

(2005) 03 RAJ CK 0058
In the Rajasthan High Court
Case No : Civil Special Appeal No. 656 of 2004

Laxman Prasad Sharma

APPELLANT

Vs

District and Sessions Judge and Others

RESPONDENT

Date of Decision : 02-03-2005

Acts Referred:

Rajasthan Subordinate Courts Ministerial Establishment Service Rules, 1986 — Rule 15, 16, 19

Citation : (2005) 3 RLW 1819 : (2005) 2 WLC 787

Hon'ble Judges : N.N. Mathur, J; Manak Lall Mohta, J

Bench : Division Bench

Advocate : H.K. Soni, Additional Govt., M. Mridul, sisted by Suchita Bachhawat, Rakesh Arora, S.L. Jain and Pankaj Gupta, for the Appellant; V.K. Mathur, for the Respondent

Final Decision : Dismissed

Judgement

N.N. Mathur, J.—In these two sets of Special Appeals, one arising from the advertisement issued by the District & Sessions Judge Pratapgarh and another by the District & Sessions Judge Bhilwara for recruitment on the post of Lower Division Clerk, hereinafter referred-to as the "LDC", directed against the judgment of the learned Single Judge, the core question arises for consideration is:-

"whether the candidates placed in the select list have vested and enforceable right to be appointed on the further vacancies occurred in excess of the advertised vacancies during the currency of one year ?"

2. The undisputed relevant facts are that the district Judge, Pratapgarh by advertisement dated 10.5.2001 invited applications for filling-in six posts of LDC. After written & type test, the result of the successful candidates was declared on 30.10.2001. The successful candidates were called for interview on 31.10.2001. Because of pendency of the writ petition being D.B. Civil Writ petition No. 955/2002 challenging the recruitment of LDCs in Pratapgarh judgeship, filed

under the label of "Public Interest Litigation," appointments could not be made immediately. However after dismissal of the said petition on 26.7.2002, six persons were given appointment in order of merit on the post of LDC. Out of six, four persons joined their duties and two viz. Pushpendra and Bhaskar did not join. The District & Sessions, Judge, Pratapgarh, issued the impugned advertisement dated 15.7.2002 for filling-up 23 posts of LDC. After completing the process of recruitment, the appointments on the said 23 vacancies have also been made. Similarly, the District & Sessions Judge, Bhilwara also issued an advertisement on 19.3.2002 for filling up 12 posts of LDC. After written and type tests, the list of selected candidates was declared on 30.11.2002. 12 candidates as per the merit were given appointment on the post of LDC by order dated 2.12.2002. The District Judge, Bhilwara, issued the impugned advertisement dated 27.1.2003 for filling up 17 posts of LDC. After due selection, 17, persons have been given appointment on the post of LDC in accordance with their merit.

3. We have heard Mr. M. Mridul, Senior Advocate & Mr. Rakesh Arora, learned counsel for the appellants. It is submitted that the select list prepared by the respondents remained operative for a period of one year from the date of declaration of result and all the vacancies occurred during the period, could be filled up only from the said list and not by a fresh advertisement. In the instant case, the result was declared on 30.10.2001, as such, the said list remained operative upto 29.10.2002, Thus, the advertisement dated 15.7.2002 inviting applications for 23 existing vacancies was issued almost three and half months before expiry of one year, is *ex facie* illegal. It is further submitted that the very fact that besides 6 vacancies which were specifically referred as being vacant vide Notification dated 10.5.2001, 23 vacancies arose before 15.7.2002. Thus, it is contended that the finding of the learned Single Judge that the vacancies on which the appointments could be given within one year had not occurred and were not available for appointments being given to the appellants, is *ex facie* illegal. Learned counsel has supported his stand by referring Rules 15 and 19 of the Rajasthan Subordinate Courts Ministerial Establishment Service Rules, 1986, hereinafter referred to as "the Rules of 1986".

4. Per contra, it is submitted by the learned Additional Government Advocate and the learned counsel for the Rajasthan High Court that both the District Judges were justified in issuing fresh advertisements for the vacancies which occurred after issuance of earlier advertisement. There is nothing in Rules 15 and 19 of the Rules of 1986, which suggests of filling-up future vacancies from the select list. After filling-up the advertised vacancies, the select list did not survive. The subsequent advertisement has been issued taking into account the further vacancies. It is further submitted that the appellants have no vested right to be appointed on the post of LDC simply because their names have appeared in the select list.

