

(2015) 05 RAJ CK 0088

In the Rajasthan High Court

Case No : Civil Writ Petition Nos. 646, 647, 2801, 2805, 2858, 3116, 3167, 3173, 3207, 3208, 3283, 3416, 3423, 3424, 3514, 3843, 3993, 4183, 4228, 4280, 4281, 4604, 4969 and 5129 of 2015

Mukesh Kumar Gujar and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 27-05-2015

Acts Referred:

Constitution of India, 1950 — Article 142

Citation : (2015) 05 RAJ CK 0088

Hon'ble Judges : Sandeep Mehta, J

Bench : Single Bench

Advocate : V.N. Kalla, Nupur Bhati, Gopal Acharya and Kailash Jangid, for the Appellant; S.S. Ladrecha, AAG and Vikas Choudhary, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Sandeep Mehta, J.—These writ petitions are preferred by the petitioners all having a common cause of action and are thus being decided together by this judgment.

2. Facts in brief are that all the petitioners claim to have cleared the Rajasthan Teachers Eligibility Test (RTET) with more than 60% marks and thereby, claim eligibility for appointment as Teacher Grade-III. They joined the two years BSTC Course and claim to have cleared the same in the year 2014. An advertisement was issued by the Panchayati Raj Department in the month of August 2013 for recruitment to the posts of Teachers Grade III Level-I in various Zila Parishads. As per Clause 7(7) of the advertisement, it was required of the applying candidates to be holding the requisite qualifications of B.Ed./BSTC by the last date fixed for submission of application form. The minimum qualifications for the post of Teacher Grade III Level I and Level II were stipulated in Clauses 7(1) and 7(2) of the advertisement. The Clauses 7(1), 7(2) and 7(7) of the advertisement

being relevant for deciding the controversy are reproduced hereinbelow for ready reference:-

3. It was clearly mentioned in the advertisement that the last date for receiving the application forms was 4.9.2013. The petitioners have set up a case that they were undergoing the Second Year of the BSTC Course at the time, when online applications were invited in terms of the advertisement. The petitioners applied for and appeared in the competitive examination, which was held on 11.10.2013. The result of the competitive test was declared in the month of January 2015. The petitioners claim to have secured well above the cut off marks in their respective categories. Accordingly, their names were published in the select list and they were invited for document verification to be conducted by the concerned Zila Parishad whereafter the posting orders were to be issued. During the verification process, the petitioners, who were duly selected, were denied appointment and were informed that they could not be permitted to join the posts as they were not holding the requisite qualification of BSTC by the last date fixed for submission of the application forms i.e. 4.9.2013 in terms of Clause 7(7) the advertisement. The petitioners submitted representations to the respondents for ventilating their grievances, but the respondents did not respond thereto. Hence, these writ petitions.

4. The petitioners have set up a case in these writ petitions that in a similar selection process conducted in pursuance of an advertisement issued in the year 2012, the candidates, who were undergoing the qualifying degree courses, were permitted to appear in the competitive test and upon standing in merit, they were allowed to produce the proof of clearing the qualifying exam upto the date of declaration of the result of the competitive test. The petitioners have raised a grievance that in the questioned selection process, the said liberty of submitting the qualifying degree upto the date of declaration of the result of the competitive examination was unjustifiedly and arbitrarily curtailed by Clause 7(7) of the advertisement and a totally illegal condition was imposed that the applicant would be required to hold the qualification by the last date of submission of the application form. It is asserted that the petitioners, despite standing in merit were unjustly denied appointment in the selection process despite having acquired the requisite qualification by the time the result of the competitive test was declared. Reference is made in the writ petitions to the proviso to Rule 266(3) of the Rajasthan Panchayati Raj Rules, 1996 (hereinafter referred to as "the Rules of 1996"), which as per the petitioners, provides that a person, who has appeared or is appearing in the B.Ed./BSTC/BSE/B.Ed. (Special Education) examination shall be eligible to apply for the post of Primary and Upper Primary School Teachers (General Education/Special Education) but he shall have to submit a proof of having acquired the said educational qualification to the District Establishment Committee before the declaration of the result of the competitive examination. On the strength of this proviso to Rule 266(3) of the Rules of 1996, it is contended that the Condition No. 7(7) of the questioned advertisement is arbitrary and contrary to the Rules and deserves to be declared ultra-vires and

as a consequence, the petitioners are entitled to be appointed as Teachers Grade-III in the questioned selection process pursuant to their selection by ignoring the said condition, as they had acquired the requisite eligibility criterion as per the above referred Proviso to Rule 266 of the Rules of Rajasthan Panchayati Raj Rules, 1996.

