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**(2004) 09 RAJ CK 0063**

**In the Rajasthan High Court**

**Case No : Civil Writ Petition No. 3100 of 2002**

Bhupender Sharma and Others

APPELLANT

Vs

District and Sessions Judge

RESPONDENT

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**Date of Decision : 02-09-2004**

**Acts Referred:**

Rajasthan Subordinate Courts Ministerial Establishment Service Rules, 1986 — Rule 15, 19

**Citation : (2005) 1 RLW 382 : (2004) 4 WLC 704**

**Hon'ble Judges : B. Prasad, J**

**Bench : Single Bench**

**Advocate : K.L. Thakur, A.A.G., M. Mridul, sisted by R.N. Upadhyaya and S.L. Jain, for the Appellant;**

**Final Decision : Dismissed**

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## **Judgement**

B. Prasad, J.—The present writ petition has been filed by the petitioners seeking appointment as Lower Division Clerks pursuant to an advertisement issued by District and Sessions Judge, Pratapgarh dated 10.05.2001. By the said advertisement, applications were invited. After scrutiny of applications, competitive examinations were held and it is claimed that the petitioners were declared successful. Having been declared as successful, petitioners were entitled to face type test which was also conducted and a list of selected candidates was prepared.

2. In the notification dated 10.05.2001 it was stated that there are six posts of LDCs vacant and in future, some vacancies are anticipated to occur. In the notification, this was also stated that out of these posts which have been advertised, three posts are reserved for Scheduled Caste and three for Scheduled Tribes. This was also stated that the posts may be filled up from other methods viz, promotions from IV th class and by transfer etc. A panel will be prepared of the successful candidates which will to be effective for one year.

3. According to the petitioners, after declaration of select list on 30.10.2001,

they kept waiting for the appointment order against the existing and anticipated vacancies. Petitioners claim that vide Annex.3, petitioners were called to appear before ADJ (Fast Track), Pratapgarh with their testimonials because the vacancies were likely to be filled up. Petitioners have placed reliance on Rule 15 of the Rajasthan Subordinate Courts Ministerial Establishment Service Rules, 1986 (hereinafter referred to as "the Rules of 1986") which is reproduced here in below for ready reference :-

"15. Frequency of Examinations : Early in each year or as the circumstances may require each District Judgeship shall recruit as many candidates for his Judgeship as required for the vacancies likely to arise in the course of the year."

The contention of the learned counsel for the petitioners is that the District Judge of the Judgeship is required to recruit as many candidates as required for the vacancies likely to arise in the course of the year. In terms of Rule 15 of the Rules of 1986, the District Judge is required to determine all existing and anticipated vacancies every year and in this way it is claimed that the anticipated vacancies were 25 and therefore, a select list so declared was required to remain in currency of one year from the date of notification i.e. 30.10.2001. Such is the provision provided in Rule 19 of the Rules of 1986. The same is reproduced here in below for ready reference :-

"19. Registration of selected candidates :-

(i).....

Provided that.....

Note-(1).....

(2).....

(3) If any such candidate has not been given an appointment offer in strict order of seniority according to the list in the bound register prescribed under rule (1) within one year from the date of declaration of the result of his recruitment test, his name shall be automatically removed from the register of recruited candidates. He must then take his chance with others for recruitment again in subsequent year."

4. While process of selection was continuing, a writ petition was filed before this Court being D.B. Civil Writ Petition No. 955/02, "Pappu Lal v. State" (1), wherein, validity of selections which were made for the recruitment of LDCs in Pratapgarh judgeship were challenged. The said writ petition was dismissed by the Hon"ble Court on 26.07.02 and it was observed in the decision that there was no reason for not completing the selection process expeditiously. The petitioners have further averred that while the writ petition was pending, a notification was issued by the respondent on 15.07.2002 inviting applications from eligible candidates to fill up the existing 23 vacancies in Pratapgarh judgeship. According to the petitioners, these 23 vacancies were same which were shown as anticipated

