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Court : Rajasthan

Decided On : Apr-29-2008

Reported in : RLW2008(3)Raj2382

Judge : Shiv Kumar Sharma and; Guman Singh, JJ.

Appellant : Ashok Kumar Jain

Respondent : Rfc and ors.

Advocate for Pet/Ap. : Mr. Virendra Dangi

Disposition : Appeal allowed

Judgement :

Shiv Kumar Sharma, J.

1. This appeal impugns the judgment dated January 9, 1998 of the learned Single Judge whereby writ petitions filed by Ashok Kumar Jain (present appellant) and three others namely Davendra Kumar Pokarna, Rajeev Ajmera and Shiv Kumar, against the Rajasthan Financial Corporation, (in short RFC), Executive Director of RFC and Selection Committee constituted for selection of Depty Manager (Finance) in pursuance to the advertisement dated September 7, 1991, issued by the RFC, were dismissed and the prayer of appellant to appoint him as Deputy Manager (Finance) on the touchstone of the criteria laid down by the respondents

and to award him 20 marks under the head of 'Experience', was rejected.

2. The appeal is primarily founded on the ground that if the appellant was given marks according to the formula fixed by the respondents, he would have secured 20 marks under the head of 'Experience'. When 20 marks are added to the marks obtained by the appellant under the three heads, he would secure 69 marks, more than the marks awarded to the private respondents No. 7 and 12, who were not holding 'responsible position' as they were clerical employees of 'B' Class being 'Assistant' and 'Junior Assistant' in RFC and were not entitled to 20 marks under the head of 'Experience'. In the circumstances therefore the appellant was entitled to be appointed as Deputy Manager (Finance) on the touchstone of criteria laid down by the respondents themselves and learned Single Judge was not right in rejecting the writ petition.

3. Before advertng to the rival submissions, we at the outset, deem it appropriate to notice the order dated March 20, 2003 passed by the Division Bench of this Court in D.B. Special Appeal No. 502, 1998 preferred by Rajeev Ajmera against the said order of learned Single Judge dated January 9, 1998. The operative part of D.B. Judgment reads as under--

Thus, if the appellants were given marks according to the criteria, fixed by the respondents, he would have secured 20 marks under the head 'Experience'. When 20 marks are added to the marks obtained by the appellant under the three heads, he would secure 64 marks. Thus, he will have one more mark than the last selected candidate. This position cannot be legitimately denied by the respondents, when the criteria for assessing the inter se merits of the candidates, was laid down by them. Therefore they are bound to follow the aforesaid criteria. Their actions can only be judged on the basis of the criteria, laid down by them. There is no explanation, why the appellant was granted only 13 marks for experience, when actually, he should have been given 20 marks.

In the circumstances, therefore, the appellant was entitled to be appointed as Assistant Manager, on the touchstone of the criteria, laid down by the respondents. The learned Single Judge was not right in rejecting the writ petition of the appellant. The appellant was denied appointment to the post of Assistant

Manager (Finance), which should have been made available to him, 10 years back. He has lost 10 years of his service against the higher post, for no fault of his. In the circumstances, the appellant has to be restored to the position, which he would have acquired 10 years back, at least, for granting notional benefits. We are giving the appellant, notional benefits, for the reason that the appellant did not work against the higher post. In the circumstances, the principle of 'no work, no pay' must apply. However, since the appellant ought to have been appointed to the post, 10 years back, we are of the view that the appellant would be entitled to reasonable compensation, for the lost years. Accordingly we set aside the order of the learned Single Judge, dated 9th January, 1998 qua the appellant, and direct as follows:

1. The appellant shall be appointed to the post of Assistant Manager (Finance), in the Corporation, w.e.f. 16th May, 1992, when the candidate, with 63 marks, was appointed. The appointment, however, from the date, would be a notional appointment only, for the purposes of seniority.

2. The appellant shall be paid compensation of Rs. 30,000/- on account of failure of the respondents, for not granting appointment to the appellant, though, he deserved the same on the basis of merit.

