

(1989) 01 RAJ CK 0016

In the Rajasthan High Court

Case No : Civil Writ Petitions No's. 573 of 1981 and 829 of 1986

K.N. Mathur and Another

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 10-01-1989

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (1989) 1 RLW 48 : (1990) 1 WLN 210

Hon'ble Judges : J.S. Verma, J;Farooq Hasan, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

J.S. Verma, C.J.—The point involved for decision in both these petitions is the effect of the amendment made in the Rajasthan Forest Service Rules, 1962 by the Rajasthan Forest Service (Amendment) Rules, 1985. These amendments were made in exercise of the powers conferred by Proviso to Article 309 of the Constitution of India by Notification dated June 22, 1985 published in the Rajasthan Gazette (Extraordinary) dated June 26, 1985. According to clause 1 (ii) of these amendments they came into force on the date of their publication in the Rajasthan Gazette. The contention of the petitioners is that these amendments are merely declaratory and must be deemed to declare the position existing under the Rajasthan Forest Service Rules, 1962 even prior to these amendments. The question is, whether this contention can be accepted?

2. The petitioners in both these petitions applied for selection for the Diploma Course in Forestry and after being so selected and getting the Diploma, were appointed to the Service as provided in Rule 32 (2) of the Rajasthan Forest Service Rules, 1962. This is clear from the documents filed with the petition. The petitioners how ever claim that their appointment to the service should be treated as commencing with their initial selection for the Diploma Course in Forestry and not from the date of their appointment to the service after obtaining the Diploma. In short, the contention is that the period spent by them as

candidates for the Diploma Course should be treated as a part of their service for all purposes. The consequence of the amendments made in 1985 is to this effect, but prior to these amendments this was not the position. It is for this reason that the petitioners contend that the amendments of 1985 should be treated merely as declaratory of the earlier position.

3. We shall now refer to the provisions of the Rajasthan Forest Service Rules, 1962 as they existed prior to the 1985 amendments. Rule 3 contains the definitions. Clause (a) of sub Rule (1) defines "cadet" to mean a person sponsored by the Government for Diploma Course in Forestry under the provisions of these Rules. Rule 6 relates to methods of recruitment and includes direct recruitment to the service. Rule 11 relates to academic qualifications and experience. It provided the qualifications needed by a candidate for direct recruitment to the junior posts in the service and Sub-rule (2) therein clearly provided passing the Diploma Course in Forestry as an essential qualification for appointment to the service by direct recruitment. It is, therefore, clear that according to this provision no appointment to the service by direct recruitment could be made prior to the candidate passing the Diploma Course in Forestry. In other words, the service of a direct recruit could not commence from a date prior to the date on which he passed the Diploma Course in Forestry. Part IV of the Rules containing Rules 17 to 29 deals with the procedure for direct recruitment. Rule 28 provided that the candidates who were called "cadets" as defined in Rule 3 (1)(a) found suitable for appointment to the post in the service after they had successfully undergone the prescribed course of training shall be selected by the Government. Rule 29 deals with the training of cadets and Rule 32 with the appointment to the service. It provided for appointment of cadets successfully completing the Diploma Course in Forestry, which was a condition laid down in Rule 11 (2) with the other prescribed conditions to the service thereafter. A combined reading of both these rules show that the appointment to the service by direct recruitment was to be made from amongst the cadets who successfully completed the Diploma Course fulfilling the condition laid down in Rule 11(2) and also the other prescribed conditions. Proviso (3) of Rule 35 dealing with the seniority in service laid down that the inter se seniority of the direct recruits was to be fixed according, to the merit at the time of passing out from the training course.

4. It is, therefore, clear that according to the Rajasthan Forest Service Rules, 1962 at they stood prior to the 1985 amendments appointment to the Service was made only after the candidate selected for the Training in Diploma Courses had obtained the Diploma and was found suitable in all respects. It is not as if training for Diploma Course was a part of the in service training programme after appointment to the Service.

5. We shall now refer to the amendments made in 1985 to these Rules. By these amendments the definition of "Cadet" in rule 3(i)(a) has been deleted and similarly there is deletion of Rule 11(2) and Rule 11(4)(ii), both of which

prescribed the essential academic qualifications for appointment to the Service. Rule 28 has been amended to delete the words "after they successfully undergone the prescribed course of training", with the result that under the amended rule appointment to the service of a direct recruit can be made before completion of the prescribed training course. There is a corresponding amendment of Rule 29. It has been substituted to enable the appointment to the service prior to obtaining the academic qualification prescribed in Rule 11(2) and 11(4)(ii). For the same purpose Rule 32 has also been similarly amended to give effect to this scheme and a similar amendment has been made in Proviso (3) to Rule 35. The effect of these amendments, therefore, is that direct recruitment to the Service is made and the appointment given on initial selection and thereafter the direct recruit is sent for the prescribed training so that the training is a part of in service training and not an essential precondition for appointment to the Service. There is no ambiguity about these provisions.

6. In view of the clear provisions in the Rules as initially enacted and as they became after the 1983 amendments there is no scope for accepting the contention that those amendments are merely declaratory of the position existing prior to the amendment. The scheme of the Rules prior to the amendments was that a direct recruit was appointed to the Service only after he had acquired the prescribed academic qualification specified in Rule 11(2) and Rule 11(4)(ii) so that the service could not commence on a date prior to his acquiring the prescribed academic qualification. The remaining rules, particularly Rules 28, 29, 32, and 35, made similar provisions relating to appointment to the Service and fixation of inter se seniority of the direct recruits. At that time the candidates on initial selection were called Cadets as defined in Rule 3(1)(a) and after successfully completing the prescribed training and obtaining the prescribed academic qualification for appointment to the service they were given appointment to the Service and it was at that stage that their Service commenced. Obviously any period spent by them as Cadets in the training prior to the appointment to the Service cannot be included as a part of their service. After the amendment made in 1985 the prescribed essential academic qualifications contained in Rule 11(2) and 11(4)(ii) have been deleted and there is no bar to appointment to the Service prior to obtaining these academic qualifications at the end of the training period. This being so, under the amended rules the Service of a direct recruit commences at the time of initial selection and appointment and not on appointment after completion of the training. It may be mentioned that it is for this reason that provision was made in the rules relating to appointment to the Indian Forest Service for inclusion of the training period for the purpose of counting experience of such a candidate who had been appointed in accordance with the un-amended Rajasthan Forest Service Rules, 1962 prior to the 1985 amendment. The contention of learned Counsel for the petitioner that the amendments are merely declaratory of the position existing even prior to the amendments cannot, therefore, be accepted.

7. Learned Counsel for the petitioner also contended that this results in

discrimination of appointees to the same Service, in as much as, the training period is included in the Service of persons governed by the 1985 amendments while it is not included in the case of earlier appointees. He also contended that making these amendments prospective and not restrospective is discriminatory. It is sufficient to say that no provision is to be treated as retrospective unless it has been made retrospective. Accordingly, not making any amendment in the Rules retrospective is by itself not discriminatory. There is also no discrimination for the other reason suggested by learned Counsel. Persons recruited to the Service after the amendments came into force have obviously to be governed by the Rules under which they were appointed as the appointees prior to the amendments are to be governed by the un-amended rules. The two categories being distinct there is no question of any hostile discrimination on this ground. This contention is also rejected.

8. Consequently, both these petitions fail and are dismissed. No costs.