
(2021) 02 RAJ CK 0036

In the Rajasthan High Court

Case No : Civil Writ Petition No. 9978 Of 2020, 680 Of 2021

Ashok Ram And Ors

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 17-02-2021

Acts Referred:

Constitution Of India, 1950 — Article 14, 16(4), 226

Citation : (2021) 02 RAJ CK 0036

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Advocate : Kuldeep Mathur, Abhilasha Bora, Sumeha Kalla, Mahesh Thanvi, Hemant Choudhary, Vinit Sanadhya

Final Decision : Dismissed

Judgement

These writ petitions have been filed by the petitioners seeking to question the validity of provision made in order dated 23/6/2019 (Annex.2), whereby,

reservation to Economically Backward Section ('EWS') has been provided in the ongoing recruitments. Further the consequential reduction in the

number of post earmarked for unreserved category candidates has also been questioned and a direction has been sought to declare the result and

make appointments on the post of Lecturer (School Education) in accordance with the posts earmarked for unreserved category vide advertisement

dated 13/4/2018 (Annex.1).

An advertisement dated 13/4/2018 was issued by the Rajasthan Public Service Commission ('RPSC') inviting applications for appointment on the post

of Lecturer (School Education). The advertisement provided for reservation to candidates belonging to SC, ST, O.B.C, S.B.C & P.H. The mode of

selection was through competitive examination and the last date for filing the

application was 16/6/2018.

While the recruitment was in progress, an order dated 23/6/2019 (Annex.2) came to be issued by the State indicating that the State Government by its

Notification dated 13/2/2019 had provided for 5% reservation for Most Backward Category ('MBC') and by Notification dated 19/2/2019 had provided

for 10% reservation for EWS and indicated the procedure to be adopted for ongoing recruitments. It was inter alia provided that for the recruitment

where examination have not been held at any stage, the benefit of reservation in terms of Notifications dated 13/2/2019 to 19/2/2019 shall be provided.

It was further provided that advertised posts shall be re-categorized and the recruiting agency shall issue an amended notification and further indicated

the procedure to be adopted.

Following the order dated 23/6/2019 (Annex.2), the RPSC issued a corrigendum dated 19/9/2019 (Annex.3) providing for enhanced reservation for

MBC and reservation for EWS.

Feeling aggrieved, the present writ petitions have been filed by the candidates inter alia indicating that vide advertisement dated 13/4/2018 a total of

5000 posts for 20 subjects for appointment on the post of Lecture (School Education) were advertised, out of which a total of 2541 posts were for

unreserved (open) category candidates, however, on account of corrigendum dated 19/9/2019 (Annex.3) which provided for enhanced reservation, the

posts earmarked for unreserved (open) category candidates have been reduced to 2050 by reserving 491 posts for EWS Category.

It is inter alia submitted by learned counsel for the petitioners that respondent RPSC by enhancing reservation to MBC category and providing for

reservation to EWS category, has reduced the number of posts which were earmarked for unreserved category candidates, which is not justified.

Submissions have been made that the action of the respondents has caused serious prejudice to the interest of petitioners, who being eligible have

applied and participated in the selection process in pursuance of the advertisement dated 13/4/2018.

Submissions were made that as the advertisement was dated 13/4/2018 and enhanced reservation / reservation for the two categories were provided

during the ongoing recruitment, the same could not have been applied to the said recruitment and in any case the posts earmarked for the unreserved

category should not be reduced.

With reference to the order dated 23/6/2019 (Annex.2), it was submitted that the notification created two classes of recruitments, which is not

justified, wherein, cases where the examination had been held, while the reservation for EWS has not been provided, the enhanced reservation for

MBC has been provided along with creating additional posts, however, in recruitment where examinations have not been held, both the reservations

i.e. enhanced reservation for MBC and new reservation for EWS has been applied whole hog without providing for enhancement of posts, which is

highly discriminatory and cannot be justified on any ground.