3. With the aforesaid directions, the appeal stands disposed of.

4. We are told by learned Counsel for the RFC that the above order was implemented in letter and spirit by RFC and Rajeev Ajmera was appointed as Assistant Manager (Finance) w.e.f. May 16, 1992. Learned Counsel placed relevant record for our perusal and we noticed that on the advise of its counsel, RFC did not file S.L.P. against the said order before the Hon'ble Supreme Court and allowed the order to attain finality.

5. In this backdrop we examine the contextual facts which depict that the appellant came in service of the RFC through direct recruitment on the post of Assistant Manager (Finance) in the year 1983-84. The RFC issued advertisement on September 7, 1991 for selection to 16 posts of Deputy Managers (Finance). The minimum qualification and experience as on April 1, 1991 prescribed in the

advertisement for the post of Deputy Manager (Finance) were as under:

of Post promotion	Method is	Post from which to	Criteria of eligibility	Deputy Manager forbe	recruitment made
50% by direct	Asst. Manager Group)	Graduation experience	(Finance with 3 years onthe	50% by postmentioned	inColumn 4

C.A. - No experience is required

Or(b) M.B.A./ICWA/SAS (Commercial/First Class) DCWA/Post Graduate degree in Commerce/Economics/Statistics/Maths.

With3. years experience in Govt. Undertaking/Industrial undertaking/Financial Institution in a responsible position.

6. The appellant being eligible, applied for his recruitment on the post of Dy. Manager (Finance). The appellant was called for interview, but was not awarded marks in accordance with the formula adopted by RFC.

7. The criteria/formula adopted for award of marks in the selection was as under:

No.	Qualification	Total	Marks
Classification			
Secondary 10	Above 75% 10 Marks	66-75% 8 Marks	60-65% 6 Marks
Below 60% 4 Marks	2. Higher Secondary 10	-do-3. Graduation 10	-do-4. Minimum requisite 20
20 Marks	qualification	5. Additional qual. 10	10 Marks
6. Experience in 20 Govt. undertaking/Indus.	Undertaking/Financial	Institute 4 marks per year	RFC subject to maximum20 marks.
Privateexperience-2 marks peryear	subject to maximum12 marks.	7. Extra curricular activities 8	8 marks(State & National LevelSports NCC etc.)
8.			Interview
12			
100			

marks _____

8. The appellant in the writ petition averred that the private respondents 7 and 12 were in-eligible to apply against advertisement dated September 7, 1991 for the post of Deputy Manager (Finance), as they were not having minimum requisite eligibility qualifications including experience of three years in a responsible position and their applications were to be rejected out rightly and they could not have been legally called for interview. It was further averred that the respondents 7 and 12 were throughout junior Assistants/Assistants in 'B' Class Clerical Cadre and whatever working experience they obtained that was of clerical nature or it could not be treated as experience in a responsible position. The experience in a responsible position can only be on the posts in A Class i.e. Officers cadre from Assistant Managers to the Chairman and not in posts of B class i.e. Clerical cadre from Typists/Junior Assistants to Senior Assistants. As the respondents 7 and 12 did not possess requisite 3 years experience in a responsible position their applications were liable, to be rejected and they could not be called for interview for the post of Deputy Manager (Finance). It was further averred that appellant although was entitled to full 20 marks for experience but he was only given 19 marks and because of arbitrariness when result was declared the name of the appellant was not there whereas respondents 7 and 12 were shown as selected in the list. The appellant therefore made following prayer in the writ petition--

to declare the petitioner as selected for the post of Deputy Manager (Finance) and give him appointment on the post of Manager (Finance) w.e.f. The date of order of appointing the respondents Nos. 4 to 19 on the post of Dy. Manager (Finance).

9. The respondent RFC filed reply to the writ petition raising preliminary objection that the appellant after participating in selection is estopped from questioning the process of selection. It was further averred that the appellant was called for interview but was not found suitable for the post of Deputy Manager (Finance) therefore he was not selected. It was wrong on the part of the appellant to state that employees belonging to Class B category are not amongst responsible officers or responsible employees of the RFC. The selection committee consisting of experts examined the candidature of every candidate and number of factors like

qualification, experience over all performance, outlook and performance at the time of interview prevails upon the result of such selection.

