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IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAI PUR

ORDER

IN

1. S. B. Civil Writ Petition No. 5993/1997

D.D. Vashistha (since deceased)
through his LRs Smt. Shakuntala
Sharma and Others Vs. State of
Rajasthan and Others

2. S. B. Civil Writ Petition No. 2/1993

The State of Rajasthan and Another
Vs. Shri D.D. Vashistha and
Another

3. S. B. Civil Writ Petition No. 5441/1994

Prahlad B. Chhablani Vs. State of
Rajasthan and Others

Date of Order ::: 26.02.2010

Present

Hon'ble Mr. Justice Mohammad Rafiq

//Reportable//

SBCWP No. 5993/1997

Shri Shiv Charan Gupta, Counsel for petitioner
Shri S.D. Khaspuri a, Additional Government Counsel
for respondents No.1 and 2
Shri Sanjeev Prakash Sharma, Counsel for respondent
No. 3

SBCWP No. 2/1993

Shri S.D. Khaspuri a, Additional Government Counsel
for petitioners
Shri Sanjeev Prakash Sharma, Counsel for respondent
No. 1
Respondent No.2 is a formal party

SBCWP No. 5441/1994

Shri Sanjeev Prakash Sharma, Counsel for petitioner
Shri S.D. Khaspuri a, Additional Government Counsel
for respondents No.1 and 2
Shri Shiv Charan Gupta, Counsel for respondent No. 3
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By the Court: -

These three writ petitions raise common questions of law and fact and therefore they were clubbed and heard together and are being decided by this common judgment.

Shri Shiv Charan Gupta, Learned Counsel for petitioner D.D. Vashistha (in SBCWP 5993/1997) at the outset submitted that Shri D.D. Vashistha has during the pendency of writ petition expired and his legal representatives have been brought on record who have substituted themselves for him as petitioners to pursue the present writ petition. Therefore, wherever hereinafter reference is made to petitioner in this judgment, it should be understood to mean original writ petitioner Shri D.D. Vashistha.

State of Rajasthan and another have come up in writ petition No.2/1993 challenging judgment dated 06.02.1992 of Rajasthan Civil Services Appellate Tribunal, Rajasthan, Jaipur, (for short, 'the Tribunal') in Appeal No. 281/1987, filed by D.D. Vashistha, which was allowed. Prahlad B. Chhablani has also questioned validity of very same judgment dated 06.02.1992 of the Tribunal, although for

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different reasons, on apprehension that he may be adversely affected by implementation thereof.

Petitioner D.D. Vashistha filed a separate writ petition being SBCWP No.5993/1997 with prayer that respondents be directed to consider his case for promotion on the post of Assistant Engineer with effect from 23rd September, 1974 on temporary basis and thereafter from 8th July, 1975 on regular basis instead of 01.04.1977 on analogy that his junior Prahlad B. Chhablani was granted those benefits and accordingly his pay be directed to be fixed by giving him benefit of Rule 26-A of the Rajasthan Service Rules, and further consider his case for grant of consequential benefits including of promotion to the higher post.

Background in which this litigation has reached this Court can be gathered from impugned judgment of Tribunal which is – that after regular selection of D.D. Vashistha he was appointed as temporary Surveyor in office of Assistant Town Planner, Village Planning Cell, R.C.F., Jaipur, with effect from 13.06.1962 in pay scale of 115-335, which was revised from time to time. The Government

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decided to have a centrally administered set up of all Town Planning Sections existing at that time in various Government Departments, under control of Chief Town Planner, and thus staff working in Town Planning Cell of R.C.F., was absorbed in Town Planning Organization and accordingly D.D. Vashistha was also absorbed in Town Planning Department as a surplus person, vide order dated 12.08.1970. A tentative seniority list of Surveyors was issued in which name of D.D. Vashistha appeared at Serial No.4. Said seniority list was made final by order dated 31.12.1970, wherein it was mentioned that name of D.D. Vashistha and names of Siyaram and Jeet Singh would be placed in seniority list between Shri A.L. Dube whose name was at S.No.3 and Shri Chhablani whose name was at S.No.7. Certain doubts were raised whether D.D. Vashistha possessed requisite qualification necessary for appointment as Surveyor, therefore, except him, all others were confirmed as Surveyor/Overseer with effect from 16.09.1971. D.D. Vashistha, on his request was transferred to Agriculture Department on 22.03.1973, though his lien was retained in Town Planning Department.

