

**HIGH COURT OF JUDICATURE FOR RAJASTHAN BENCH AT
JAIPUR**

S.B. Civil Writ Petition No. 2173 / 2018

Neetu Mishra W/o Dr. Raghvendra Mishra, Aged About 41 Years,
R/o Shiv Shakti Arogay Bhawan, Kishangarh Renwal, Dist- Jaipur
(Raj.)

----Petitioner

Versus

1. The State of Rajasthan Through Principal Secretary, Rural Development and Panchayati Raj Department, Rajasthan Secretariat, Jaipur.
2. The Secretary to the Government and Commissioner, Rural Development and Panchayati Raj Department, Secretariat, Jaipur.
3. Chief Executive Officer, Zila Parishad, Jaipur.

----Respondents

For Petitioner(s) : Mr. Naveen Dhuwan

For Respondent(s) :

HON'BLE MR. JUSTICE VEERENDR SINGH SIRADHANA

Order

31/01/2018

Learned counsel for the petitioner, at the very outset, submits that the controversy raised in the instant writ application stands resolved in view of the adjudication made by a Coordinate Bench of this Court, at Principal Bench, Jodhpur, in a batch of writ applications lead case being S.B. Civil Writ Petition No.144/2015: Babu Lal Meena & Ors. Versus State of Rajasthan & Ors., decided on 1st September, 2015, after according an opportunity of hearing to the counsel for the State-respondents, observing thus:

"17. The fact regarding the petitioners' selection as L.D.Cs. in the recruitment process initiated in the year 2013 is not disputed. It is also an admitted case of the parties that just a few days after issuance of the advertisement for direct

recruitment of L.D.Cs., the Government issued another advertisement for direct recruitment in subordinate services including the posts of Accounts Assistants which carry a higher pay scale than a L.D.C. The petitioners were holding the requisite qualifications for appointment on both the posts and thus, applied at both the places. The Government realized the possibility of complications arising because of the overlapping selections and thus, consciously issued the letter dated 28.6.2013 whereby, the candidates selected as L.D.Cs. were given permission to apply for extension of joining time till the issuance of the appointment orders in the recruitment process for subordinate services. The authorities concerned, upon receiving such applications, were directed to ensure that the joining time is extended. The language of the letter carries an unexceptional direction to the concerned officer to extend the joining time of the applicant. The petitioners thus were absolutely justified in entertaining a genuine belief in their minds that upon the application for extension of joining time being submitted, they would be allowed such extension and they could join on the post of L.D.C. in case of non-selection in the subsequent recruitment process. It is further the undisputed case of the parties that the applications submitted by the petitioners have not been rejected by the concerned authorities till date. The selection process for subordinate services is still facing a road block of litigation. The result has not been declared and no appointment orders have been issued. As per the letter dated 17.8.2015 placed on record by Mr.Panwar, numerous candidates viz. Sudarshan Shandilya, Prakash Garasiya, Vishal Kumar Vyas, etc. were given extension of joining time in reference to the letter dated 28.6.2013.

In the file of SB Civil Writ Petition No.9556/2014, the petitioners have placed on record a copy of the order dated 11.7.2013 whereby, the concerned B.D.O. has allowed deferment of joining to Ms.Anita Vijayvargiya, Mr.Surendra Kumar Vijayvargiya and Ms.Dimple Soni.

18. Learned AAG Mr.Panwar tried to stress upon the fact that the petitioners have breached the mandatory condition of the appointment order in as much as, they did not join on their post by the last date mentioned therein. As per him, since the appointment orders were issued subsequent to issuance of the letter dated 28.6.2013, the terms and conditions of the appointment order would supersede the above letter and consequently, such persons who did not join the post by the last date mentioned in the appointment order, would be deemed to have forfeited their right of appointment.

The appointment orders which were issued to the petitioners required them to join on different dates in the month of July, 2015. It was stipulated that in case, the candidates concerned failed to join the post by the last date mentioned in the order, his/her appointment would stand cancelled.

This argument on the face of it is fallacious. The joining time could undoubtedly be stipulated with the issuance of the appointment orders and not prior thereto. Thus, before the appointment orders were issued, there was no occasion for the candidates to seek extension of joining time. Hence, this Court has no hesitation in holding that the requirement to extend the joining time would arise only after the issuance of the appointment orders and not before that. Thus, the argument advanced by learned AAG Mr.Panwar that the order dated

28.6.2013 became non est and as the petitioners did not comply with the terms of the appointment order, they cannot be allowed extension of joining time is noted only to be rejected.

