
(2014) 05 RAJ CK 0049

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) Nos. 1163, 1164, 1165, 1166, 1167, 1168, 1169, 1172, 1173, 1196, 1198, 1199, 1201, 1313, 1544, 1702, 1705, 1830/2011 and 1033/2012

Dhanraj Meena and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 23-05-2014

Acts Referred:

Citation : (2014) 05 RAJ CK 0049

Hon'ble Judges : Amitava Roy, C.J.;Veerender Singh Siradhana, J.

Bench : Division Bench

Advocate : Sanjeev Prakash Sharma, Senior Counsel assisted by Sandeep Singh Shekhawat, for the Appellant; S.K. Gupta, AAG assisted by Gaurav Tanwar, for the Respondent

Final Decision : Dismissed

Judgement

Veerender Singh Siradhana, J.?The instant intra-court appeals involve identical question of facts and law and therefore, the intra-court appeals are being adjudicated upon by this common judgment.

2. Shorn off unnecessary details, the indispensable essential material facts necessary for appreciation of the controversy raised are: that the appellants successfully participated in the selection process in response to the advertisement dated 20th June, 2008, and as amended by corrigendum dated 2nd September, 2008, issued by the Rajasthan Public Service Commission (hereinafter referred to as the "RPSC", for short). The written test was conducted on 22nd July, 2009 and result was declared on 22nd September, 2009. The appellants were accorded appointment on 14th July, 2010 on the post of Teacher Grade-III and submitted their joining in consequence thereof. However, the appointment of the appellants was cancelled vide order dated 17th March, 2011, as a consequence of revision of the result, in compliance of the judgment delivered by this Court in a batch of writ applications, lead case being SBCWP

Number 12621 of 2009 - Hari Singh & Ors. Versus RPSC & Ors. The learned Single Judge while allowing the batch of writ applications (supra), held thus:--

"Consequently, writ petitions are hereby allowed. Respondents are directed to treat option (3) (Abdul Fazal) to Q.20 of Series A & its corresponding Questions of other series as correct answer thereto and accordingly such of petitioners and applicants who have not approached this Court but attempted option (3) (Abdul Fazal) to Q.20 of Series A & its corresponding Questions of other series as their answer thereto, their result be revised and such of applicants including petitioners whose names ultimately find place in select list which is supposed to be revised as a consequence of directions (supra), may be considered for appointment for the post of Teacher Gr. III pursuant to advertisement dated 20th June, 2008. Compliance be made within two months. No costs."

3. In another batch of 26 writ applications, lead case being SBCWP No. 4145 of 2011 - Meenakshi Sharma Versus State & Ors., involving identical controversy, the learned Single Judge, concurred with the judgment and order dated 17th August, 2010 in case of Hari Singh & Ors. (supra) and declined to interfere with the order of termination dated 17th March, 2011. The controversy in the instant appeals at hand, is with reference to the correctness of the answer key to question number 20 of Series "A" as to which of the authors, namely (1) Colonel Taud, (2) Badayuni, (3) Abul Fazal and (4) Gopinath Sharma; has referred to the war of "Haldi Ghati" as "Khamnor Ka Yudh". The learned Single Judge in the case of Hari Singh & Ors. (supra), was convinced that option number (Abdul Fazal), is the correct answer to question number 20 of Series "A" and its corresponding question of other series, and consequently issued a direction to the respondent-RPSC to revise the result accordingly within two months; which resulted into termination of the appointment of the appellants.

