

(2014) 03 RAJ CK 0036

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 378/2014

Suresh Garg and Others

APPELLANT

Vs

Sharwan Kumar Khurkhuria and Others

RESPONDENT

Date of Decision : 06-03-2014

Acts Referred:

Citation : (2014) 03 RAJ CK 0036

Hon'ble Judges : Dinesh Maheshwari, J; Banwari Lal Sharma, J.

Bench : Division Bench

Advocate : G.R. Punia, Senior Advocate and Kuldeep Mathur, Ravindra Singh for Nupur Bhati and Kailash Jangid, for the Appellant; P.R. Singh, Additional Advocate General, Mahesh Boda, Senior Advocate, S.P. Sharma and Kaushal Sharma, for the Respondent

Judgement

1. This intra-court appeal is sought to be maintained by the appellants-applicants, who are said to have been declared selected in the written examination conducted by the Board of Revenue for appointment to the post of Inspector Land Records, with the submissions that their rights are going to be seriously prejudiced for the order dated 17.02.2014, as passed in Second Stay Application (No. 1288/2014), moved in S.B. Civil Writ Petition No. 6510/2013, as filed by the present respondent No. 1.
2. After having taken into comprehension all the facts and circumstances of the case and the nature and purport of the order impugned, we are satisfied that the applicants are going to be affected by the effect of the order dated 17.02.2014 and deserve to be granted leave to appeal. Accordingly, the application (IA No. 1174/2014) is allowed. The applicants are permitted to maintain this appeal against the impugned order dated 17.02.2014.
3. In this appeal, the impleadment applications (IA Nos. 1287/2014 and 1288/2014) have also been moved with the submissions that the applicants of these applications have filed separate the writ petitions concerning the same selection process, which are pending before the learned Single Judge of this

Court but therein, they did not move any fresh stay application essentially for the reason that their cause stood covered by the common relief granted by the learned Single Judge in CWP No. 6510/2013, i.e., in the impugned order dated 17.02.2014.

4. This Court is clearly of the view that these applicants, who are otherwise not the parties in the writ petition leading to this appeal, i.e., CWP No. 6510/2013, cannot be allowed to join this appeal as a party as such. However, when there is commonness of their cause with the writ petitioner, i.e., the respondent No. 1 herein, it does appear appropriate to allow them to make submissions in this appeal as intervenors. The applications stand disposed of accordingly.

5. Mr. P.R. Singh, the learned Additional Advocate General has put in appearance for the respondents Nos. 2 to 4. The learned Senior Counsel Mr. Mahesh Boda with the learned counsel Mr. S.P. Sharma and Mr. Kaushal Sharma have put in appearance for the respondent No. 1 in caveat.

6. We have heard the learned counsel for the parties at length on admission and on the prayer for interim relief.

7. The sum and substance of the matter for the present purpose could be noticed in the following : The contesting candidates are working on the post of Patwari and they had been the participants in the selection process taken up for appointment to the post of Inspector Land Records. Essentially, the grievance of the writ-petitioners is that the question papers set for the departmental examination were replete with excessive errors and mistakes; and it was found even by the Experts' Committee in relation to 22 questions out of 100 that wrong answers had been supplied in the answer-key and, therefore, the Board of Revenue itself revised the result of the examinations. It is further the case of the writ-petitioners that several more questions were either incorrectly framed or their answers were incorrectly suggested. According to the writ-petitioners, the examination, as conducted, cannot be said to be leading to an objective assessment of the merits of the candidates.

8. It may be observed that we do not propose to go into the merits of the case either way as the matter remains sub judice before the learned Single Judge as also before the Division Bench of this Court. We have only indicated the background aspects, which form the foundation of the subject-matter of writ petitions.

9. For the present purpose, relevant it is to notice that in the writ petitions filed by the petitioners as also by the intervenors and other persons questioning the selection process, earlier an interim order was passed by the learned Single Judge of this Court staying further process for appointments but then, the matters were considered in detail by a learned Single Judge of this Court in the order dated 12.11.2013, as passed in the batch of petitions led by S.B. Civil Writ Petition No. 6098/2013 : Hinglaj Dan Charan & Ors. v. State of Rajasthan & Ors. In the said order dated 12.11.2013, the learned Single Judge observed that the

matters required consideration and hence, proceeded to admit the writ petitions for hearing. However, so far the question of grant of interim relief was concerned, after having heard the learned counsel for the parties, the learned Single Judge observed that granting of the blanket stay order and staying the entire promotion process was not justified. The learned Single Judge proceeded to refer to the order in the case of Lalit Mohan Sharma Vs. RPSC and Others, and the order dated 11.11.2013 in Sunil Kumar and others v. State of Rajasthan & Ors. :SBCWP No. 8865/2013 and ultimately, found that keeping the examination results revised on 16.05.2013 as well as the appointments by way of promotion to the successful candidates to the posts of Inspector Land Records subject to the final decision of this writ petition would serve the ends of justice. Thus, the learned Single Judge proceeded to allow the respondents to go ahead with the promotions and appointments but ordered that the same would remain subject to the final decision of the writ petition. The learned Single Judge finally observed and ordered as under:-

