

(2022) 09 RAJ CK 0084

In the Rajasthan High Court

Case No : D.B. Special Appeal Writ No. 511 Of 2021

Govind Ram Jakhar And Others

APPELLANT

Vs

State Of Rajasthan And Others

RESPONDENT

Date of Decision : 30-09-2022

Acts Referred:

Constitution Of India, 1950 — Article 309

Rajasthan Civil Service (Absorption Of Ex-Servicemen) Rules, 1988 — Rule 2

Rajasthan Municipal (Subordinate And Ministerial Staff) Service Rules, 1963 — Rule 2, 9, 9(2)

Fire Force Act, 1964 — Section 39

Citation : (2022) 09 RAJ CK 0084

Hon'ble Judges : Sandeep Mehta, J; Rekha Borana, J

Bench : Division Bench

Advocate : G.R. Punia, Sunil Beniwal, R.S. Choudhary, S.S. Gour

Final Decision : Allowed

Judgement

Rekha Borana, J

The present special appeal has been filed against the impugned judgment dated 18.08.2021 whereby the writ petition of the petitioners/appellants was dismissed.

Before advertng into the adjudication of the matter, above question, entailing of the brief facts would be relevant :

An advertisement for 178 posts of 'Driver-cum-Fire Machine Operator' was issued by the Rajasthan Municipalities (Administrative & Technical) and (Subordinate & Technical) and (Subordinate & Ministerial) Service Selection Board (hereinafter referred to as 'the Service Board') on 30.12.2015, out of which 22 posts were reserved for ex-servicemen. Because of certain litigation pertaining to the recruitment in question, a fresh advertisement was issued on 03.06.2019 and in the said advertisement, no post for ex-servicemen was reserved. The said reservation was denied on the ground that notification dated 10.10.2008 had been issued by the State whereby the expression "Driver" in item no.33 of the

Schedule-I of the Rules of 1988, by virtue of which, earlier reservation was provided on the post of "Driver", was deleted. Instruction no.6 of the fresh advertisement (impugned notification) dated 03.06.2019 was under challenge before learned Single Judge in the writ petition.

The writ petition of the petitioners has been dismissed by learned Single Judge on two grounds : firstly that the Rajasthan Civil Service (Absorption of Ex-Servicemen) Rules, 1988 (hereinafter referred to as 'the Rules of 1988') being the special legislation would prevail over the Rajasthan Municipal (Subordinate and Ministerial Staff) Service Rules, 1963 (hereinafter referred to as 'the Rules of 1963') which is a general legislation. Therefore, the deletion of the expression "Driver" in item No.33 of Schedule-I of the Rules of 1988 would have precedence and thus, the petitioners would not be entitled for reservation being ex-servicemen and secondly that Rule 2 of the Rules of 1988 being a provision with a non obstante clause, would definitely prevail over any other law in existence at the relevant point of time and therefore, the amendment in the said Rule vide the notification would definitely prevail over the general Rules of 1963. Moreover, learned Single Judge relied upon the principle of interpretation "*leges posteriores priores contrarias abrogant*" meaning thereby that the Rules of 1988 which were introduced later in point of time would prevail over the Rules of 1963 by virtue of the said principle. Aggrieved against the judgment dated 18.08.2021 passed by the learned Single Judge, the present special appeal has been filed.

Learned Senior counsel for the appellants submitted that the Rules of 1963 is a State legislation framed by the legislature under its rule making authority whereas the Rules of 1988 have been framed by His Excellency the Governor in terms of Article 309 of the Constitution of India. Therefore, in terms of the settled proposition of law, the rules framed under Article 309 cannot supersede rules made by the legislature on the principle of 'Occupied field'. In support of his contention, learned Senior counsel relied upon the judgment of Hon'ble Apex Court passed in

A.B. Krishna and Others Vs. State of Karnataka and Others; (1998) 3 SCC 495 and Full Bench judgment of the Allahabad High Court in Vijay Singh and Others Vs. State of Uttar Pradesh and Others; 2005 (2) AWC 1191. Second argument raised by learned Senior counsel for the appellants is that when a provision of law relating to a particular subject exists and a subsequent law is enacted containing a provision regarding the same subject, there can be no presumption that the latter law repeals the earlier law. If the subsequent law does not specifically repeal the earlier law, there can be no presumption of an intention of repealing earlier law. In support of his contention, learned counsel relied upon a judgment of Hon'ble Apex Court passed in Maya Mathew Vs. State of Kerala and Others, (2010) 4 SCC 498 and the Division Bench judgment of Allahabad High Court passed in State of U.P. and Another Vs. Anil Kumar Bharti 2015 (6) ADJ 306(DB). Learned Senior counsel submitted that in absence of any law/order/notification repealing Rule 2 of the Rules of 1963, the same would hold place and

would ipso facto not be presumed to be repealed.

