

(2014) 10 RAJ CK 0142

In the Rajasthan High Court

Case No : Civil Writ Petition Nos. 4516, 4519, 4523, 4540, 4784, 4847 and 4851/2013

Jaisa Ram

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 01-10-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 19(1)

Citation : (2014) 10 RAJ CK 0142

Hon'ble Judges : Sunil Ambwani, Acting C.J.; Vijay Bishnoi, J

Bench : Division Bench

Advocate : Kuldeep Mathur, Ravindra Singh, Nupur Bhati, Manish Patel, Deepak Nehra, Anirudh Purohit and Bhanwar Singh, Advocate for the Appellant; P.R. Singh, Addl. Advocate General and S.S. Ladrecha, Addl. Advocate General, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Vijay Bishnoi, J.—The petitioners, in these writ petitions, have challenged the amendment introduced in Rajasthan Rural Development and Panchayati Raj State and Subordinate Service Rules, 1998 (hereinafter after referred to as "the Rules of 1998"), whereby the State Government has made certain alterations in the qualificaltional eligibility for the purpose of appointment to the post of Junior Engineer (Degree Holder) and Junior Engineer (Diploma Holder).

2. As per the existing qualification required for consideration for appointment to the post of Junior Engineer (Degree Holder), an aspirant should have degree in Civil or Agricultural Engineering from a university established by law in India or qualification declared equivalent thereto by the Government. The qualification of degree in Civil Engineering from a recognized institution or Diploma in Civil Engineering recognized by the institution of engineers is required to have consideration for appointment to the post of Junior Engineer [Diploma (Civil) Holder].

3. The petitioners, who are having qualifications of degree or diploma in Engineering in trades of Mechanical, Electrical, Computer Science and Bachelor of Science are claiming that their exclusion from consideration for the purpose of Junior Engineer (Degree Holder) and Junior Engineer (Diploma Holder) is discriminatory as they were and are working in the various schemes such as MGNREGA and others on engineering posts and discharging similar kind of duties as discharged by a Junior Engineer (Degree Holder) and Junior Engineer (Diploma Holder) in Civil and Agricultural trades.

4. It is contended that the process of selection initiated by the respondents to fill up the post of Junior Engineer under the Rules of 1998 is bad as the qualification prescribed under the Rules itself is discriminatory.

5. Having considered the pleadings of the petitioners and arguments advanced by the learned counsel for the petitioners, we do not find any merit in these writ petitions.

6. It is settled proposition of law that a law made by the legislature can be struck down by the Courts only on two grounds namely (i) that the Legislature, which has enacted the law, does not have competence to enact such law and (ii) that it does not take away or abridge any of the fundamental rights as guaranteed under Part-III of the Constitution of India or any other constitutional provisions.

7. Hon"ble Supreme Court in State of M.P. Vs. Rakesh Kohli and Another, has held as under

"16. The statute enacted by Parliament or a State Legislature cannot be declared unconstitutional lightly. The court must be able to hold beyond any iota of doubt that the violation of the constitutional provisions was so glaring that the legislative provision under challenge cannot stand. Sans flagrant violation of the constitutional provisions, the law made by Parliament or a State Legislature is not declared bad."

17. This Court has repeatedly stated that legislative enactment can be struck down by Court only on two grounds, namely (i) that the appropriate Legislature does not have competence to make the law, and (ii) that it does not take away or abridge any of the fundamental rights enumerated in Part - III of the Constitution or any other constitutional provisions. In State of Andhra Pradesh and others, etc. Vs. McDowell and Co. and others, etc., while dealing with the challenge to an enactment based on Article 14, this Court stated in paragraph 43 of the Report as follows:

"43....A law made by Parliament or the legislature can be struck down by courts on two grounds and two grounds alone, viz. (1) lack of legislative competence, and (2) violation of any of the fundamental rights guaranteed in Part III of the Constitution or of any other constitutional provision. There is no third ground..... if an enactment is challenged as violative of Article 14, it can be struck down only if it is found that it is violative of the equality clause/equal protection clause

enshrined therein. Similarly, if an enactment is challenged as violative of any of the fundamental rights guaranteed by clauses (a) to (g) of Article 19(1), it can be struck down only if it is found not saved by any of the clauses (2) to (6) of Article 19 and so on. No enactment can be struck down by just saying that it is arbitrary or unreasonable. Some or other constitutional infirmity has to be found before invalidating an Act. An enactment cannot be struck down on the ground that court thinks it unjustified. Parliament and the legislatures, composed as they are of the representatives of the people, are supposed to know and be aware of the needs of the people and what is good and bad for them. The court cannot sit in judgment over their wisdom."

