

(1985) 08 RAJ CK 0020
In the Rajasthan High Court
Case No : Civil Writ Petition No. 332 of 1985

Krishna Autar Maheshwari

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 22-08-1985

Acts Referred:

Rajasthan Economics and Statistical Service Rules, 1958 — Rule 8(b)

Citation : (1985) WLN 209

Hon'ble Judges : A.K. Mathur, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ashok Kumar Mathur, J.—The petitioner has filed the present writ petition against his threatened reversion from the post of Statistical Officer. The petitioner was appointed as Statistical Inspector on 15th June, 1961 on ad hoc basis. The petitioner was thereafter selected by the Rajasthan Public Service Commission and he came to be regularly appointed on the post of Statistical Inspector. Thereafter the petitioner came to be confirmed on the post of Statistical Officer with effect from 1st March, 1969. The petitioner was promoted to the post of Statistical Assistant on temporary basis but later on he was confirmed on this post with effect from 18th June, 1979. The petitioner came to be promoted to the post of Statistical Officer by order dated 31st March, 1980 for a period of four months or till a duly selected candidates from the Rajasthan Public Service Commission or Departmental Promotion Committee are available whichever is earlier. This period of temporary appointment of the petitioner was extended from time to time and last extension was given vide order dated 17/19th September, 1984.

2. This writ petition has been filed by the petitioner because he apprehends that he is likely to be reverted now. The service condition of the petitioner is governed by the Rajasthan Economics and Statistical Service Rules, 1958 (here in after referred as the Rules of 1958). There are two sources of recruitment for this

post, namely, be direct recruitment and by promotion. The direct recruitment is governed by Part IV of the Rules of 1958 and recruitment by promotion is governed by Part V of the Rules of 1958. The petitioner has submitted that the Government of Rajasthan in a reply filed before the Rajasthan Civil Services Appellate Tribunal in Appeal No. 12 of 1984 filed by Shri B.S. Yadav has taken the position as under:

It is submitted that according to Rule 8 Sub-clause (b) of Rajasthan Economics and Statistical Service Rules, the Government is authorised to convert the quota of direct recruitment in promotions and vice-versa. As the Government was satisfied that suitable persons by direct recruitment were not available hence on the concurrence of RPSC the direct quota vacancy upto 1980 numbering in 52 were converted to be filled in by promotion.

3. From this learned counsel submits that since the Government has decided that the direct recruitment quota vacancies upto 1980 numbering 52 were converted in promotion quota and the petitioner should be considered against this promotion quota till then he should not be reverted. It has been further submitted by the learned counsel for the petitioner that subsequently position has been altered by the Government of Rajasthan and the Government of Rajasthan has stated in the reply filed in the appeal No. 42 of 1985 filed by Ved Kumar Sharma before the Rajasthan Civil Services Appellate Tribunal, Jaipur as under:

That no post of promotion quota is available because the post of direct recruitment from the year 1976 to 1980 totalling 52 were filled in by promotion and according to Rule 10 of the Rajasthan Economics and Statistical Service Rules, 1958 as amended by various service amendment rules, the appointment of vacancies determined under Clause (a) to each method shall be done maintaining the prescribed proportion for the over all number of posts already filled in. Thus the eight vacancies of the year 1981 and 12 vacancies of the year 1982 were rightly filled in by direct recruitment and no vacancy was treated for promotion quota and all the 20 vacancies were required to be filled in by direct recruitment.

4. In this connection I may also reproduce relevant Clause (b) of Rule 8 of the Rules of 1958 amended vide Notification dated 17th October, 1984 as under:

The recruitment to fill-in the vacancies occurring in a year in the post of Statistical Officer shall be made by promotion from amongst Statistical Assistants and by selection through the Agency of the Commission in the proportion of 1 : 2. This proportion has now been altered to 1 : 1 by the Rajasthan Economics and Statistical Service Rules, 1984.

5. This amendment was given effect from 1st April, 1981.

6. It is also useful to reproduce were the amendment in Rule 8(b) which was brought about by the Notification dated 27th May, 1983, where by the first

proviso to Rule 8(b) was substituted by new proviso which reads as under:

(b) Recruitment to the post of Statistical Officer shall be made partly by promotion from the Statistical Assistants in various departments except Agriculture Department and partly by selection through the agency of the Commission in the proportion of 1 : 2 respectively:

Provided that if the Government is satisfied in consultation with the Commission, that suitable persons are not available for appointment by either method recruitment in particular year, appointment by other method in relaxation of the prescribed proportion, may be made in the same manner as specified in that rules.

7. In the back grounds of the rules reproduced above the argument of the learned counsel for the petitioner is that once the Rajasthan Government has decided to make the recruitment against direct recruitment post from the promotion quota, the Government of Rajasthan should fill up these vacancies out of the promotees and no recruitment should be made by direct recruitment. According to the learned counsel for the petitioner such decision of the Government of Rajasthan taken under first proviso to Rule 8(b) should be enforced by issuing a mandamus. I am afraid this contention of the petitioner is not sustainable.

8. As already mentioned above the proviso to Rule 8(b) only enables the Government of Rajasthan to change the proportion of direct recruitment and promotion quota in the event of reasonable number of candidates are not available by direct recruitment. In exercise of this enabling power the Government of Rajasthan decided to fill the posts of direct recruitment upto 1980 numbering 52 to be filled in by candidates from promotion quota. This administrative decision will not confer any right on the petitioner so as to be enforced by issuing a writ of mandamus by this Court.

9. The amendment aforesaid only enables the Government that in given situation at one point of time Government may fill direct recruitment vacancies to be filled from promotion quota but that would not mean that the Government has become powerless and they are bound to fill these vacancies from promotion quota only, they cannot change the position. This decision was purely administrative in the nature and Government after reconsideration of the whole matter has decided to resort back to direct recruitment and wants to maintain the ratio of the direct recruitment and promotion quota, this court cannot direct the Government of Rajasthan to fill the vacancies of 1980 of direct recruits from the promotees alone.

10. In the result, I do not find any merit in the writ petition. The petition is dismissed summarily.