5. We have considered the rival contentions. Since learned counsel has made good deal of arguments referring-to Rules 15, 16 and 19 of the Rules of 1986, it

would be convenient to read the said provisions as follows:-

"15. Frequency of Examinations: Early in each year or as the circumstances may require each District Judge shall recruit as many candidates for his Judgeship as required for the vacancies likely to arise in the course of the year.

16. Authority for conducting the examinations & Syllabus: The examination shall be conducted by the District Judge or by a Senior Judge or Munsif if such power is delegated to any one of them by District Judge on the basis of likely vacancies during a year. The Syllabus of the examination shall be as given in Schedule-I.

19. Registration of selected candidates:

(1) The names of candidates selected on the basis of the aggregate obtained by them shall be entered in order of merit in a bound register in the form given in Schedule III & each entry shall be initialled & dated by the appointing authority:

Provided that no candidate who failed to secure 40% of the total marks with atleast 30% marks in each paper at the competitive examination shall be selected. If two or more of such candidates obtain equal marks in the aggregate, their names shall be arranged in order of merit on the basis of their general suitability. An entry shall be made in the remarks column against the name of a candidate who has qualified himself as Stenographer.

Note-(1) Omitted.

(2) The result of the successful candidate shall be exhibited on the notice board of the court of District & Sessions Judge showing the marks obtained by all the candidates in different subjects.

(ii) The name of any candidate entered under Sub-rule (i) may be removed for inefficiency or misconduct.

(iii) If any such candidate has not been given an appointment offered in strict order of seniority according to the list in the bound register prescribed under Sub-rule (i) within one year from the date of declaration of the result of his recruitment test his name shall be automatically removed from the register of recruited candidates. He must then take his chance with others for recruitment again in subsequent year."

6. Rule 15 under the heading "Frequency of examinations" casts a duty on the District Judge to make recruitment as far as possible in the beginning of the year in his judgeship for the existing and vacancies likely to arise during the course of the year. Rule 16 provides authority for conducting the examinations and syllabus. Rule 19 provides that the names of the candidates selected on the basis of merit shall be entered in a bound register. Sub-rule (iii) of Rule 19 provides for automatic removal of the name of the candidates from the register maintained under Sub-rule (i), in the event of non-offer of appointment for one year.

7. Thus, before issuing an advertisement, the District Judge is required to

determine vacancies taking into account the existing and such vacancies which he may foresee at that particular moment on account of expected happenings during the course of the year. A clear distinction must be understood between likely or anticipated and future vacancies. The vacancies which can be foreseen in the course of the year, are likely or anticipated, but vacancies on account of uncertain events like death, resignation, compulsory or voluntary retirement, promotion, transfer, creation of post etc. are future vacancies. Select list remains operative under Rule 19 in the currency of the year for filling likely or anticipated i.e., number of advertised vacancies and not future vacancies. Now, it is well settled that simply because a person has been placed in select list, does not acquire right of appointment, except to the limited extent that when a candidate selected against the advertised vacancy does not join for some reason and the select list is still operative. The process of selection comes to an end as soon as the appointment on all the advertised vacancies are made and carried out. The life of select list is co-terminus with the completion of process of selection. No appointment can be made over and above the advertised vacancies are made and carried out. The life of select list is co-terminus with the completion of process of selection. No appointment can be made over and above the advertised vacancies. In Surinder Singh's case (referred letter), the Apex Court ruled that even in case, it is found that vacancies have not been correctly calculated, the Court cannot issue directions to fill up the vacancies, over and above the vacancies advertised.

8. The Apex Court in Prem Singh and Others Vs. Haryana State Electricity Board and Others, held that the selection process by way of requisition and advertisement can be started for clear vacancies and also for anticipated vacancies but not for future vacancies. The Court further observed that if the requisition and the advertisement are for a certain number of posts only, the State cannot make more appointments than number of posts advertised, even though it might have prepared a select list of more candidates. In the said case, as against 62 advertised posts, the State Electricity Board made appointments on 138 posts. The selection process stated for 62 clear vacancies and at that time, the anticipated vacancies were not taken into account. On further calculation, it was found that after the selection process and commenced, 13 posts had become vacant because of retirement and 12 because of deaths. Some more posts were created in the course of the year. The Court found that appointments made against future vacancies i.e., on account of newly created posts or death, must be regarded as invalid/The Court further held that 13 vacancies which had arisen on account of retirement could have been reasonably anticipated and such vacancies could be filled-in. The Court taking into consideration the special facts & circumstances, did not consider it proper to invalidate the appointments made on the said 25 additional posts but beyond that, 87 posts were held to be invalid. It would be convenient to extract para 25 from the judgment which reads as follows:-

