

Deoki Nandan and ors. Vs. State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Apr-14-1987

Reported in : 1987WLN(UC)268

Judge : Kanta Bhatnagar and; Ashok Kumar Mathur, JJ.

Appeal No. : D.B. Civil Writ Petition No. 778 of 1980

Appellant : Deoki Nandan and ors.

Respondent : State of Rajasthan and ors.

Advocate for Pet/Ap. : Mr. Mridul

Disposition : Petition dismissed

Judgement :

Ashok Kumar Mathur, J.

1. This writ petition is directed against the order of the Rajasthan Civil Services Appellate Tribunal Rajasthan, Jaipur hereinafter referred to as 'the Tribunal') dated 10-3-1980 whereby the Tribunal allowed the appeal of deceased N.K, Singh respondent which was prosecuted by his wife Smt. Pushpa Lata Chandel and set aside the order so far as it related to respondents Nos. 3 to 5 before the Tribunal. The orders Ex. 4 and Ex 7 dated 30-11-1977 and the order dated 25-2-1978 (Ex. 9) were quashed. Respondents No. 1 and 2 were directed to consider the case of

promotion on the post of Statistical Assistant (except those held by respondents No. 3 to 5) on the basis of the seniority of the parties determined by the order dated 10-7-1978 as if any of the impugned orders were not passed at all It was further directed that the persons found suitable for promotion shall be given consequential benefits with effect from 30-11-1970.

2. The brief facts which are necessary for the disposal of this writ petition are that one Shri N.K. Singh (who died during the pendency of the appeal and his wife Smt. Pushpa Lata Chandel was substituted for the appellant) filed the original appeal before the Tribunal against the order dated 30-11-1977 whereby the respondents No. 3 to 18 before the Tribunal were promoted on officiating basis from the post of Statistical Inspectors to the post of Statistical Assistants on temporary basis under Rule 27(1) of the Rajasthan Statistical Subordinate Service Rules, 1971 (here in after called 'the Rules of 1971')- After filing of the appeal respondent No. 2 passed another order dated 25-2-1978 by which these 16 persons were appointed as Statistical Inspectors with effect from 11-1-1972. The appellant thereafter amended the memo of appeal to challenge this order as well. Deceased N.K. Singh was appointed on the post of Progress Assistant on 1-12-1958 and in pursuance of that order he joined his services on 8-1-1959, His appointment was made on temporary basis for a period of six months or till selected candidates were made available by the Rajasthan Public Service Commissioner which ever is earlier. The appellant continued with the concurrence of the Rajasthan Public Service Commission till he was selected by the Commission for this post in the year 1965. The appointment of the appellant on substantive basis was issued on 2-7-1965. He was sent on deputation to the Panchayat Samiti, Merta in the year 1967. All the posts of Progress Assistants in the Panchayat Samiti and Development Department were abolished and the appellant along with other Progress Assistants was declared surplus and sent to the G.A.D. for absorption in the Medical and Health Directorate on the post of Computers. In the year 1972 the Rajasthan Statistical Subordinate Service Rules, 1971 (here in after called 'the Rules') were promulgated. The appellant was sent back to the Directorate of Economics and Statistics and he was appointed as Statistical Inspector by the order dated 16-6-1972 and was also promoted with effect from 14-9-1972. The post of Statistical Inspector was a promotion post to

which Progress Assistants and Computers were entitled to be promoted. The contention of the appellant was that he was a duly selected Progress Assistant of the Rajasthan Public Service Commission and stood confirmed with effect from 14-9-1972. As against this the respondents No. 3 to 18 were appointed on temporary basis as Computers from the period 1960 to 1965 and were confirmed under Rules of 1971 with effect from 14-9-1972. They were in the meantime appointed as Statistical Inspectors in the year 1972 by the office order dated 18-11-1972. They were further promoted to the post of Statistical Inspectors on temporary basis with effect from 14-9-1972. This order dated 18-11-1972 was subsequently withdrawn by the order dated 30-11-1977 Ex.4 and on the same day the order Ex. 7 was passed promoting 18 persons, including the 16 respondents from the posts of Statistical Inspectors to that of Statistical Assistant which is the next promotion post under the Rules. The main grievance of the appellant was that this cannot be done without following the Rules of 1971. It was contended that this order was subsequently withdrawn but in the meantime the benefits given under this order were not withdrawn. The appellant also claimed seniority over these respondents and made a grievance that he has not been given his dues according to seniority. It was also submitted that after 5 years the order dated 25-11-1978 cannot be passed by which these respondents No. 3 to 18 have been shown to be duly selected to the post of Statistical Inspectors with effect from 11-1-1972 and thereby the further promotion of these persons by the order dated 10-11-1977 is violative of Articles 14 and 16 of the Constitution.