"24. This Court is further of the opinion that by keeping said examination result revised on 16.5.2013 as well as appointments by way of promotion to be given to the successful candidates to the posts of Land Records Inspector subject to the final decision of this writ petition should serve the ends of justice. Therefore, it is ordered accordingly and the stay applications in the present cases deserve to be disposed of accordingly.

25. Therefore, the stay applications are disposed of by directing that while permitting the respondents to go ahead with the said promotions and the appointment made by way of promotion to the posts of Land Records Inspectors in pursuance of examination conducted of the Departmental examinations of the Patwaris shall remain subject to the final decision of these writs petitions and the ex parte stay order dtd. 21.5.2013 is modified accordingly."

10. The same order was separately passed on the even date, i.e., 12.11.2013, in relation to the writ petition filed by the present respondent No. 1. Noteworthy it is that the aforesaid order dated 12.11.2013 was sought to be questioned in intra-court appeals, and such an intra-court appeal (SAW No. 1162/2013) was considered and dismissed by a Division Bench of this Court on 21.11.2013. The Division Bench did not find any persuasive reason to interfere with the order passed by the learned Single Judge on 12.11.2013 but, made it clear that any appointment/promotion to the post of Inspector out of the process involved would abide by the final decision of the writ petitions. The Division Bench said:-

"Be that as it may, we consider it inexpedient at this stage to undertake a detailed analysis of the rival pleadings and the documents on record to express any opinion on the merit of the challenge and/or defence thereto, as the writ petitions await fullfledged adjudication. A perusal of the impugned order reveals that the learned Single Judge has, in details, examined all relevant aspects, as required for the present and on balancing the same, has permitted the respondents to go ahead with the process, making however the consequential

appointments/promotions subject to the final outcome of the writ proceeding. The view taken by the learned Single Judge in the above conspectus of facts, can, by no means, be repudiated to be absurd or in defiance of logic. In course of the arguments, Mr. Punia has stated in unequivocal terms that any order of appointment/promotion, if issued, would in clear terms contain a rider that the same would be subject to the final decision in the writ proceeding. In the attendant facts and circumstances, according to us, the view taken by the learned Single Judge is a plausible one, more particularly as an interim relief is of equitable nature. In our view, the learned Single Judge has evenly balanced the competing equities. No possibility of irreparable prejudice is discernible. We, thus, do not find any persuasive reason to interfere. It is however made absolutely clear that any appointment/promotion made to the post of Revenue Inspector out of the process involved, would abide by the final verdict in the writ petitions."

11. It appears that later on, similar nature writ petitions pending at the Jaipur Bench of this Court were taken up for consideration by a learned Single Judge and the same were disposed of by the common order dated 15.01.2014. The learned Single Judge considered it proper to dispose of the writ petitions with directions to the Board of Revenue to refer all the objections raised by the petitioners in reference to various questions to an Experts' Committee of at least 2 members having expertise in the field of Revenue Law; and ordered that the Committee would submit the report within 15 days and the Board may take final view on receipt of such a report within next 7 days. The learned Single Judge at Jaipur Bench also took note of the aforesaid order dated 12.11.2013, as passed by the learned Single Judge at the Principal Seat, Jodhpur as also the similar nature orders passed in other cases. The learned Single Judge observed that the training of the selected candidates would not, therefore, confer any right on them to claim appointment/promotion as a matter of right, if eventually their result was revised or the Board decided otherwise. For their relevance, we may take note of the observations made and the directions issued by the learned Single Judge at the Jaipur Bench of this Court in the order dated 15.01.2014 as follows:-

"In the circumstances, this Court deem it appropriate to disposed of these writ petitions directing the Board of Revenue to refer all such objections raised by petitioners in reference to various questions in two question papers, referred to above, to an expert committee consisting of at-least two Members preferably those having expertize in the field of revenue law, who may have served as its Member in the past within seven days of filing objections along-with a copy of this order before it. The experts' committee may submit their report within fifteen days of entrustment of the task to them. The Board may take final view on receipt of such report within next seven days thereafter. Petitioners shall submit their objections within one week before the Registrar, Board of Revenue, if any."

