
(2015) 09 RAJ CK 0006

In the Rajasthan High Court

Case No : Civil Writ Petition Nos. 11831, 11941, 12457 and 11982 of 2015

Masood Akhtar and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 03-09-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 15(1), 16, 16(1)

Citation : (2015) 09 RAJ CK 0006

Hon'ble Judges : Ajay Rastogi, J; Anupinder Singh Grewal, J

Bench : Division Bench

Advocate : Laxmi Kant Sharma, Pradeep Kalwania, Dileep Sinsinwar and K.K. Vyas, for the Appellant; N.M. Lodha, Advocate General/Senior Counsel assisted by Dharamveer Tholia, Additional Advocate General, Shitanshu Sharma and Vishal Sharma, Advocates for the Responden

Final Decision : Dismissed

Judgement

1. The petitioners are claiming themselves to be outstanding sports persons and 2% of the total vacancies have been reserved for outstanding sports persons u/ R. 11 of the Rajasthan Vidhyalay Sahayak Subordinate Service Rules, 2015 (hereinafter shall be referred to as "the Rules, 2015") and their grievance is that u/R. 16 of the Rules, 2015, a candidate who intends to participate in the selection process to be held for Vidhyalay Sahayak which is to be filled 100% by direct recruitment, must have academic and technical qualifications & experience, as appended in Column-4 of Schedule-I appended to the scheme of Rules, 2015 and apart from the academic & technical qualifications, minimum one year's experience of working is also made mandatory in the State Government School/State Recognized Non-Government School/State Government Educational Projects.

2. To appreciate the controversy raised in the instant batch of writ petitions, the facts have been noticed from D.B. Civil Writ Petition No. 11831/2015.

3. That 30,522 vacancies of Vidhyalay Sahayak have been advertised by the

respondents, pursuant to its advertisement dt. 21.07.2015 inviting applications from the eligible candidates who intend to participate in the selection process for direct recruitment under the Rules, 2015.

4. Counsel for petitioners jointly submit that the petitioners are outstanding sports persons and for them 2% of the total vacancies have been earmarked for direct recruitment u/R. 11 of the scheme of Rules, 2015 and they are not supposed to hold experience being sports persons and the requirement of one year's experience, as one of the condition of eligibility, which has been provided in Column-4 of Schedule-I appended to the scheme of Rules, 2015 is arbitrary and unconstitutional and in fact for all practical purposes as long as the minimum experience of one year remains as a condition of eligibility for a candidate to participate in the selection process to be held pursuant to advertisement dt. 21.07.2015 under the Rules, 2015 for the post of Vidhyalay Sahayak, the very purpose of providing reservation of vacancies of 2% for outstanding sports persons will remain an empty formality and will be a complete farce since sports persons indisputably may not have a kind of experience which is required and indicated by the rule making authority under the present scheme of Rules, 2015 and it appears that the rule making authority has not applied its mind while incorporating one year's experience of working as one of the condition of eligibility provided u/R. 16 of the Rules, 2015 particularly for the outstanding sports persons for whom reservation has been provided u/R. 11 of the scheme of Rules, 2015.

5. Counsel further submits that stipulation of one year's experience as one of the condition of eligibility under the scheme of Rules, 2015 is violative of Arts. 14 & 16 of the Constitution and apart from it, it has no nexus with the kind of job which ultimately has to be assigned to the Vidhyalay Sahayak and it appears that one year's experience of working, stipulated u/R. 16 of the Rules, 2015 is only to restrict consideration of such of the candidates who have served the State Government either directly or indirectly through the Government projects. However, the petitioners, who are claiming to be the outstanding sports persons, hold academic qualification are looking forward to get employment in the State Government under the Rules, 2015.

6. Counsel for respondents while supporting the scheme of Rules, 2015 submit that experience is one of the condition of eligibility and one year's experience will certainly give better efficiency who may be finally inducted as Vidhyalay Sahayak under Rules, 2015 and if the rule making authority, requires one year's experience as a condition of eligibility it cannot be held to be either arbitrary and unreasonable or hit by any lack of legislative competence or violative of any of the fundamental rights guaranteed under the Constitution or of any other constitutional provisions or statutory Rules and cannot be invalidated merely because the incumbents, approaching to this court, are not holding such qualifications.