5. The above relief is claimed by the learned counsel representing the petitioners principally on the strength of a Single Bench Judgment dated 3.9.2013 delivered by this Court in the case of Suman Charan Vs. State of Rajasthan and Ors. (S.B. Civil Writ Petition No. 10845/2013), involving an identical controversy. It is also asserted that the clarification petition filed by the State in the above matter has also been dismissed.

6. Shri S.S. Ladrecha, learned Additional Advocate General put in appearance on behalf of the respondents. He submitted that there is no requirement of filing any reply to the writ petitions and that he is prepared to argue the matters as such.

7. The case set up by Sh. Ladrecha during the course of the arguments was that the above-referred proviso to the Rule 266(3) of the Rules of 1996, which was relied upon by the Single Bench of this Court while deciding the case of Suman Charan (supra) stood deleted by an amendment dated 11.5.2011 much before the decision of the writ petition and since this Court was not apprised of the amendment, the said judgment is of no help to the petitioners because the same was passed on the basis of a repealed statute and thus, has no precedential value. The learned AAG has placed on record the copy of the gazette notification dated 11.5.2011, whereby an amendment was effected in the Rule 266(3) of the Rules of 1996 and the Proviso to Rule 266(3) (relied upon by this Court while deciding Suman Charan's case) was deleted.

8. I have heard and considered the arguments advanced by the learned counsel for the parties and have gone through the material available on record.

9. For the sake of ready reference, the unamended Rule 266(3), heavily relied upon by the petitioners as it stood before the year 2011 is reproduced hereinbelow:-

Provided further that the person who has appeared in the B.Ed./B.S.T.C. examination shall be eligible to apply for the post of primary and upper primary school teacher but he shall have to submit proof of having acquired the said educational qualification to the Distt. Establishment Committee before the declaration of result of the said examination.

[Emphasis]

10. The Rule 266(3) was thereafter amended and substituted by an amendment published in the official Gazette by Notification No. F.4(7)Am/Rule/Legal/PR/2010/825 dated 11.5.2011. The amending notification reads as below:

11. Thus, it is evident that the abovequoted Proviso to the Rule 266(3) of the Rules stood deleted by the amendment brought about in the Rules on 11.5.2011.

12. The basic thrust of the arguments advanced by the learned counsel for the petitioners was heavily reliant on the order dated 3.9.2013 passed by the coordinate Single Bench of this Court in the case of Suman Charan (supra). While deciding the said case involving a controversy identical to the one involved in these writ petitions, this Court considered the import of the abovequoted Proviso to Rule 266(3) of the Rules of 1996 and held that the candidates, who had appeared in the B.Ed./BSTC examination were indeed entitled to apply for the posts in question and that the condition [similar to Clause 7(7) of the advertisement in the cases at hand] contained in the advertisement requiring the candidates to possess the qualification by the last date fixed for submission of the application forms was bad in the eye of law in view of the aforequoted proviso to Rule 266(3). It was further held that the aspiring candidate was entitled to produce the mark-sheet of the qualifying examination upto the date of declaration of result of the competitive examination in terms of the proviso to Rule 266(3) of the Rules of 1996.

13. On going through the gazette notification dated 11.5.2011 quoted supra, it is evident that the order dated 3.9.2013 passed by this Court in Suman Charan's case (supra) was based on the Proviso to Rule 266(3), which had been long since deleted by the amendment dated 11.5.2011 and did not exist on the statute on the date of decision of the above case. The Amendment of 2011, whereby the Proviso to Rule 266(3) was repealed and deleted was evidently not brought to the notice of this Court by learned counsel representing both the parties and thus the order dated 3.9.2013 came to be passed in ignorance of the said amendment and was consequently based on a repealed statute and thus cannot be held as having a precedential value. The dismissal of the clarification application filed by the State would also have no impact on this conclusion because even the order dated 10.4.2015, whereby the clarification application was dismissed does not reflect that the repeal of the Proviso to Rule 266(3) and effect thereof on the controversy was considered by this Court. As the order dated 3.9.2013, whereby the writ petition was allowed and the order dated 10.4.2015 rejecting the clarification application do not account for the Amendment of 2011 in the Rule 266(3), these orders are required to be qualified as sub-silentio and cannot be of any persuasive value.