10. The appellant filed rejoinder to the reply reiterating the facts mentioned in the writ petition.

11. However, the learned Single Judge did not find force in the submissions of appellant and dismissed the writ petition as indicated hereinabove.

12. Mr. Virendra Lodha, learned Counsel for RFC supported the findings of learned Single Judge and raised preliminary objection in regard the maintainability of the writ petition on the ground of estoppel by acquiescence. Placing reliance on *Madan Lal v. State of J. & K.* (1995) 3 SCC, learned Counsel canvassed that appellant, having taken a chance to appear in an interview and having remained unsuccessful can not turn round and challenge the method of selection as illegal. According to Mr. Lodha, learned Counsel, the appellant is estopped to question the correctness of the selection.

13. Refuting the contention Mr. Virendra Dangi, learned Counsel for the appellant would submit that principle of estoppel by conduct or acquiescence has no application to the facts in the case. According to learned Counsel the appellant had neither challenged the constitution of selection Board nor called in question the method of selection. Challenge was only to the act of unfairness and arbitrariness of selection committee in not awarding full marks under the head 'Experience' to the appellant, as per the criteria for assessing the inter se merits of the candidate was laid down. The appellant was denied appointment to the post of Deputy Manager (Finance) by illegally awarding marks under the head 'Experience' to the private respondents who were not holding 'responsible post' and working on clerical post under the appellant. Learned Counsel placed reliance on *Raj Kumar v. Shakti Raj* : AIR 1997 SC2110 wherein the Apex Court indicated thus--

The entire procedure is also obviously illegal. It is true, as contended by Shri Madhava Reddy that this Court in *Madan Lal v. State of J.K.* (1995) 3 SCC 456 and other decisions referred therein had held that a candidate having taken a

chance to appear in an interview and having remained unsuccessful, cannot turn round and challenge either the constitution of the Selection Board or the method of selection as being illegal; he is estopped to question the correctness of the selection. But in this case, the Government have committed glaring illegalities in the procedure to get the candidates for examination Under the 1955 Rules, so also in the method of selection and exercise of the power in taking out from the purview of the Board and also conduct of the selection in accordance with the Rules. Therefore, the principle of estoppel by conduct or acquiescence has no application to the facts in this case.

14. The laws as to equitable estoppel by acquiescence have been very clearly stated by Fry J. in *Wilmott v. Buker* 1880 1J ChD 96, 105 : 43 Lt 95 thus--

It has been said that the acquiescence which will deprive a man of his legal rights must amount to fraud, and in my view that is an abbreviated statement, of a very true proposition. A man is not to be deprived of his legal rights unless he has acted in such a way as would make it fraudulent for him to set up those rights. What, then are the elements or requisites necessary to constitute fraud of that description?

In the first place, the plaintiff (i.e. the party pleading acquiescence) must have made a mistake as to his legal rights; secondly the plaintiff must have expended some money or must have done some act (not necessarily upon the defendants land) on the faith of the mistaken belief;

thirdly, the defendant, the possessor of the legal right, must know of the existence of his own right which is inconsistent with the right claimed by the plaintiff. If he does not know of it, he is in the same position, as the plaintiff and the doctrine of acquiescence is founded upon conduct with a knowledge of your legal right;

fourthly, the defendant, the possessor of the legal right, must know of the plaintiff's mistaken belief of his rights. If he does not, there is nothing which calls upon him to assert his own rights;

lastly, the defendant, the possessor of the legal right must have encouraged the plaintiff in his expenditure of money, or in the other acts which he has done, either directly or by abstaining from asserting his legal right. Where all these elements exist there is fraud of such a nature as will entitle the Court to restrain the possessor of the legal right from exercising, it, but in my judgment nothing short of this will do.

15. If a party interested in preventing an act being done has full notice of its being done and acquiesces in it, he will be estopped. This is the doctrine of acquiescence. Acquiescence is not a question of fact, but a legal inference from facts found.