3. A return was filed by the respondents and the respondents have justified their actions.

4. The Tribunal after hearing both the parties held that the orders dt. 30-11-1977 Exs. 4 & 7 and the order dated 25-2-1978 Ex. 9 are not legal and set aside those orders and gave the direction as mentioned above. Aggrieved against this, the petitioners have approached this Court challenging the validity of the order dated 10-3-1980 passed by the Tribunal.

5. Mr. Mridul, learned Counsel for the petitioners contended that the appointment of these petitioner respondents is by way of direct recruitment under Rule 20. We

have gone through the orders as well as Rule 20 and we are not inclined to accept this contention of Mr. Mridul. Rule 20 appears under Chapter IV which provides the procedure for direct recruitment. The order dated 25-2-1978 clearly states that the appointment of these persons is regularised on the post of Statistical Assistants with effect from 11-1-1972. The submission of the learned Counsel is wholly misconceived as there is no provision in Rule 20 that an appointment can be regularised. Chapter IV including Rule 20 clearly lays down the procedure for direct recruitment. Thus, the regularisation of these incumbents under Rule 20 and treating them as direct recruits is wholly misconceived. Thus, the contention of the learned Counsel is not sustainable.

6. We have also gone through the order of the Tribunal and we are fully in agreement with the views expressed by the learned Members of the Tribunal.

7. Mr. Mridul, learned Counsel for the petitioners also contended that the appeal is abated after the death of Shri N.K. Singh and the right to sue does not survive to his wife Smt. Pushpa Lata Chandel. In this connection, learned Counsel has invited our attention to Keshav Puri v. Union of India 1979 RLW 509 where in it was held that a Government servant filing the appeal but during the pendency of the appeal dies then the right to sue does not survive.

8. Mr. Singhvi, learned Counsel has invited our attention to Rule 35 of the Rajasthan Civil Services (Service Matters Appellate Tribunal) Rules, 1976 (here in after referred to as 'the Rules of 1976'). Rule 35 reads as under:

35. Continuation of proceedings after the death of a party.--An appeal shall abate, unless on the death of appellant his legal representative applies for its continuance to the Tribunal within a period of thirty days from the date of the death of the appellant. In the event of the death of any respondent, his legal representative, if he so desires, may apply for being impleaded as a party within a period of thirty days from the date of the death of the respondent.

9. Mr. Singhvi, learned Counsel also submitted that in view of Rule 35 the appeal shall not abate before the Tribunal as on the death of Shri N.K. Singh his wife came to be substituted as his legal representative. He also invited our attention to

Tej Pal Singh v. State of U.P. and Anr. (1986) 2 SLR 730 and Katheeja Bai v. Superintending Engineer and Ors. : (1986)ILLJ314SC .

10. In Keshav Puri's case (1) this Court has taken the view that on account of the death of the incumbent the right to sue does not survive to the legal representatives. But the present case is distinguishable as in the case of Keshav Puri(1) the petitioner directly filed a writ petition before this Court, but in the present case Shri N.K. Singh approached the Tribunal and Rule 35 of the 1976 Rules clearly provides that in the event of death of the appellant the appeal shall abate unless his legal representative applies for continuation to the Tribunal within thirty days and it further provides that if the legal representative so desires may apply and he can be impleaded as a party for prosecuting the appeal. Thus, there is a clear provision under the Rules of 1976 that the appeal can survive inspite of the death of the appellant through his or her legal representative. Thus, the ratio of the Keshav Puri's case (1) is not applicable in the present case.

11. Recently, their Lordships of the Supreme Court in Tej Pal Singh's case (1986) 2 SLR 730 allowed the petition inspite of the death of the incumbent and directed that all the arrears and benefits accruing to the deceased incumbent shall be paid to his wife. It was observed as under:

We are informed that the appellant has died on 27-11-1983 and his legal representatives have been brought on record. The arrears of salary, pension etc. payable to the appellant on the above basis till 27-11-1983 shall, therefore, be paid to the legal representatives of the appellant within four months from today. The appeal is accordingly allowed. The legal representatives of the appellant are also entitled to the costs in both the Courts.

12. Similarly in Katheeja Bai's case : (1986)ILLJ314SC their Lordships of the Supreme Court allowed the arrears to the widow of the retiral benefits which were illegally and unreasonably withheld to her husband during his life-time. The writ petition was allowed and the respondents were directed to pay the arrears with interest at rate of 15% per annum plus compensatory costs of Rs. 2,500/-.

13. Thus, in this view of the matter, the objection of Mr. Mridul does not survive and it is over-ruled.

14. In the result, we do not find any merit in this writ petition and the same is dismissed.

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