

(2010) 04 RAJ CK 0030
In the Rajasthan High Court

Himmat Singh and Others

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision : 20-04-2010

Acts Referred:

Citation : (2010) 04 RAJ CK 0030

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mohammad Rafiq, J.—Heard learned Counsel for the parties.

2. This writ petition was filed by the petitioners way back in the year 1997 challenging relaxation in the criteria of promotion in favour of the candidates of Scheduled Castes and Scheduled Tribes.

3. Shri Ankur Srivastava, learned Counsel for the petitioners has argued that according to Rule 28A of the Rajasthan Police Service Rules, 1954, 50% posts of promotion from Inspector to ordinary/junior scale of RPS were required to be filled in by the criteria of seniority-cum-merit and remaining 50% were to be filled by the criteria of merit-cum-seniority.

4. It is contended that the respondents in the selection of the year 1996-97 as against 71 posts, promoted 44 persons on the criteria of seniority cum merit and only 24 persons have been promoted on the criteria of merit-cum-seniority and sealed cover procedure was adopted in case of 3 persons, but even if 68 posts are taken into consideration, still the criteria has been flouted and relevant provisions were violated. Learned Counsel submitted that the reliance placed by the respondents on proviso to Sub-rule (4) of Rule 28A of the Rules is wholly misconceived in view of the subsequent Circular of the government dated 15.9.2001. Learned Counsel also cited the judgement of Supreme Court in Sher Singh and Others Vs. Surinder Kumar and Others,

5. Shri M.F. Beg, learned Deputy Government Counsel opposed the writ petition and submitted that as far as general candidates are concerned, 19 persons were promoted on the criteria of seniority-cum-merit and Anr. 19 persons were on the criteria of merit-cum-seniority. The ratio of 1:1 in the case of general candidates was thus strictly maintained. However, when the total candidates from SC and ST were not available on the criteria of merit-cum-seniority, therefore the criteria was relaxed in view of proviso to Sub-rule (4), according to which if the Departmental Promotion Committee is satisfied that suitable persons are not available for selection by promotion strictly on the basis of merit in a particular year, selection by promotion on the basis of seniority-cum-merit may be made in the same manner as specified in these rules.

6. Upon hearing the learned Counsel for the parties and perusing the material on record, I find that there was indeed a proviso to Sub-rule (4) of Rule 28A which enabled the competent authority to make promotion on the criteria of seniority-cum-merit in excess of 50% quota, if the Departmental Promotion Committee was satisfied that the suitable persons were not available on the basis of merit in the particular year. In that event, the promotions could be made on the basis of seniority-cum-merit. The excess number of persons, who have been promoted are all those who belong to SC and ST i.e. 16 candidates from SC and 9 candidates from ST, they were promoted on the criteria of seniority-cum-merit in excess of the earmarked quota of 50%. Even in the Circular dated 15.9.01 which the petitioner has relied, it has been clarified that if the requisite number of candidates from reserved categories are not found suitable for promotion on merit-cum-seniority criteria and to that extent, the promotion could be made on the criteria of seniority-cum-merit. Even otherwise, this Circular was issued on 15.9.01 much later than the promotions in question. Learned Counsel for the petitioner is seeking to build up a case on the basis of the explanation given therein. However, I find that when the subject matter of dispute is covered by the proviso of the Rules, the Circulars are not required to be looked into in that the Rules clearly provides that if the Committee is satisfied that suitable persons are not available for selection by promotion strictly on the basis of merit in the particular year, selection by promotion on the basis of seniority-cum-merit may be made in the same manner as specified in these rules. The judgement of Supreme Court, which is sought to be relied, is distinguishable on facts of the case. It does not arise out of a case for relaxation of the criteria in favour of the candidates of Scheduled Caste and Scheduled Tribe. Moreover, the candidates, who were promoted by relaxation of the criteria way back in 1997, many of them may now have been retired from service, at this distance of time, unless those were impleaded as party to the writ petition, no order, which could adversely affect them, even otherwise, can be passed.

7. The writ petition for all the aforesaid reasons is dismissed.