
(1993) 12 RAJ CK 0003

In the Rajasthan High Court

Case No : Civil Writ Petition No's. 290, 740 and 741 of 1991

Antim Ramdeo

APPELLANT

Vs

The State of Rajasthan and Another

RESPONDENT

Date of Decision : 20-12-1993

Acts Referred:

Citation : (1993) 2 RLW 710 : (1994) 1 WLC 765 : (1993) WLN 271

Hon'ble Judges : B.R. Arora, J

Bench : Single Bench

Final Decision : Allowed

Judgement

B.R. Arora, J.—These three writ petitions raise a common question of law and facts and, therefore, they are being disposed of by this common judgment.

2. The District Judge, Balotra, vide Notification dated 27.9.89, invited applications for appointments on seven posts of Lower Division Clerk and for empanelment against the future vacancies. The petitioners, in pursuance to this Advertisement, applied for the post of Lower Division Clerks in the District Judgeship, Balotra. The petitioners were called for written examination, which were held on 26.11.89. The petitioner qualified the written examination and, therefore, they were called for typing test, which was held on 21.1.90. The petitioners qualified both these tests. After the written examination and the typing test, a merit list (Annexure. 2) was prepared on 22.1.90, in which the name of petitioner Antim Ramdeo was shown at serial number 9, the name of petitioner Durgesh Kumar was shown at serial number 10 and that of petitioner Balkishan at Serial Number 12 and that of Deva Ram at serial number 13. Before the applications were invited for giving appointments on the post of Lower Division Clerk, Dewa Ram Goyal, Smt. Shanti Ramawat, Naresh Kumar Avasthi and Om Prakash Jingar were given appointments by the respondents on the post of Lower Division clerk in the months of February and March, 1989. Out of these four persons, Dewa Ram qualified the written examination and the typing test but in the merit list, his name was shown at Serial Number 13, while Smt. Shanti

Ramawat, Naresh Kumar Avasthi and Om Prakash Jingar could not qualify the examination and, therefore, their names did not find mention in the merit list. After the declaration of the result, the respondents gave appointments to first six persons and retained Smt. Shanti Ramawat, Naresh Kumar Avasthi and Om Prakash Jingar though they were declared unsuccessful in the examination and, also, allowed Dewa Ram to continue in service though his name was shown much below the names of the petitioners in the merit list. As appointments were not given to the petitioners as well as to Virendra Kumar and Ashok Kumar Tiwari, the petitioners, Virendra Kumar and Ashok Kumar Tiwari, therefore, filed writ petitions. After the writ petitions were filed, Virendra Kumar and Ashok Kumar Tiwari, whose names appeared at Serial No. 7 and 8 in the merit list, were given appointments but the petitioners were not provided appointments. One Ghan Shyam Das was, also, given appointment by the respondents as per the direction of the High Court. In this way, nine vacancies were filled-up by the respondents. As the appointments were not given to the petitioners, the petitioner, therefore, preferred the present writ petitions.

3. It is contended by the learned Counsel for the petitioners that the name of petitioner Antim Ramdeo appears at Serial Number 9 in the merit list but he has not been given appointment though the vacancies were available with the respondents and the persons, who have failed in the examination have been retained in service and one Dewa Ram Goyal, whose name appeared in the merit list at serial number 13, has also, been provided appointment but the petitioners were denied appointments. The case of the petitioners is that when the vacancies were available the persons, who could not qualify in the examination and who were less meritorious than the petitioners, cannot be retained in service by denying appointments to the petitioners and the petitioners, therefore, deserve to be given appointments on the post of Lower Division Clerks. In support of its contention, the learned Counsel for the petitioners have placed reliance over the judgment of the Supreme Court rendered in: Prem Prakash Vs. Union of India (UOI) and Others, Learned Deputy Government Advocate and the learned Assistant Government Advocate, on the other hand, have submitted that mere empanelment in the merit list does not amount to selection and it does not create a right in favour of the petitioners to be appointed and it is open to the appointing authority to decide how many appointments should be given and if after consideration of the facts and circumstances of the case the appointing authority came to the conclusion that only seven appointments are to be given then no grievance can be raised by the petitioners or other remaining persons on the ground that the vacancies are still lying there and, therefore, they may, also, be given appointments. In support of its contention, the learned Counsel for the respondents have placed reliance over: the The State of Haryana Vs. Subash Chander Marwaha and Others, , Jatinder Kumar and Others Vs. State of Punjab and Others, , Shankarsan Dash v. the Union of India AIR 1984 SC 1612, the State of Bihar and others Vs. The Secretariat Assistant Successful Examinees Union 1986 and others, It is further contended by the learned Counsel for the

respondents that though the petitioners have challenged the retention of Dewa Ram, Smt. Shanti Ramawat, Naresh Kumar Avasthi and Om Prakash Jingar in service but they have not made them the parties to the writ petition and, therefore, no relief can be granted against them and as they are continuing in service, therefore, the petitioners cannot be given appointments. In support of this contention, the learned Counsel for the respondents has placed reliance over: *Malu Ram v. the State of Rajasthan* and Ors. 1977 WLN (UC) 323. Learned Counsel for the respondents further submitted that these aforesaid four persons have been retained in service as they were given ad hoc appointments under Rule 23 of the Rules and the High Court had directed the District Judge to give one more opportunity to these persons to qualify the test as they were the persons appointed earlier.

