

Ramdeo Vs. State of Rajasthan

Ramdeo Vs. State of Rajasthan

SooperKanoon Citation : sooperkanoon.com/762885

Court : Rajasthan

Decided On : Jul-22-1993

Reported in : 1993WLN(UC)338

Judge : J.R. Chopra and; N.K. Jain, JJ.

Appeal No. : D.B. Civil Special Appeal No. 424 of 1992

Appellant : Ramdeo

Respondent : State of Rajasthan

Advocate for Pet/Ap. : Mr. Mridul

Judgement :

N.K. Jain, J.

1. This special appeal Under Section 18 of the Rajasthan High Court Ordinance is directed against the order of the learned Single Judge dt. 26.5.92 whereby he has dismissed the writ petition filed by the appellant holding that the disputed questions of fact are involved in it.

2. Mr. Mridul, learned Counsel for the appellant has submitted that the learned Single Judge has erred in dismissing the writ petition on the ground that it involves disputed questions of fact as the pleas raised by the petitioner appellant are supported by the documents rather the court should have summoned the record.

He has also submitted that the court is not precluded to decide the disputed questions of fact particularly when none of the documents produced by the petitioner has been denied but the learned Single Judge has not considered them. He has relied on Smt. Gunwant Kaur and Ors. v. Municipal Committee, Bhatinda and Ors. : AIR 1970 SC802 , Madan Mohan Maharaj v. State of Raj. and Ors. 1978 Vol. XXVIII-342), Sant Lal Bharti v. State of Punjab : [1988]2SCR107 and Kavalappara Kottarathil Kochunni v. State of Madras and Ors. : AIR 1959 SC725 .

3. On the other hand Mr. Vyas, learned Addl. Government Advocate has submitted that the learned Single Judge has rightly dismissed the writ petition as numerous disputed questions of fact are involved and the petitioner has alternative remedy which must be availed first and, therefore, this special appeal is not maintainable. He has relied on S.K. Bhatia and Ors. v. State of U.P and Ors. : [1983]3SCR595 State of U.P. and Anr. v. Labhchand 1993 Vol. 1 S VLR-117, Ashok Kumar v. State Bearing No. D.B.C. Special Appeal No. 1003/86 decided on 5.4.88 and Mohan Pandey and Ors. v. Smt. Usha Rani Rajgaria and Ors. 1992 J.T. 572.

4. We have heard learned Counsel for the parties and perused the material on record as well as the case law cited by the counsel for the parties.

5. The position of law on the point of regularisation stands finally determined by the various decisions of this Court and that of their lordships of the Supreme Court and in view of Rule 3(3) of the Rajasthan P.W.D. (B&R;) including Gardens Irrigation, Water Works & Ayurvedic Departments Work charged Employees Service Rules 1964, it is not in dispute that if incumbent i.e. casual/daily wages work charged employee has completed two years service or more till 1.4.85, he will be eligible for grant of semi permanent status if in the opinion of the competent authority his service record is satisfactory and if he has completed 10 years of satisfactory service he is entitled to grant of permanent status.

6. Now we proceed to consider the claim of the petitioner, in the light of the settled position of law.

7. In this case the petitioner-appellant preferred a writ petition alleging that he was appointed on Muster-Roil on 1.6.84 on a daily wage of Rs. 13/- The daily wage

was increased to Rs. 17/- in the year 1987 and then in the year 1990 to Rs. 25. At present the appellant is getting Rs. 25/- per day. It was also alleged that from the very beginning he has been discharging the duties of Store Munshi. He also moved applications Anx. 3 dt. 5.7.86 and Anx. 4 dt. 20.6.89 for appointing him as Store Munshi and for giving salary of that post but he was not appointed as such. It was prayed that the respondents may be directed to regularise his service on the post of Store Munshi w.e.f. the date the started working with all the consequential benefits and further prayed that interest @ 18% per annum may also be awarded on the amount due. In reply to the writ petition, the non-petitioners stated that he was not engaged as Store Munshi and a post of Store Munshi was vacant at the relevant time. It was stated that the petitioner was engaged as casual labour on 4.6.84 as unskilled labour and he is being paid the amount fixed for the category. It was also stated that by mere performing stray work in the office does not make him entitle for appointment on the post of Store Munshi. It was further stated that the petitioner had not completed two years or more service on 1.4.85 and further the petitioner did not fulfill the requisite qualification laid down in the Government order dt. 1.11.85 and, therefore, he cannot take advantage of the Government Circular. The non-petitioner State has also stated that the petitioner is working in Nagaur Circle whereas the orders Anx. 9 is of Jodhour Circle. The non-petitioner prayed that the writ petition involves disputed questions of fact and the petitioner is not entitled for any relief under Article 226 of the Constitution and he can avail alternative remedy. The petitioner in his rejoinder to the reply filed on 17.3.91 stated that the petitioner had applied for the post of Clerk and the Executive Engineer forwarded that application with the remarks that the petitioner be engaged on the post of Store Munshi for three months. The petitioner also filed some more documents with the rejoinder, The learned Single Judge after hearing both the parties, refused to entertain the writ petition under Article 226 as disputed questions of fact are involved. The contention of Mr. Mridul is that the learned Single Judge should have asked for record to examine the contention that since appointment petitioner-appellant was working as Store Munshi but instead of summoning the record he has dismissed the petition. Undoubtedly, this Court can ask the State to produce the relevant record under Article 226 of the Constitution but at the same time it is incumbent upon the person who approaches the Court

