
(1981) 08 RAJ CK 0003
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1838/80

Ashok Dave

APPELLANT

Vs

The State of Rajasthan and The RPSC

RESPONDENT

Date of Decision : 10-08-1981

Acts Referred:

Rajasthan State and Subordinate Services (Combined Competitive Examination by Direct Recruitment) Rules, 1962 — Rule 15(3), 15(4)

Citation : (1981) RLW 545 : (1981) WLN 244

Hon'ble Judges : G.M. Lodha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

G.M. Lodha, J.—This cases raises an important question about the interpretation of rule 15 of the Rajasthan State and Subordinate Services (Combined Competitive Examination by Direct Recruitment) Rules, 1962.

2. Ashok Dave, the petitioner appeared in these examinations conducted by the Rajasthan Public Service Commission and was declared successful having obtained 136 position in the list, called the merit list, published by the Public Service Commission on 20-8-80 in the Rajasthan Raj-patra Dated 9-10-80 (Part VII) pages 328, 329 & 330. The caption of the list is as under:

Rajasthan Rajya Sevayen Sanyukt Prityogi Pariksha, 1979.

S. No. Roll No. Merit List. X X X X 136 5571 (Prov) ".

3. It is not in dispute that the roll No. of the petitioner was 5571. In all 316 candidates were included in the merit list. Since the petitioner's number was at Section No. 136, he was above more than half of the candidates. Even then, he was not appointed in the service.

4. It was revealed that inspite of his being successful and meritorious and being above more than 170 candidates, his name was excluded from the appointments

because he could not be adjusted in accordance with the preference, which he gave in the form filled in by him for appearing in the se examinations. There are 8 services in all out of which the first two, RAS and RPS are State Services, and the other 6 services are allied services. In the preference which the petitioner gave, he mentioned RAS as the first RPS as the second, Rajasthan Accounts services as the third, Rajasthan Commercial Taxes Service as the fourth, Rajasthan Industries Services us the fifth, and the Rajasthan State Insurance Service as the sixth. The two services which remained are Rajasthan Cooperative-Service and Rajasthan Labour Welfare Service.

5. In reply to the query of the court, Mr. G.G. Sharma, the learned Addl. Government Advocate, obtained factual information from the Public Service Commission on the question whether the candidates having less marks have been appointed in these services in this examination. The factual position, as mentioned in the letter dated 24-4-81 No. F. 7(5) Karmik (k) 4/81 issued by the Assistant Secretary to the Government D.O.P. & A.R. (A.IV)) Department, Government of Rajasthan, Jaipur, is that many of the candidates who secured less marks in the competitive test have been appointed in the Cooperative Service & Labour Welfare Service. But, the petitioner could not be appointed because he did not give the preference for these two services.

6. It is, therefore, common ground between the parties that from the merit list in which the petitioner was shown at Section No. 136, many of the candidates who have secured less marks and were much below him have been appointed but petitioner has been refused the appointment.

7. The question, therefore, canvassed by Mr. Calla the learned Counsel for the petitioner is that once the petitioner is declared meritorious, as per the merit list published by the RPSC he cannot be deprived of his valuable right of appointment in any of the 8 services, when those candidates who are less meritorious are given appointments. This is so, argued Mr. Calla, even though a candidate fails to give all the preference and gives only a few preferences.

8. Mr. Sharma, the learned Additional Government Advocate, vehemently opposed the writ petition on the ground that if the candidate fails to give all the preferences, then he can do so at his own peril, and he will have to face the consequences of his mistake.

9. The facts not being in dispute, the sole point which requires adjudication is whether inspite of being more meritorious, a candidate can be deprived of his appointment to the service merely because he has given only 6 preferences out of 8 and according to the merit he is eligible for being appointed only in those two services which have been left out while giving preference. As has been mentioned above, there are 8 services and it is a combined competitive examination. The merit list published by the RPSC in which the petitioner's position is 136 out of 316, has been published under Rule 15. The learned Additional Government Advocate also submitted that this list is published under

Rule 15(4) of the Rules. Sub-Clause (3) contemplates that while preparing the list, due weightage should be given to the preferences.