14. The prayer made by the learned counsel for the petitioners in the instant writ petitions is to grant relief to the petitioners in ignorance of the condition No. 7(7) of the advertisement. The condition is challenged by reliance on the repealed/deleted proviso to Rule 266(3) of the Rules and thus, cannot be sustained in the eye of law. Admittedly, the petitioners did not challenge the said condition before applying for the posts in pursuance of the advertisement in question. Thus, they are definitely bound by all the conditions of the questioned advertisement.

15. A similar controversy was examined in extenso by the Hon'ble Supreme

Court in the case of District Collector and Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram and Another Vs. M. Tripura Sundari Devi, (1990) 2 LLJ 153 : (1990) 1 SCALE 806 : (1990) 3 SCC 655 : (1990) 2 SCR 559 : (1990) 1 UJ 710 and it was held that appointment given to an under qualified person in contravention of the conditions of the advertisement, amounts to a fraud on public. The Court observed as below:

"It must further be realized by all concerned that when an advertisement mentions a particular qualification and an appointment is made in disregard of the same, it is not a matter only between the appointing authority and the appointee concerned. The aggrieved are all those who had similar or even better qualifications than the appointee or appointees but who had not applied for the post because they did not possess the qualifications mentioned in the advertisement. It amounts to a fraud on public to appoint persons with inferior qualifications in such circumstances unless it is clearly stated that the qualifications are relaxable. No court should be a part to the perpetuation of the fraudulent practice. We are afraid that the Tribunal lost sight of this fact"

16. The above judgment squarely applies to the controversy prevailing in these matters. Here also, admittedly, the petitioners were not holding the requisite qualification by the cut off date notified in the advertisement, i.e. the last date of submission of the application forms (4.9.2013) and, therefore, the respondent authorities were indeed justified in denying appointment to the petitioners despite having been selected in the competitive examination.

17. The case of Alka Ojha Vs. Rajasthan Public Service Commission and Another, (2011) 131 FLR 593 : (2011) 9 SCALE 411 involves a factual scenario much harsher than the one involved in these writ petitions. The petitioners therein applied for appointment as Motor Vehicle Sub-Inspectors. The last date fixed for submission of the application forms was 19.11.2001. Although by that date, none of the petitioners therein possessed a driving licence authorizing them to drive a motorcycle, heavy goods vehicles or heavy passenger vehicles, all of them were provisionally allowed to take part in the written examination and the interviews. Their names were included in the select list prepared by the Commission. However, after final scrutiny of the papers, the Commission cancelled the tentative selection of the petitioners therein on the ground that they did not possess the requisite driving licence by the cut off date fixed for submission of the application forms.

18. The High Court allowed the writ petitions preferred by the candidates questioning the cancellation of their selection holding that as even the requirement of the educational qualifications could be relaxed, there was no justification to deny appointment to the applicants on the ground that they did not possess the required driving licence on the last date fixed for submission of the application forms. Appeals were preferred against the order of the Single Judge before the Division Bench which ordered that the appointment of the respective litigants on the posts of Motor Vehicle Sub-Inspector would remain

subject to the final decision of the appeals. The matter was then referred to the Full Bench, which answered the reference holding that as per Clause 13 of the advertisement, driving licence and experience were required to be possessed by the candidates on the last date of submission of the application forms and not on or before the date of interview. The Division Bench thereafter decided the appeals holding that those aspirants, who did not possess the prescribed qualification i.e. the driving licence as on the last date fixed for the submission of the application form, were not eligible for selection. The order was challenged before the Hon"ble Supreme Court. The Hon"ble Supreme Court while examining the controversy refused to come to the aid of the selected candidates holding as below:

"22. We shall now consider the question whether despite reversal of the order passed by the learned Single Judge by the Division Bench of the High Court, the Petitioners can continue in service. The submission of the learned Counsel that this Court should invoke Article 142 of the Constitution and direct the competent authority to allow the Petitioners to continue in service because they have already completed more than 5 years" service sounds attractive but lacks merit. In our view, the power under Article 142 cannot be exercised for conferring legitimacy to the appointment of the Petitioners, who, as held hereinabove, were not eligible to be considered for selection. The Commission had provisionally allowed the Petitioners to take part in the written test and the interview, but their tentative selection was cancelled because at the stage of final scrutiny, it was found that they did not possess one of the prescribed qualifications i.e. driving licence authorising them to drive motor cycle, heavy goods vehicles and heavy passenger vehicles. Notwithstanding this, the competent authority was compelled to appoint the Petitioners because while entertaining the special appeals, the Division Bench of the High Court declined to stay the direction given by the learned Single Judge.

