

J. C. Bhatia

Vs

State of Rajasthan and Others

Civil Appeal No. 388 of 1971

(D.G. Palekar, A. Alagiriswami JJ)

23.04.1973

JUDGMENT

ALAGIRISWAMI, J. –

1. This appeal by special leave is against the judgment of a Division Bench of the Rajasthan High Court reversing on appeal the judgment of a learned Single Judge who allowed the writ petition filed by the appellants and another Kalu Ram. The facts necessary for the disposal of this appeal may be stated in a short compass.

2. The appellant entered the service of the former Kotah State on April 11, 1949, as a temporary Overseer. In due course he was promoted as an officiating Assistant Engineer on October 26, 1959. On January 8, 1968, 41 Engineering Subordinates were appointed as officiating Assistant Engineers against permanent posts and 35 against temporary vacancies. On January 17, 1968, services of 17 temporary Assistant Engineers were terminated and 4 temporary Assistant Engineers, including the appellant, were reverted to their substantive cadre as Engineering Subordinates. The petitioners filed a writ petition before the High Court on January 22, 1968, challenging both these orders. The learned Single Judge following his earlier decision in *Guman Singh v. State of Rajasthan and Others*, ((1971) 2 SCC 452) allowed the writ petition and held that the reversion of the appellant while keeping or promoting junior men in his place was not valid and quashed the orders reverting the appellant as well as the order appointing the 76 Assistant Engineers, already referred to. The State of Rajasthan took the matter on appeal before a Division Bench and the Bench following its decision in *D.B. Special Appeal No. 57 of 1968*, reversing the judgment of the learned single Judge in *S.B. Civil Writ Petition No. 79 of 1967*, allowed the appeal. That judgment of the Division Bench had been rendered after the judgment in the present case.

3. In the meanwhile the judgment of the Division Bench in *Guman Singh's case*, (1971) 2 SCC 452 came up to this Court on appeal. In considering the circular, dated August 27, 1966, containing administrative instructions for the guidance of Selection Committees and the Appointing Authorities, and laying down a marking system for that purpose, this Court observed that it was so rigid that it curtailed the power conferred on the appointing authorities by statutory rules and it was therefore opposed to statutory Rules 28-B and 32, and held it void thus restoring the judgment of the learned Single Judge in *Guman Singh's case* (supra). The selections of the 76 persons, who were appointed on January 8, 1968, were made on the basis of the circular held invalid by this Court and the selections have necessarily got to be set aside. The result would be that the Departmental Promotion Committee would now have to reconsider the promotion of all these 76 persons as well as the appellant leaving out of account the circular of August 27, 1966.

4. Mr. Jain appearing on behalf of Rajasthan Government tried to argue that these 76 appointments are officiating appointments under Rule 27 of the Rajasthan Service of Engineers (Irrigation Branch) Rules, 1954 and, therefore they are not liable to be set aside. We think his argument is wholly without substance. Rule 27 reads as follows :

"27. Emergent temporary appointments of Assistant Engineers - A vacancy in the grade of Assistant Engineers may be filled by Government temporarily by appointing thereto in an officiating capacity an official eligible for promotion as Assistant Engineer or by appointing thereto any other suitable person possessing the qualification prescribed in Rule 12 :

Provided -

(i) that appointments up to a period of four months may be made by the Chief Engineer;

(ii) that appointment shall not be continued for a period exceeding one year without the concurrence of the Public Service Commission.

The 76 appointments in this case were made after consideration and selection by the Departmental Promotion Committee and therefore they cannot fall under Rule 27. Indeed their appointment order does not purport to be under that Rule. The order only says that the appointments are made against the post of Assistant Engineers reserved for promotion quota under Rule 25. The very circumstances under which these appointments have been made would show that they do not fall under Rule 27. If they were who has been officiating as an Assistant Engineer for nearly 9 years was reverted while 76 new appointments were being made. Instead of gracefully accepting the result of the decision of this Court in Guman Singh's case (Supra) as applying to the facts of this case, a wholly pointless argument was sought to be made. The judgment of this Court in Guman Singh's case (supra) does not apply to appointments under Rule 27; it can apply to promotions made on the recommendation of the Departmental Promotion Committee.

5. The appeal is allowed and the judgment of the Division Bench of the Rajasthan High Court set aside. As already mentioned, the appointment of the 76 Assistant Engineers on January 8, 1968, will have to be reconsidered along with the claims of the appellant and after excluding the circular of August 27, 1966. The First Respondent will pay the appellant's costs.

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