vacancies in advertisement Annex. 1 dated 10.05.2001 for which selection was conducted. After the dismissal of the writ petition in the matter of Pappu Lal (supra), respondent has given appointment to six persons. Out of six persons offered appointment, four joined and two namely Shri Pushpendra and Bhaskar did not join duties within the stipulated time. It is urged that the respondent has not filled in these vacancies as was required under the law from the existing select list. Petitioners were selected candidates against the existing and anticipated vacancies for which a select list was published. Advertisement vide notification dated 15.07.2002 for fresh selection is bad according to the learned counsel for the petitioners. Appointments were required to be given from the select list already existing and having not done so, respondent has neglected the mandate of law and also the mandate of Division Bench of this Court.

5. Reply has been filed on behalf of the respondent. Respondent in his reply have contested that advertisement dated 10.05.2001 was principally issued for selection of six vacancies of LDCs. Due to pendency of the writ petition of Pappu Lal (supra), the appointments were not made immediately but after dismissal of the writ petition, appointments were made and six eligible candidates were offered appointment out of which four joined and two did not join and in place of these two persons, two persons from the select list figuring on top were offered appointment.

6. The answering respondent has further submitted that Secretary, Department of Personnel (A-2), Govt. of Rajasthan has issued a circular dated 19.07.2001 according to which 50% posts can be filled up by way of panel of successful candidates. This means that appointment cannot be given more than 50% of the posts advertised from the list prepared. Thus, no appointment could have been offered to the petitioners as stands from the circular referred to hereinabove. The answering respondent has issued an advertisement of 23 posts vide Annex.4 for which examinations were conducted and selection process has been completed. The process of selection for these posts has come to an end and the petition has become infructuous. This has been emphasised in the reply that advertisement dated 10.05.01 primarily meant for selection of six posts and six posts have been filled up.

7. The answering respondent has further stated that appointment from the waiting list may be given upto the extent of 50 per cent of the posts advertised. This has also been contested that any person figuring in the select list has no indefeasible right to get appointment. The answering respondent has submitted that the advertisement issued on 15.07.2002 was issued in relation to the posts which occurred after the issuance of advertisement dated 10.05.2001. Since the posts were advertised after appointment, petitioners cannot claim any right against the anticipated vacancies. Petitioners cannot claim appointment as a right. Learned counsel for the respondents has further submitted that vacancies which are claimed to have been anticipated when the advertisement was issued, in fact, occurred due to various circumstances and a perusal of Annex.R/1 goes

to show that due to inter-district transfers on 22.05.2001, three vacancies fallen vacant and two posts became vacant on 04.07.2001 due to promotion of two LDCs. One LDC namely, Mangilal Rao was to be retired on 31.07.2001. By other inter-district transfer orders dated 15.12.2001, 30.01.2002 and 01.02.2002, 3, 2 & 2 posts of LDCs respectively again fell vacant. Two posts of LDCs again became vacant due to inter-district transfer on 01.02.2002 and one post on 16.03.2002. Three posts became vacant due to death of Nanuram Regar on 25.06.2002. Thus, it is clear that these 23 vacancies could not have been anticipated on 10.05.2001 when the said advertisement was issued.

8. Supporting the contentions raised in the writ petition, learned counsel for the petitioners submits that in view of Rule 15 of the Rules of 1986, respondents were required to take into account the anticipated vacancies to operate the list as delineated in Rule 15 of the Rules of 1986. Learned counsel for the petitioners further submitted that there is arbitrariness in operating the list. More particularly, when this Court while entertaining the writ petition of the petitioner has ordered that if any appointments are made, they will be subject to final decision of the writ petition. Therefore, whatever selections have been made in view of subsequent notification, they are bad in the eye of law and the petitioners have a preferential right of appointment because they figured in the select list prior to the holding of the examination and appointments pursuant to the advertisement dated 15.07.2002.

