

Jakir Hussaln Vs. State and ors

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Court : Rajasthan Jodhpur

Decided On : Sep-02-2014

Appellant : Jakir Hussain

Respondent : State and ors

Judgement :

S.B. CIVIL WRIT PETITION No.5527/2008. Jakir Hussain Vs. State of Rajasthan & Ors. Order dated 02/09/2014 1/6 IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR. ::

ORDER

:: S.B. CIVIL WRIT PETITION No.5527/2008. Jakir Hussain Vs. State of Rajasthan & Ors. .. Date of Order :::

02. d September, 2014. PRESENT HON'BLE Dr. JUSTICE VINEET KOTHARI
Appearance: Mr. Jakir Hussain, petitioner present-in-person. Mr. Pyara Singh, Deputy Superintendent of Police (Officer-in-Charge), SC/ST Cell, Jaipur -- BY THE COURT:

1. The lawyers are observing strike which is contrary to various Supreme Court decisions. Name of Mr. Ranjeet Joshi, as the counsel for the petitioners and Mr. B.L. Tiwari, as the counsel for the respondents, is shown in the cause list.

2. Heard the petitioner Mr. Jakir Hussain, who is present- in-person before the Court. On behalf of the respondents, Mr. Pyara Singh, Deputy Superintendent of

Police (Officer-in-Charge), SC/ST Cell, Jaipur, is present-in-person before the Court.

3. Perused the record. The case is listed at Sl. No.89 in the cause list under the category of For Hearing.. S.B. CIVIL WRIT PETITION No.5527/2008. Jakir Hussain Vs. State of Rajasthan & Ors. Order dated 02/09/2014 2/6 4. The writ petition has been filed by the petitioner in this Court on 28.07.2008 with the following prayers:- It is, therefore, most humbly and respectfully prayed that the writ petition filed by the petitioner may kindly be accepted and allowed as under:- (a) by an appropriate writ, order or direction, the respondents may be directed to give promotion to the petitioner from the post of Constable to Head Constable after considering his seniority as per selection merit list Ann.-1 selected by the Selection Board from 25.11.1991 to 30.11.1991 with all consequential benefits. (b) by an appropriate writ, order or direction, the candidature of the petitioner may be considered for the appointment by promotion on the post of Head Constable towards vacancy to be filled up for the test of 2007-08. (c) any other order, which this Hon'ble Court considers just and proper, may kindly be passed in favour of the petitioner. (d) costs of this writ petition be allowed to the petitioner.. 5. It is submitted that the despite communication (Annex.5) dated 22.04.2002 of the D.I.G. (Police), Bikaner Range, Bikaner, whereby the seniority of the petitioner as Constable was to be considered from the year 1991, although the dispute with regard to date of birth of the petitioner was resolved in his favour by the respondents authorities themselves, yet he was not allowed to S.B. CIVIL WRIT PETITION No.5527/2008. Jakir Hussain Vs. State of Rajasthan & Ors. Order dated 02/09/2014 3/6 appear in the written test for promotion to the next higher post of Head Constable in the year 2008 when such examinations were held. The petitioner has also cited order passed by a coordinate bench of this Court in Devendra Yadav Vs. State & Ors. (SBCWP No.3712/2009, decided on 07.12.2009), in which the coordinate bench of this Court held as under: - S.B. CIVIL WRIT PETITION No.3712/2009 (Devendra Yadav Vs. State of Rajasthan & Ors.) Date of order :

7. 12.2009 HON'BLE MR. PRAKASH TATIA, J.

Mr. Hemant Jain, for the petitioner. Mr. I.S. Pareek, for the respondents. Heard learned counsel for the parties. The petitioner prayed that respondent be directed to treat the petitioner as a constable (C.P.) for all purposes and to include his name in the seniority list maintained by them relating to Civil Police constables and also to confer all such benefits as are admissible to the constable of C.P. and to allow the petitioner to complete the promotional post of Head Constable (Civil) and to confer such promotion if he is found eligible otherwise also considering him to be constable (C.P.). Learned counsel for the respondent submitted that petitioner was given appointment by relaxing the age under the rule which could have been done only he is appointed as constable (driver), therefore, the petitioner is not a constable of Civil Police. S.B. CIVIL WRIT PETITION No.5527/2008. Jakir Hussain Vs. State of Rajasthan & Ors. Order dated 02/09/2014 4/6 The issue has been considered by this Court (in S.B. Civil Writ Petition No.187/2000) (By me) in Jai Kumar Shadu Vs. State of Raj. & Ors. and other three and in view of the above judgment the petitioner's case is clearly covered by the decision given in the above writ petition. Consequently the writ petition is allowed. The respondents are directed to treat the petitioner as constable (C.P.) and respondent may hold qualifying examination for the post of Head Constable and petitioner, if is found suitable in accordance with the rules for the post then he may be offered appointment on the post of Head Constable at appropriate stage. The process can be completed within six months from today.. 6. The petitioner has also relied upon a Departmental Circular dated 10.01.2008, in which the date of seniority has to be maintained in the same order of merit in the year of selection, which is also quoted herein below for ready reference: - " , . 12 (01) - / .. /2001/4-103 10.01.2008 1989 36 (3) # &) +) :- The Seniority inter se of persons appointed to a post in a particular selection by direct recruitment on the basis of one and the same selection, except those S.B. CIVIL WRIT PETITION No.5527/2008. Jakir Hussain Vs. State of Rajasthan & Ors. Order dated 02/09/2014 5/6 who do not join service, when a post is offered to them, shall follow the order in which their name have been placed in the list prepared under rule 23.

. 3 5 3 . # ; +) 3 3 ; + (, 3 , ,) A + + # 3 / ; + 3 & + A # ; + + / ; + . A # # + / # , 3 # +) Sd/- . , () . " 7. There is no serious dispute also from the side of respondents in relation to seniority of the petitioner being assigned as Constable from the year

1991. Accordingly, in the considered opinion of this Court, the writ petition is liable to be disposed of in view of order dated 07.12.2009 passed by a coordinate bench of this Court in the case of Devendra Yadav (supra).

8. Accordingly, the writ petition is allowed and the respondents are directed to now hold the examination for promotion S.B. CIVIL WRIT PETITION No.5527/2008. Jakir Hussain Vs. State of Rajasthan & Ors. Order dated 02/09/2014 6/6 to the post of Head Constable for the petitioner within a period of three months from today and if the petitioner is otherwise found suitable for such promotion, the consequential promotion orders may be passed in his favour within a period of next three months and he may be assigned the year of promotion in the same manner to which he would have been entitled he not been ignored in the year 2008 when such examinations were held by the respondent- Department. No costs. A copy of this order be sent to the concerned parties forthwith. (Dr. VINEET KOTHARI), J.

DJ/- 89

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