Further submissions were made that by applying for the post of Lecturer (School Education) pursuant to the advertisement dated 13/4/2018 a right has

accrued in favour of the petitioners, which cannot be taken away by way of corrigendum providing for reservation/enhanced reservation and,

therefore, the action of the respondents in issuing the corrigendum dated 19/9/2019 (Annex.3) reducing the posts available for unreserved category

deserves to be set aside and/or the respondents be directed to enhance the posts to the extent reservation has been provided.

It was further submitted that in certain other recruitments, where examinations were not held, reservation has been provided to MBC & EWS

category by enhancing the advertised posts and as such it is a clear case of discrimination.

Reliance was placed on Ranjeet Kumar Sah & Ors. Vs. State of Jharkhand : Writ Petition (S) No. 53/2020 decided on 21/1/2021 by the Jharkhand

High Court.

Learned counsel appearing for the respondent no.1, contested the submissions made on behalf of the petitioners. It was submitted that with the

amendment in the Constitution (vide Constitution 103rd Amendment Act, 2019), reservation was provided for EWS, which came into force on

12/1/2019. The State issued Notification dated 13/2/2019, whereby, the Rajasthan Backward Classes (Reservation of Seats in Educational Institutions

in the State and of Appointments and Posts in Services under the State) Amendment Act, 2019 ('Rajasthan Backward Classes {Amendment} Act,

2019') was enacted, which came into force at once and provided for enhanced reservation for MBC. Whereafter, on 19/2/2019 by another

Notification, Rajasthan Various Services (Amendment) Rules, 2019 ('the Rules, 2019') were notified, which also came into force with immediate

effect providing for reservation of vacancies for EWS. Based on the said Notification, the State issued general order dated 23/6/2019 for implementing

the amendments introduced by the Constitution and the Notifications dated 13/2/2019 & 19/2/2019.

Submissions were made that looking to the fact that there were large number of ongoing recruitments, with a view to ensure that while the reservation

as prescribed are provided, the same does not disturb the recruitment process in the cases where they have substantially proceeded ahead, provisions

were made.

It was submitted that in the present recruitment except for filling up the application forms, nothing has proceeded further and, therefore, the provision

made in the order dated 23/6/2019 which pertained to recruitment where the examinations were not held was rightly implemented.

It was submitted that by merely filling the application forms, no right has accrued in favour of the petitioners so as to question the validity of the action

taken pursuant to the order dated 23/6/2019.

It was submitted that for fulfilling the requirements of amendment, which came into force at once/immediately, it was necessary to provide for the

reservation in the ongoing recruitment and as such, the same cannot be questioned on any ground.

Submissions were also made that there is no question of any discrimination between the cases where the examinations have been held and where no

examinations were held in the ongoing recruitment as the said differentiation is reasonable and, therefore, no case of any kind of intervention is made

out.

It was submitted that a part of the Notification dated 23/6/2019 was challenged, wherein, cases where examinations were held and reservation for

enhanced seats was provided for MBC only, EWS candidates questioned the said action, which was negated in Surendra Singh Rathore vs. State of

Rajasthan : S.B.Civil Writ Petition No. 13208/2019 & other connected matters decided on 6/12/2019 at Jaipur Bench, which judgment has been upheld

in Bhagvat Singh & others vs. State of Rajasthan & Ors. : D.B. Special Appeal (Writ) No. 176/2020 decided on 20/7/2020 and, therefore, the issue

raised stands covered by the said judgment.

Reliance was also placed on CMD/Chairman, B.S.N.L. & Ors. Vs. Mishri Lal & Ors. : (2011) 14 SCC 739 and Vishwas Bajirao Patil vs. State of

Maharashtra & Ors. : AIR 2019 Bombay 311.

It was submitted that insofar as the allegation pertaining to enhancing the seats in certain other recruitments as alleged, is concerned, the said aspect

pertains to each individual department and unless the said department is impleaded as party, the same cannot be responded.

I have considered the submissions made by learned counsel for the parties and have perused the material available on record.

The entire case of the petitioners is by way of questioning the validity of order dated 23/6/2019 (Annex.2), whereby, the State, as noticed

hereinbefore, has provided guidelines implementing the Constitution 103rd Amendment as well as the Notifications dated 13/2/2019 and 19/2/2019

providing for enhanced reservation to MBC and reservation to EWS.