9. To support the contention, learned counsel for the petitioners has relied on a decision rendered in the case of *Purushottam v. Chairman, M.S.E.B. and Anr.* (2), wherein, Supreme Court has held as under:-

"The appellant [indisputably was selected for the post of Assistant Personnel Officer meant for a Scheduled Tribe category. He had produced the certificate of the Magistrate indicating that he belongs to "Halba" caste which is undoubtedly the Scheduled Tribe, but the employer in accordance with the procedure prescribed referred his case to the Caste Scrutiny Committee for verification. The said committee being of the opinion that the appellant does not belong to Halba caste denied him the right to be employed notwithstanding his selection for the post in question."

10. This case relates to denial of appointment because of controversy regarding the recognition of a caste. The selection of the candidate was not against the anticipated vacancy but the appointment was denied because of caste which was later found of the category of which the petitioner claimed. The facts of the case therefore, do not govern the facts of this case and it renders no assistance to the learned counsel for the petitioners.

11. Learned counsel for the petitioners has further relied on a case "*Hanuman Ram and Anr. v. State of Raj. and Ors.*" (3), wherein the appointment was denied to the petitioners because there was dispute regarding the recognition of their B.Ed, degrees and less meritorious persons were appointed. In this background,

this Court has held that mere expiry of select list would not come in the way of petitioners because the candidature of the petitioners was wrongly rejected. It has been held as under: =

"19. Further more, so far as the argument that the writ petition was filed by the petitioners after selection process was over is concerned, it is submitted that the petitioners are not seeking appointment on the ground that they were kept in waiting list, but they are seeking appointment as their case was wrongly rejected by the respondents and therefore, they law laid down in the case of Virendra Singh v. State of Rajasthan reported in 1991(1) WLC 758 , Krishi Utpadan Mandi Samiti, Haldwani Etc. Etc. Vs. M/s. Indian Wood Products Ltd., and another, and M.P. Electricity Board v. Virender Kumar Sharma reported in 2002 SCC 1097 would not be helpful to the learned counsel for the respondents.

20. Hence, it may be concluded that if the select list expires because of fault of the petitioners and the petitioners were found otherwise suitable to be appointed, then expiry of select list would not come in the way of the petitioners for giving appointment as denial of appointment is violative of fundamental right as enshrined under Article 14 and 16 of the Constitution of India. Thus, from this point of view also, if the petitioners stand in merit, petitioners are entitled to be appointed on the post of Teacher Grade III in pursuance of advertisement dated 24.4.97 (Annex.1) and thus, the petitioners are entitled to seek remedy under Article 226 of the Constitution of India."

12. This case also renders no assistance to the petitioners.

13. Learned counsel for the petitioners has further relied on a case "Idan Singh v. State of Rajasthan and Ors." (4), wherein, this Court considered the question of a candidate who was wrongly placed in the list. The quest has been dealt with by this Court in the following words :-

"11. Present is not a case of seeking a mandamus for operating a select list or reserved list which has not been operated at all, or has only been partly operated by giving appointments to persons in order of merit about the petitioners. It is clearly a case where the state Government has operated the select list for giving appointments on the post of Gram Sevaks in pursuance of selections made in 1996, and petitioner being No. 1 amongst O.B.C. Candidates for whom a percentage of seats are reserved, he was bound to be appointed amongst first candidate, but for the mistake committed by the officials not including the name of the petitioner in the category of OBC candidates. Thus admittedly person lower in merit in the select list has been given appointment while candidate higher in order of merit has been denied appointment, and that too when the respondents had all the opportunities to remedy such breach of petitioner's fundamental right."

14. The law laid down in this case has no application in the present set of facts because it was a case where the candidate was put at the top of the list but since persons lower in the list were appointed, that resulted into issuance of order in

favour of the petitioner.

15. Learned counsel for the respondents has relied on a case 2001 (2) RLR 580 (5), wherein, this Court observed as under :-

"It is undoubtedly true that mere inclusion of the name in select list in particular order of merit does not give a right to claim appointment on that basis. But it is equally well settled that if appointments are offered in pursuance of such selection, such appointments are to be offered strictly in order of merit except for the reasons to be disclosed to deviate from the order of merit. When undisputedly the petitioner was overlooked in order of merit, the persons below her have been given appointment, she is entitled to seek a mandamus to be treated at par with those who have been given appointment, in the absence of any compelling reasons to deviate from such merit order."