17.... to 25.....

26. In *Mohd. Hanif Quareshi*, AIR 1958 SC 731, the Constitution Bench further observed that there was always a presumption in favour of constitutionality of an enactment and the burden is upon him, who attacks it, to show that there has been a clear violation of the constitutional principles. It stated in paragraph 15 of the Report as under:

"15....The courts, it is accepted, must presume that the legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds. It must be borne in mind that the legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest and finally that in order to sustain the presumption of constitutionality the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation."

27. The above legal position has been reiterated by a Constitution Bench of this Court *Moti Das Vs. S.P. Sahi*, *The Special Officer In Charge of Hindu Religious Trusts and Others*, .

28. In *Hamdard Dawakhana and Another, Kalipada Deb and Another, Lakshman Shripati Itpure @ Lakshman Shripati Impore and A.B. Choudhri and Another Vs. The Union of India (UOI) and Others*, inter alia, while referring to the earlier two decisions, namely, *Bengal Immunity Company Ltd.* and *Mahant Moti Das*, it was observed in para 8 of the Report as follows:

"8. Therefore, when the constitutionality of an enactment is challenged on the ground of violation of any of the articles in Part III of the Constitution, the ascertainment of its true nature and character becomes necessary i.e. its subject-matter, the area in which it is intended to operate, its purport and intent have to be determined. In order to do so it is legitimate to take into consideration all the factors such as history of the legislation, the purpose thereof, the surrounding circumstances and conditions, the mischief which it intended to suppress, the remedy for the disease which the legislature resolved to cure and the true reason

for the remedy..."

In Hamdard Dawakhana, the Court also followed the statement of law in Mahant Moti Das and the two earlier decisions, namely, Charanjit Lal Chowdhary v. Union of India and State of Bombay v. F.N. Balsara and reiterated the principle that presumption was always in favour of constitutionality of an enactment."

8. In the present set of petitions, the petitioners have not questioned the competence of the State Government in prescribing qualificational eligibility for the purpose of appointment to the post of Junior Engineer (Degree Holder) and Junior Engineer (Diploma Holder) under the Rules of 1998.

9. The petitioners have also utterly failed to demonstrate that the qualification prescribed by the State Government for appointment to the post of Junior Engineer under the Rules of 1998 is in contravention of Part-III of the Constitution of India or any other constitutional provision.

10. Prescribing any qualification for a particular post is a matter within the domain and jurisdiction of the employer concerned and it cannot be claimed as a matter of right. The rule making authority looking to the job requirements prescribed qualificational eligibility pertaining to the post concerned. The petitioners have utterly failed to prove as to how the qualification prescribed by the State Government for requirement on the post of Junior Engineer (Degree Holder) and Junior Engineer (Diploma Holder) under the Rules of 1998 is irrelevant. The petitioners have also failed to demonstrate that the qualification possessed by them is having any nexus, relevance or rational with the post for which they have not been treated eligible. Simply because the qualification possessed by the petitioners does not figure in the eligibility criterion, the petitioners cannot be allowed to question the same until they satisfy the Court that the rule making authority lacks competence to prescribe eligibility qualification or there is violation of any of the fundamental rights as governed under Part-III of the Constitution of India or any of the constitutional provisions.

11. Looking from every angle, we are not persuaded to strike down the validity of the provisions of rule prescribing qualification for appointment to the post of Junior Engineer (Degree Holder) and Junior Engineer (Diploma Holder) under the Rules of 1998, at the instance of the petitioners.

12. Hence, there is no force in these writ petitions and the same are hereby dismissed. Stay petitions also stand dismissed.

13. There shall be no order as to costs.