10. Rule 15 reads as under;

15.--Recommendation of the Commission (1)--The Commission shall prepare for each service, a list of the candidates arranged in order of merit of the candidates as disclosed by the aggregate marks finally awarded to each candidate. If two or more of such candidates obtain equal marks in the aggregate, the Commission shall arrange their names in the order of merit on the basis of their general suitability for the service:

Provided that:

x x x x x x

(3) The Commission, while giving weight to the preference for the posts in the different service expressed by a candidates in his application may recommended him for appointment to any post in any such services for which it considers him suitable.

(4) The list compiled under this rule shall be immediately sent to the Government and also be published for general information

X X X X

11. The above would show that the rules contemplate publication of a list showing the merit of each candidate. Once, a joint list is published, it becomes the duty of the Government to appoint candidates from them and while doing so, due weightage should be given to the preferences given by them, as per the list separately sent by the Commission under Sub-clause (3).

12. It is true that the preferences, initially be adjusted by the Commission under Sub-Rule (3) of Rule 15, but it is immaterial whether it is to be done by the PSC or by the State Government, because that is only a question of procedure. The candidates who gets merit, in the merit list published by the PSC can always claim that even if he cannot be adjusted amongst the preferences given by him, and if he is more meritorious than other persons, he should be adjusted amongst both services which remain as a residuary to his preferences. To make the above clear in the instant case, the six preferences given by the petitioner could not be availed of by him, because he was not so meritorious. But, so far as the two services of Cooperative and Labour are concerned, though he did not given any preference for them, but he was more meritorious than the candidates who were selected in them. This factual provision is not in dispute as per the letter read by Mr. G.G. Sharma, a copy of which has been placed on record.

13. Mr. Sharma submitted that even though there is no prohibition clause in Rule 15 or any where else, yet by inference the petitioner must be deprived, because he did not give the preferences of Cooperative and Labour. I am not inclined to accept this interpretation given by the respondents, because it is well established

principle of interpretation of Statute that unless there is a prohibition clause or a penalty clause, a rule cannot be held to be mandatory. A reference may be made to Jagan Nath Vs. Jaswant Singh and Others, The rule about preferences is directory and not mandatory.

14. I am of the opinion that in case the petitioner has failed to give the last two preferences, they should be deemed to be implied and it was the duty both of the RPSC and the Government to tabulate the merit list by giving him the appointment in the service, either of Cooperative or Labour, before the candidate who was less meritorious.

15. Mr. Sharma submitted that the Government under the rules is required to strictly follow the recommendations of the PSC and it has got no option. Even if that is taken as true and correct position of law, then also there is no difficulty in granting relief, because it is the duty of the PSC initially to adjust the merit in such a manner that after adjusting the preferences given by the candidates, if some one has given only a few preferences out of 8, then also he must be placed above those who have got less marks in the merit.

16. It is true that in a given case it would create enormous difficulty to the PSC, but unless a clause providing for the penalty or consequences of non-giving of some preferences is enacted in the rule, I cannot deprive the meritorious persons from appointment, because of his lapse or mistake, which can only be treated as irregularity in view of the present position of law, as contained in the rules. I am also convinced that the interpretation which I have taken would enhance justice is more equitable, and in no way it would do any violence to the relevant rules, mentioned above. This is so for the simple reason that rejecting the "head" and appointing the "tail" would be against all canons of justice and law and, such an absurdity should not be permitted unless the Legislature in clear terms contemplates so.

17. The result is, that this writ petition is accepted. Rule 15(3) and (4) are held to be directory. The respondents RPSC and the Rajasthan State Government are directed to take steps to appoint the petitioner either in the Rajasthan Cooperative Service or the Rajasthan Labour Service. However, while doing so, since by this time some other persons less meritorious in his place had already been appointed, the respondents are given liberty not to disturb them, and appoint the petitioner in 1981 quota, if there is no existing vacancy in 1980 quota. The parties would bear their own costs.