19. The principle of promissory estoppel on which the learned counsel for the petitioners have banked upon for claiming relief is a doctrine based on fairness. Admittedly, the petitioners were and even now are serving the respondent State on contractual basis on the posts of L.D.C. or equivalent post for last number of years. It is not disputed that the State is in requirement of their services even as on date. The State, in order to avoid possible future complications on account of overlapping selections in the two contiguous recruitment procedures, took a conscious decision of allowing extension in joining time to the candidates who had applied and were successful in the direct recruitment process on the post of L.D.C. Thus, the State is estopped from taking steps for de-sanctioning the remaining unfilled posts on which the petitioners are selected and in claiming that they have forfeited their right to the posts. The judgment relied upon by the learned AAG in the case of Jitendra Kumar (supra) is entirely distinguishable on facts because in that case, the writ petitioners therein were claiming appointment on the posts beyond the number of the posts advertised by the Government. The Hon'ble Apex court in the said situation held that if the State is right in its contention that the selection process being in cloud, no appointment can be made, the Court by invoking any doctrine cannot ask the State to do so unless it arrives at a positive and definite finding that the State's stand is fraught with arbitrariness. Such is not the situation in the case at hand. There is no contention on behalf of the State that the selection process is under a cloud. A major share of the vacancies have already been filled in with the joining of no less than 7765 successful candidates. Thus, the petitioners who also are amongst the list of selected candidates, cannot be deprived of their right to be appointed.

In Jitendra Kumar's case (supra), the Hon'ble Supreme Court further observed that a legitimate expectation is distinct and different from an anticipation or desire and hope. It was held that legitimate expectation is based on a right. It is grounded in the rule of law as requiring regularity, predictability and certainty with the Government's dealings with the public. The doctrine of legitimate expectation operates both in procedural and substantive matters. Considering the fact that the petitioners before the Hon'ble Supreme Court were claiming appointments beyond the posts advertised for, the Hon'ble Supreme Court held that the doctrine of legitimate expectation could not operate in their cases.

The scenario in the cases at hand is entirely different and as a matter of fact, the ratio of Jitendra Kumar's case (supra) also helps the petitioners to the hilt. The petitioners were successful in the recruitment initiated vide advertisement dated 14.2.2013 against the vacancies of L.D.Cs. which the State itself has determined. A contiguous advertisement for selection in the subordinate services particularly, the post of Accounts Assistant was issued by the State. The petitioners were having requisite qualifications for being inducted as Accounts Assistant and thus, they applied in the subsequent selection process also. The State itself realized the possibility of complications in case overlapping selections were made in both the selection procedures. Thus, by letter dated 28.6.2013 the authorities concerned were directed that if candidates selected on the post of L.D.C. desired and applied for extension they shall be given extension of joining

time till the issuance of appointment orders in subsequent advertisement in subordinate services. The petitioners herein all applied for deferment of joining time. None of the applications has till date been rejected as per the admitted case of the respondents. Some of the applications have even been expressly accepted as noted above. Thus, having applied for deferment of joining time in terms of the State Government's letter dated 28.6.2013, the petitioners were totally justified in entertaining the legitimate expectation that the extension of joining time would be granted to them and in the event of being unsuccessful in the endeavor of selection in subordinate services, they could join on the post of L.D.C. The expectation was legitimate as the same was grounded on the State's own letter/circular dated 28.6.2013.

In this background, the State cannot be permitted to retrace its steps and cannot be allowed to de-sanction the posts on which the petitioners have virtually established a lien. The principle of promissory estoppel totally debars the State from taking such a step.

20. As a result of the aforesaid discussion, the instant writ petitions deserve to be and are hereby allowed. The respondents shall allow the petitioners to join on their respective posts pursuant to their selection as L.D.Cs. in the questioned direct recruitment process of the year 2013. However,

(i) such of the petitioners who did not apply for extension of time shall not be entitled to join the post;

(ii) the petitioners shall not be entitled to claim seniority over and above the candidates who have already joined their posts pursuant to their selection. Their names shall be placed at the bottom of the select list;

(iii) the petitioners shall be entitled to notional benefits from the date of the appointment order till the date of their joining. They shall join their respective posts within a period of two months from the date of this order, failing which their appointment shall stand cancelled automatically."

It is further contended that for the present; the petitioner would be satisfied, if the State-respondents are directed to consider and decide the representation of the petitioner, within a time frame, in the backdrop of the adjudication in the case of Babu Lal Meena & Ors. (supra), which the petitioner is ready and willing to address within two weeks hereinafter.

In view of the limited prayer addressed; the instant writ proceedings are closed with a direction to the petitioner to address

a comprehensive representation enclosing a copy of the order in the case of Babu Lal Meena & Ors. (supra).

In case, a representation is so addressed within the aforesaid period, the State-respondents are directed to consider and decide the same by a reasoned and speaking order as expeditiously as possible in accordance with law. However, in no case later than eight weeks from the date of receipt of the representation along with a certified copy of this order.

With the observations and directions, as indicated above, the writ application stands disposed off.

(VEERENDR SINGH SIRADHANA)J.

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