12. After the orders aforesaid, three events occurred, one after the another, having bearing on the subject-matter of this appeal. On 28.01.2014, the Registrar of the Board of Revenue, Ajmer proceeded to issue a communication to the Principal Secretary, Department of Revenue, Jaipur seeking orders for appointment on the post of Inspector Land Records wherein, while pointing out that several such posts were lying vacant and the examination had taken place after about 17 years, it was prayed that under Rule 3 of the Rajasthan Land Records Rules, relaxation be granted in the provisions of Rules 298, 302, 304 and 305 thereof and even during the training period, the selected persons may be allowed to be appointed, subject to the final decision of the pending writ petition bearing number 6098/2013 and other similar cases.

13. Secondly, the aforesaid order dated 15.01.2014 as passed by the learned Single Judge at the Jaipur Bench of this Court in the batch of petitions led by CWP No. 8886/2013 : Mahesh Kumar & Ors. v. State of Rajasthan & Ors. was challenged in intra-court appeal, being D.B. Civil Special Appeal (Writ) No. 343/2014. The said intra-court appeal came up for consideration before a Division Bench of this Court on 06.02.2014 and the following order was passed:-

"In Appeal:

Heard Mr. Ashok Gaur, learned Senior Counsel assisted by Mr. Vijay Dutt Sharma for the appellants.

Issue notice, returnable on 14.02.2014. The appellants would deposit PF and take out notice of service on the respondents.

In Stay Application No. 1230/2014:

Issue notice on the stay application, returnable on 14.02.2014. The appellants would deposit PF and take out notice of service on the respondents.

Meanwhile, the status quo, as on today, of the process, if at all initiated in terms of the impugned judgment and order shall be maintained till the next date fixed."

14. The third event, that has eventually led to this appeal, had been that the present respondent No. 1 moved a second stay application bearing number 1288/2014 in CWP No. 6510/2013 on 06.02.2014 with reference to the order dated 15.01.2014, as passed by the learned Single Judge at the Jaipur Bench of this Court as also with reference to the aforesaid communication dated 28.01.2014, as sent by the Registrar, Board of Revenue, Ajmer to the Principal Secretary, Department of Revenue; and it was prayed that the respondents may be restrained from offering any posting to the selected candidates on the basis of the letter dated 28.01.2014 and further, the objections of the writ-petitioner, which had already been submitted in the light of the directions of the Court at the Jaipur Bench, be entertained and then, revised merit list be issued on the basis of expert opinion.

15. On the application so moved on 06.02.2014, the learned Single Judge has

passed the order impugned wherefrom it appears that after noticing the position aforesaid and while observing that the controversy was sub judice before the Division Bench (i.e., at the Jaipur Bench in the aforesaid SAW No. 343/2014), the learned Single Judge ordered that no appointment shall be made till the decision of the Division Bench. The order impugned in its entirety reads as under:-

"Learned counsel for the petitioner submits that State Government will provide appointment on the post of Inspector, Land Records because a communication has been sent by the Revenue Board of Ajmer to the Secretary Revenue, Board of Revenue, Rajasthan, Ajmer dated 28.01.2014. It is said that proper instructions may be issued for the purpose of providing appointment.

Learned counsel for the petitioner submits that matter is sub judice before Division Bench of Jaipur Bench, therefore, there is no question of providing appointment till the decision of Division Bench.

In view of above, after perusing the communication dated 28.01.2014 it appears that only letter has been sent to the Government for seeking further direction for appointment therefore obviously State Government at the time of issuing any instruction will take note of the fact that the controversy is sub judice before the Division Bench therefore, no appointment shall be made till the decision of the Division Bench.

With above observation, the second stay application is hereby disposed of."

16. Seeking to question the aforesaid order dated 17.02.2014, it has strenuously been argued on behalf of the appellants that the impugned order is neither in conformity with the order passed on 12.11.2013 on the first stay application nor is in conformity with the order dated 06.02.2014 passed by the Division Bench of this Court in SAW No. 343/2014. It is submitted that a total stay over the appointment process is going to cause serious prejudice to the appellants without any corresponding gain to the writ-petitioners; and on the other hand, when the entire process has already been made subject to the final decision of the writ petition, there was no reason for the learned Single Judge to grant stay over the appointments, particularly when such an order had, in fact, been declined by the Court on the earlier occasion.