7. After repealing the Rajasthan Education Assistant Services Rules, 2013, the

State Government in exercise of powers conferred by the proviso to Art. 309 of the Constitution framed the Rules called "Rajasthan Vidhyalay Sahayak Subordinate Service Rules, 2015" and the post of Vidhyalay Sahayak is included in the Schedule-I appended to the Rules, 2015. R. 11 of the Rules, 2015 provides reservation of vacancies for outstanding sports persons and such of the persons who have one year of experience of academic/non-academic work of the State Government School/State Government Educational Projects for better efficiency in discharge of duties they have been provided age relaxation u/R. 15(x) of the Rules but the candidates who are intending to participate in the selection process to be held for the post of Vidhyalay Sahayak u/R. 16 certainly have to possess academic qualification and one year experience as indicated in Column-4 of Schedule-I appended to the scheme of Rules, 2015 and the experience has been defined u/R. 2(j) of the Rules.

8. We consider it appropriate to quote R. 2(j), 11, 15(x), 16 & Schedule-I appended to the scheme of Rules, 2015, which read ad infra:--

"R. 2(j) "Experience" wherever prescribed in these rules means the experience gained by Academic/Non-Academic work in State Government School/State Recognized Non-Government School/State Government Educational Projects (other than those engaged through placement agencies) viz. Lok Jumbish Pariyojana Sarva Shiksha Abhiyan/District Primary Education Programme/Rajiv Gandhi Pathshala/Shiksha Karmi Board and Madarsa listed under the Madarsa Board.

11. Reservation of vacancies for outstanding sports persons.--Reservation of vacancies for outstanding sports persons shall be 2% of the total vacancies in that year earmarked for direct recruitment. In the event of non-availability of the eligible and suitable sports persons in a particular year, the vacancies so reserved for them shall be filled in accordance with the normal procedure and such vacancies shall not be carried forward to the subsequent year. The reservation for sports persons shall be treated as horizontal reservation and it shall be adjusted in the respective category to which the sports persons belong.

15(x). Age.--A candidate for direct recruitment to a post enumerated in the Schedule-I must have attained the age of 18 years and must not have attained the age of 35 years on the first day of January next following the last date fixed for receipt of applications.

Provided that - (i) to (ix) XX XX

(x) the persons serving under State Government School/State Government Educational Projects (other than those engaged through placement agency) viz. Lok Jumbish Pariyojana/Sarva Shiksha Abhiyan/District Primary Education Programme/Rajiv Gandhi Pathshala/Shiksha Karmi Board and Madarsa listed under the Madarsa Board shall be deemed to be within age limit, had they been within the age limit when they were initially engaged even though may have crossed the age limit at the time of direct recruitment.

16. Academic and technical qualifications and experience.--A candidate for direct recruitment to the post enumerated in the Schedule-I shall possess:--

- (i) the qualifications and experience given in column-4 of the Schedule-I; and
- (ii) working knowledge of Hindi written Devnagri script and knowledge of Rajasthani culture.

9. The petitioners admittedly do not possess the requisite experience of one year's working of academic/non-academic which is one of the condition of eligibility under the Rules, 2015 for a candidate to participate in the selection process held for the post of Vidhyalay Sahayak and that is the reason for which the present petitioners have challenged the validity of R. 16 of the Rules in so far as it provides one year's experience as a condition of eligibility u/R. 16 of the Rules. It is not the case of the petitioners, who are claiming themselves to be the outstanding sports persons, that they are ineligible to acquire experience of one year of the State Government School/State Recognized Non-Government School/State Government Educational Projects.

10. While dealing with the meaning, scope and effect of Art. 14 of the Constitution, to pass the test of permissible classification, two conditions must be fulfilled, namely, (i) the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and (ii) such differentia must have rational relation to the object sought to be achieved.

11. Ld. Advocate General has relied on the explanation of the scope of Arts. 14 & 16(1) of the Constitution in *State of Kerala and Another Vs. N.M. Thomas and Others*, AIR 1976 SC 490 : (1976) LabIC 395 : (1976) 1 LLJ 376 : (1976) 2 SCC 310 : (1976) 1 SCR 906 wherein while explaining the fundamental rights guaranteed under Arts. 14 and 16(1) of the Constitution of India, the Supreme Court held in paragraphs 21, 24, 25, 27, 28 & 34 *ad infra*:--

"21. Articles 14, 15 and 16 form part of a string of constitutionally guaranteed rights. These rights supplement each other. Article 16 which ensures to all citizens equality of opportunity in matters relating to employment is an incident of guarantee of equality contained in Article 14. Article 16(1) gives effect to Article 14. Both Articles 14 and 16(1) permit reasonable classification having a nexus to the objects to be achieved. Under Article 16 there can be a reasonable classification of the employees in matters relating to employment or appointment.

