promotion as per direction of the first appellate Court. The plaintiff is ordinary Drawing Teacher in Darbar High School, Jaipur having been appointed on July 27, 1943 and is well qualified having passed Matriculate and Intermediate examination.

9. From 1953 till now he has not been granted promotion in the trained Intermediate grade, whereas his juniors have been so promoted with effect from July 17, 1953, July II, 1954, and November 16, 1955, inspite of his making several representations and having this prolonged litigation.

10. I do not find any error of law so far as the appeal is concerned, because once it was held that the seniority list was mistaken and was corrected subsequently and the juniors to the plaintiff were granted trained Intermediate grade and Grade II, then unless something contrary was shown, the plaintiff was entitled to it.

11. It is not the case of the State here that the seniority list was correct and the correction made was wrong. That being so, the appeal of the State is frivolous and has got no merit.

12. So far as the cross-objection is concerned. I am inclined to accept it, because the plaintiff, who is a low paid employee has been agitating for his legal right of being fixed in the grade of Rs. 70-125 from July 17, 1953, and subsequent Grade-II from July 12, 1963, but till now even after correcting the seniority list and restoring his seniority, the State functionaries have not been able to grant him this grade. I inquired from the learned counsel for the State whether any order rejecting him after consideration for promotion after the judgment of the first appellate Court has been passed, but the learned counsel pleaded that there is nothing on the record and no instructions have been given to her in this respect.

13. Consequently it is necessary in the interest of justice that the decree of the trial Court must be restored and the modification done by the first appellate Court should be set aside.

14. In this respect the weighty observations of the Supreme Court in *Dilghat Rat Jary v. Union of India* and Ors. 1974(1) SLR 1 in para 24 may be noticed as a whole, which reads as under:

24. Krishna Iyer, J.--The judgment just delivered has my full concurrence but I

feel impelled to make a few observations not on the merits but on Governmental disposition to litigation, the present case being sympathetic of a serious deficiency. In this country the State is the largest litigant to-day and the huge expenditure involved makes a big draft on the public exchequer. In the context of expanding dimensions of State activity and responsibility, is it unfair to expect finer sense and sensibility in its litigation policy, the absence of which, in the present case, had led the Railway callously and cantankerously to resist an action by its own employee, a small man, by urging a mere technical plea which has been perused right into the summit court here and has been negatived in the judgment just pronounced. Instances of this type are legion as is evidenced in recent report (54th Report) on amendments to the CPC has suggested the declaration of Section 80 finding that wholesome provision hardly ever utilized by Government, and has gone further to provide a special procedure for Government litigation to highlight the need for an activist policy of just settlement of claims where the State is a party. It is not a right for a welfare State like ours to be Janus-faced, and while formulating the humanist project of legal aid to the poor, contest the claims of poor employees under it pleading limitation and the like. That the tendency is chronic flows from certain observations I had made in a Kerala High Court decision (6) which I may usefully excerpt here:

The State, under our Constitution, undertakes economic activities in a vast and widening public sector and inevitably gets involved in disputes with private individuals. But it must be remembered that the State is no ordinary party trying to win a case against one of its own citizens by hook or by crook; for the State; interest is to meet honest claims, vindicate a substantial defence and never to score a technical point or over reach a weaker party to avoid a just liability or secure an unfair advantage, simply because legal devices provide such an opportunity. The State is a virtuous litigant and looks with unconcern on immoral forensic successes so that if on the merits the case is weak, Government shows a willingness to settle the dispute regardless of prestige and other lesser motivations which move private parties to fight in court. The lay-out on litigations costs and executive time by the State and its agencies is so staggering these days because of the large amount of litigation in which it is involved that a positive and wholesome policy of cutting back on the volume of law suit by the twin methods of not being tempted into forensic show-downs where a reasonable adjustment is feasible and ever offering to extinguish a pending proceeding on just terms, giving the legal mentors of Government some initiative and authority in this behalf. I am not indulging in any judicial homily but only echoing the dynamic national policy on State litigation evolved at a Conference of Law Ministers of India way back in 1957. This second appeal strikes me as an instance of disregard of that policy.

All these words from the Bench, hopefully addressed to a responsive Government, may, if reasonable reactions follow, a long way to avoidance of Governmental litigations and affirmance of the image of the State as deeply

concerned only in Justice--social justice. The...victory of the poor appellant in this case is a sad justification for the above observations.

15. The above contained observations of the earlier judgment of Kerala High Court of the same Hon''ble Judge Mr. Krishna Iyer in P.P. Abubacker Vs. The Union of India (UOI), in 1972, which was reiterated in 1974 in the Supreme Court.

16. The Hon''ble Judge was disturbed to find that while on the one hand the State provides legal aid to the poor, but on the other hand contest the claims of poor employees.

17. The Hon''ble Supreme Court expressed concern on the image of the State which is bound to deteriorate if the concern for social justice is not made a reality.

18. This case amply illustrates that the above concern of the Apex Court has not even been noticed by the State functionaries so far in 1985, when a poor teacher is dragged to litigation in the High Court inspite of his getting a decree in the lower Court fixing him in grade of Rs. 70-125 but that too is not acceptable to the mightly, State.

19. In this the homage we are paying to the social justice is a million dollar question. I had occasion to express my anguish, concern and distress at the ever increasing tendency of the State's litigation against low paid employees particularly teachers and clerks. As rightly voiced by Hon''ble Mr. Justice Krishna Iyer in the above case, the legal aid to poor on the one hand preached but not professed by entering such litigation is really a sad commentry on the pre-amble of the Constitution and directive principles of the State policy which directs a State to ensure social justice to the poor disabled and the lowest in the ladder.

20. In such circumstances while rejecting the appeal and accepting the cross-objection, I direct that the plaintiff-respondent would get exemplary costs of Rs. 1,000/- from the defendant-appellants in addition to the normal costs.