

(1990) 01 RAJ CK 0013

In the Rajasthan High Court

Case No : Civil Writ Petition No's. 2774, 2368 to 2372, 2642, 2501, 2878 and 4861 of 1988

Munish Kumar Sharma and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 24-01-1990

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Citation : (1990) 1 RLW 62 : (1990) 1 WLN 313

Hon'ble Judges : I.S. Israni, J;G.K. Sharma, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

I.S. Israni, J.—The above mentioned writ petitions involved same question of law, therefore, are disposed of by single order. The petitioners in these writ petitions have prayed that Sub-rule (3) of Rule 24(a) Of the Rajasthan Subordinate offices Ministerial Staff Rules, 1957 (here in after referred to as "the Rules, 1957") Which was introduced by notification dated May 30, 1985 be quashed and declared as violative of Articles 14 and 16 of the Constitution and the petitioners may be appointed by way of transfer in the secretariat services as Stenographer (Hindi) and their seniority be fixed according to the selection treating their selection in the year 1980 batch with all consequential benefits.

2. Briefly it may be stated that in the year 1980 the Rajasthan Public Service Commission (for short "the RPSC") advertised the post by different advertisements under Rajasthan Secretariat Ministerial Service Rules, 1970 (here in after referred to as "the Rules, 1970") and as well as separately by advertisement under the Rules, 1957 which were published in newspapers on March 13, 1980. The petitioners submitted their applications and separate written test was hold for post of Stenographer against each advertisement for Secretariat Services and Subordinate Services. In the merit list prepared by the RPSC the petitioner's names were placed at Serial Nos. 166, 157, 162, 147, 160,

169, 153, 155, 149, 170 respectively. In all meris list of 172 candidates was sent by the R.P.S.C. to Government out of which 90 candidates were given appointment substantively in secretariat services and 74 candidates remained in the merit list till 24-1-82, the waiting list was to expire oh 23-1-83. In between 24-1-82 and 23-1-83, 43 more candidates were given appointment out of the above list, thus 29 candidates remained unappointed on 23-1-83 the date on which the reserve list was to expire. It is submitted by the petitioners that these who were not appointed directly in secretariat service were appointed on temporary basis in the Subordinate Services on the clear understanding after filling their option form, that after appointments in Subordinate services when ever posts become available in the secretariat services they will be transferred to the Rajasthan Secretariat Ministerial Services. It is also submitted by the learned Counsel that the persons who stood up to No. 142 in the merit list Were from time to time transferred an account of the availability of posts from Subordinate Services to Secretariat Services but the persons who stood in the merit list from 143 onwards continued in subordinate services and further transferred in the secretariat services was stopped in view of the amendment was made in the Rules, 1957 vide notification dated Mary 30, 1985.

3. It is contended by Shri Ajay Rastogi, learned Counsel for the petitioner that the petitioners who were sleeted for the post or Stenographer Grade-II (Hindi) in secretariat services were called upon to give their option for appointment on temporary post in the Rajas than Subordinate Ministerial Services as per the decision taken by Government. A Photostat copy of relevant letter dated 13-5-82 is marked Annexure-3. In pursuance of the above letter the petitioners submitted their option forms and they were given appointment in various Subordinate-Offices in Rajasthan. One Shri Mahesh Chandra made representations to Government from time to time which how ever, were rejected by Government by communication dated 16-6-87 (Annexure-5) stating therein that the panel prepared by the RPSC lapsed with effect from 23-1-83 and that the State Government had made an amendment vine notification dated May 30,1985 in Subordinate Rules, 1957 and introduced Rule 24(a)(3). It is further contended by the learned Counsel that all candidates who were selected in pursuance of the Secretariat Rules, 1970 on the post of Stenographer (Gr-II) constitute one single class and so discrimination can be made with regard, to their place of posting under same set of rules Some of the selected candidates have been appointed under the Secretariat Rules, 1970 and others like petitioners who faced the same selection have been appointed under Subordinate Rules, 1985 in Subordinate Rules. It is submitted that Stenographer in Secretariat-Services have ample avenues for prompt on where as these like petitioners who are appointed in Subordinate Services have hardly any chance of promotion and retitid on the post of Personal-Assistant only. It is, therefore, contended that Amended Rule 24(a)(3) of Subordinate Rules, 1957 is, bad and deserve to be quashed as it is in clear violation of Articles 14 and 16 of the Constitution of India. It is further submitted that since the petitioners were selected for Secretariat Services they

