

Suresh Chandra Mathur Vs. State of Raj. and ors

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Court : Rajasthan Jodhpur

Decided On : Nov-13-2013

Appellant : Suresh Chandra Mathur

Respondent : State of Raj. and ors

Judgement :

1 D.B.Civil Writ Petition No.1652/2013 Suresh Chandra Mathur V/s The State of Rajasthan & ORS.13.11.2013 Hon'ble the Chief Justice Mr.Amitava Roy Hon'ble Mr.Justice P.K.Lohra Mr.Rajat Dave for the petitioner.

Heard learned counsel for the petitioner.

Apart from seeking an appropriate writ, order or direction to the respondents to grant him appointment to the post of Junior Engineer (Diploma Holder) with all consequential benefits with effect from the date on which he had acquired qualification therefor i.e.10.6.2003, the vires of proviso (6) to Rule 6 of the Rajasthan Engineering Subordinate Service (Public Health Branch) Rules, 1967 (for short, hereinafter referred to as the Rules.) to the extent it provides the cut off date as 1.4.1988 for the application thereof, has been challenged.

The advertisement dated 17.5.2008 and the appointments made on the basis of selection process initiated thereby to the post of Junior Engineer (Civil)(Diploma Holder) have been sought to be quashed as well.

Concisely put, the pleaded case of the petitioner is that he was initially appointed as a work-charged employee on 1.5.1988 with the Public Health & Engineering Department of the State and was eventually conferred semi permanent status with effect from 1.5.1990.

According to him, he was posted as Helper in the District Sub Division-III, Mandore, Jodhpur.

He has averred that in course of his service, on due permission from the concerned authorities, he did pursue higher studies and in the year 2002, passed the Technician Engineers Examination as is evident from the certificate dated 10.6.2003 to that effect, which according to him, is equivalent to the Diploma in Mechanical Engineering as conducted by the State Polytechnics.

The petitioner has referred to a policy decision of the State Government taken in the year 1989 to encourage departmental employees who would pursue higher studies and acquire qualifications based thereon, following which, proviso (6) to Rule 6 of the Rules was added.

The Public Health & Engineering Department (for short, hereinafter referred to as the Department.) to which the petitioner belongs was brought within the ambit of the above provision of the Rules by notification dated 9.5.1997.

According to the petitioner, vide communication dated 22.7.2003 issued by the Chief Engineer (Rural).PHED, Jaipur information was sought for from the Chief Engineer, PHED and other authorities with regard to the employees, who had obtained degree/diploma in Civil/Mechanical Engineering on due permission from the Department for the purpose of granting appointment to them in consonance with the addendum dated 9.5.1997 qua proviso (6) to Rule 6 of the Rules.

The petitioner has averred that his name was forwarded in pursuance of this communication for the purpose of his appointment to the post of Junior Engineer in the Department.

Thereafter, certain queries were made in connection therewith.

Though the same were duly met, no further action was taken in that regard.

Contending that one Shri Manoj Kumar, who has been appointed as Beldar in the year 1992 has similarly been appointed as Junior Engineer (Mechanical) after obtaining Diploma in Mechanical Engineering during service vide order dated 20.8.1997, the petitioner has imputed discriminatory and unfair treatment to him though equally placed.

He has stated further that the posts of Junior Engineer (Mechanical) (Diploma Holder) are lying vacant and that having regard to the State policy for according incentives to the willing departmental employees to acquire higher academic qualifications, he is entitled to be appointed as Junior Engineer (Mechanical) (Diploma Holder). He has pleaded without prejudice to all these that the cut off date i.e. 1.4.1988 as mentioned in the proviso (6) to Rule 6 of the Rules is however without any basis or nexus with the objects sought to be achieved thereby and is thus liable to be adjudged violative of Articles 14 and 16 of the Constitution of India.

The learned counsel for the petitioner has argued thus.

We have duly considered the pleaded facts, documents and the arguments advanced.

Proviso (6) to Rule (6) of the Rules had been inserted vide Notification No.F.3(1) DOP/A-II/88 dated 21.12.1989.