4. The learned counsel for the appellants reiterating the pleaded contents of the appeals/writ applications, has assailed the action of the State-respondents and RPSC. Firstly, for the appellants were not impleaded as party to the writ proceedings. Secondly, the appellants being successful were duly appointed, had joined the post involved, and were discharging their duties until the impugned order of cancellation dated 17th March, 2011; terminating their employment, without affording any opportunity of hearing. Thirdly, leave to appeal preferred was dismissed as premature. Fourthly, report of the Expert Committee was not subjected to challenge. Fifthly, the learned Single Judge took upon himself the task of an expert body as would be evident from the finding arrived at by the learned Single Judge to the effect that there is no opinion expressed by the Expert Committee for having considered the question on the basis of support of text books of the subject, which were duly approved and prescribed by the Board of Secondary Education, Rajasthan or text books authenticated or recognized by the State or Agency owned by the State Government. Sixthly, if the appellants were accorded an opportunity of hearing, before the learned Single Judge, they could have been successful in an effort to convince the learned Single Judge, of

the correctness of the answer key, furnished by the Experts. In order to reinforce the submissions made, the learned counsel placed reliance on the opinion of the Hon"ble Supreme Court in the case of Kanpur University and Others Vs. Samir Gupta and Others, ; Prabodh Verma and Others Vs. State of Uttar Pradesh and Others, ; Girjesh Shrivastava and Others Vs. State of M.P. and Others, ; A.R. Antulay Vs. R.S. Nayak and Another, ; Asit Kumar Kar Vs. State of West Bengal and Others, ; H.P. Public Service Commission Vs. Mukesh Thakur and Another, ; Ku. Rashmi Mishra Vs. Madhya Pradesh Public Service Commission and Others, ; Manish Ujwal and Others Vs. Maharishi Dayanand Saraswati University and Others, ; Arun Tewari and Others Vs. Zila Mansavi Shikshak Sangh and Others, and the opinion of the Coordinate Bench of this Court in the case of State of Rajasthan v. Rimjhim Shrimal & Ors.: 2008 (2) WLC 116.

5. Per contra, the learned counsel for the State-respondents, Mr. S.K. Gupta, Additional Advocate General, assisted by Mr. Gaurav Tanwar, Mr. S.N. Kumawat, learned counsel for the respondent-RPSC, Mr. Vigyan Shah and Mr. Vipul Jaiman on behalf of the respondents/writ petitioners, have supported the impugned judgment and order passed by the learned Single Judge.

6. Mr. Vigyan Shah, learned counsel for the respondents/writ petitioners, vehemently argued that so soon a provisional select list was published on 6th November, 2009; second stay application was preferred with a prayer for permission to participate in the selection process provisionally. The learned Single Judge taking into consideration all the facts and circumstances of the case, made an order on 9th November, 2009, to the effect that the appointments involved in the recruitment process shall remain subject to the decision of the writ petition. The State-respondents were allowed four weeks time to file reply in the meanwhile while allowing the respondents/writ petitioners to participate provisionally in the counseling. The learned counsel would further submit that information sought under the Right to Information Act, 2005, was also brought on record wherein the respondent-RPSC informed that no Expert Committee was constituted regarding wrong answer key. The respondent-RPSC while submitting its reply on 10th May, 2010, placed on record the extract of the book published by the Rajasthan Hindi Granthagar, Jodhpur in 1986, which was relied upon by the Experts to support the answer key. The report of the Experts in view of the meeting held on 9th and 11th February, 2010, was also brought on record. The respondents/writ petitioners countered the opinion of the Expert Committee on various counts including that the book published by the Rajasthan Hindi Granthagar, Jodhpur, allegedly relied upon by the respondent-RPSC in support of the answer key, was out of publication for last twenty years. The respondents/writ petitioners were allowed to participate in the counseling. The learned counsel further emphasized that the entire selection process was made subject to the decision on the writ applications pending before the learned Single Judge, which were ultimately allowed vide impugned judgment and order.

