

Anil Kumar Arya Vs. Raj. State Mines and Minerals Ltd and ors

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Court : Rajasthan Jodhpur

Decided On : Sep-24-2014

Appellant : Anil Kumar Arya

Respondent : Raj. State Mines and Minerals Ltd and ors

Advocate for Pet/Ap. : Mr. Sanjay Mathur

Judgement :

S.B. CIVIL WRIT PETITION No.9369/2010. Anil Kumar Arya Vs. R.S.M.M. Ltd. & Ors. Order dated 24/09/2014 1/7 IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR. ::

ORDER

:: S.B. CIVIL WRIT PETITION No.9369/2010. Anil Kumar Arya Vs. R.S.M.M. Ltd. & Ors. Date of Order :::

24. h September, 2014. PRESENT HON'BLE Dr. JUSTICE VINEET KOTHARI
Appearance: Mr. Sanjay Mathur, for the petitioner. None present for the respondents. -- BY THE COURT:

1. The petitioner was working as Helper in Jhamar Kotda Mines, Udaipur of the respondent - Rajasthan State Mines & Minerals Ltd. (RSMML, for short), has filed the present writ petition claiming his promotion to the next higher post of Auto Electrician Grade-B in preference over the private respondents No.4 and 5,

namely, S/Sh. O.P. Ajmera and Daya Shanker. The petitioner has sought following reliefs: - It is, therefore, humbly prayed that this Hon'ble Court may kindly be pleased to allow the writ petition, call the record of the case and (i)By an appropriate writ, order or direction, S.B. CIVIL WRIT PETITION No.9369/2010. Anil Kumar Arya Vs. R.S.M.M. Ltd. & Ors. Order dated 24/09/2014 2/7 the respondents may kindly be directed to prepare a seniority list of the persons who were holding the post of Auto Electrician Gr. 'B' according to their seniority and after that persons who are senior and eligible may be called for interview/trade test for the promotion to the post of Auto Electrician Grade 'A'. (ii)The Office order dated 4.4.2007 whereby the respondent has given promotion to Daya Shanker and O.P. Ajmera on the post of Auto Electrician Grade 'B' may be quashed and set aside. (iii)The respondents be directed to call the petitioner and consider his case for promotion to the post of Auto Electrician Gr. 'A'. (iv)The respondents may kindly be directed to declare senior the petitioner from O.P. Ajmera and Daya Shanker. (v)Any other relief which this Hon'ble Court deems just and proper in favour of the petitioner, may kindly be granted and (vi)The cost of the writ petition be allowed in favour of the petitioner.. 2. The respondents have taken a stand in their reply to the writ petition that the petitioner could not be given such promotion as during the probation period, the services of the S.B. CIVIL WRIT PETITION No.9369/2010. Anil Kumar Arya Vs. R.S.M.M. Ltd. & Ors. Order dated 24/09/2014 3/7 petitioner were no satisfactory. The stand of the respondent- RSMML in para 4 to 7 of the reply is quoted herein below: -

4. That the contents of para No.4 of the writ petition are not admitted as alleged and the same are denied. In this respect, it is submitted that the petitioner was selection on the post of Auto Electrician Gr.-C at Jhamar Kotda on 04.10.1998 and he was kept under probation for one year. Copy thereof is placed on record and marked as Annexure.R-1/2. In pursuance thereof, the petitioner joined his duties on 07.10.1998. However, during the period of probation, i.e. from 07.10.1998 to 06.10.1999, his performance was not even satisfactory, therefore, period of probation was extended for a period of six months w.e.f. 07.10.1999 vide office order dated 09.02.2000. A copy of the same is filed herewith and marked as Annexure.R-1/3. Finally he was confirmed on the post of Auto Electrician Gr.-C w.e.f. 26.05.2000 vide order dated 02.10.2000. A copy of the order dated

02.10.2000 is filed herewith and marked as Annexure.R-1/4. Therefore, it is not proper on the part of the petitioner to urge that he was working efficiently, effectively and with all dedications.

