

**Prem Bihari Mathur Vs. State and ors**

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**SooperKanoon Citation :** [sooperkanoon.com/1154076](http://sooperkanoon.com/1154076)

**Court :** Rajasthan Jodhpur

**Decided On :** Jul-03-2014

**Appellant :** Prem Bihari Mathur

**Respondent :** State and ors

**Judgement :**

S.B.Civil Writ Petition No.4519/1998 Prem Bihari Mathur versus State of Rajasthan & ORS.Order dt: 03/07/2014 1/4 IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

ORDER

S.B.Civil Writ Petition No.4519/1998 Prem Bihari Mathur versus State of Rajasthan & ORS.Date of Order ::: 03rd July, 2014 PRESENT HON'BLE Dr.

JUSTICE VINEET KOTHARI Appearance: Mr.Sanjay Mathur, for the petitioner.

Mr.S.M.Toshniwal, Addl.

Govt.

Counsel.

-- BY THE COURT: 1.

The petitioner who was working as Junior Engineer (Civil).has preferred this writ petition seeking following relief(s).- It is, therefore, respectfully prayed: - (i).That

this petition for a writ in the nature of mandamus may kindly be allowed and by issuing a writ, order or direction, respondents may kindly be directed to revise the seniority list Annex.1 also in the light of the directions given by the Hon'ble Supreme Court in the case of Vijay Singh Deora (supra) and etc.(ii).That seniority list Annex.1 may kindly be declared illegal and be quashed and a direction may kindly be issued to prepare a fresh seniority list by reckoning seniority of Junior Engineer (Civil) Degree Holders in accordance with the Rules of 1967 and S.B.Civil Writ Petition No.4519/1998 Prem Bihari Mathur versus State of Rajasthan & ORS.Order dt: 03/07/2014 2/4 criteria laid down by the Hon'ble Supreme Court in the case of Vijay Singh Deora.

(iii).That respondents may kindly be restrained from making any promotion from amongst the Junior Engineer (Civil) Degree Holders without fiRs.reviewing the seniority in the terms referred above.

(iv).That any appropriate writ, order or direction which this Hon'ble Court deems fit and proper in the facts and circumstances of the case may kindly be allowed.

(v).That costs may be awarded in favour of the petitioner.

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2.

Both the learned counsel for the parties state at Bar that the controveRs.involved in the present writ petition is covered by the decision of the Hon'ble Apex Court in the case of Vijay Singh Deora & ORS.versus State of Rajasthan & Anr.

reported in (1997) 3 SCC118 Learned counsel for the petitioner, however, submitted that the benefit of said judgment of the Hon'ble Apex Court has not been extended to him by considering his case in accordance with said legal position.

3.

The Hon'ble Apex Court in the case of Vijay Singh Deora (supra).has held as under: - There was 20% direct recruitment quota for graudate Engineers in Rajasthan Civil Engineering Service (Irrigation Branch).Prior to 30-6-1978,

graduate Junior Engineers (known as Group 'A' officers) were appointed on temporary basis through Department of Manpower.

Their appointment was made S.B.Civil Writ Petition No.4519/1998 Prem Bihari Mathur versus State of Rajasthan & ORS.Order dt: 03/07/2014 3/4 till the availability of regularly recruited candidates in accordance with recruitment rules but no such recruitment took place.

Subsequently, diploma-holders (known as Group 'B' officers) were appointed as Sub-Engineers through an advertisement.

They acquired B.E./A.M.I.E. qualification after their appointment.

There was yet another group of employees who were also diploma-holders and were appointed substantively as Sub-Engineers in lower cadre (Group 'C' officers). On acquiring of B.E./A.M.I.E. qualification they were appointed as Junior Engineers on transfer basis.

Appointments of Group 'A' officers (Graduate Junior Engineers) were regularised by a screening committee constituted under the rules.

Resolving the matter of their seniority and promotion held: One should not lose sight of fact that Group 'A' officers were substantively discharging the duties of the post right from the date of their appointment.

'A' temporary appointee has no right to post nor does he get seniority unless regularly recruited in accordance with the rules and seniority would be reckoned from the date of substantive appointment when he started discharging the duty of the post.

If appointments were made de hors the rules, the entire length of service was required to be treated as fortuitous and excluded.

If appointments are made after due consideration and according to the procedure, though on temporary basis, the seniority would start from the date of appointment.

However, Group 'A' officers in the present case were appointed prior to 30-6-1978 and they were given 10 advance increments.

Group 'B' officers were S.B.Civil Writ Petition No.4519/1998 Prem Bihari Mathur versus State of Rajasthan & ORS.Order dt: 03/07/2014 4/4 appointed with diploma qualification and later as Group 'A' officers and acquired degree qualification subsequently.

Group 'C' officers on acquiring degree qualification were appointed on application by transfer after 30-6-1978.

Unqualified became qualified subsequent to the appointment of qualified graduates.

When Group 'A' officers were screened by the committee, all those found eligible for confirmation in temporary appointments made prior to 30-6-1978, must, of necessity and under equity and justice be construed to have been regularly appointed to the post in the above factual backdrop.

Since there was no recruitment made by the Chief Engineer, the qualified Group 'A' officers need to be treated as appointed on regular basis.

Otherwise, unqualified officers would become senior to the qualified graduates at the inception.

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4.

In view of aforesaid legal position, the case of the present petitioner deserves to be considered in accordance with said judgment.

Accordingly, the present writ petition is disposed of with a liberty and direction to the petitioner to file a fresh representation to the respondent No.2- Chief Engineer (Irrigation).Govt.

of Rajasthan, Jaipur, who is expected to decide the same after giving an opportunity of hearing to the petitioner expeditiously, preferably within a period of the three months from today.

No costs.

A copy of this order be sent to the concerned parties forthwith.

(Dr.

VINEET KOTHARI).J.

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