7. The learned counsel, to buttress his submissions, has placed reliance on the

opinion of the Hon"ble Supreme Court in the case of Kanpur University, through Vice-Chancellor & Ors. (supra); Abhijit Sen and Others Vs. State of U.P. and Others, ; Convenor, MBBS/BDS Selection Board & Ors. v. Chandan Mishra & Ors.: 1995 Supp (3) SCC 77; State of Orissa & Ors. v. Prajnaparamita Samanta & Ors.: (1996) 7 SCC 106; Manish Ujwal & Ors. (supra); Guru Nanak Dev University v. Saumil Garg & Ors.: (2005) 13 SCC 749 ; Rajesh Kumar and Others etc. Vs. State of Bihar and Others etc., ; Vikas Pratap Singh and Others Vs. State of Chhattisgarh and Others, , and on the opinion of this Court in the case of Adiya Pratap Singh & Ors. v. Rajasthan University of Health Sciences & Anr.: 2009 (3) WLC 328; Lalit Mohan Sharma & Ors. v. R.P.S.C. & Ors. (Full Bench Reference in Writ Petition No. 1042/2005 & connected cases) decided on 18th November, 2005; Hari Singh & Ors. v. RPSC & Ors. (S.B. Civil Writ Petition No. 12621/2009) decided on 17th August, 2010 and Manish Sharma & Anr. v. RPSC, Ajmer & Ors. (S.B. Civil Writ Petition No. 14655/2011) decided on 27th August, 2012 and State of Rajasthan Vs. Kamlesh Kumar Sharma and Others, .

8. We have heard the learned counsel for the parties and with their assistances, perused the materials available on record as well as the impugned judgment(s) and order(s) passed by the learned Single Judge.

9. It is settled proposition of law that ordinarily, the answer key provided by the Recruiting Agency is to be treated as correct unless it is demonstrated to be wrong so much so that no reasonable prudent, person well informed in the subject concerned, would consider it to be correct. The learned Single Judge taking note of the text books, approved by the Board of Secondary Education and by the Government Agency (Rajpal Hindi Granth), which were available to the candidates for study in the regular courses and are of wide circulations amongst the students, repelled the defence of the Public Service Commission, who placed reliance on a book, which was published by a private publisher lastly in the year 1986 and further, the same has not been prescribed by the Government or the Education Board.

10. The learned Single Judge while addressing the rival submissions, referring to the law declared by the Hon"ble Supreme Court in the case of Kanpur University and Others Vs. Samir Gupta and Others, and subsequently taken note of in the case of Manish Ujwal and Others Vs. Maharishi Dayanand Saraswati University and Others, , has concluded in the backdrop of the factual matrix that the writ petitioners were successful in convincing the Court of their grievance on account of wrong, and demonstrably erroneous key answer. In the instant case at hand, the Expert Committee has not expressed any opinion with reference to consideration of the question supported by the subject text books approved and prescribed by the Board of Secondary Education or recognized by the State or State Agencies, and therefore, rightly distinguished the opinion of the Larger Bench of this Court in Lalit Mohan Sharma v. RPSC (Reference in CWP Number 1042/2005 and connected matters, decided vide judgment and order dated 18th November, 2005).

11. Be that as it may, the controversy raised herein may not detain us for long for the reason that the writ proceedings instituted, arising out of the same recruitment process by the petitioners/appellants, have already been adjudicated upon in D.B. Civil Special Appeal No. 207/2013 (Vinita Sharma & Ors. v. State of Rajasthan & Ors.) vide judgment and order dated 2nd August, 2013, to which one of us (Mr. Amitava Roy, Chief Justice) was a party. In the case of Vinita Sharma & Ors. (supra), the petitioners/appellants therein, were aggrieved of dismissal of the writ application challenging the order dated 17th March, 2011, terminating their services, as a consequence of revision of the merit list in compliance of the directions vide judgment and order dated 17th August, 2010 in the case of Hari Singh & Ors. v. RPSC & Ors. (S.B. Civil Writ Petition Number 12621/2009) as published on 12th October, 2010. While adjudicating upon the Special Appeal in the case of Vinita Sharma & Ors. (supra), the Coordinate Bench also took note of the judgment and order dated 19th May, 2011, passed in a batch of writ application lead case being S.B. Civil Writ Petition Number 4145/2011 (Meenakshi Sharma v. State of Rajasthan & Ors.), observed thus:--