"25. From the above discussion of the case-law, it becomes clear that the

selection process by way of requisition and advertisement can be started for clear vacancies and also for anticipated vacancies but not for future vacancies. If the requisition and advertisement are for a certain number of posts only the State cannot make more appointments than the number of posts advertised, even though it might have prepared a select list of more candidates. The State can deviate from the advertisement and make appointments on posts falling vacant thereafter in exceptional circumstances only or in an emergent situation and that too by taking a policy decision in that behalf. Even when filling up of more posts than advertised is challenged the court may not, while exercising its extraordinary jurisdiction, invalidate the excess appointments and may mould the relief in such a manner as to strike a just balance between the interest of the State and the interest of persons seeking public employment. What relief should be granted in such cases would depend upon the facts and circumstances of each case."

9. Prem Singh's case (supra), has been followed by the Apex Court in *Surinder Singh and Others Vs. State of Punjab and Another*, . It is held therein that the candidates in the waiting list have no vested right to be appointed except to the limited extent that when a candidate selected against the existing vacancy does not join for some reason and the waiting list is still operative. The Court further observed that the candidate included in the waiting list cannot claim appointment on the ground that the vacancies were not worked out properly. The Court observed thus:-

"It is improper exercise of power to make appointments over and above those advertised. It is only in the rare and exceptional circumstances and in emergent situation that this rule can be deviated from. It should be clearly spelt out as to under that policy such a decision has been taken. Exercise of such power has to be tested on the touchstone of reasonableness. Before any advertisement is issued, it would, therefore, be incumbent upon the authorities to take into account the existing vacancies and anticipated vacancies. It is not as a matter of course that the authority can fill up more posts than advertised."

10. In *State of Bihar and another Vs. Madan Mohan Singh and others*, the Court held that the advertisement and the whole selection process were meant only for 32 vacancies. The process came to an end as soon as these vacancies were filled-up. If the same list has to be kept alive for the purpose of filling up other vacancies, it would amount to deprivation of right of other candidates who would have become eligible subsequent to the said advertisement and selection process.

11. In the instant case, as far as Pratapgarh judgeship is concerned, a perusal of Annex.R/1 shows that 23 vacancies for which the subsequent advertisement was issued, had arisen because of the future event. Due to inter-district transfer on 22.5.2001, 3 vacancies had fallen vacant and 2 posts on 4.7.01 due to promotion of 2 LDCs. By other inter district transfer orders dt. 15.12.01, 30.1.02 and 1.2.2002, 7 posts of LDCs had fallen vacant and one post fell vacant on 16.3.02. 3 posts fell vacant on account of deaths, 3 vacancies on account of voluntary

retirement and one resignation. This, these vacancies cannot be said to be likely or anticipated vacancies cannot be said to be likely or anticipated vacancies. Sub Rule (iii) of Rule 19 of The Rules of 1986 also does not advance the case of the appellants. This rule only provides that if a candidate from the select list is not appointed within a period of one year his name shall be struck off from the bound register maintained under Sub-rule (i) of Rule 19.

12. As regards Bhilwara Judgeship, fresh advertisement was issued for recruitment on 17 posts of LDC, in view of directions of the Apex Court and directions of the Ministry of Law & Justice, Government of India to establish earmarked Courts. Because of creation of new courts, the posts of LDC were created. These vacancies fall in the category of future vacancies and not likely or anticipated vacancies.

13. In our view, learned District Judges, Pratapgarh and Bhilwara were justified in not clubbing future vacancies with the vacancies advertised and giving appointment from the select list and issuing fresh advertisement for unforeseen vacancies occurred after issuing of earlier advertisement. The learned Single Judge rightly rejected the contention.

14. It is next contended that in the advertisement itself, it is clearly mentioned that there are chances of appointment on the posts likely to fall vacant during the course of the year. It is settled law that once a statutory rule has been made, the appointment shall be only in accordance with the rules. Reference be made to a decision of the Apex Court in J and K. Public Service Commission, etc. Vs. Dr. Narinder Mohan and others etc. etc., . Thus, the contention deserves to be rejected and is, accordingly, rejected.

15. Consequently, we find no merit in the group of Special Appeals, as such, they stand dismissed. No order as to costs.