Per contra, learned counsel for the respondents relied upon the findings as arrived by the learned Single Judge and submitted that in the present matter the Rules of 1988 being a special legislation would prevail over the Rules of 1963 which is a general legislation and therefore, the notification dated 10.10.2008 would definitely apply to the recruitment in question and consequently, instruction no.6 in the advertisement dated 03.06.2019 is perfectly valid.

Heard learned counsel for the parties and perused the material available on record.

It is clear on record that the advertisement in question was issued by the Service Board on 30.12.2015 under the Rajasthan Municipal (Administrative and Technical) Service Rules, 1963, Rajasthan Municipal (Subordinate and Ministerial) Service Rules, 1963 and Rajasthan Scheduled Area Subordinate, Ministerial and Class IV Service (Recruitment and Other Service Conditions) Rules, 2014 and the same specifically provided for reservation to Ex-servicemen. The reservation as provided in the advertisement was withdrawn in the year 2019 when the process was re-initiated. The said reservation was withdrawn on the pretext that by virtue of notification dated 10.10.2008, the post of 'Driver' had been deleted from the Schedule and therefore, the reservation provided for in the advertisement dated 30.12.2015 was an inadvertent mistake which was sought to be rectified in the year 2019.

The first question which would arise for consideration of this Court would be whether a reservation/benefit once provided can be withdrawn subsequently on the pretext of a mistake being committed by the Department. The second question would be whether there is any repugnancy/contradiction in the Rules of 1963 and the Rules of 1988. The third question would be if there is any repugnancy/contradiction between a general law and a special law, which would prevail and the last question would be if during the process of recruitment, the Rules of 1988, which is the bone of contention in the matter, again stood amended in the year 2019, what would be effect of the same.

Coming on to the first question, a perusal of the advertisement dated 30.12.2015 makes it clear that the same was issued in terms of the Rajasthan Municipal (Administrative and Technical) Service Rules, 1963, Rajasthan Municipal (Subordinate and Ministerial) Service Rules, 1963 and Rajasthan Scheduled Area Subordinate, Ministerial and Class IV Service (Recruitment and Other Service Conditions) Rules, 2014. Further, a perusal of the impugned notification dated 3.6.2019 whereby the process of recruitment was re-initiated, also makes it clear that it was the decision of the Department that the complete selection process would be conducted in terms of the provisions of the Rules of 1963. So far as Rules of 1963 are concerned, it is an admitted position that Rule 9(2) of the said Rules specifically provided for 12.5% of reservation to Ex-servicemen. Therefore, it is clear on record that the complete recruitment process was intended to be

completed by the department in terms of Rules of 1963 only which specifically provided reservation to Ex-servicemen independent of the Rules of 1988. It is also admitted on record that vide Rules of 1988, Rule 9 of the rules of 1963 was never sought to be repealed. Meaning thereby, Rule 9 of the Rules of 1963 remained in the Statute Book and it exists till date. In the case of *Maya Mathew Vs. State of Kerala and Others*; (2010) 4 SCC 498, the Hon'ble Apex Court held as under:

"The rules of interpretation when a subject is governed by two sets of rules are well settled. They are:

(i) When a provision of law regulates a particular subject and a subsequent law contains a provision regulating the same subject, there is no presumption that the latter law repeals the earlier law. The rule-making authority while making the later rule is deemed to know the existing law on the subject. If the subsequent law does not repeal the earlier rule, there can be no presumption of an intention to repeal the earlier rule;

_____."

In view of the ratio as laid down in *Maya Mathew's* case (*supra*), it can be concluded that rule 9 of the Rules of 1963 was never repealed and sustains till date. Therefore, the reservation extended in the advertisement of the Year 2015 by virtue of the Rules of 1963 cannot be held to be bad or an inadvertent error by the department. It was extended by virtue of the provisions of law and the same could not have been withdrawn subsequently when the Rules, by virtue of which the same was extended, still existed in the statute book. Moreover, the recruitment process was re-initiated in the year 2019 and was a process in continuity. Therefore, even otherwise, in terms of the settled proposition of law, the conditions of the advertisement could not have been amended/modified after the recruitment process having commenced. To conclude, it is held that the benefit of reservation provided to ex-servicemen in the advertisement of the year 2015 could not have been withdrawn by the Department, subsequently in the year 2019 on the wrong pretext of an inadvertent error.