cannot be posted permanently in Subordinate Services Ministerial Staff Rules. It is also contended that the ground relied upon the respondent that the same has been made operative and the appointments have been made from the same as stated above. It is contended that once it is made operative it remains operative for all time to time. It is further pointed-out that the respondent No.1 cannot go back on its commitment that the appointment of petitioners in Subordinate Ministerial Services in only temporary and they shall be taken in the Secretariat-Services as and when the vacancies occurred. The principles of Promisory Estoppel will be operative against respondent No.1 The learned Counsel has placed reliance on *M/s vij Resins, Pvt. Ltd. and Ors. v. State of jammu and Kashmir* 1989 SCC 115. It is stated that RPSC has now again issued an advertisement published in newspaper *Rajasthan Patrika* dated 18-5-88 for posts of Stenographer Gr. II (Hindi) under the Rajasthan Secretariat Ministerial Services. The petitioner, therefore, has now right to appointment in Secretariat Services since there are vacancies and no new candidates can be selected and appointed till the petitioners are given appointment in the Secretariat Services.

4. Shri M.L. Khan, learned Additional Advocate General submits on behalf of the, behalf of the respondents that the reserved list expired on 23-1-1983 and there after no appointments have been made out of this list in the Secretariat Services. It is pointed out that till 27-1-1982, 98 persons were appointed against clear vacancies of Stenographer Gr. II in Secretariat Services. In all 143 persons out of last of 172 candidates were given appointment up to 23-1-1983 i.e. the date on which the reserved list expired. Thus, 29 persons remain up-appointed. The Amended Rule 24 (a) (3) of Subordinate Rules, 1957 was introduced for the benefit of 29 selected candidates who could not be given appointments in Secretariat Services as the list had expired, This, therefore, according to the learned Counsel is beneficial legislation which was made to see that the petitioners get the employment and option for the same was also given to them and they have joined the services in Subordinate offices at their choice by way of option exercised by them. It is pointed out that it was therefore, suggested that the candidates who were selected for Secretariat Services but could not be given appointments and were desirous to go to the Subordinate Offices other than Secretariat may give their option. A list of such persons with covering letter dated 27-1-1982 marked Annexure-R/1, was issued by Department of Personnel, Administrative Reforms (Grade-III). In this letter also it is clearly mentioned that the list of selected candidates is valid only up to mid January, 1983 and since some posts of Stenographer Grade-II were lying vacant in Subordinate offices option may be taken from the persons whose names are mentioned in the accompanying list, which also included names of petitioners, whether they were willing to join in the Subordinate Offices. It is also pointed out that these 29 candidates who opted for joining the Subordinate Offices did so on clear condition that they may be called at any time to the Secretariat when needed by the State and if so called, their seniority may be counted from the date they join the Secretariat. To avoid any future controversy regarding their appointment in

Subordinate Offices the Subordinate Rule, 1957 were amended with an object to give powers to the Subordinate Offices to regulate the services of these 29 appointees who could not be absorbed in the Secretariat. No lien was kept for them in the Secretariat. Copies of the relevant letters dated 5-1-1983 (Annex-R/2) and 21-2-83 (Annex-R/3) have been produced. It is, therefore, contended that the option also ended with the expiry of the reserved list as the petitioners had no lien to join the Secretariat Services nor any option was given to them in that respect. It is also pointed out by learned Counsel that in the Writ Petition No, 2368/88 (Ram Narain Yadav v. State) the option form (Annexure-4) filed by the petitioner is a forged document and infact the petitioner filed his option on 18-5-1982 photostat of which is produced and marked as Annexure-R/5. It is submitted by the learned Counsel that permission may be given to prosecute the petitioner Ram Narain Yadav for filing forged document in support of which an affidavit has also been filed. It is also pointed out that those persons who could be given appointments in the vacancies in Secretariat in view of the available vacancies, but the others like petitioners who could not be given appointments in Secretariat Services as there were no vacancies available and they opted to join Subordinate Offices cannot be said to form one class of persons. Thus, there is no discrimination and question of any violation of Articles 14 and 16 of the Constitution does not arise.

