
(2017) 07 RAJ CK 0086
In the Rajasthan High Court
Case No : 589 of 2015

State of Rajasthan & Ors.

APPELLANT

Vs

Chandra Ram

RESPONDENT

Date of Decision : 07-07-2017

Acts Referred:

Citation : (2017) 07 RAJ CK 0086

Hon'ble Judges : K.S. Jhaveri, Inderjeet Singh

Bench : DIVISION BENCH

Advocate : S.K. Gupta, Yaduvendra Singh, Hem Singh Rathore, Mahendra Singh Gurjar, Arvind Kumar Arora

Judgement

1. Applications filed for waiving the office objections is allowed. The defects are waived.

2. In all these appeals common questions of law and facts and involved, hence they are decided by this common judgment.

3. The controversy is covered by the Full Bench Decision passed on 3.7.2017 wherein it has been held as under: "31. At this stage, it will be relevant to consider the text of para 10 of the judgment in the case of Jagdish Narain Chaturvedi (supra), which reads thus:

"10. Rule 25(4) relates to prospective appointment as is clear from the expression `occurrence". Therefore, the starting point has to be as noted above, when the employee is born in the cadre, as observed by this Court in Dr. Chanchal Goyal (Mrs.) v. State of Rajasthan : [2003]2SCR112 , Santosh Kumar and Ors. v. G.R. Chawla and Ors. : AIR2003SC3304 and A.G. Sainath Reddy v. Govt. of A.P. and Ors. :2003 (4) SCC 625. Ad hoc employee has no right to the post and ad hoc appointment does not count for the purpose of seniority."

32. In the case of Surendra Mohnot & Ors. (supra), reiterating the view in the case of Jagdish Narain Chaturvedi (supra) and on a survey of earlier opinions,

the Apex Court of the land in no uncertain terms held that stagnation benefits were given from the date of regularization in the backdrop of the Government orders dated 25th January, 1992 and 17th February, 1998, relying upon the opinion in the case of *State of Haryana Versus Haryana Veterinary and AHTS Association and Anr.*: (2008) 8 SCC 4. The Supreme Court also took specific note of the language employed in the circulars employing words "appointment relatable to the existing cadre/service". The Apex Court of the land further held that a candidate is required to satisfy four conditions, while claiming regular appointment, namely;

- (a) appointment must be a substantive capacity;
- (b) to a post in service i.e. in a substantive vacancy;
- (c) appointment must be according to the rules; and
- (d) within the quota prescribed for the source.

33. For ad-hoc appointment is always to a post but not to the cadre/service and is also not made in accordance with the provisions of the statutory recruitment rules for regular appointment. Hence, despite the word "regular" was not used in para 3 of the Government order dated 25th January, 1992, but would obviously contemplate a need for "regular" appointment in accordance with the statutory recruitment rules. The Supreme Court further observed that what was implicit in the Government order dated 25th January, 1992, was made explicit by clarification dated 3rd April, 1993, and was incorporated in para 3 of the Government order dated 17th February, 1998.

34. In the case of *Surendra Mohnot & Ors.* (supra), the Supreme Court, in no uncertain terms, also held that "there can be no estoppel against law". It will be relevant to consider the text of para 17 of the judgment aforesaid, which read thus:

"17. It is well settled in law that there can be no estoppel against law. Consent given in a court that a controversy is covered by a judgment which has no applicability whatsoever and pertains to a different field, cannot estop the party from raising the point that the same was erroneously cited."

35. In the case of *Rajasthan State Industrial Development and Investment Corporation Versus Subhash Sindhi Cooperative Housing Society, Jaipur & Ors.*, the Apex Court of the land again examined somewhat similar controversy as to "estoppel against the law", observing thus:

"34. Be that as it may, there can be no estoppel against the law or public policy. The State and statutory authorities are not bound by their previous erroneous understanding or interpretation of law. Statutory authorities or legislature cannot be asked to act in contravention of law.