17. Per contra, on behalf of the contesting respondent, i.e., the respondent No. 1, the very maintainability of this intra-court appeal is sought to be questioned. This apart, while taking us through several of the aspects related with the merits of the case, the endeavour of the learned counsel for the respondent No. 1 had been to submit that the entire examination in question suffers from several shortcomings, including the fundamental one that nearly half of the questions in the paper were either incorrect or unintelligible and in any case, the answer-key had been incorrect for 22 questions, as has been found by the Experts' Committee itself. It is submitted that if such a process is allowed to be continued and the appointments are made thereunder, it would be of serious prejudice to the meritorious persons.

18. True it is that, ordinarily, in an intra-court appeal, this Court is not inclined to interfere in the orders granting or refusing interim relief but then, for the consistent view taken by this Court in relation to the appeals under Rule 134 of the High Court Rules, it cannot be laid down as a blanket proposition that in no case, an appeal could be entertained in relation to an interlocutory order. It is the cumulative effect of the nature and purport of the order impugned that has its own bearing on the question as to whether any relief in such an appeal is to be granted or not. However, we would still leave this question open for further consideration at the time of final hearing of this appeal.

19. So far the question of admission of this appeal is concerned, we are prima facie of the view that several questions do arise for consideration, including the question as to whether the impugned order dated 17.02.2014 could be read as providing anything over or apart from the orders passed by the Division Bench on the same subject-matter. Though the learned counsel for the respondent No. 1 has attempted to submit that the order as passed by the learned Single Judge on 17.02.2014 cannot be said to be of any result over and above the order of the Division Bench but, on a comprehension of the directions issued by the Division Bench and their background aspects vis-à-vis the directions issued by the learned Single Judge in the order impugned and their background aspects, we find that this appeal involves questions worth consideration. Hence, without any other comment as at present, the appeal is admitted for consideration. The respondents being represented, notices need not be issued.

20. Heard on the prayer for interim relief also.

21. We have taken note of the relevant background aspects and different orders passed by the Court concerning the subject-matter of the writ petitions. So far the writ-petitioner-respondent No. 1 is concerned, it remains indisputable that in the first stay application filed by him in the writ petition, earlier an interim order was passed staying the entire promotion process but then, the stay order was revised in the detailed considered order dated 12.11.2013; and the Court found it justified to order that the respondents may proceed with promotions/appointments but the process would remain subject to the final decision of the writ petitions. Significantly, this order was challenged by a similarly circumstanced person in SAW No. 1162/2013 and the said intra-court appeal was dismissed by a Division Bench of this Court by another detailed considered order dated 21.11.2013, finding justified the order as made by the learned Single Judge on 12.11.2013. Thus, the order dated 12.11.2013, as passed by the learned Single Judge on the first stay application, has not only become final but has even been endorsed and affirmed by a Division Bench of this Court.

22. True it is that in the order dated 15.01.2014, the learned Single Judge at the Jaipur Bench of this Court issued directions for constitution of another Experts' Committee and it was also directed that the process shall be undertaken after the Experts' Committee had considered the objections and submitted its report to the respondents. However, the Division Bench of this Court at the Jaipur

Bench, in its order dated 06.02.2014, has ordered status quo to be maintained, as existing on that date, of the process, if at all initiated, pursuant to the impugned order, i.e., the order dated 15.01.2014. We have been informed during the course of submissions that the said intra-court appeal, SAW No. 343/2014, still remains pending at the Jaipur bench of this Court and the interim order continues to operate.

23. In the backdrop of the above facts and circumstances and particularly, looking to the phraseology, contents and import of the order dated 06.02.2014 as passed by the Division Bench in SAW No. 343/2014, we are clearly of the view that no other order deserves to be made in the case and nothing of a different state of affairs than that as envisaged in the order dated 06.02.2014 could be permitted, lest it leads to inconsistency.

24. As already noticed, so far the writ petition filed by the respondent No. 1 is concerned, the prayer for interim relief had essentially been considered in detail and final order was passed on 12.11.2013, which was affirmed by the Division Bench on 21.11.2013.

25. In view of the above, we consider it proper and hence, order that the operation and effect of the impugned order dated 17.02.2014 shall remain stayed until final decision of this appeal. However, the rights of the parties shall otherwise be governed by the orders as already made in this case, i.e., the aforesaid orders dated 12.11.2013 and dated 21.11.2013; and further, by the order dated 06.02.2014, as passed in SAW No. 343/2014.

26. In view of the subject matter of this appeal, it is also made clear that if any other order is passed by the Division bench of this Court at the Jaipur Bench in the aforesaid SAW No. 343/2014 or any cognate matter, it shall be permissible for the parties to apply for taking up of this appeal for hearing.

27. Subject to the orders, directions and observations foregoing, the stay application (No. 1554/2014) stands disposed of.