A perusal of the Rajasthan Backward Classes (Amendment) Act, 2019 and the Rules, 2019 indicates that the same came into force at once and with

immediate effect, respectively. Once the enhanced reservation and reservation were provided with immediate effect, the same were required to be

applied to the ongoing recruitments and the plea raised that applying the same to the ongoing recruitment amounts to applying the same retrospectively

and bad on that ground, apparently has no substance.

The Division Bench in Kamla Godara & Ors. Vs. State of Rajasthan & Anr. : AIR 2000 Rajasthan 130, whereby, enhanced reservation provided by

the Government, whereby, quota for SC was enhanced from 8% to 16% and quota of ST was enhanced from 6% to 12%, and three new reservations

were provided for the candidates belonging to Other Backward Classes at 21% for the pre-medical test & pre-Veterinary test, 2019, it was held as

under:

35. A change in law, which came into effect with an express intention of the State Government, to enforce the law in relation to 1999 examination,

which was going to be held, cannot be held to be ineffective, for that examination. A reference can be made in this regard to a Supreme Court

decision rendered in the matter of Indra Sawhney vs. Union of India reported in 1992 Supp (3) S.C.C. 217 : (AIR 1993 SC 477) wherein it has been

observed as under :-

Once we hold that a provision under Article 16(4) can be made by the executive, it must necessarily follow that such a provision is effective the moment it is made.

37. With the Cabinet decision on 4-5-1999 enhancement became effective. The order was passed on 5-5-1999. On this count the arguments of the learned counsel for the petitioners fail and it is held that the State Government's decision taken in the Cabinet Meeting held on 4-5-1999 will govern the examination of 1999 whereby enhanced reservation was available to the classes specified in the order.

38. The case of the petitioners further falls on the ground that by mere filling up of the forms for taking up the examination no vested right can be said to have accrued to the petitioners. If there was no vested right accrued to the petitioners then they cannot ask this Court to exercise its extraordinary jurisdiction under Article 226 of the Constitution of India to interfere in a matter which falls short of creating any right in favour of the petitioners.

39. The Courts in India have been taking a consistent view that even those who figured in the select list have no indefeasible right to get appointment.

In the instant case the petitioners had only taken up the examination and they have been declared successful and don't find place in the select list.

Therefore, they cannot claim that they have any indefeasible right. A valid law framed by the State Government cannot be called in question on the grounds raised by the petitioners.

Insofar as the judgment of Jharkhand High Court in Ranjeet Kumar Sah (supra) is concerned, a perusal of para 13 of the said judgment indicates that

Clause 11 of the Resolution dated 15/2/2019 provided that reservation will be effective w.e.f. 15/1/2019 'in subsequent advertisement' and as such, the

said judgment, wherein, the Resolution was to provide for reservation in subsequent advertisement would have no application to the facts of the

present cases. Irrespective of the said distinguishing feature, the judgment in the case of Kamla Godara (supra) holds the field and, therefore, also the

judgment of Jharkhand High Court would have no implication.

By Notification dated 23/6/2019, the respondents for implementing the reservation provided by the Notifications dated 13/2/2019 and 19/2/2019 inter

alia provided the following guidelines:

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(ii)

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(iii)

13.02.19 () 19.02.19 ()

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Besides the above, further procedure for implementing the above guidelines was also indicated.

A perusal of the above would indicate that the above guidelines were issued to ensure the implementation of enhanced reservation/reservation in the

ongoing recruitments, while apparently ensuring that the same does not result in disturbing the recruitments, which had crossed a particular stage i.e.

holding of examination and within the said category i.e. holding of examination and not holding of the examination, further provisions were made in

cases where examinations were held providing for enhanced reservation for MBC and not implementing the reservation for EWS.

The Notification dated 23/6/2019 has already undergone scrutiny qua the cases where the examinations have already been held, which provided for

enhanced reservation to MBC and declining reservation to EWS in the case of Surendra Singh Rathore (supra), wherein, it was inter alia laid down as

under:

30. The decision of the State Government in determining the number of posts in cases where the recruitment is pending and examination has not been

held, is found to be in consonance with the Rules as rule relating to determination of vacancies would be adhered.