Now coming on to the second question-whether there is any repugnancy/contradiction in the Rules of 1963 and the Rules of 1988. To find an answer to this question, a perusal of the notification dated 10.10.2008 is essential. On 10.10.2008, in all, four notifications were issued by the Department of Personnel. Vide three notifications, the amendments were introduced in Rajasthan Various Service (8th amendment) Rules, 2008, Rajasthan Forest subordinate Service (second amendment) Rules, 2008 and Amendment in Rajasthan Jail Subordinate Service Rules, 1998. Vide all the three amendments, the clause for reservation to the ex-servicemen was introduced in the concerned Service Rules itself. Vide the fourth amendment in the Rules of 1988 (the amendment in question), the expression 'Driver/Forest Guard' was deleted from Schedule-I appended to the

Rules. Meaning thereby, the reservation provided to the ex-servicemen on the post of 'Driver/Forest Guard' by virtue of the Rules of 1988 was taken away and on the same hand, the said reservation was provided in the concerning Service Rules itself. Therefore, the intention of the legislation is very clear. It was never to deprive the ex-servicemen from the benefit of reservation on the post of Driver but as the same was provided in the relevant/concerned Service Rules itself, the same was deleted from the Rules of 1988. Admittedly, the Rules of 1963 governing the present recruitment in question already had a provision for reservation to ex-servicemen and therefore, no amendment was required to be made in the said Rules. It is therefore, crystal clear that the intention of State was always to provide reservation to the extent of 12.5% to the ex-servicemen and therefore, the amendment in the Rules of 1988 cannot be read or interpreted in a manner totally contrary to the intention of the legislation. The said conclusion is rather substantiated from the notification dated 17.4.2018 issued by the Department of Personnel whereby again an amendment was introduced to Rule 2 of the Rules of 1988 and it was provided that the reservation to the ex-servicemen would be -"such percentage of posts as reserved under relevant Service Rules, whichever is higher". Meaning thereby, it was specifically provided that the reservation would be granted to the ex-servicemen either in terms of the percentage as provided in the said Rule or in terms of the percentage as provided under the relevant Service Rules. That is to say, if a reservation has been provided under the relevant Service Rules, that would prevail.

Admittedly, the Rules of 1963, which are the relevant Service Rules governing the present recruitment in question provides for a reservation of 12.5% to the ex-servicemen. Keeping in view the overall scenario and the above interpretation, it is clear that there is no repugnancy/contradiction in the Rules of 1963 and the Rules of 1988 (amended vide notification dated 10.10.2008). Giving a harmonious construction to both the provisions of law, the only conclusion that can be arrived at is that the Rules of 1963 and the Rules of 1988 are complementary to each other and not repugnant.

Coming on to the third question, as we have already concluded that there is no repugnancy in the Rules of 1963 and the Rules of 1988, the said question is not required to be gone into by this Court. Even if, the same is to be interpreted, in the case of A.B. Krishna (supra), the Hon'ble Apex Court held as under :

"9. It is no doubt true that the rule-making authority under Article 309 of the Constitution and Section 39 of the Act is the same, namely, the Government (to be precise, the Governor, under Article 309 and the Government under Section 39), but the two jurisdictions are different. As has been seen above, power under Article 309 cannot be exercised by the Governor, if the legislature has already made a law and the field is occupied. In that situation, rules can be made under the law so made by the legislature and not under Article 309. It has also to be noticed that rules made in exercise of the rule- making power given under an Act

constitute delegated or subordinate legislation, but the rules under Article 309 cannot be treated to fall in that category and, therefore, on the principle of "occupied field", the Rules under Article 309 cannot supersede the rules made by the legislature.

14. Applying the above principle to the instant case, it will be noticed that the Rules made by the State Government under Section 39 of the Act prescribe the qualifying examination as a condition precedent for promotion to the post of Leading Firemen. These rules have not been touched, altered or amended and they exist in their original form. What had been done by the Government is that it has amended the General Recruitment Rules by providing therein that at any promotion made on the higher post would not be on the basis of examination, if any prescribed, but on the basis of seniority. This is a rule made by the Executive, namely, the Governor under Article 309 of the Constitution. The amendment in the General Recruitment Rules would not have the effect of displacing or altering the Rules made under Section 39 of the Fire Force Act, 1964 as the Act of the legislature would have precedence over any rule made by the Executive under the proviso to Article 309."

It is an admitted case that the Rules of 1988 are the Rules framed under Article 309 by His Excellency the Governor and the Rules of 1963 is a piece of legislation framed by the State. Therefore also, in view of the ratio laid down in A.B. Krishna's case (supra), the Rules of 1963 would prevail.

Coming on to the last question, as observed in the preceding para, an amendment was again introduced in the Rules of 1988 by virtue of notification of the year 2019. Although it cannot be held that the same would govern the recruitment process of the year 2015 but an interpretation of the same would be essential to read out the intention of the legislation. As observed in the preceding paras, vide the said amendment of the year 2019, the intention of the legislation has been fortified that it intended to provide the benefit of reservation to ex-servicemen in all services of the State.

In view of the above observations and the conclusion arrived at, the present special appeal is allowed. The judgment under appeal dated 18.08.2021 passed by the learned Single Judge is set aside, instruction no.6 of the notification dated 3.6.2019 is declared to be void and non est but keeping in consideration that the recruitment process is over by now, the benefit of the same would be extendable only to the extent of the present appellants.

Consequently, the respondents are directed to afford appointment to the present writ petitioners in the reserved category of 'Ex-servicemen' as per their merit and if they are otherwise found eligible. It is made clear that because of the said appointments, the appointments of the private respondents would not be disturbed.

No order as to costs.