5. That as regards the contents of para No.5 of the writ petition, it is submitted that since according to the settlement, he was eligible for S.B. CIVIL WRIT PETITION No.9369/2010. Anil Kumar Arya Vs. R.S.M.M. Ltd. & Ors. Order dated 24/09/2014 4/7 being considered for promotion as Electrician Gr.B, accordingly he was called for interview and was subjected to trade test as he had completed 5 years' service on the post of Auto Electrician Gr.- C. However, as per clause 16.3, reproduced herein above, as per the long terms settlement VIII, it was agreed between the workmen and the management that if any workman has failed to earn increment even for one year during the eligibility period of any promotion(s), number of such years shall not be counted as years of experience for the purpose of promotion and since petitioner did not earn his annual increment, which became due on 01.01.2000 and 01.01.2001, therefore, two years' experience has not been counted and he has allowed promotion to the post of Auto Electrician Gr. B (V) only on 01.04.2006.

6. That as regards the contents of para No.6 of the writ petition, suffice it to state that there exists an avenue of promotion from the post of Auto Electrician Gr.-B to post of Auto Electrician Gr.A (VI) after five years' service in category (V), subject to passing the trade test and having good service record. However, the petitioner is holding the post of Auto Electrician Gr.B w.e.f. 01.04.2006, therefore, he would be eligible for being called for interview and trade test only w.e.f. 01.04.2011. Thus, the petitioner is not even S.B. CIVIL WRIT PETITION No.9369/2010. Anil Kumar Arya Vs. R.S.M.M. Ltd. & Ors. Order dated 24/09/2014 5/7 eligible for being called for interview and trade test, therefore, he has got no right to question the promotion being made in the cadre of Auto Electrician Gr.-A.

7. That as regards the contents of para No.7 of the writ petition, suffice it to state that Shri O.P. Ajmera and Shri Daya Shanker, who were Technicians Gr.-C, along with other workmen at Jaisalmer, were transferred to Rock Phosphate Mines, Jhamar Kotda Mines vide office order dated 26.10.2005 and their designation as

Technician Gr.-C was changed to Auto Electrician Gr.-C. Since these workmen were transferred, therefore, they were to be treated as junior most in the cadre. A copy of the transfer order dated 26.10.2005 is filed herewith and marked as Annexure.R-1/5.. 3. The petitioner had filed a representation to the respondent RSMML before approaching this Court vide Annex.7 representation dated 03.09.2010 addressed to the Managing Director, of R.S.M.M. Ltd., which has not been responded by the said authority.

4. Mr. Sanjay Mathur, learned counsel for the petitioner has contended that the petitioner was senior to the said private respondents No.4 and 5, S/Sh. O.P. Ajmera and Daya Shanker, and, therefore, he deserves to be first considered for promotion S.B. CIVIL WRIT PETITION No.9369/2010. Anil Kumar Arya Vs. R.S.M.M. Ltd. & Ors. Order dated 24/09/2014 6/7 to the next higher post of Auto Electrician Gr. A, whereas vide order (Annex.8) dated 23.09.2010, the said private respondents were called for interview/trade test for such promotion to the next higher post of Auto Electrician.

5. None has appeared on behalf of respondent- RSMML to contest the present writ petition, though name of Mr. M.R. Singhvi is shown in the cause list.

6. After hearing the learned counsel for the petitioner and upon perusal of the record, this Court is of the opinion that no sufficient reasons have been assigned by the respondents in ignoring the claim of the petitioner, who was admittedly senior to the private respondents No.4 and 5 for promotion to the next higher post of Auto Electrician Gr.A, nor his representation addressed to the M.D., RSMML has been decided by the said authority by a speaking order.

7. In view of these circumstances, the present writ petition is disposed of with a direction to the respondent, Managing Director, Rajasthan State Mines and Minerals Ltd., Udaipur, to decide the pending representation of the petitioner after giving an opportunity of hearing to the petitioner and if the claim of the petitioner is found to be justified, appropriate orders may be passed by him giving him the promotion to the next higher post from the date when junior persons to him were so promoted and if, however, the petitioner is not found to be S.B. CIVIL WRIT PETITION No.9369/2010. Anil Kumar Arya Vs. R.S.M.M. Ltd. & Ors. Order dated

24/09/2014 7/7 entitled for the same, appropriate speaking order, giving reasons for the same, may be passed by the said authority, expeditiously, within a period of six months from today. No costs. A copy of this order be sent to the concerned parties. (Dr. VINEET KOTHARI), J.

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