16. This court considered the position of law and observed as under ;-

"A Division Bench of this Court in Divya Prakash Pandya v. State of Rajasthan and Ors. In D.B. Civil Special Appeal No. 701/99 observed as under :-

"It is true that mere inclusion of the name in the select list does not confer any right to the appointment, it is equally well settled that if such select list is operated, the appointments will ordinarily be offered in order of merit in which their names appear in the select list, no person outside such select list can be appointed during the life of such select list on the posts for which selections have been made. Any deviation from the select list in giving appointment would call for satisfactory explanation to the select list."

Further, it has been observed as under :-

"Present is a case of later class where the petitioner is not seeking a mandamus for operating a select list which has not been operated at all or has been operated partly by giving appointments in order of merit to candidates above the petitioner. But it is a case where the State Govt. has operated the select list for giving appointments to persons ranked below the petitioner in the order of merit and no reason has been shown to deviate from such merit."

17. The prayer in this case was not for operating a select list, therefore, this case has also no application as far as case of the petitioners is concerned.

18. In the preceding paras, the case relied upon by the petitioners have been discussed by me and it is clear that none of the cases has any application in the present controversy. Learned counsel for the petitioners has urged that in terms of Rule 15 of the Rules of 1986, the examination has to be held for the vacancies which are likely to arise in the course of the year. The advertisement was issued for selection on 10.05.2001, therefore, what should be taken is that in the advertisement in question, the vacancies which arose for the relevant year were only required to be filled by the list which was to be prepared of the selected candidates. The recruitment is limited to the year in which vacancy arose in the

course of year and not subsequently. There is not a whisper in the petition that the vacancies for which the petitioners claim appointment were for the year relevant in terms of Rule 15 of the Rules of 1986. Petitioners' case is not supported by the provisions of Rule 15 of the Rules of 1986.

19. The answering respondent has further submitted that the petitioners are trying to take advantage of the provisions of Note (3) of Rule 19 of the Rules of 1986 wherein, it has been stated that within one year, if the candidate has not been given an appointment, he is required to take chances with others for recruitment in the subsequent year. This does not mean that the vacancies advertised in terms of Rule 15 of the Rules of 1986 are meant to be filled by the vacancies occurring after preparation of the list. This note appended to Rule 19 of the Rules of 1986 only means that those candidates who figured in the list can be offered appointment, if an appointment is offered to them by the District Judge within one year. The District Judge has offered appointment to those persons for whom the advertisement was issued and such posts which occurred during the year the advertisement was issued on 10.05.2001.

20. It has further been canvassed that no less meritorious person has been appointed. All persons appointed have been appointed in accordance with merit. Merely figuring in the select list does not give indefeasible right of appointment as has been held by the Hon'ble Supreme Court in catena of decisions and in this Background, no right accrues to the petitioners to claim that they should be offered appointment.

21. I have considered the rival submissions and have given my thoughtful consideration.

22. This is an admitted position that no person less meritorious than the petitioners have been appointed. Petitioners' case is that since they figured in the list of selected candidates, they should have been offered appointment within one year of the list so prepared. This contention of the petitioners is required to be examined in the light of Rule 15 of the Rules of 1986 quoted herein above for ready reference. Rule 15 makes it explicit that recruitment is required to be made for as many candidates for judgeship which are likely to arise in the course of the year. A consideration has to be made to the term "vacancy likely to arise in the course of the year". The notification for selection was issued on 10.05.01. It is quantified that alongwith available posts, the expression used in the advertisement is that some vacancies are anticipated to occur. Now this anticipation of occurrence relates to which year is the question to be answered. It is in the eventuality of vacancies arising in the course of year that it is required to be filled in. In the advertisement, only six vacancies were said to have been clearly available, others were said to be vacancies which were anticipated vacancies. The year starts from where and ends where, both the parties have not delineated in their pleadings. It could be the financial year or the calendar year. Thus, there being no sufficient pleading on the point, it is not clear as to from which date, the year has to be computed. Thus, the expressions contained in

Rule 15 of the Rules of 1986 have not been clearly explained either by the petitioners or the respondent.