4. I have considered the submissions made by the learned Counsel for the parties.

5. Mere inclusion of the names of the petitioners in the merit list does not confer any right on them to be given appointments and the appointing authority or the State is not under a legal duty to fill-up all the vacancies. The only restriction that can be imposed upon the appointing authority or the State is that it cannot act arbitrarily and should not give appointment to any person whose name does not find place in the merit list or ignoring the right of the persons whose names find place much above in the merit list by giving appointments to the persons who stand lower in merit. The appointments should be given strictly in accordance with the merit. While giving appointments, the order of merit, thus, cannot be disturbed by the appointing authority at its own sweet will. The appointing authority or the Government, also, cannot appoint a person whose name does not appear in the merit list, but it is open to the Government or the appointing authority to decide how many appointments should be made and the inclusion of the name in the merit list against the existing vacancies or against the anticipated vacancies does not create a right to be appointed on the post. In the present case, the applications were invited for seven vacancies, which were in existence and for anticipated vacancies, also. The petitioner, in para No. 4 of the writ petition, has specifically stated that seven posts of Lower Division Clerks were available in the month of September, 1989, and three additional posts became available thereafter before filing the writ petitions. The respondents, in their reply to para No. 4 of the writ petition, have admitted the averments made in para No. 4 of the writ petition. The admission, made by the respondents, thus, clearly shows that at the relevant time, there were ten vacancies of Lower Division Clerks available with the respondents, The respondents initially gave appointments to six persons and thereafter Virendra Kumar and Ashok Kumar Tiwari, whose names appear to Serial Numbers 7 and 8 in the merit list, were, also, given appointments. One Mr. Ghan Shyam Das was, also, given appointment in pursuance to the decision in *S.B. Civil Writ Petition No. 10 of 1988 (Ghan Shyam Das v. High Court of Judicature for Rajasthan at Jodhpur, and Anr. - decided on 2.1.90)*. Thus, in all nine vacancies were filled--up and one

vacancy is still available with the respondents. The respondents gave appointments to nine persons and retained Dewa Ram Goyal, whose name finds mention at Serial Number 13 in the merit list, and Smt. Shanti Ramawat, and Narendra Kumar Avasthi, who did not even qualify the examination. It is true that they have not been made a party to the writ petition and, therefore, in their absence no order adversely affecting their rights can be passed, but it is, also, true that they have been retained in service while the petitioners have been denied appointments. The petitioners have only challenged not providing appointments to them by the respondents though ten posts were available with the respondents and the names of the petitioners Antim Ramdev appear over and above the name of Deva Ram - the retained person. The relief has been claimed against the State of Rajasthan and not against any individual, namely, Smt. Shanti Ramawat, Naresh Avasthi, Om Prakash Jingar or Dewa Ram and, therefore, failure to implead these persons as party-respondents would not make the present writ petition unmaintainable and, thus, the preliminary objection, raised by the learned Counsel for the respondents, is devoid of any force. Further, appointments to these four persons were purely on ad hoc basis and for a fixed term or till the selected candidates are made available. In the order giving them appointments, it was, also, made clear that they will have to compete with other candidates and if their names will find mention in the merit list then they will be given appointments. The normal rule of recruitment is that the ad hoc/temporary appointments can be made only in exceptional circumstances and these ad hoc/temporary appointments should be replaced by a regularly selected candidate, as early as possible. These ad hoc and temporary employees may, also, compete alongwith others for such regular selection/appointment and if they get themselves selected then only they may be given appointments but if they do not qualify the examination or their names find mention lower in the merit list then they cannot be retained in service and the appointments to the regularly selected candidates cannot be denied for accommodating such ad hoc employees, who were working in the department. The retention of the ad hoc employees, who did not qualify the examination or whose names stand lower in merit list and denying appointments to the persons whose names find mention much above the aforesaid persons, is wholly illegal and bad. The appointment to petitioner Antim Ramdeo was, thus, wrongly denied by the respondents. While passing the stay order, the respondents were directed to keep one post reserved and as one vacancy is available with the respondents, they are directed to give appointment to petitioner Antim Ramdeo against the tenth unfilled post. Petitioner Antim Ramdeo preferred this writ petition within one year of the publication of the merit list. The merit list was in existence and had not lapsed when he approached this Court and, therefore, he is entitled for appointment.

6. So far as petitioners Durgesh Kumar and Bal Kishan are concerned, as only ten vacancies were available with the respondents and they have been filled-up therefore, they cannot be given appointments. Even otherwise, also, they

approached this Court on 15.2.91, when the merit list stood lapsed and no appointments can be given to them on the basis of that merit list after one year when the merit list stood lapsed.

7. In this view of the matter, the writ Petition, filed by petitioner Antim Ramdeo is allowed while the writ petition, filed by petitioners Durgesh Kumar and Bal Kishan, are dismissed. The parties are left to bear their own costs.