24. Discrimination is the essence of classification. Equality is violated if it rests on unreasonable basis. The concept of equality has an inherent limitation arising from the very nature of the constitutional guarantee. Those who are similarly circumstanced are entitled to an equal treatment. Equality is amongst equals. Classification is, therefore, to be founded on substantial differences which distinguish persons grouped together from those left out of the groups and such differential attributes must bear a just and rational relation to the object sought

to be achieved.

25. The crux of the matter is whether Rule 13AA and the two orders Exhibits P-2 and P-6 are unconstitutional violating Article 16(1). Article 16(1) speaks of equality of opportunity in matters relating to employment or appointment under the State. The impeached Rule and orders relate to Promotion from Lower Division Clerks to Upper Division Clerks. Promotion depends upon passing the test within two years in all cases and exemption is granted to members of Scheduled Castes and Scheduled Tribes for a longer period namely, four years. If there is a rational classification consistent with the purpose for which such classification is made equality is not violated. The categories of classification for purposes of promotion can never be closed on the contention that they are all members of the same cadre in service. If classification is made on educational qualifications for purposes of promotion or if classification is made on the ground that the persons are not similarly circumstanced in regard to their entry into employment, such classification can be justified. Classification between direct recruits and promotees for purposes of promotion has been held to be reasonable in *C.A. Rajendran v. Union of India*.

27. There is no denial of equality of opportunity unless the person who complains of discrimination is equally situated with the person or persons who are alleged to have been favoured. Article 16(1) does not bar a reasonable classification of employees or reasonable tests for their selection *State of Mysore v. V.P. Narasinga Rao*.

28. This equality of opportunity need not be confused with absolute equality. Article 16(1) does not prohibit the prescription of reasonable rules for selection to any employment or appointment to any office. In regard to employment, like other terms and conditions associated with and incidental to it, the promotion to a selection post is also included in the matters relating to employment and even in regard to such a promotion to a selection post all that Article 16(1) guarantees is equality of opportunity to all citizens. Articles 16(1) and (2) give effect to equality before law guaranteed by Article 14 and to the prohibition of discrimination guaranteed by Article 15(1). Promotion to selection post is covered by Article 16(1) and (2).

34. The equality of opportunity takes within its fold all stages of service from initial appointment to its termination including promotion but it does not prohibit the prescription of reasonable rules for selection and promotion, applicable to all members of a classified group. *Ganga Ram v. Union of India*."

12. Ld. Advocate General has also relied upon a judgment of the Supreme Court in *State of Kerala Vs. M.K. Krishnan Nair and Others*, AIR 1978 SC 747 : (1978) LabIC 723 : (1978) 1 SCC 552 : (1978) 2 SCR 864 in which it was held in paragraph 10 as follows:--

"It may be stated that by way of deriving support for its finding that there had come into existence a complete integrated Judicial Service in the State of Kerala

prior to February 12, 1973, the High Court has pointed out that in a Full Bench decision of that Court in P.S. Menon's case, (supra), the Full Bench has in connection with the 1959 Rules in G.O. Ms 851 dated September 24, 1959) observed that the said Rules had been framed for the absorption of the personnel, who were occupying the posts of District Magistrates and Sub Divisional Magistrates into the Civil Judiciary. The High Court has further pointed out that when P.S. Menon's case (supra) was carried to the Supreme Court in appeal, even this Court in its judgment has referred to the ad hoc Rules framed on February 11, 1966 as being meant for absorption of the Criminal Side Judicial Officers of the Travancore-Cochin Branch who were kept in the separate cadre into Civil Judiciary. The observations of the Kerala High Court in the Full Bench decision in connection with the 1959 Rules in G.O. Ms 851 and of this Court in connection with the 1966 ad hoc Rules are obviously correct, but, as discussed earlier, both these Rules had a limited operation effecting a partial absorption of such of the incumbents of the eleven posts which were kept in a separate cadre who were to be found suitable by the High Court into Civil Judiciary; but from this fact it is impossible to draw the inference that there had come into existence a complete integrated Judicial Service in the entire State of Kerala in the sense that all posts on the Magisterial Side had got integrated with those on the Civil Side. On the other hand the very fact that there have been in operation three separate sets of Rules, namely, (1) the Kerala State Higher Judicial Service Rules 1961 (dealing only with District and Sessions Judges) (2) the Kerala Subordinate Magisterial Judicial Service Rules 1962 and (3) the Kerala State Judicial Service Rules (Special Rules) of October 5, 1966, shows that there was no integration of the Judicial Magisterial posts with Judicial Civil posts. If that be so, there will be no question of singling out of certain posts from any integrated service for a separate, avenue of promotion under Exhs. P1 and P2 respectively as contended for by the petitioner and the scheme of bifurcation as contained in Exhs. P1 and P2 cannot be regarded as being violative of either-Art. 14 or Art. 16. In this view of the matter it is unnecessary for us to deal with the decision of this Court in State of Mysore v. Krishna Murthy & Ors. (supra), on which reliance was placed by counsel for the original petitioner, for, the ratio of that decision would be inapplicable to the instant case. In that case on an examination of the Mysore State Accounts Services' 882 Cadre and Recruitment Rules, 1959, the High Court had come to the conclusion, which was accepted by this Court, that there was a clear and complete integration brought about between the P.W.D. Accounts unit and the Local Fund Audit. unit under the common administrative control of the Controller of State Accounts, the qualifications and status of the officers of the formerly separate units being identical, their work being of the same nature, the recruiting authorities being the same and the standards observed and tests prescribed for entry into the formerly separate units being identical and as such the impugned Notifications which resulted in a striking disparity in the promotional opportunities between the officers of the two wings in the, same category were struck down. In the instant case before us, we are clearly of the view that prior to the introduction of the scheme of bifurcation as per Exhs. P1

