

(2018) 04 RAJ CK 0044

In the Rajasthan High Court

Case No : Special Appeal Writ No.1111 of 2015, Special Appeal Writ No.92 of 2016

Krishan Kumhar And Ors @APPELLANT@Hash Prakash Patidar And Ors

Date of Decision : 27-04-2018

Acts Referred:

Constitution of India, 1950 — Article 244(1)

Citation : (2018) 04 RAJ CK 0044

Hon'ble Judges : G R MOOLCHANDANI, J;PRADEEP NANDRAJOG, CJ

Bench : Division Bench

Advocate : Vigyan Shah, Rajendra Prasad, Shashank Pareek

Final Decision : Dismissed

Judgement

1. On 29/05/2013 an advertisement was issued by the Directorate of Agriculture, State of Rajasthan, inviting applications from the eligible and

qualified candidates to fill up the notified 2224 vacancies in the Department of Agriculture and since the dispute pertains to reservation, vide Special

Note No.3 under the caption, it was indicated to the candidates, as under:-

â??(3) vkj{k.k dh fLFkfr jkT; ljdkj ds orZeku fu;e@funZsâ??kkuqlkj gS tks fd fu;e@funsâ??kksZ ds v/khu ifjorZuh; gksxhâ??

Translated it would read : The position regarding reservation is as per the extent rules and the notifications issued by the State Government which

would be subject to change as per the rules/notifications.

2. As per the advertisement, vide Sr.No.5 it was indicated that the eligibility prescribed in terms of educational qualifications has to be by 15/07/2013

and vide Sr.No.8 it was indicated that online applications could be submitted from 01/06/2013 till 15/07/2013. Meaning thereby the last date for

submitting the applications was 15/07/2013.

3. In between the Department of Personnel issued a notification on 16/06/2013 exercising the powers under Article 244(1) of the Constitution of India

as per which for posts in Rajasthan required to be filled up by direct recruitment, 50% un-reserved posts would be filled up from amongst the local

residents. The effect was that 50% vacancies in the TSP Areas as per the advertisement became the subject-matter of dispute. Whether these

vacancies had to be filled up by local residents in view of the notification dated 16/06/2013 was the dispute.

4. RPSC and the State Government took the view that since the notification dated 16/06/2013 was issued subsequent to the advertisement inviting

applications (dated 29/05/2013) it would not have retrospective operation. The stand taken by the local residents, some of whom had filed the writ

petition being qualified candidates, was that the last date for submitting applications as per the advertisement was 15/07/2013 and hence the

notification had to be given effect to.

5. This took the debate to the issue whether the notification dated 16/06/2013 had a retrospective operation.

6. Without any meaningful discussion the learned Single Judge has held that benefit of the notification ought to be granted.

7. Relevant would it be to highlight that the learned Single Judge has not held the notification to be retrospective. The reasoning given is that since last

date for submitting applications was 15/07/2013, the benefit of notification had to be granted.

8. The appellants are aggrieved by the impugned order for the reason the benefit of local reservation has ousted them notwithstanding they having

marks higher than some of the local residents who got the benefit of reservation.

9. Shri Vigyan Shah, learned counsel for the appellants relied upon the decisions reported as 2017 (4) SCT 89 (SC) :

Gaurav Pradhan & Ors. Vs. State of Rajasthan & Ors., (1990) 3 SCC 157 : N.T. Bevin Katti, etc., Vs. Karnataka Public Service Commission &

Ors., (1990) 1 SCC 411 : P.Mahendran & Ors. Vs. State of Karnataka & Ors. : Matteesh Y.Annigeri & Ors. Vs. State of Karnataka & Ors., (2007)

10 SCC 627 : Sonia Vs. Oriental Insurance Co. Ltd. & Ors. and (2015) 8 SCC 410 : M.Surender Reddy Vs. Govt. of Andhra Pradesh & Ors. to urge

that principle of law laid down in the said decisions was clear. Unless a

notification granting reservation was made retrospective expressly or impliedly its benefit could not be extended to ongoing recruitment processes. Pertaining to a notification dated 26/02/2013 having a clause similar to the instant notification dated 29/05/2013 learned counsel urged that a learned Single Judge of this Court in SBCWP No.5750/2016 did not grant the benefit of reservation and said decision was upheld in DBSAW No.1212/2016.

10. With respect to the five decisions cited by Mr.Vigyan Shah, learned counsel for the appellants, there can be no quarrel with the proposition of law

that unless the amending rule or the amending notification is made expressly or impliedly retrospective it has to be treated as prospective.

11. Thus, we need not note the facts of the said five cases and extract the ratio therefrom. As regards the decision of the learned Single Judge in

SBCWP No.5750/2016 which was upheld by the Division Bench, it simply applies the well known principle of law that a legislation unless expressly or

implied made retrospective has to be read as prospective. In the said case advertisement inviting applications was 26/02/2013. On 18/09/2013 certain

castes were included in the category of OBC. Members of the said caste had filed the writ petition claiming benefit of the notification dated

18/09/2013. The learned Single Judge simply held that since the notification was not retrospective and the recruitment had commenced on 26/02/2013

no benefit could be accorded.

12. The Division Bench upheld the decision of the learned Single Judge.

13. The decisions do not note the condition of the advertisement which we have noted hereinabove. The said decisions thus have no value as a precedent.

14. The issue in the instant case is not whether the notification dated 16/06/2013 had retrospective operation. The reason being that Condition No.3

under the Special Note, which we have noted hereinabove, clearly indicated that the reservation provided for in the advertisement was as per the

existing rules and notifications issued by the State Government which would be subject to change as per the rules and the notifications making

amendments. As highlighted by the learned Single Judge the notification dated 16/06/2013 was issued before the last date for submitting the

applications i.e. 15/07/2013. Notwithstanding the learned Single Judge not noting the condition aforementioned, the impugned judgment shows that the

learned Single Judge has been influenced by the same.

15. Relevant would it be to highlight that commencement of a selection process begins after the last date for submitting the applications is over. Any

change in policy concerning the selection prior to the last date of submitting applications would therefore apply to ongoing processes of recruitment

initiated when advertisements are issued inviting applications from the eligible candidates.

16. We note that though the State and the RPSC opposed the writ petition filed but in view of the verdict given by the learned Single Judge proceeded

to finalise the merit list granting benefit of reservation as per the notification in question and the appointments have been made.

17. In view of the facts noted hereinabove and in particular Condition No.3 under the Special Note in the advertisement, we are constrained to uphold

the impugned order and dismiss the appeals.

18. The appeals are accordingly dismissed.

19. No costs.