"There is however one aspect which needs consideration of the State Government that as many as 171 candidates were appointed by order dated 14.7.2010 and they continued to work till 17.3.2011. This has been result of implementation of judgment of this Court. Although that judgment may be subject matter of appeal and may even now be further subjected to appeal by many other candidates but nevertheless State Government ought to examine, if, as has been given out by the learned counsel for the petitioners, it, as sufficient number of vacancies, whether it can at its discretion accommodate these 171 candidates below already appointed candidates, as a one time measure so as to settle controversy once and for all."

12. On a careful scrutiny of the controversy in the backdrop of the judgment and order delivered in the case of Hari Singh & Ors. as well as Meenakshi Sharma (supra), the Coordinate Bench repelling the similar assailment on similar grounds, held thus:--

"The sequence of events constituting the factual backdrop is not in dispute. Noticeably, it is not the case of either of the parties that the judgments delivered in Hari Singh & Ors. (supra) and Meenakshi Sharma (supra) have as on date, being interfered with or modified by any higher forum. Though there is no specific direction in Hari Singh & Ors. (supra), for ouster of the candidates earlier selected and appointed, but whose names do not find place in the revised merit list, in our estimate, having regard to the nature of the exercise directed, it was a contemplated and logical consequence as a corollary thereof. In Meenakshi Sharma (supra), the plea, amongst others, that the revision of the merit list ought to be confined only to the writ petitioners, was rejected in categorical terms. That no appointment of any candidate beyond the number of posts advertised in the selection process, has been recorded in emphatic terms. Apart from the fact that the appointment orders of the appellants/writ petitioners did

contain a stipulation that the same would be subject to the orders passed in the writ petitions filed before this Court, there is no semblance of any evidence that the 1688 posts said to be vacant as on 1.1.2013 or any number therefrom, had been within the purview of the selection process involved, but had remained unfilled even after the publication of the revised merit list. The reference of these vacancies therefore, is of no decisive significance. If these vacancies do not relate to the selection process in hand, accommodation of any unsuccessful candidates therein against the same, would not be permissible in law, as it would then tantamount to recruiting persons against posts, not thrown open to be competed for by the available, eligible and even more meritorious candidates. This would run contra to the constitutionality enjoined norms governing the process of recruitment to public service. As the litmus test, is and ought to be merit and merit alone exhibited by the performance of the candidates in a public participatory process initiated for appointment in public office, there cannot be any compromise with this imperative precept. The learned Single Judge in Meenakshi Sharma (supra) as well, left it to the discretion of the government to examine as to whether it is possible to accommodate/retain 171 candidates excluded from the revised merit list. As appointments have to be essentially made only against the posts advertised and for which selection had been held, in the attendant facts and circumstances, in our view, no judicial mandate, as sought for to retain the appellants/writ petitioners in service, is warranted."

13. The Coordinate Bench of this Court in Special Appeal preferred on behalf of Vinita Sharma & Ors. (supra), taking note of the opinion of the Hon"ble Supreme Court in the cases of Rakesh Kumar & Ors. as well as Girjesh Shrivastava & Ors. (supra), concluded that those cases before the Hon"ble Supreme Court were distinctly different on facts, as compared to the facts attendant in the instant controversy, arising out of the recruitment process initiated vide advertisement dated 20th June, 2008, subsequently amended vide advertisement dated 21st September, 2008, observing and holding thus:--

"Not only the textual facts are distinguishable from those as obtained herein, a striking feature in the reported decision is availability of vacancies, for which the two processes had been conducted and had remained unfilled, even on the completion thereof. The directions of the Hon"ble Apex Court in this case, in our humble comprehension, does not signify that in all fact situations where the candidates once selected are ousted from the revised merit list following reevaluation of the answer scripts, consequence upon a detected erroneous answer key, have to be accommodated irrespective of availability of vacancies for the recruitment process concerned. This decision, in the singular facts and circumstances of the case therefore, in our opinion, does not advance the case of the appellants/writ petitioners.

