
(2020) 08 RAJ CK 0039

In the Rajasthan High Court

Case No : Civil Writ Petition No. 8943 Of 2020

Dinesh Gavaria

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 24-08-2020

Acts Referred:

Citation : (2020) 08 RAJ CK 0039

Hon'ble Judges : Inderjeet Singh, J

Bench : Single Bench

Advocate : Ram Pratap Saini

Final Decision : Dismissed

Judgement

Counsel for the petitioners submits that the petitioners' candidature may also be considered as they have scored higher marks than those candidates who have been appointed in terms of the judgment passed by the Division Bench.

I have heard learned counsel for the petitioners. The judgment of Division Bench in D.B. Special Appeal (Writ) No.908/2017, it has been held as under:

"Vide this order above mentioned appeals would be disposed of as they involve common questions of law and fact.

Learned counsel for the appellants has submitted that the appellants had participated in the selection process for Teacher Grade-III (Level-I and II) in pursuance to the advertisement dated 24.02.2012. However, candidates who had scored less marks than the appellants were selected. During the pendency of the writ petition filed by the appellants, the results were revised account of revision of answer keys. Consequently, the candidates who were lower in merit than the appellants could not make in the selection process on account of revised result. However, the said candidates were retained in service by the respondents in view of the directions given by this Court vide order dated 18.11.2014 in Ramdhan Kumawat V/s State of Rajasthan & another. The said decision of the learned

Single Judge was upheld by the Division Bench. Learned counsel for the appellants have further submitted that a similar controversy arose before this Court in D.B. Special Appeal(Writ) No.1178/2017 titled as Rajesh Choudhary and others Versus State of Rajasthan and another along with other connected appeals and vide order dated 03.11.2017, it was ordered that the unfilled posts be treated as vacant posts and the same be filled up in view of various directions issued in judicial verdicts reproduced and considered in the said order. Learned counsel has submitted that the similar directions be issued in this case as were issued vide order dated 03.11.2017.

Learned State Counsel, on the other hand, has opposed the appeals.

Facts in the present case are not in dispute. Similar controversy involved in the present case had arisen before this Court in D. B. Special Appeal(Writ)No.1178/2017 and other connected appeals. The said appeals were disposed of vide order dated 03.11.2017 and the same has been placed on record as Annexure-9 along with the rejoinder filed by the appellants.

The relevant part of the order dated 03.11.2017 reads as under:-

"9) Orders impugned in the instant appeals have been passed by the learned Single Judge in light of the decision dated 12/04/2017 directing that for the year 2011 only 1478 notified vacancies have to be filled up and that the respondents would carry out an exercise to determine as to how many candidates offered appointment pursuant to the first merit list prepared had accepted and joined. Said candidates would not be disturbed. Their appointments would continue. Apart from 62 vacancies out of 1478 for which no letters offering appointment were issued, such additional vacancies which would be available on account of either candidate not accepting letter of offer or having accepted letter of offer had left service would be filled up.

10) Learned counsel for the appellants could not show any material to us as to the exact number of vacancies available out of 1478 which were notified for the year 2011 which remain to be filled up. Similarly, learned counsel for the respondents could also not throw any light on said aspect.

11) As regards the issue raised by the appellants that people lower in merit than them in the revised merit list have been retained in service and thereby a vested right in the appellants who are higher in merit in the second select list, has been violated is concerned, in view of the decision in Umesh Singhal's case which is based on decision of the Supreme Court, the argument is rejected. Thus, of the 1478 notified vacancies such number have been occupied by candidates as per the merit position in the first select list notified on 21/07/2012 is concerned, the same cannot be upset. Such vacancies for said year which remain unfilled as of today, be it because of letters offering appointment not issued to all selected candidates when the merit list was prepared or on account of some of the candidates not accepting letter offering appointment or some having joined and resigned thereafter would require to be filled up in view of the various directions

issued in judicial verdicts and as noted hereinabove.

12. Declaring as above, we dispose of the appeals directing the respondents to workout how many posts out of 1478 notified for the year 2011 remain unfilled as of today and by unfilled we mean those posts for which candidates who were offered appointment did not join or after joining resigned or left service. All of them would be treated as vacant posts. The exercise shall be completed within six weeks from today. Thereafter, the mandamus issued by the learned Single Judge in Umesh Singhal's case shall be complied with."

It was held by the learned Single Judge in S.B.Civil Writ Petition No.311/2014 titled as Umesh Singhal Vs. State of Rajasthan & Others and other connected matters decided on 05.03.2014 as under:-

"Having regard to the ratio of aforesaid judgment in Rajesh Kumar, supra the writ petition is disposed of directing respondent university to get the objections raised by the petitioners examined from experts, on receipt of the report, within one month from the date copy of this order is produced before them and forward the revised merit list to the State. The State Government on the basis of such revised list, shall offer appointment to such candidates, who newly figure in the merit list within the advertised number of posts i.e. 1478. The candidates already appointed against the vacant posts, may be continued in service by placing them below the candidates who are now in the revised merit placed higher than them in merit. The appointment of newly figure candidates in the merit shall relate back to the date when the appointments of the candidates was made on the basis of originally prepared merit list."

Since, the question involved in the present appeals is similar to the one dealt by this Court vide order dated 03.11.2017, we are of the considered opinion that the present appeals are liable to be disposed of in terms of the decision of this Court dated 03.11.2017. It has been pointed out during the course of arguments that the order dated 03.11.2017 has been duly complied by the State/respondents.

Accordingly, these appeals as well as all the applications moved by the intervenors stand disposed of directing the respondents to work out as to how many posts out of 41000 notified for the year 2012 recruitment remain unfilled as of today on account of the fact that the candidates who were offered appointment did not join or after joining resigned or left the service and all of them would be treated as vacant posts. Thereafter, the mandamus issued by the learned Single Judge in Umesh Singhal's case shall be complied with. The entire exercise shall be completed within eight weeks from today by the respondents.

In view of the judgment (supra) passed by the Division Bench, it is apparent that fresh writ petitions in relation to the same prayer which already stood decided by the Division Bench would not lie.

The present writ petition is wholly frivolous and the same is accordingly

dismissed. Further, it is observed that the judgment passed by the Division Bench will apply to all the candidates.