

(2018) 08 RAJ CK 0225
In the Rajasthan High Court
Case No : Civil Writs No. 10323 of 2018

Hemant Singh Shekhawat @APPELLANT@Hash State of Rajasthan & Ors

Date of Decision : 14-08-2018

Acts Referred:

Rajasthan Civil Services (Absorption of Exservicemen), Rules, 1988 — Rule 2(1)(a)

Citation : (2018) 08 RAJ CK 0225

Hon'ble Judges : Veerendr Singh Siradhana, J

Bench : Single Bench

Advocate : Tanveer Ahamad, B. L. Avasthi, R. N. Mathur, Punit Singhvi

Final Decision : Allowed

Judgement

1. Matter comes up an application (I.A. No.36433/2018), instituted on behalf of the State-respondents so also private respondents, with a prayer for

vacation of the ex-parte interim order dated 11th May, 2018.

2. The petitioners belonging to the category of ex-servicemen, who have instituted the present writ application for implementation of Notification dated

17th April, 2018, providing 5% reservation in State services.

3. Heard and considered.

4. Indisputably, Notification dated 17th April, 2018, which provides for 5% reservation of posts for the ex-servicemen, has been brought into force

with immediate effect i.e. 17th April, 2018.

5. Mr. R. N. Mathur, learned Sr. Counsel along with Mr. Punit Singhvi, asserted that a glance of Notification dated 17th April, 2018, with the language

employed therein, would leave no element of doubt that reservation to the extent of 5% made in favour of the ex-servicemen, is to be prospective i.e.

from the date when the notification was issued. Further, the position has been clarified vide Circular dated 14th May, 2018, issued by the State-

respondents, which in no uncertain terms makes it clear that reservation would be extended in the recruitment process, wherein the last date of submission of application form was still due for closure.

6. It is further pointed out that the recruitment process involved herein, was initiated vide advertisement dated 28th April, 2016 and result was declared on 17th October, 2017. Thus, it is more than clear that the claim of the petitioners cannot be sustained in the recruitment process involved herein.

Reliance has been placed on the opinion of the Apex Court of the land in the case of Cooperative Company Ltd. Vs. Commissioner of Trade Tax,

U.P.:(2007) 4 SCC 480 and R. Kapilnath (Dead) through LR. Vs. Krishna :(2003) 1 SCC 444, in support of the stand.

7. The factual matrix as to date of notification i.e. 17th April, 2018, advertisement issued on 28th April, 2016 and result declared on 17th April, 2017; are not in dispute. The petitioners are, in fact, seeking retrospective application of notification dated 17th April, 2018, claiming 5% horizontal reservation to ex-servicemen.

8. Mr. B. L. Avasthi, learned counsel appearing on behalf of the State-respondents endorsing stand of Mr. R. N. Mathur, learned Sr. Counsel added

that a glance of text of the relevant provision of Rule 2(1)(a) of the Rajasthan Civil Services (Absorption of Exservicemen), Rules, 1988, would reflect

that 5% horizontal reservation has been accorded to the category of ex-servicemen vide Notification dated 14th April, 2018. Further, the recruitment

process involved herein, was initiated vide Advertisement dated 28th April, 2016, for Rajasthan State and Subordinate Services Combined Competitive

Examination, 2016; which crystallized into conclusion by declaration of result of 17th October, 2017. Thus, in the face of the factual matrix and

application of notification clarified by the State Government by issuance of Circular dated 14th May, 2018, making it unambiguous that the notification

would be applicable in the recruitment process initiated where the last date of submission of the application form was still to end. Hence, the claim of

the petitioners in the instant case at hand, cannot be sustained.

9. In the case of R. Kapilnath (supra), the Apex Court of the land, as to retrospectivity observed thus:

4. The above submission of the learned counsel has been stated only to be rejected. It is pertinent to note that the proceedings in the Court of

Munsif had already stood concluded by the time the amendment came into force. It is not disputed that Amendment Act No. 32 of 1994 has not been given a retrospective operation and there is nothing in the Act to infer retrospectivity by necessary implication. The Act has been specifically brought into force w.e.f. the 18th day of May, 1994. The learned counsel for the appellant cited a number of decisions laying down the law as to how an amendment in legislation brought into force during the pendency of legal proceedings has to be given effect to. Without stating the decisions so cited, suffice it to observe that all those decisions deal with substantive rights having been created or abolished during the pendency of legal proceedings and depending on the legislative intent and the language employed by the Legislature in the relevant enactment, this Court has determined the impact of the legislation on pending proceedings and the power of the Court to take note of change in law and suitably mould the relief consistently with the legislative changes. So far as the present case is concerned, the only submission made by the learned counsel for the appellant is that the effect of the amendment is to deprive the Court of Munsif of its jurisdiction to hear and decide proceedings for eviction over such premises as the suit premises are. In other words, it is a change in forum brought during the pendency of the proceedings. The correct approach to be adopted in such cases is that a new law bringing about a change in forum does not affect pending actions. unless a provision is made in it for change over of proceedings or there is some other clear indication that pending actions are affected. (See Principles of Statutory Interpretation, Justice G.P. Singh, 8th Edition, 2001, p.442)

We have already indicated that the Act does not bring about a change in forum so far as the pending actions are concerned. Moreover by the time the amendment came into force, the proceedings before the Munsif had already stood concluded and the case was pending at the stage of revision before the Additional District Judge. Further we find that an objection laying challenge to forum's competence was not raised before the learned Additional District Judge nor the objection was taken before the High Court in the civil revision preferred by the appellant. It was not taken as a ground in the special leave petition. It has been taken only by way of a separate petition filed subsequently and seeking leave to urge additional grounds. Such an objection cannot be allowed to be urged so belatedly. However, we have already held the argument based on 1994 Amendment as of no merit.â??

10. In the case of Co-operative Company Ltd. (supra), Apex Court of the land, held thus:

“We, however, are not impressed with the arguments of Mr. Radhakrishnan that Section 3AB of the Act introduced in the statute by reason of the

U.P. Trade Tax (Amendment) Act, 1991 is clarificatory in nature. The said amendment came into force with effect from 25.04.1990. The

assessment year, as noticed hereinbefore, is 01.04.1989 to 31.03.1990. The Act having been brought into force from a particular date, no retrospective

operation thereof can be contemplated prior thereto. The said provision furthermore contains a substantive provision which is itself a pointer to the fact

that for the earlier period packing materials would not be exempted merely because main commodity is exempted from tax, but albeit subject to the

condition that there was an agreement to sell in respect thereof. The amendment sought to deal with a matter which created some problem in

implementation of the Act.”

11. In view of the factual matrix and the language employed in the Notification dated 17th April, 2018, making it operative from immediate effect,

leaves no element of doubt that the notification dated 17th April, 2018, would be prospective in operation and application.

12. For the reasons aforesaid and in view of settled legal position, applications seeking vacation of ex-parte interim order dated 11th May, 2018, are

hereby allowed.

Interim order dated 11th May, 2018, stands vacated.