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In the meantime the Department of Personnel by its letter dated 26.11.1976 decided question regarding recognition of qualification held by D.D. Vashistha as equivalent to Diploma in Civil Engineering. Department of Personnel held that D.D. Vashistha was entitled to be confirmed as Junior Engineer in Town Planning Department from the date on which his juniors were confirmed regardless of his transfer to Agriculture Department in 1973. Despite this, Shri D.D. Vashistha was not confirmed against the post of Junior Engineer. It should be noted at this stage that post of Surveyor against which D.D. Vashistha was working in Agriculture Department was abolished and therefore he was repatriated to his parent Department i.e. Town Planning Department vide order dated 24.12.1974 of the Director of Agriculture Department. The Chief Town Planner, instead of confirming D.D. Vashistha, contrarily conveyed to Government in its Department of Personnel, by his letter dated 26.11.1976 that case of D.D. Vashistha for confirmation against post of Junior Engineer has been rejected. Aggrieved by that order, D.D. Vashistha filed an Appeal

No. 352/1976 before the Tribunal. Said appeal was allowed by judgment dated 25.07.1977, by which the Government was directed to include name of D.D. Vashistha in seniority list dated 31.12.1970 at appropriate place. Aggrieved by that judgment of Tribunal, the State Government filed S.B. Civil Writ Petition No.427/1976 which was rejected after contest, by a Coordinate Bench of this Court vide judgment dated 09.04.1979. A seniority-list was issued by Town Planning Department on 17.04.1979 of Surveyors working with it as on 31.12.1970 in modification of their earlier order, and name of D.D. Vashistha was shown at Serial No.6 below Shri Siyaram and Jeet Singh, and above Shri Prahlad B. Chhablani. However, Town Planning Department, by its order dated 15.07.1980 again informed Shri D.D. Vashistha that since he has not rendered satisfactory performance during the year 1970-71, it was not possible to consider his case for confirmation from 16.09.1971. Aggrieved thereby, Shri D.D. Vashistha filed fresh Appeal before the Tribunal, which was dismissed by order dated 24.09.1980 as premature because the Government maintained before the Tribunal that it was

simply a letter conveying proposed order but no final order has so far been passed. It was thereafter when Town Planning Department passed an order on 22.01.1986 confirming Shri D.D. Vashistha with effect from 16.09.1972 in stead of 16.09.1971, as was earlier directed by the Tribunal and the Department of Personnel, Shri D.D. Vashistha again approached the Tribunal by filing Appeal No. 281/87, which has been allowed by impugned judgment. As a result of confirmation of D.D. Vashistha with effect from 16.09.1972, he was rather placed in seniority list dated 03.03.1981 between Shri R.S. Gopalra (Serial No.11) and Shri Bhawani Ram (Serial No.12). All these three writ petitions have been filed against the backdrop of these facts.

Shri S.D. Khaspuria, Learned Additional Government Counsel, submitted that the Tribunal could not have allowed last appeal filed by D.D. Vashistha by impugned judgment because the appeal was hopelessly time barred. Cause of action accrued to Shri D.D. Vashistha on 15.07.1980 when he was denied confirmation on the post of Junior Engineer with effect from 16.09.1971. Subsequent order publishing seniority list dated 09.04.1987 merely

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reflected the same position, which could not furnish any new reason or fresh cause of action to Shri D.D. Vashistha to file appeal. The Tribunal was wholly unjustified in allowing the appeal in absence of such of persons who were likely to be adversely affected by its order. In that eventuality, they would have been pushed down in the seniority by Shri D.D. Vashistha, if he was brought above them. In any case, Shri D.D. Vashistha did not challenge the order dated 22.01.1986 by which he was confirmed with effect from 16.09.1972. It is prayed that the judgment of the Tribunal be therefore set-aside.

Shri S.D. Khaspuria, Learned Additional Government Counsel, submitted that Shri D.D. Vashistha, in so far as his fresh writ petition is concerned, could not be considered for grant of benefit of officiating promotion as given to Shri Prahlad B. Chhablani and that he could not also be considered for promotion on higher post of Executive Engineer as he did not possess eligibility qualification etc.

Shri Shiv Charan Gupta, Learned counsel for D.D. Vashistha argued that when already earlier appeal filed by Shri D.D. Vashistha was

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allowed by the Tribunal by judgment dated 15.07.1977 directing Town Planning Department to implement the order of Department of Personnel, which required them to confirm D.D. Vashistha with effect from 16.09.1971, the date on which his juniors were confirmed, there was no justification for Town Planning Department to have reopened the entire issue by declining to confirm D.D. Vashistha from that date and defer his confirmation until 16.09.1972. Learned counsel submitted that only impediment in confirmation of D.D. Vashistha when his juniors were confirmed on 16.09.1971, was that qualification of ITI diploma in civil engineering held by him was not considered equivalent to ITI diploma in Surveyor required by the Department. When this issue was referred to Department of Personnel and decided thereby, then Town Planning Department was under an obligation to honour the view taken by Departmental of Personnel. Once Shri D.D. Vashistha was confirmed with effect from the date on which his juniors were confirmed i.e. 16.09.1971, other consequential benefits would automatically follow. Learned counsel submitted that the Government encouraged by the minority

view taken in judgment of the Tribunal dated 25.07.1977 filed writ petition challenging that judgment before this Court but their writ petition was rejected by a considered judgment dated 09.04.1979 wherein minority view was not accepted and the majority view was approved. The Town Planning Department was left with no option except to give effect to that order. Since unreasonable hurdles were created by Town Planning Department by not giving benefit of earlier judgment of the Tribunal, Shri D.D. Vashistha had to again approached the Tribunal filing Appeal No.281/87, which was rightly allowed by impugned judgment.