for relief under Article 226, which is an extra ordinary jurisdiction to establish a case for production of relevant documents or otherwise in case he does not have those documents there must be admission of the opposite party about the basic ground raised by the petitioner. But the' case in hand is not a case where the writ petition was dismissed in limine without there being any reply of the opposite party disputing the claim of the petitioner rather in the instant case there is a dispute between the parties on the main issue i.e. on what post the petitioner was appointed/engaged as the petitioner initially came out with a case that he was appointed on daily wage and since appointment he has been discharging duties of Store Munshi. In support of his contention he has filed certificates Anx. 1 and 2 to the effect that he is working in the office satisfactorily. In these certificates it is nowhere mentioned that the petitioner was working as Store Munshi. The petitioner has also filed copy of the applications moved by him Anx. 3 and 4 to appoint him as Store Munshi. A perusal of both these applications shows that the petitioner has not stated that he is discharging duties of Store Munshi, so he may be appointed as such. What he has stated is that he knows work of preparing bills and ledger and, therefore, he may be appointed on a vacant post of Store Munshi. As stated above in the reply the non-petitioners have categorically refuted the claim of the petitioner that he was ever appointed on muster roll or on the work charged basis on the post of Store Munshi by any competent authority and to meet out the case of the non petitioners, the petitioner built up a new case in the rejoinder stating that he had applied for the post of clerk in the office of Assistant Engineer, Nawa and his application was forwarded with the remarks that he be engaged on the post of Store Munshi but admittedly copy of that application has not been produced before this Court, which is all the more necessary particularly when in the writ petition no such averment has been made by the petitioner. The other documents filed by the petitioner are also not helpful to him and it cannot be said that the dispute is not a real dispute. Therefore, in the absence of any order or material it was not necessary for the learned Single Judge to summon the record and the argument of Mr. Mridul has no substance as no relief could be granted only on the basis of averments that too when the averments do not find support from his own applications Anx. 3 and 4 and moreso when the question of appointment of the petitioner on the post of Store Munshi and about the nature of

duties which are being performed by the petitioner, there is a dispute between the parties. Such a disputed question of fact cannot be gone into in a writ petition. In a number of cases it has been held that an application under Article 226 has to be normally decided on facts which are not in dispute or on facts which may have been established by affidavits but when the petition raises complex questions of fact which may require appreciation of evidence, the High Court can very well decline to try such a petition raising disputed question of facts. Thus, the dispute involved in this petition is a real dispute and the claim of the petitioner to regularise him on the post of Store Munsi and to put him in the regular pay scale of that post cannot be accepted in this special appeal and the learned Single Judge has rightly observed that the controversy whether the petitioner was appointed as the Store Munshi or as an unskilled labour on the work charged basis and whether he performed the duties on the post of Store Munshi or as an unskilled labour or a clerk, is not capable of being decided in this writ petition as the controversy requires an elaborate examination of the facts and some oral or documentary evidence to support this contention raised by the petitioner.

8. So far as Anx. 5 dt. 26.6.82 issued by the State Government is concerned, it is not helpful to the petitioner for regularisation for the reason that it extends benefit to the work charged employees covered under the Rules of 1964 who have been continuously working on work charged posts and completed two years or more service on 31.3.82 and their work being satisfactory during the period whereas admittedly the petitioner was engaged on 1.6.84 on daily wage. However, in view of Anx. 6 dt. 1.11.85 the petitioner is entitled for semi permanent status and a salary in the regular pay scale of the lowest post of work charge establishment of the department provided he has worked satisfactorily as admittedly he has served the Department for more than two years.

9. As regards the argument that the petitioner-appellant has worked for some time as Store Munsi for that period. Even about this period there is a serious dispute. The doctrine of equal pay for equal work has been accepted by the Apex Court, so also by this Court and he can move before the competent Court as has been held by a Division Bench of this Court in RSEB v. Fateh Chand 1988 RLR Vol. 2-629 Under Section 33(2) of the I.D. Act who will consider his case on the basis of

evidence led by both the parties and will grant the petitioner adequate relief as regards the period he has undisputedly worked as a Store Munshi on the basis of the aforesaid principle of equal pay for equal work.

10. Consequently, the claim of the petitioner-appellant for regularisation and grant of pay scale of the post of Store Munshi is rejected but he will be free to move before the competent court for the same according to law. However, the respondents are directed to declare the petitioner-appellant as semi permanent in the lowest post of work charge establishment of the Department w.e.f. the date of completion of two years continuous service if his service record is satisfactory and to give him all consequential benefits. Accordingly, this special appeal stands disposed of with the above observations.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com