23. If the course suggested by the learned Counsel for the Petitioners is adopted, then every illegal appointment will get regularized by judicial fiat and those who are eligible and more meritorious will be deprived of their constitutional right to be fairly considered for selection and appointment against the advertised posts. The judgments of this Court in M.S. Mudhol v. S.D. Halegkar, Rekha Chaturvedi v. University of Rajasthan, Bhupinderpal Singh v. State of Punjab and other similar judgments cannot be pressed into service for issuing a direction for the petitioners" continuance in service because in those cases, the selection and/or appointments were made otherwise than by judicial intervention and this Court held that the candidate should not suffer due to the fault of the public authorities."

19. It is manifest that the case involved circumstances of extreme hardship, where the candidates concerned had put in five years of service after their irregular selection and yet the Hon"ble Supreme Court refused to come to their aid.

20. The petitioners herein will not be required to face that predicament as they were prevented from joining on account of non-holding of the eligibility criterion by the cut off date at the very threshold due to the alertness shown by the authorities.

21. Similar view was also expressed by the Hon"ble Supreme Court in the following cases:

"(1) Rakesh Kumar Sharma Vs. Govt. of NCT of Delhi and Others, (2013) 10 SCALE 42 : (2013) 11 SCC 58 : (2013) 4 SCT 543

(2) State of Rajasthan Vs. Hitendra Kumar Bhatt, AIR 1998 SC 91 : (1997) 7 JT 287 : (1997) 5 SCALE 393 : (1997) 6 SCC 574 : (1997) SCC(L&S) 1744 : (1997) 3 SCR 224 Supp : (1997) 2 UJ 400

(3) Jenany J.R. Vs. S. Rajeevan and Ors. (2010) 2 SCC (L&S) 109

(4) Ashok Kumar Sonkar Vs. Union of India and Ors. (2007) 2 SCC (L&S) 19

(5) Dipitimayee Parida Vs. State of Orissa and Ors. (2009)1 SCC (L&S) 50

(6) Bhupinderpal Singh and Ors. Vs. State of Punjab and Ors. 2000 SCC (L&S) 639

(7) A. Umarani Vs. Registrar, Cooperative Societies and Ors. 2004 SCC (L&S) 918

(8) Mrs. Rekha Chaturvedi (Smt) Vs. University of Rajasthan and Others, (1993) 1 JT 220 : (1993) 1 LLJ 617 : (1993) 1 SCALE 93 : (1993) 3 SCC 168 Supp : (1993) 1 SCR 186

(9) Ashok Kumar Sharma and Others Vs. Chander Shekhar and Another, (1997) 4 JT 99 : (1997) 1 LLJ 1160 : (1997) 2 SCALE 707 : (1997) 4 SCC 18 : (1997) SCC(L&S) 913 : (1997) 2 SCR 896 : (1997) 2 UJ 15

22. The crystal clear legal proposition which comes out from the above judgments is that unless otherwise provided by the statute, the candidature of an aspirant to a civil post has to be mandatorily governed by the terms and conditions of the advertisement.

23. In the cases at hand, challenge to the allegedly offending condition of the advertisement is laid on the strength of the Proviso to Rule 266(3) of the Rules of 1996, which was deleted by the amendment of 2011 and thus, obviously, being frivolous must fail because such challenge is fallacious on the face of the record.

24. Viewed in light of the ratio of the Supreme Court judgments referred to supra, this Court has no hesitation in reaching to a conclusion that the petitioners, who were admittedly not possessed of the requisite eligibility educational qualification/eligibility criterion by 4.9.2013 i.e. the cut off date notified for submission of the application forms as per the advertisement, were not entitled to be considered for selection in view of the above quoted clause

7(7) of the advertisement, the validity whereof cannot be questioned in view of the amendment of 2011 in Rule 266(3) of the Rules of 1996.

25. As a consequence of the above discussion, there is no merit in the instant writ petitions and the same are hereby dismissed.

26. No order as to costs.

27. A copy of this order be placed in each file.