It provides that persons employed on work-charged basis in Public Works Department/Irrigation Department, Aryurved Department, who had put in at least two years continuous service as on 1.4.1988 and such other employees who had been working in the lower posts in the Department and are possessed of the requisite qualifications for direct recruitment to any of the post of Driver, TraceRs.4 Ferooman, Junior Draftsman, Laboratory Assistant, Laboratory Attendant etc. might be considered once only for appointment on these posts against direct recruitment quota alongwith fresh names received from open market candidates and upto 50% vacant posts might be filled out of the above categories of work-

charged and other employees in relaxation of age limit prescribed in these rules, provided they are otherwise found suitable by the Selection Committee.

Proviso (6) to Rule (6) is quoted hereinbelow:- (6) that persons employed on work-charged basis in Public Works Department/Irrigation (Indira Gandhi Nahar Board (including Indira Gandhi Nahar Board Command Area Development) Department, Aryurved Department and who have put in at least two years continuous service as on 1/4/88 and such other employees who have been working on lower posts in the department and possess the requisite qualifications for direct recruitment to any of the post of Driver, TraceRs.Ferroman, Junior Draftsman, Laboratory Assistant, Laboratory Attendant etc.may be considered once only for appointment on these posts against direct recruitment quota alongwith fresh names received from open market candidates and upto 50% vacant posts may be filled out of the above categories of work-charged employee and other employees in relaxation of age limit prescribed in these rules.

Provided they are otherwise found suitable by the Selection Committee.

The concerned Appointing Authority while inviting applications for direct recruitment to work-charged employees and other employees working on lower posts in the department possessing the requisite qualifications for the posts.

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5 As the text of proviso (6) to Rule 6 would clearly demonstrate, the benefit contemplated therein was devised as a one time measure, the cut off date for eligibility of the persons employed on work-charged basis in the Department mentioned being 1.4.1988.

By no means proviso (6) to Rule 6 can be construed to be a provision securing appointment as envisaged therein for all times to come.

Apart from the other features thereof, the cut off date i.e.1.4.1988 is an unimpeachable testament to this proposition.

The incorporation of the Public Health & Engineering Department in the notification dated 21.12.1989 referred to hereinabove thereby adding proviso (6) to Rule 6 of the Rules does not in any way otherwise alter the scheme thereof.

The proviso for appointment as a one time measure with the condition precedent therefor as detailed therein did not thereby undergo any modification or enlargement otherwise.

Having regard to the legislative intendment to provide as one time exception, a scope for consideration for appointment of work charged and other employees as referred to in proviso (6) to Rule 6 and the plain and unequivocal language applied to convey such objective, we do not feel persuaded to sustain the challenge to the vires of this provision.

The Rules provide the methods of recruitment to the service governed thereby.

The one time exception carved out by proviso (6) to Rule 6 can neither be construed nor be applied repeatedly as the same would be opposed to the intent of the rule makers. The policy formulated by the State respondents, pursuant to which proviso (6) to Rule 6 had been inserted vide notification dated 21.12.1989 cannot be assigned a meaning and amplitude over reaching or supplanting the same.

The official communications relied upon by the petitioner to end ORS. his claim for appointment as Junior Engineer (Mechanical) (Diploma Holder) on the basis of his semi permanent status and the higher academic qualifications acquired by him cannot, in our view, substitute the otherwise unambiguous mandate of proviso (6) to Rule 6.

The petitioner has failed to prove any right founded on the Rules to justify a writ from this Court to the respondents to provide him appointment, as sought for by him.

Admittedly, the selection process initiated by the impugned advertisement of 2008 has been completed and appointments on the basis thereof have been made.

At this distant point of time interference therewith based on belated contentions of the petitioner is not called for.

A public participatory process having been taken to its logical conclusion, no interference therewith now is warranted.

On an overall consideration of the above aspects, we find no merit in the writ petition, which is dismissed.

(P.K.Lohra)J.

(Amitava Roy)CJ Parmar

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