Girjesh Shrivastava & Ors. (supra), also present a distinctly different factual scenario. The appellants therein had been appointed following their selection in a process initiated under the relevant rules. These appointments were challenged

in two public interest litigations on the ground that those were in contravention of the said rules. In one of the petitions, the jurisdictional High Court ordered cancellation of the appointments, while in the other, the selection was not struck down as a whole. The Hon"ble Apex Court, in appeal, entertained the plea against maintainability of a public interest litigation in service matters and also sustained the contention that the appellants have not been impleaded in the petitions, though they were necessary parties, but concluded that the entire selection process did not stand vitiated by the pleaded illegalities. In this factual context, the direction for cancellation of the appointments was disapproved, amongst others, on the ground that there unemployment would result in serious hardship to them; they having left the previous employment and having been rendered overage with time, prospects for them for finding another job was rather dim.

Qua the allegations of participation of near relatives in the selection process, their Lordships observed that even if there were some illegal beneficiaries, they should have been weeded out, instead of striking down the entire selection. The process was thus upheld.

Having regard to the facts involved in Grijesh Shrivastava & Ors. (supra), we are constrained to observe that this decision as well, is of no assistance to the appellants. As a comparative assessment of the merit of the candidates in the selection process in hand had been undertaken afresh, as per the decision in Hari Singh & Ors. (supra), and as a consequence thereof, the appellants/writ petitioners could not make their mark to stake their claim against the vacancies, for which the process had been contemplated and conducted, we are constrained to hold that no writ, order or direction, in the exercise of our power of judicial review to continue them in service, in the singular facts and circumstances of the case, ought to be issued.

The appeal is thus dismissed. The stay application also stands rejected.

This notwithstanding, it would always be open for the respondents, if so advised, to take appropriate steps in terms of the observations made in Meenakshi Sharma (supra). We however, make it abundantly clear that this parting observation should not be construed to be a direction to the State-respondents to retain the appellants in service."

14. We are informed that the judgment and order dated 2nd August, 2013 in the case of Vinita Sharma & Ors. (supra), has been subjected to further scrutiny before the Hon"ble Supreme Court in Special Leave to Appeal (Civil) Number(s) 25894/2013 (Munna Ram & Ors. v. State of Rajasthan & Ors.), and on 20th September, 2013, the Hon"ble Supreme Court made an order, which reads thus:--

"Issue notice on the special leave petition as also on the petitioners" prayer for interim relief, returnable in six weeks. Dasti, in addition, is permitted.

In the meanwhile, operation of the impugned order of the Division Bench of the

High Court shall remain stayed.

It shall be the petitioners' duty to serve the respondents before the next date of hearing, failing which the interim order passed today shall stand automatically vacated."

15. In the instant special appeals, the orders terminating the services of the petitioners/appellants have already been given effect to. No interim protection by way of any order(s) was granted to them, a distinctive feature and possible reason for interim order passed by the Hon'ble Supreme Court in SLP preferred in the case of Munna Ram & Ors. (supra), as aforesaid.

16. Having regard to the contextual facts, as stated herein above, more particularly in view of the judgment and order dated 2nd August, 2013 in D.B. Civil Special Appeal Number 207/2013, passed by the Coordinate Bench of this Court, adjudicating upon the controversy almost similar arising out of the same recruitment process; and further the matter being subjected to further scrutiny before the Hon'ble Supreme Court, we see no reason to take a view different than the one expressed vide judgment and order dated 2nd August, 2013 in case of Vinita Sharma & Ors. (supra).

17. In the result, the Special Appeals are hereby dismissed.

18. In view of the final adjudication on the Special Appeals, the stay applications stand closed.

19. However, in the facts and circumstances of the case, there shall be no order as to costs.