16. In the instant matter from the facts found, we can safely hold that doctrine of estoppel by conduct or acquiescence has no application. Here the appellant has neither challenged the constitution of selection committee nor questioned the method of selection. The criteria adopted by the selection committee is acceptable to the appellant. His only grievance is that the selection committee did not follow its own criteria. The appellant was denied appointment by not awarding full marks under the head 'Experience', whereas private respondents who were not entitled to marks under the head 'experience' even according to the criteria adopted by selection committee, were given full marks. In our opinion, ratio indicated in *Raj Kumar v. Shakti Raj* (supra) is squarely applicable to the facts of the instant case.

17. At this juncture it will not be out of place to mention that the respondent RFC did not apply same yardstick in contesting the cases of similar situated employees in the Court. As already noticed while contesting appeal of *Rajeev Ajmera*, the RFC almost conceded to the submissions advanced on behalf of *Rajeev Ajmera*. Neither preliminary objection in regard to maintainability of his writ petition was raised nor anything was said in support of marks awarded by the selection committee. Therefore the Division Bench had to observe thus-

Thus, if the appellants were given marks according to the criteria, fixed by the respondents, he would have secured 20 marks under the head 'Experience'. When 20 marks are added to the marks obtained by the appellant under the three heads, he would secure 64 marks. Thus, he will have one more mark than the last

selected candidate. This position cannot be legitimately denied by the respondents, when the criteria for assessing the inter se merits of the candidates, was laid down by them. Therefore they are bound to follow the aforesaid criteria. Their actions can only be judged on the basis of the criteria, laid down by them. There is no explanation, why the appellant was granted only 13 marks for experience, when actually, he should have been given 20 marks.

18. During the course of arguments we asked learned Counsel for the RFC to give benefit to the appellant, as has been given to similarly situated employee Rajeev Ajmera. Learned Counsel was very fair in giving advise to RFC to apply ratio of Rajeev Ajmer's case to the case of appellant but RFC declined to accede to the advise.

19. It is well settled that the court cannot assume the role of selection committee but it may enquire as to whether the allocation of marks is with an oblique intention and whether it is sp arbitrary as capable of being abused or misused in its exercise.

20. In Indian Airlines Corporation v. Capt. K.C. Shukla : (1993)ILLJ215SC the Apex Court observed as under--

.Adjusting equities in exercise of extra ordinary jurisdiction is one thing but assuming the role of selection committee is another. The court cannot substitute its opinion and devise its own method of evaluating fitness of a candidate for a particular post. Not that it is powerless to do so and in a case where after removing the illegal part it is found that the officer was not promoted or selected contrary to law it can issue necessary direction. For instance a candidate denied selection because of certain entries in his character roll which either could not be taken into account or had been illegally considered because they had been expunged the court would be within jurisdiction to issue necessary direction..

21. In Jasvinder Singh v. State of J & K : (2003)2SCC132 it was held by the Supreme Court that there can not be any hard-and- fast rule of universal application for allocating the marks what ultimately required to be ensured is as to whether the allocation as such is with an oblique intention and whether it is so

arbitrary as capable of being abused and misused in its exercise.

22. Recruitment and service conditions of the staff of RFC is governed by the provisions contained in Rajasthan Financial Corporation) Staff Regulations) 1958 (for short 'Regulations'). Regulations 6 and 8 provide following three categories of permanent staff--

(1) 'A' Class officers cadre-includes Assistant Manager to Chairman.

(2) 'B' Class- Assistant/clerical cadre- including Typist/Jr. Assistant to Sr. Assistant.

