

SUPREME COURT OF INDIA  
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 3836 OF 2001

STATE OF RAJASTHAN & ORS.

Appellant (s)

VERSUS

VISHAL SINGH BHATI

Respondent(s)

(With appln(s) for permission to place addl. documents on record and prayer for interim relief and office report )

WITH SLP(C) NO. 10488 of 2001

(With appln.(s) for accepting English translation)

Date: 10/10/2007 This Appeal and Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.K. MATHUR

HON'BLE MR. JUSTICE MARKANDEY KATJU

For Appellant(s)

Mr. Aruneshwar Gupta, Adv.  
Mr. Naveen Kumar Singh, Adv.  
Ms. Shashwat Gupta, Adv.

For Respondent(s)

Mr. Mukesh K. Giri, Adv.  
Mr. H.S. Tak, Adv.  
  
Mr. R.K. Soni, adv.  
Mr. H.D. Thanvi, Adv.  
Mr. Naresh Kumar, Adv.

UPON hearing counsel the Court made the following ORDER

Leave granted in SLP(C) No.10488 of 2001.  
The appeals are disposed of in terms of the signed order.

(Sukhbir Paul Kaur)  
Court Master

(Vijay Dhawan)  
Court Master

(Signed Order is placed on the file)

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.3836 OF 2001

STATE OF RAJASTHAN & ORS.

Appellant(s)

Versus

VISHAL SINGH BHATI

Respondent(s)

WITH CIVIL APPEAL NO.4813 OF 2007 @ SPECIAL LEAVE PETITION  
(CIVIL) NO. 10488 OF 2001

ORDER

Leave granted in Special Leave Petition (C) No.10488 of 2001.

We have heard learned counsel for the parties.

These matters were taken up for disposing of both the matters which involve a similar question of law. We dispose of both the matters by a common order. For the convenient disposal of these appeals, the facts of Civil Appeal No.3836 of 2001 (State of Rajasthan & Ors. versus Vishal Singh Bhati) are taken into consideration.

This appeal by special leave is directed against the judgment and order dated 3rd August, 2000 passed by the Division Bench of the High Court of Rajasthan at Jodhpur in D.B. Civil Special Appeal No.163 of 1998 whereby the Division Bench dismissed the Letters Patent Appeal filed by the State of Rajasthan against the order

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passed by the learned Single Judge. The learned Single Judge allowed the Writ Petition by order dated 5th July, 1993 in view of the judgment delivered by the Rajasthan High Court in the case of Arjun Lal Sharma versus State of Rajasthan & Ors. and directed the respondent to consider the case of the petitioner for promotion to the post of L.D.C. within a period of two months. Aggrieved against the order of 5th July, 1993 the Letters Patent Appeal was filed before the Division Bench. The Division Bench by Order dated 3rd August, 2000 confirmed the order of learned Single Judge. Hence this appeal.

The brief facts which are necessary for disposal of this case are that the respondent was appointed as Peon in the office of AEN, RCP, Chattargarh. The State Government recognized the Hindi Examination conducted by different educational institutions including Prathma Examination conducted by Hindi Sahitya Sammelan. The Writ Petitioner alleged that he appeared in the

Prathma Examination with the permission of I.G.N.P., Jaisalmer and after obtaining this degree he produced the mark sheet and sought promotion from Class IV to Class III. Meanwhile, the State of Rajasthan amended the service

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rules and modified the eligibility condition with effect from 1st April, 1985 which reads as under :-

"Rule 12(2) : A candidate for direct recruitment to the general cadre must have passed the High School Examination of the Rajputana University or/of University of Board recognised by the Government for the purpose of this Rule or possesses Hindi or Sanskrit qualifications recognised by the Commission as equivalent to that of Matriculation."

As a result of this amendment, the Hindi qualification of Prathma from Hindi Sahitya Sammelan, Allahabad ceased to be recognized as an eligibility condition for promotion to the Class III post. By an order passed by the learned Single Judge, the respondent was promoted on 20th February, 1995 as L.D.C. Against the order passed by the learned Single Judge an appeal was preferred and that appeal was decided on 3rd August, 2000 and the Order of the learned Single Judge was confirmed. The respondent continued on the promoted post. Hence this appeal.

There are two opinions in the matter. In fact the promotion of the respondent in 1995 was illegal because in 1985 the qualification for appointment to Class III post from Class IV had already been amended and the Prathama certificate obtained from Hindi Sahitya Sammelan, Allahabad was no longer recognized as an eligibility

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condition for promotion to the Class III post. Therefore, the learned Single Judge was not correct in directing the State to promote the respondent in 1995 on the basis of the so called

certificate of 1984 obtained by the respondent. Meanwhile, a full bench Judgment of the High Court was delivered on 11 th September, 1998 in the case of Shanker Lal Verma and others versus Rajasthan State Electricity Board in Civil Writ Petition No.5031 of 1991. We are surprised that the Division Bench, despite the full bench judgment refused to follow it, and upheld the order of the learned Single Judge. The Division Bench was bound by the full bench judgment, and there was no scope for the Division Bench to ignore the judgment of the full bench. The observation made by the learned Division Bench in the impugned judgment that "it is too late for the Court to interfere with the judgment and order dated 5.7.1993 passed by the learned Single Judge on the ground that recently the Full Bench of this Court took a different view in the matter" was totally unwarranted, and amounts to judicial indiscipline.

We would have ordinarily set aside the impugned judgment but for the fact that the incumbent has been working for the last 12 years as L.D.C. and is now due to

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retire shortly, we are not inclined to exercise our discretion under Article 136 of the Constitution to remove the incumbent from Class III post i.e. from the post of L.D.C. because it will effect him financially, though we are also of the view that the view taken by the Division Bench is incorrect and cannot be sustained.

It may be mentioned that Article 136 confers a discretionary power in this Court to interfere with orders of lower Courts or authorities, and hence the Court is not bound to interfere even if there is violation of law.

In the peculiar facts of this case we are not inclined to disturb the present promotion of the respondent. He may be allowed to continue as L.D.C. till his date of retirement.

CIVIL APPEAL NO.4813/2007 @ SPECIAL LEAVE  
PETITION (C) NO.10488 OF 2001  
State of Rajasthan versus Ajay Kumar

In this appeal the respondent is continuing on the post  
from the last 10 years. Therefore, on the same

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reasoning we are not inclined to disturb his present promotion  
from Class IV to Class III.

The appeals are accordingly, disposed of.

.....J.  
(A.K.MATHUR)

.....J.  
(MARKANDEY KATJU)

New Delhi,  
October 10, 2007.