and P2 a complete integrated Judicial Service in the State of Kerala in the sense that all Magisterial posts on the Criminal Side (all District Magistrates and Sub Divisional Magistrates) had got integrated with the posts of Sub Judges and Munsiffs on the Civil Side, had not come into existence and, therefore, in the absence of such a complete integrated Judicial Service having come into existence, it was open to the State Government to bifurcate the service into two Wings-Civil and Criminal-in the manner done under Exhs. P1 and P2 respectively and to provide for a particular type of option specified therein and no violation of Arts. 14 and 16 is involved."

13. Ld. Advocate General has also relied on the judgment of the Supreme Court in *Om Kumar and Others Vs. Union of India*, (2000) 3 JT 92 : (2000) 7 SCALE 524 : (2001) SCC(L&S) 1039 : (2000) 4 SCR 693 Supp , in which it was held in paragraph 32 as follows:--

"32. So far as Article 14 is concerned, the courts in India examined whether the classification was based on intelligible differentia and whether the differentia had a reasonable nexus with the object of the legislation. Obviously, when the courts considered the question whether the classification was based on intelligible differentia, the courts were examining the validity of the differences and the adequacy of the differences. This is again nothing but the principle of proportionality. There are also cases where legislation or rules have been struck down as being arbitrary in the sense of being unreasonable. [see *Air India v. Nergesh Meerza* (SCC at pp.372-373)]. But this latter aspect of striking down legislation only on the basis of "arbitrariness" has been doubted in *State of A.P. v. McDowell and Co.*"

14. Ld. Advocate General has cited the judgment in *National Council for Teacher Education and Others Vs. Shri Shyam Shiksha Prashikshan Sansthan and Others* etc. etc., AIR 2011 SC 932 : (2011) 2 SCALE 59 : (2011) 3 SCC 238 : (2011) 2 SCR 291 : (2011) 2 UJ 1039 : (2011) AIRSCW 1075 : (2011) 1 Supreme 673 , in which the Supreme Court held in para 22 as follows:--

"22. Article 14 forbids class legislation but permits reasonable classification provided that it is founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group and the differentia has a rational nexus to the object sought to be achieved by the legislation in question. In *Re: The Special Courts Bill, 1978*, AIR 1979 SC 478 : (1979) 1 SCC 380 : (1979) 2 SCR 476 , Chandrachud, C.J., speaking for majority of the Court adverted to large number of judicial precedents involving interpretation of Article 14 and culled out several propositions including the following:

"72.(2) The State, in the exercise of its governmental power, has of necessity to make laws operating differently on different groups or classes of persons within its territory to attain particular ends in giving effect to its policies, and it must possess for that purpose large powers of distinguishing and classifying persons or

things to be subjected to such laws.

(3) The constitutional command to the State to afford equal protection of its laws sets a goal not attainable by the invention and application of a precise formula. Therefore, classification need not be constituted by an exact or scientific exclusion or inclusion of persons or things. The courts should not insist on delusive exactness or apply doctrinaire tests for determining the validity of classification in any given case. Classification is justified if it is not palpably arbitrary.

(4) The principle underlying the guarantee of Article 14 is not that the same rules of law should be applicable to all persons within the Indian territory or that the same remedies should be made available to them irrespective of differences of circumstances. It only means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Equal laws would have to be applied to all in the same situation, and there should be no discrimination between one person and another if as regards the subject-matter of the legislation their position is substantially the same.