33. The creation or abolition of posts is an exclusive domain of the State Government and this Court cannot direct the State Government to create

additional posts for the implementation of EWS reservation in the pending recruitments. Thus, the decision of the State Government in not

implementing EWS reservation to the pending recruitments, where the examinations have already been held or where the result has been declared,

cannot be said illegal or contrary to the Rules which govern the said recruitment.

42. This Court further finds that the decision of the authority in applying EWS reservation in pending selections where examination has not been held is

equitous and allows participation of all the persons who may fall under EWS category. The contention of learned counsel for the petitioners that EWS

category candidates should be identified from the existing applicants alone, would per se be discriminatory amongst all the candidates who would

otherwise fall in EWS category but have been deprived to participate for the said category posts. Examining on the said basis, this Court finds that the

decision taken by the State Government dated 23/06/2019 confirms the principles ingrained in Article 14 of the Constitution.

45. In view of the aforesaid settled law, the classification and categorization of the candidates who fall under the MBC category and those who fall

under the EWS category by the State Government while applying reservation in the pending recruitments being conducted by the recruiting agencies

independently through their letter dated 23/06/2019 cannot be said to be discriminatory or arbitrary or violative of Article 14 of the Constitution of India

and the same is accordingly upheld.

The Court came to the categorical conclusion that the provision providing for determining the number of posts in cases where the recruitment was

pending and examinations were not held to be in consonance with the Rules, which relates to determining the vacancies.

It was further found that the decision of the State in not implementing the EWS reservation to the pending recruitments where examinations have

already been held was not illegal or contrary to the Rules which governed the recruitment. It was also found that applying EWS reservation in pending

selection where examinations have not been held was equitable and allows participation of persons, who may fall under EWS category and that the

communication dated 23/6/2019 cannot be said to be discriminatory and arbitrary.

The said judgment has been upheld in the case of Bhagvat Singh (supra), wherein, it was inter alia held as under:

22. In the instant case, the State Government while implementing the reservation provided, vide Circular dated 23.6.19 excluded the recruitment

process where the examinations were already concluded or the process for

preparation of the merit list was at the verge of completion. It is not the case of the appellants that the policy decision of the Government in implementing the reservation provided, was actuated by malafide and thus, the decision taken which is not otherwise unreasonable or irrational, cannot be interfered with by this Court in exercise of its extra-ordinary jurisdiction under Article 226 of the Constitution of India.

The Division Bench held that as the case of appellants was not that the policy decision of the Government in implementing the reservation vide

Circular dated 23/6/2019 was actuated by malafides or the decision was otherwise unreasonable or irrational, the same could not be interfered by the Court in exercise of its extra ordinary jurisdiction under Article 226 of the Constitution of India.

In view of the above observations made in the case of Surendra Singh Rathore (supra) and Bhagvat Singh (supra) in relation to Circular dated

23/6/2019, apparently, no case is made out for interference in the present writ petitions.

The additional submissions made, seeking to the alleged discrimination on the ground of issuance of certain notifications by RPSC pertaining to other

recruitments are concerned, by Circular dated 23/6/2019 it was left to the concerned administrative departments to send the requisition based on

Notifications dated 13/2/2019 and 19/2/2019 to RPSC, based on which the RPSC was to issue notifications. Merely by producing the Notifications

issued earlier and the amended Notifications, without anything more, by itself cannot establish any kind of discrimination, as the action apparently is

based on the decision taken by the respective administrative departments and as such no case is made out on that count also.

So far as the plea raised regarding creating two classes of recruitments is concerned, in view of the judgment in the cases of Surendra Singh Rathore

(supra) and Bhagvat Singh (Supra), qua the category i.e. cases where examinations have been held and reservation was provided to MBC and not to

EWS, it was found that the classification was reasonable and the distinction between cases where the examinations were held and examinations were

not held cannot by any stretch of imagination be said to be discriminatory.

In view of the above discussion, no case for interference is made out in the present writ petitions. The writ petitions have no substance and the same

are, therefore, dismissed.