"13. "The statutory body cannot be estopped from denying that it has entered into a contract which was ultra vires for it to make. No corporate body

can be bound by estoppel to do something beyond its powers, or to refrain from doing what it is its duty to do."

Even an offer or concession made by the public authority can always be withdrawn in public interest. (Vide: State of Madras and Anr. v. K.M. Rajagopalan: AIR 1955 SC 817; Badri Prasad and Ors. v. Nagarmal and Ors.: AIR 1959 SC 559; and Dr. H.S. Rikhy etc. v. The New Delhi Municipal Committee: AIR 1962 SC 554). In Surajmull Nagoremull v. Triton Insurance Co. Ltd.: AIR 1925 PC 83, it was held as under:

"... No court can enforce as valid, that which competent enactments have declared shall not be valid, nor is obedience to such an enactment a thing from which a court can be dispensed by the consent of the parties or by a failure to plead or to argue the point at the outset..."

A similar view was re-iterated by the Privy Council in Shiba Prasad Singh v. Srish Chandra Nandi : AIR 1949 PC 297."

36. In our considered opinion, where the rules which are pari-materia for the State of Rajasthan, the Supreme Court has held that the ad-hoc period cannot be allowed to be considered for the benefits of 9, 18 & 27 years. Therefore, para 16 of the judgment of Supreme court in the case of State of Rajasthan vs. Surendra Mohnot & Ors. (supra), as reproduced above is binding for this Court and is required to be accepted. Accordingly, the questions referred to us are answered thus:

37. QUESTION A

For the reasons and discussions aforesaid and in view of the law declared by the Supreme Court in the case of Jagdish Narain Chaturvedi and Surendra Mahnot & Ors. (supra); we are of the opinion that the respondent - employee would stand regularized from the date of regularization in service and not prior to that.

38. QUESTION B

Taking into consideration the recent decision, prior to two decades the regularization period was not questioned by anybody, therefore, in a writ petition filed by the petitioner it will not be appropriate for us to allow the Government to end the regularization. However, regularization will be from the date of regularization done by the department and not prior thereto.

39. QUESTION C

The contention of the counsel for the employees is required to be accepted and it cannot be annulled unless it has been annulled by appropriate authority. However, the benefits shall not be withdrawn but in future when the benefits are to be accorded for further promotion, the same will be considered on the basis of new law declared by the Supreme Court i.e. period will be considered from the date of regularization. When the future benefit of 9, 18 and/or 27 will be considered their ad-hoc service will not be considered for the purpose of benefit

of 9, 18 and/or 27 years. But if benefit has already been granted for all the three scales; the same shall not be withdrawn and no recovery will be made from the employees.

40. QUESTION D

In view of our answer in above matters, it is very clear that for the purpose of regularisation the date of regularisation will be from the date of regular appointment.

In that view of the matter, there cannot be two dates for the purpose of seniority and the other benefits. However, earlier services will be considered for the purpose of the same if there is a shortage in pensionary benefits.

41. QUESTION E

In view of the observations made by the Supreme Court, as referred to above, the ad-hocism will not be considered for seniority. In that view of the matter, there will be only one date for regularization, date of regularizing ad-hoc period will not have any effect on seniority. In our considered opinion, the Division Bench of this Court in the case of State of Rajasthan & Ors. vs. Gopa Ram in DB Civil Special Appeal No.44/2016, decided on 18.04.2016 had no right to distinguish the judgment of the Supreme Court in the case of Jagdish Narayan Chaturvedi (Supra) and State of Rajasthan vs. Surendra Mohnot & Ors. (supra). Thus, the decision of State of Rajasthan & Ors. vs. Gopa Ram (supra) did not lay down correct law. The correct law would be the law declared by the Supreme Court in the two judgments referred hereinabove."

4. In view of the above, all the appeals deserve to be allowed and the same are allowed. Stay applications are disposed of. A copy of this judgment be placed in each file.