

Bal Kishan Vs. District and Sessions Judge and anr.

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Court : Rajasthan

Decided On : Feb-27-1998

Reported in : 1998(2)WLC756; 1998(1)WLN190

Judge : B.S. Chauhan, J.

Appeal No. : S.B. Civil Writ Petition No. 3018 of 1990

Appellant : Bal Kishan

Respondent : District and Sessions Judge and anr.

Advocate for Pet/Ap. : Mr. Govind Mathur

Disposition : Petition Allowed

Judgement :

B.S. Chauhan, J.

1. The instant petition has been filed challenging the order dated 6.6.1990 contained in Annexure. 4 to this writ petition, by which the claim of the petitioner for promotion to the post of Upper Division Clerk has been turned down.

2. The petitioner claimed that he had been appointed as Lower Division Clerk vide order dated 11.9.1969 in the District & Sessions Judgeship, Pali and in pursuance to the said appointment letter, he had been confirmed as Lower Division Clerk with

effect from 1.10.1982. The petitioner's name was shown at Serial No. 29 and the respondent No. 2 was shown at Serial No. 31 as is evident from the Seniority List contained as Annexure. 1 to the petition. The Rajasthan Subordinate Courts Ministerial Establishment Rules, 1986 (hereinafter referred to as 'the Rules, 1986') governs the service conditions of the employees like the petitioner and for the purpose of promotion, the Rule 14 of the Rules, 1986 provides the criteria of 'seniority cum merit'. Vide impugned order dated 6.6.1990, the respondent No. 2 had been promoted rejecting the claim of the petitioner on the ground that some adverse entries had been made in the years 1986-87 against the petitioner. Being aggrieved and dissatisfied, the instant writ petition has been filed.

3. Heard Mr. Govind Mathur, learned Counsel for the petitioner, Mr. C.R. Jakhar, Additional Government Advocate for the respondent No. 1 and Mr. Kailash Trivedi for Mr. Vinyayk M. Joshi, for the respondent No. 2.

4. Learned Counsel for the respondents have taken a plea that the alternative remedy of making a representation to the High Court is available to the petitioner and. thus, he should be relegated to the said remedy. The petition was filed in the year 1990 and after the lapse of such a long period, it is not desirable that the petitioner be asked to seek an alternative remedy.

5. A Seven Judges Bench of the Hon'ble Supreme Court in State of Kerala and Anr. v. N.M. Thomas and Ors. : (1976)ILLJ376SC , observed as under:

Seniority cum merit means that given the minimum necessary merit requisite for efficiency of administration, the senior, though the less meritorious, shall have right. This will not violate Articles 14, 1(1) and 16(2) of the Constitution of India.

6. In Sadi Lal v. Deputy Commissioner, Gurgaon and Ors. 1974 (1) SLR 217, it has been held that if the promotion is to be made on the basis of seniority cum merit', the seniority is the relevant factor to be considered and a senior person is to be selected irrespective of better merit of his juniors.

7. However, in Sr., Jagathigowda C.N. and Ors. v. Chairman, Kaweri Gramin Bank and Ors. : AIR 1996 SC2733 , the Apex Court has observed as under:

It is settled proposition of law even while making promotion on the basis of seniority cum merit, the totality of the service record of the officer concerned has to be taken into consideration. The Performance Appraisal Forms are maintained primarily for the purpose that the same are taken into consideration when the person concerned is considered for promotion to the higher rank.

8. In view of the aforesaid judgment of the Hon'ble Supreme Court, even if the promotion is to be made on the basis of 'seniority cum merit', the junior person having a better merit can be promoted ignoring the claim of the senior person. However, this proposition of law has been declared as settled proposition of law by the Hon'ble Apex Court in the aforesaid judgment. No reference has been made of the earlier Seven Judges Bench in this case and in view of the judgment of the Seven Judges Bench, it cannot be the settled position of law.

9. In *State of Uttar Pradesh v. Ram Chandra Trivedi* : (1977)ILLJ200SC , the Hon'ble Supreme Court has held as under:

It is also to be borne in mind that even in cases where a High Court finds any conflict between the views expressed by larger and smaller benches of this Court, it cannot disregard or skirt the views expressed by the larger benches. The proper course for a High Court in *Union of India v. K.S. Subramanian* (Civil Appeal No. 212 of 1975 decided on July 30, 1976) is to try to find out and follow the opinion expressed by larger benches of this Court in preference to those expressed by smaller benches of the Court which practice, hardened as it has into a rule of law is followed by this Court itself.

10. Similar view has been taken by the Apex Court in *Union of India and Ors. v. Godfrey Philips India Ltd.* 1995 (4) SCC 369; and *General Manager, Telecom v. S.Sriniwasan Rao and Ors.* : (1997)8SCC767 .

11. Thus, in view of the above, the judgment in *Sr. Jogathigowda* is in per incuriam and cannot be accepted.

12. In view of the above, it was not permissible for the respondent No. 1 to reject the claim of the petitioner for promotion only on the ground that Annual Appraisal

Report of the petitioner in respect of one year was not satisfactory. The petition succeeds and is allowed. The impugned order dated 6.6.1997 (Annexure. 4) is quashed. The respondent No. 1 is directed to consider the claim of the petitioner for promotion from the date the said impugned order has been passed and if the claim of the petitioner is accepted, he shall be entitled for notional promotion from the said date. However, he shall not be entitled for the back wages. This exercise is to be done by the respondent No. 1 within a period of three months from the date of production of the certified copy of this order.

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