(3) 'C' Class- Subordinate staff i.e. Peon, Jamadar, Messengers, Drivers etc:

Organisational Hierarchy has been described in Schedule 'A' thus--

Schedule-A

RFC Organisational Hierarchy Chart
Chairman|Managing Director|Executive Director|General Managers-'A' CLASS i.e. Officer Cadre|DY. General Managers.|Managers|DY. Managers & Asstt. Managers|SR. Assistants 'B' Class i.e. Clerical Cadre|Assistants|Jr. Assistants/TypistsJamadars/Messengers etc. - 'C' Class i.e. Peons

23. Respondent No. 7 (Rupendra Kumar Jain) and respondent No. 12 (Ghewar Chand Jain) had been throughout Jr. Assistant/Assistant in 'B' class clerical cadre and their names were shown at Numbers 61 and 134 in the tentative seniority list of Assistant/Jr. Assistant as on January 1, 1998. Whatever working experience they had, was of clerical cadre in RFC only. In our opinion working experience of clerical nature could not be treated as experience on a Responsible Position.

24. As per Oxford Advanced Dictionary 'Responsible position' means 'involving the obligation to make decisions for others and bear the blame for their mistakes.'

25. Undeniably a person working in clerical cadre does not have authority to make decision for others and he does not bear the blame for the mistakes of the others. Since respondents No. 7 and 12 did not possess requisite 3 years experience in a

'Responsible Position'; their applications ought to have been rejected outrightly and they could not be called for interview for the post of Dy. Manager (Finance). We are of the considered opinion that respondents No. 1,2, and 3 flouted the criteria adopted by them in awarding full marks (20) under the head 'Experience' to respondents No. 7 and 12 ignoring the fact that they were not working in a 'Responsible position'. On the contrary the appellant was given 19 marks under the head 'Experience' despite the fact that he had requisite 3 years experience in a 'responsible position' and was entitled to full 20 marks under the head 'Experience'. If the appellant was given the marks according to the criteria fixed by the respondents 1, 2, and 3 he would have secured 20 marks under the head 'Experience' whereas respondents No. 7 and 12 would have secured '0' marks under the said head. In the circumstances, therefore, the appellant was entitled to be appointed as Deputy Manager (Finance) on the touchstone of the criteria, laid down by the respondents No. 1, 2 and 3. The learned Single Judge, thus was not right in dismissing the writ petition of the appellant. The appellant was denied appointment to the post of Dy. Manager (Finance) which should have been made available to him 16 years back. He has lost 16 years of his service against the higher post and suffered humiliation working under respondents No. 7 and 12 who had worked in a clerical cadre under his subordination, for no fault of his.

26. In *Inder Prakash Gupta v. State of J. & K.* : (2004)6SCC786 the Apex Court in a similar situation indicated thus--

.a clear case of breach of the statutory rules had been made out. While the appellant had been given minimum marks in the viva voce tests, the other, respondents who did not even fulfill the requisite criterion were awarded higher marks.

The Apex Court further observed as under--

We are, therefore, of the opinion that the interest of justice would be subserved if the State is directed to fully comply with the directions of the High Court by giving all benefits to the appellant herein including monetary benefits and seniority by placing him in the select list above the respondents 8 and 9. We further direct that if any respondent has been promoted to the higher post in the meantime the same

would be subject to the aforementioned direction. Necessary order in this behalf must be passed by the State.

27. In the instant matter also, the ends of justice would be served if the respondent RFC is directed to appoint the appellant to the post of Dy. Manager (Finance) with effect from the date when the respondents No. 7 and 12 were given appointment. The appellant shall be entitled to all benefits including monetary benefits, and seniority and he shall be placed in the select list above respondents No. 7 and 12.

28. For these reasons we allow the appeal and set aside the order dated January 9, 1998 of the learned Single Judge.

29. We direct respondents No. 1, 2, and 3 to appoint the appellant to the post of Dy. Manager (Finance) with effect from the date when the respondents No. 7., 12, and other similarly situated respondents were given appointment on the post of Dy. Manager (Finance). The appellant shall be entitled to all benefits including monetary benefits and seniority and he shall be placed in the select list above respondents No. 7, 12 and other similarly situated respondents. We further direct that if any respondent has been promoted to the higher post in the meantime the same, would be subject to the aforementioned direction. Necessary order in this behalf must be passed by the RFC within 90 days of the receipt of copy of this order. The appellant shall also be entitled to the costs which we quantify as Rs. 20,000/-.