Learned counsel submitted that except for the period from 22.03.1973 till 24.12.1974 Shri D.D. Vashistha was very much available in the Town Planning Department, therefore, even benefits of officiating promotion at-least from the date he returned back to Town Planning Department have to be accorded to him apart from benefit of regular promotion granted to his juniors Shri Chhablani.

Learned counsel further submitted that D.D. Vashistha was fully eligible for being considered for further promotion on the post of

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Executive Engineer. Once he was assigned appropriate seniority, there was no question of delaying his confirmation on that basis depriving him of fruits of earlier judgment of the Tribunal. His case for further promotion was also therefore required to be considered just like Shri Chhablani was promoted. It is therefore prayed that writ petition filed by D.D. Vashistha be allowed.

Shri Sanjeev Prakash Sharma, appearing for Shri Prahlad B. Chhablani, assailing the judgment of the Tribunal, argued that when in seniority list dated 12.08.1970 name of Shri D.D. Vashistha was wrongfully shown above Shri Chhablani, he submitted a representation and, therefore, in final seniority list dated 31.12.1970 name of Shri D.D. Vashistha was excluded. Shri D.D. Vashistha never challenged that seniority-list and Shri Chhablani was confirmed. Shri D.D. Vashistha did not challenge the order of confirmation Prahlad B. Chhablani. Shri D.D. Vashistha got himself transferred to Agriculture Department on 04.04.1973 and thereafter came back to Town Planning Department on 24.12.1974. Even when he came back to Town Planning Department, he was

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liable to be assigned seniority immediately below to other confirmed Overseers of that Department as on that date. The judgment dated 25.07.1977 passed by the Tribunal in earlier appeal of Shri D.D. Vashistha should not be held binding qua Shri Chhablani, because he was not a party respondent in that appeal. The Tribunal did not give any absolute direction to confirm Shri D.D. Vashistha even then he was confirmed with effect from 16.09.1972 by order dated 22.01.1986. Even in subsequent appeal, which Shri D.D. Vashistha filed and was allowed by impugned judgment of the Tribunal, Shri Chhablani was not impleaded as party thereto. The judgment cannot be held enforceable at least qua Shri Chhablani.

Learned counsel for Shri Chhablani submitted that this Court in writ petition filed by the State, initially stayed operation of impugned judgment of the Tribunal by order dated 02.02.1993, but subsequently since no one appeared to press the matter on behalf of the Government, the said interim stay order was vacated on 03.08.1993 and therefore Town Planning Department had to under compulsion implement impugned judgment of the Tribunal.

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Shri D.D. Vashistha has already been assigned seniority and confirmed from the date of confirmation of Shri Chhablani. Learned counsel submitted that so far as Shri Prahlad B. Chhablani is concerned, he was granted officiating promotion on the post of Assistant Engineer with effect from 23.09.1974 and thereafter on 08.07.1975, subject to review and revision and finally he was confirmed as Assistant Engineer by order dated 01.10.1977, with immediate effect. He has even been subsequently promoted on the post of Executive Engineer, but Shri D.D. Vashistha was not promoted because he did not possess necessary eligibility qualification for that post. Shri Chhablani has since retired and therefore the benefit which he has availed of may not be taken away.

Shri Sanjeev Prakash Sharma, learned counsel for Shri P.B. Chhablani, submitted that the Tribunal has given a wholly misplaced interpretation of Rules 22 and 22-A of the Rajasthan Subordinate Services (Recruitment and other Service Conditions) Rules, 1960, (for short, 'the Rules of 1960').

Upon hearing learned counsel for parties

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and perusing material on record, I have given my anxious and thoughtful consideration to rival submissions.