23. Respondent has stated in an additional affidavit filed that the vacancies which are being claimed are the vacancies which occurred due to administrative reasons of inter district transfers, retirement, death etc. Except retirement, vacancies due to transfers and death cannot be said to be anticipated vacancies because transfer and death is not an anticipated contingency. Further, the advertisement has not given out clearly that all the vacancies were likely to be filled by the process of selection only. This has also been delineated that these vacancies could be filled from other modes of recruitment. It was not an absolute promise on the part of the recruiting officer that the petitioners will be offered appointment. That being the position, this Court feels that when no less meritorious person has been recruited, it cannot be said that in terms of the advertisement, petitioners have an absolute right of being offered appointment.

24. The question can be answered from other angle also. The note appended to Rule 19 of the Rules of 1986 only makes a mention that if the candidate has not been given appointment offered in strict order of seniority according to the list within one year, the name will be removed. This rule does not make it incumbent that the list has to be operated in all circumstances. The cases relied upon by the learned counsel for the petitioners have been discussed by me in detail in the preceding paras and none of the cases was of the nature, where a list was required to be operated where, no less meritorious person was appointed. In this view of the matter, the note appended to Rule 19 of the Rules of 1986 offers no guidance to the advantage of the petitioners.

25. It may further be noticed that a Division Bench of this Court in the case of "Prakash Chand v. District & Sessions Judge, Rajsamand and Anr." (6), has dealt with this question in the following terms :-

"None of the petitioner's juniors in the list has been appointed. The panel has been operated upto the extent it could last and, if thereafter, the petitioner does not get appointed, then for that the respondents cannot be held liable. By virtue of his remaining in the select list only, the petitioner cannot be said to have acquired an indefeasible right in his favour and, therefore, is not entitled to get a mandate issued in his favour against the respondents. If the law is so held that transfer vacancy can be included in the anticipated or existing vacancy, then there is always the danger of the same being misused, abused and manipulated for accommodating some favoured ones in the list by getting some existing employees transferred and thus filling up of the posts. This cannot be permitted to happen and therefore, the view canvassed by the petitioner is obviously misconceived. There is no force in the appeal."

26. The view expressed by the Division Bench is clear and unambiguous that mere inclusion in the list does not give an indefeasible right to the petitioner and vacancies occurred due to transfers cannot be considered to be anticipated

vacancies which is the case of occurring of vacancies in the instant case for majority of the vacancies. Thus, if no appointments have been offered to these petitioners, it cannot be said that any illegality has been committed by the respondent.

27. It is the mandate of law as contained in Note (3) appended to Rule 19 of the Rules of 1986 that if no appointments are made within one year then, those who figured in the list, will have to compete in the succeeding selections after the dismissal of the writ petition of Papu Lal (supra). The list was operated. The appointment was offered to six persons. Two persons out of them were not willing to join and in their place, next two persons were offered appointment. Thus, the mandate of the Division Bench of this Court as given in Pappu Lal's case (supra), has been followed. It cannot be lost sight that there were only six posts which were clearly advertised, rest were only a guessing game. Thus, there was not a definite promise held out. Most of the vacancies which are claimed to have been occurred are due to inter-district transfers and they do not furnish cause of action to the petitioners, in that view also, petitioners have got no right. Thus, the order passed by this Court that all selections made are subject to decisions of this Court do not safeguard the interest of the petitioners to any extent because this Court has not felt that the appointments so made were in anyway not in terms of the rules arid, therefore, as a corollary, no relief can be granted to the petitioners. The list has come to an end as no appointment was offered to the petitioners within one year of the publication of the list. The list stands expired, and therefore, no relief can be granted to the petitioners. There is no force in the writ petition.

28. The writ petition is hereby dismissed.