
(1983) 12 RAJ CK 0016

In the Rajasthan High Court

Case No : Special Appeal Writ No. 676 of 1982

Govindram Purohit and Another

APPELLANT

Vs

Jagjeewan Chand Bhandari and Others

RESPONDENT

Date of Decision : 19-12-1983

Acts Referred:

Rajasthan High Court (Conditions of Service of Staff) Rules, 1953 — Rule 8

Citation : (1983) WLN 391

Hon'ble Judges : S.N. Bhargava, J;N.M. Kasliwal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

N.M. Kasliwal, J.—This special appeal u/s 18 of the Rajasthan High Court Ordinance is directed against the judgment of learned single "Judge, G.M. Lodha, J., dated September 29, 1982 passed in S.B. Civil Writ Petition No. 960/78.

2. It may be pertinent to mention that Jagjeevan Chand Bhandari had filed a writ petition in this Court which, was heard and decided by G.M. Lodha, J. while sitting at Jaipur. In the said writ petition following seven parties were impleaded as respondents:

- (1) The Rajasthan High Court, Jodhpur
- (2) The Registrar, Rajasthan High Court, Jodhpur
- (3) Shri Govindram Purohit, Bench Reader, Rajasthan High Court, Jodhpur.
- (4) Om Prakash Boda, Bench Reader, Rajasthan High Court, Jaipur Bench, Jaipur
- (5) Ghanshyamdas V.R., Bench Reader, Rajasthan High Court, Jodhpur
- (6) Parasuram Dangi, Bench Reader, Rajasthan High Court, Jaipur Bench, Jaipur
- (7) Ballabh Dass Purohit, Stamp Reporter, Rajasthan High Court, Jaipur Bench, Jaipur.

Ghanshyamdas V.R. filed D.B. Special Appeal No. 284/82 and the Rajasthan High Court, Jodhpur and the Registrar, Rajasthan High Court, Jodhpur filed D.B. Special Appeal No. 283/82 against the judgment of learned single Judge. Both the above special appeals were heard by us at Jaipur and by our judgment, dt. 4-4-1983 special appeal No. 283/82 filed by Ghanshyam Das V.R. was allowed. His promotion and that of Parasram Dangi on the post of stamp reporter and other higher posts being made on account of members of Scheduled Caste and Scheduled Tribe, was maintained. The judgment of the learned single Judge so far as quashing the appointments and promotions of these two persons is concerned, was set aside.

3. Special appeal No. 283/82, filed by the Registrar Rajasthan High Court, Jodhpur, was dismissed. However, the relief given by learned single Judge in the writ petition filed by Jagjeewan Chand was modified in the following manner:

It is directed that promotions from the cadre of Upper Division Clerks to the post of Stamp Reporters/Court-fee Examiners in pursuance to the advertisement dated 20th August, 1977, and the test held there after should be made on the basis of seniority subject to efficiency. The respondent Nos. 1 and 2 in the writ petition are directed to readjust and pass orders for promotion on the basis of seniority subject to efficiency from amongst the Upper Division Clerks who have passed the test and not on the basis of marks secured in the qualifying test. Promotions on the higher posts should, therefore, be made in accordance with the provisions laid down in the Rules made by Hon"ble the Chief Justice in his order dated 18th February, 1976. The promotions on the post of Stamp Reporter/Court-fee Examiner shall be given from the date of pronouncement of the result of qualifying test. Further promotions to the higher posts shall also be made keeping in view the seniority on the post of Stamp Reporter/Court-fee Examiner subject to efficiency for such higher posts as and when such posts have fallen vacant.

4. Govindram Purohit and Om Prakash Boda filed the present special appeal No. 676/82 at Jodhpur against the judgment of G.M. Lodha, J. dated September 29, 1982. When this appeal came up for consideration before M.C. Jain and D.L. Mehta, JJ. on May 17, 1983, they considered it proper that this appeal should also be heard by the same Bench who had heard the appeals at Jaipur Bench. Shri K.D. Sharma, the Hon"ble Chief Justice (as he then was) ordered this appeal to be heard by us. In view of these circumstances we heard this appeal at Jodhpur.

5. Though we had considered all the points in detail in our judgment, dated August 4, 1983 while deciding special appeal Nos. 284 of 1982, but Mr. Balia, appearing on behalf of the appellants, contended that he may be permitted to put his arguments in his own way so that he might persuade us to take a different view. In view of these circumstances we permitted Mr. Balia to make his submissions.