In so far as question with regard to confirmation of Shri D.D. Vashistha with effect from 16.09.1971 and consequential seniority at appropriate place obviously qua Shri Prahlad B. Chhablani, is concerned, that issue stood finalized by judgment of the Tribunal dated 25.07.1977. In that judgment, the Tribunal has duly taken note of the decision of Department of Personnel conveyed to Town Planning Department by letter dated 24.12.1976, that qualification of ITI Surveyor possessed by Shri D.D. Vashistha was recognized equivalent by the Government to Diploma in Civil Engineering and as such Shri D.D. Vashistha was entitled to confirmation on the post of Junior Engineer in Town Planning Department with effect from 16.09.1971, when his juniors were so confirmed. The reason for which confirmation of Shri D.D. Vashistha was withheld was that in perception of Town Planning Department Shri D.D. Vashistha did not possess requisite qualification and therefore matter was referred to Department of Personnel. It is indeed surprising how the

Government could question correctness of its own earlier view by filing writ petition and now again by filing subsequent writ petition challenging two orders successively passed by the Tribunal. Earlier judgment of the Tribunal dated 25.07.1977 was upheld by a Coordinate Bench of this Court by judgment dated 29.04.1979 but when matter was taken to the Tribunal second time over, the Tribunal has furnished additional reason why Shri D.D. Vashistha should be confirmed with effect from 16.09.1971 because as per the Tribunal even Rule 22 of the Rules of 1960 provided that, as it stood prior to amendment inserted by Notification dated 03.08.1977, a person appointed in service by direct recruitment or promotion, shall be on probation and the period of such probation shall be of two years in the case of direct recruitment and one year in the case of promotion, provided that such of them as previous to such appointment officiated or served temporarily on a post encadred in service, may be promoted by the Government to count such officiating or temporary service towards period of probation of six months. Rule 22-A of the Rules of 1960 provided that

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notwithstanding anything contained in Rule 22, a person who has been regularly recruited against vacant post has to put in two years service after such regular recruitment, shall not be placed on probation on conversion of such post into a permanent one but he shall be confirmed only after he fulfills the condition of confirmation as laid down in the Rules. The words 'conditions of confirmation' as laid down in the Rules are obviously indicative of the fact whether the Government servant concerned fulfills the other conditions of the Rules. In the present case, the occasion for passing the order of confirmation arose because the Town Planning Department had certain sanctioned posts of Junior Engineer available with them. It is therefore that the persons who, according to the said Department, possessed the requisite qualification were confirmed with effect from 16.09.1971 and since in its view Shri D.D. Vashistha was not having such qualification he was not confirmed. The moment this issue was clarified by the Department of Personnel, it was obligatory upon Town Planning Department to treat him also as confirmed with effect from 16.09.1971, the date on which his juniors were

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confirmed even if it meant exclusion of any of his juniors. Rule 22-A of the Rules of 1960, assumes significance because it provides that on conversion of temporary post into permanent one, notwithstanding anything contained in Rule 22, a person who has been regularly recruited against temporary post in such eventuality would not be liable to be placed on probation. The question of probation would therefore be immaterial, in so far as Shri D.D. Vashistha is concerned.

Coming now to question as to what benefit Shri D.D. Vashistha can get consequent upon implementation of impugned judgment of the Tribunal, the Court is informed of fact that Town Planning Department by its order dated 16.07.1997 has, subject to final outcome of writ petition filed by them, already promoted Shri D.D. Vashistha against vacancies of the year 1977 under Rules 24(4) and 26 of the Rajasthan Town Planning Service Rules, 1966 on the criterion of seniority-cum-merit on regular basis. Shri Sanjeev Prakash Sharma, learned counsel for Shri Prahlad B. Chhablani, has given out that even Shri Chhablani was confirmed against the vacancies of the year

1977 by order dated 01.10.1977. That being the case, obviously Shri D.D. Vashistha would have also got promotion from that year. However, it is shown that Shri Chhablani was granted officiating promotion on 23.09.1974 which was later on continued by order dated 08.07.1975 subject of-course to review and revision, and obviously in that position, he would have got earlier start on promotional post i.e. Assistant Engineer thereby availed all benefit of pay and also added increments for the duration he had been on officiating basis. But, at the same time Shri D.D. Vashistha if he would have become physically available in the service of Town Planning Department on 24.12.1974, he could not have been considered for officiating promotion on 23.09.1974 when Shri Chhablani was promoted.

In view of the above discussion, in so far as SBCWP No.2/1993 filed by the State of Rajasthan and SBCWP No.5441/1994 filed by Prahlad B. Chhablani are concerned, the same are dismissed.

The writ petition, being S.B. Civil Writ Petition No.5993/1997, filed by D.D. Vashistha is allowed with direction to respondents to

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fully implement impugned judgment of the Tribunal dated 06.02.1992 rendered in Appeal No.281/1987 and grant such benefits as granted to Shri Prahlad B. Chhablani of promotion on the post of Assistant Engineer and, if Shri D.D. Vashistha is found eligible, his case shall be further considered for promotion to the post of Executive Engineer with all consequential benefits except for the period from 23.09.1974 till 24.12.1974 when he was not physically available with Town Planning Department. Shri D.D. Vashistha shall also be entitled to interest at the rate of 6% per annum on all consequential benefits. There shall be no order as to costs.

(Mohammad Rafiq) J.

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