(5) By the process of classification, the State has the power of determining who should be regarded as a class for purposes of legislation and in relation to a law enacted on a particular subject. This power, no doubt, in some degree is likely to produce some inequality; but if a law deals with the liberties of a number of well defined classes, it is not open to the charge of denial of equal protection on the ground that it has no application to other persons. Classification thus means segregation in classes which have a systematic relation, usually found in common properties and characteristics. It postulates a rational basis and does not mean herding together of certain persons and classes arbitrarily.

(6) The law can make and set apart the classes according to the needs and exigencies of the society and as suggested by experience. It can recognise even degree of evil, but the classification should never be arbitrary, artificial or evasive.

(7) The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and (2) that differentia must have a rational relation to the object sought to be achieved by the Act."

15. There may be a claim of the candidates for counting the experience gained by them in various kinds of employments under various schemes which were now directly under the control & supervision of the State Government or under the Rules, 2015 experience has to be of academic/non academic work in State Government School/State Recognized Non-Government School/State

Government Educational Projects which directly has a nexus in the field of education, referred to in Schedule-I appended to the Rules, 2015 but in a given case, indisputably the present petitioners does not hold experience at all which is one of the condition of eligibility for the candidate to participate in the selection process initiated by the respondents for the post of Vidhyalay Sahayak pursuant to the Rules, 2015.

16. In Kallakurichi Taluk Retired Official Association, Tamilnadu and Others etc. etc Vs. State of Tamilnadu and Others etc. etc, (2013) 2 AD 133 : (2013) 136 FLR 764 : (2013) 2 JT 42 : (2013) 2 LLJ 9 : (2013) 1 LLN 360 : (2013) 1 SCALE 424 : (2013) 2 SCC 775 : (2013) 2 SCC(L&S) 452 : (2013) 1 SCT 780 : (2013) 1 SLJ 413 , the Hon"ble Supreme Court has held that a valid classification is based on a just objective. The result to be achieved by the just objective pre-supposes, the choice of some for differential consideration/treatment over others. A classification to be valid must necessarily satisfy two tests. Firstly, the distinguishing rational has to be based on a just objective and secondly, the choice of differentiating one set of persons from another, must have a reasonable nexus to the objective sought to be achieved. Legalistically, the test for a valid classification may be summarized as a distinction based on a classification founded on an intelligible differentia, which has a rational relationship with the object sought to be achieved and this what has been held by the Hon"ble Supreme Court in State of M.P. Vs. Rakesh Kohli and Another, AIR 2012 SC 2351 : (2012) 3 CTC 770 : (2012) 3 RCR(Civil) 158 : (2012) 5 SCALE 467 : (2012) 6 SCC 312 : (2012) 113 SCL 255 : (2012) AIRSCW 3245 : (2012) 3 Supreme 675 while reiterating the tests of the permissible classification laid down in Mohd. Hanif Quareshi and Others Vs. The State of Bihar, AIR 1958 SC 731 : (1959) 1 SCR 629 wherein it was held that there is 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. The court 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 recognize 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.

17. We do find substance in the contention of the Id. Advocate General that the State Government was fully conscious while inserting one year"s experience of working as one of the condition in the State Government School/State Recognized Non-Government School/State Government Educational Projects, which are connected and related to school education and are under the control & supervision and it is for the State to decide which qualification including

experience is necessary for a particular post and if the rule making authority requires experience of one year's working as condition of eligibility that cannot be held to be either arbitrary or unreasonable merely because the petitioners are not holding one year's experience of working which is one of the condition of eligibility stipulated in the Schedule-I appended to the R. 16 of the Rules, 2015.

18. The Division Bench of this court before the main seat at Jodhpur in D.B. Civil Writ Petition No. 9423/2015 [Shanti Lal Regar v. State of Rajasthan & Others] while examining the self same controversy where the petitioners do not possess the essential one year experience challenged the validity of R. 16 of the Rules, 2015 in its judgment dt. 02.09.2015 has observed ad infra:--

"It is not the case of petitioners that the authority had no power to make the rules or that the rule is contrary to any Act. And our considered view is that it is for the State to decide which qualification including experience is necessary for a particular post. The Rule requiring experience of one year working, as mentioned above, cannot be held to be either arbitrary or unreasonable. We, therefore, uphold the validity of Rule 16 under challenge, in so far as it provides for essential one year experience.

The petition has no merit and is accordingly dismissed."

19. In the light of the above discussion, the instant batch of writ petitions deserve no merit and are accordingly dismissed.