6. In this appeal we would not like to mention the facts afresh as the same have already been mentioned in detail in our judgment, dated August 4, 1983 and would only deal with the legal submissions made by Mr. Balia. It was contended that it was nowhere the case of the petitioner in the writ petition nor in the relief that promotions of Govindram, Om Prakash Boda, Ghanshyamdas V.R., Parsuram Dangi and Ballabddas Bohra, i.e., respondent Nos. 3 to 7 in the writ petition, be quashed. It is thus submitted that when there was no such relief prayed by the petitioner, there was no justification for quashing the promotions given to these persons. We do not find any force in this contention. So far as the case of Parusram Dangi and Ghanshyamdas V. R. is concerned, it stands on a different footing as they are members belonging to Scheduled Caste and Scheduled Tribe respectively. Thus, so far as their cases are concerned, we have already allowed the appeal of Ghanshyamdas V.R. and have maintained their appointments and promotions. So far as the case of other three persons, namely, Govindram Purohit, Om Prakash and Ballabhdas is concerned, it had become necessary to quash their promotions in the view taken by us. Jagjeevanchand had based his entire case on the ground that the test held for promotions from the cadre of Upper Division Clerks to the post of Stamp Reporter/Court-fee Examiners was merely a qualifying test and not a merit test. Though he had wanted his own result to be declared on this basis but he had also prayed that on his being found to have passed the test, he should be accorded promotion from a date person junior to him had been promoted on the post of Stamp Reporter/Court-fee Examiner. Ld single Judge as well as we had taken the view that the test held in pursuance to advertisement, dated August 20, 1977 was merely a qualifying test and not a merit test. The High Court on the administrative side had given promotions on the basis of marks secured in merit in the above test irrespective of the position in seniority on the post of Upper Division Clerk. Having taken the above view, it had become necessary to make adjustment and pass fresh orders for promotion on the basis of seniority subject to efficiency from amongst the Upper Division Clerk who had qualified in the test and not on the basis of marks secured in such qualifying test. We had also considered this aspect of the matter that as the petitioners had challenged the policy matter, as such it was not necessary for other persons aggrieved to file separate writ petitions and all the persons who are affected should also be given the advantage. In view of these circumstances we do not find any reason to make any modification in the relief already given by us in our judgment, dated August 4, 1983.

7 Mr. Balia also contended that clause 3 of the circular dated February 18, 1976 which provided for recruitment to the posts of Stamp Reporters and Court fee Examiners only mentions that it shall be made by promotion from Upper Division Clerks after holding a test. Mr. Balia laid emphasis on the words "after holding a test" and contended that a test has been held and it nowhere provided that while giving promotion from the post of Upper Division Clerks seniority subject to efficiency should also be taken into consideration. It is further submitted in this regard that for Bench Readers it has been laid down that recruitment to the post

of Bench Readers shall be made by promotions from amongst the Stamp Reporters/Court-fee Examiners on the basis seniority subject to efficiency. But as the words "seniority subject to efficiency" are missing with respect to recruitment of Stamp Reporter/Court fee Examiner, it should be presumed that no such criteria was necessary in regard to appointment of Stamp Reporter/Court fee Examiner. We had already examined this aspect of the matter in our judgment, dated August 4, 1983 and a similar kind of argument made before us did not find favour. In this regard we have already taken the view that the rule making authority is supposed to have known the difference between the words "Competitive examination" and "after holding a test". In this regard we cannot ignore Rule 8 of the Rajasthan High Court (Condition of Service of Staff) Rules, 1953, which is in general term dealing with the promotion of the High Court Staff as a whole for all the posts, except mentioned in Rule 9. If Rule 8 is read with Clause 3 of the circular, dated February 18, 1976, there is no manner of doubt that recruitment to the post of Stamp Reporter and Court fee Examiner has to be made by promotion as envisaged by Rule 8 after holding a test but subject to efficiency as contained in Rule 8.

8. It was further submitted by Mr. Balia that no minimum marks have been mentioned for passing the qualifying test and as such it should be presumed that merit alone was considered as a standard in the test. It is no doubt, correct that no minimum marks were notified for passing the qualifying test, but that is not the question to be considered by us. It was nowhere the case of the respondents in the writ petition that Jegjeevan Chand had not qualified in the test and thus he was not given promotion before his juniors. The only stand taken by the respondents was that the promotions should be given strictly in order of merit according to the marks secured in such test. For that we have already held that this view was wrong and once an Upper Division Clerk was considered as having qualified in the test, thereafter the promotion was to be made on the basis of seniority subject to efficiency.

9. It was also submitted on behalf of the appellants that as Govindram Purohit had secured 64 marks and Shri Om Prakash Boda had secured 59 marks in the test held in 1977 and having been promoted on the post of Stamp Reporter/Court-fee Examiner, they did not appear in the subsequent test held in 1978 and in case they are not promoted now, a great injustice would be caused to them without any fault on their part. In this regard, we would like to make it clear that the appellants, namely, Govindram Purohit and Om Prakash Boda or Ballabhdas Bohra who were given promotions on the basis of higher marks in merit secured by them in the test held in 1977, will not be required to appear again in case they are not appointed in 1977 or 1978 due to lack of their seniority on the post of Upper Division Clerk. In other words, whenever their case would be considered for promotion on the post of Stamp Reporter/Court-fee Examiner on the basis of their seniority subject to efficiency, they would be considered eligible so far as their having passed the qualifying test is concerned.

10. With the above observations, this appeal is also dismissed with no order as to costs.