5. We have heard both the parties and also perused the documents filed by them.

6. It is clear from the facts and arguments stated above that the petitioners were selected for the post of Stenographer Grade-II (Hindi) for Secretariat Services. In all 172 candidates were selected on 24-1-81 out of which those who stood upto No. 142 in merit list were either given appointment directly in the Secretariat Services or were transferred from time to time of availability of vacancies in the Secretariat Services. However, the persons who stood in merit from 143 onwards could not be given appointment in Secretariat Services, as there were no further vacancies. Since the petitioners could not be given appointment in Secretariat Services and would have remained unemployed, they were given option to take appointment in Subordinate Offices other than Secretariat and they were to be given appointment in the Secretariat Services, if any vacancies were available. An option was also given by each of the petitioners as has been produced in Writ Petition 2368/88 dated 18-5-1982 (Annexure-5), in which it is clearly mentioned that the seniority of the petitioner as Stenographer Grade-II (Hindi) shall be counted from the day, he assumes charge in Secretariat Services. The option form (Annexure-4) filed by the petitioner in the above mentioned writ petition is evidently incorrect and does not bear any signature. It is expected that those who approach this Court under extraordinary jurisdiction Under Article 226 of the Constitution and seek justice, will come with clean hands and will not file any document which is evidently not correct to their knowledge. The form of option (Annex-4) is different from, Annexure-R/5 filed by the respondents which bears the signature of the petitioner along with date. Different form of option have been filed in different petitions and Some of them

are mere copies and did not even bear any date or signature of the petitioner. However, in Writ Petition No. 2370/88 Annexure-5 dated 1-4-1982 is not as Annexure R/5 in writ petition No 2368/88 in which it is clearly mentioned that the seniority of the petitioners shall be counted from the day, he assumes his charge in Secretariat Services. The contention of the learned Counsel for the petitioners that reserved list never came to an end, as it was kept operative from time to time is based on solitary example of appointment given to one Shri Om Prakash Saraswat who also appeared in test along with the petitioners and his name in the list was placed at No 163 This plea has not been raised in any of the petitions but an additional affidavit has been filed on 7-12-1989. It is pointed out by learned Counsel that even though Om Prakash Sarswat was already working in Secretariat he could not have been given appointment ignoring the merit list. In the counter-affidavit filed on behalf of respondent, it has been stated that as per Rule-5 of Secretariat Rules, 1970 the post of Stenographer is to be filled in by direct appointment as well as amongst such of the LDC/UDC of the Secretariat who have passed the examination prescribed for Stenographer in these Rules subject to availability of such persons in the ratio of 50% : 50%. The direct recruitment is made Under Rule 23 from the list by RPSC Under Rule 22. It is explained that Shri Om Prakash Sarswat was appointed against 40% quota by order dated 26th February, 1981 and not against the direct recruitment quota. A copy of the appointment order dated 26-2-1981 (Annexure-R/2) has been produced along with this counter-affidavit. It is, therefore, clear that the waiting-list did not become operative as contended by the learned Counsel for the petitioners as Mr. Om Prakash Sarswat was given appointment against the 50% quota as per Rule 5 of the Secretariat Service Rules, 1970. Merely because he appeared for test in direct recruitment also will not deny him his opportunity by way of promotion in the Secretariat where he was already working Thus, it can be said that the reserved list did not become operative after the vacancies were filled-up and the petitioners gave option to join Subordinate Offices and were to be absorbed as and when any vacancies were available in the Secretariat. The arguments of the petitioners that the reserved list did not expire and can be put into force even now against the vacancies advertised by RPSC vide its order dated 6-5-1988 (Annex-10) has no force. The list of 172 candidates was prepared by RPSC on 24-1-1981 and was valid evidently only upto 23-1-1983 and expired thereafter, it cannot be said that the respondents denied the petitioners any chance of posting in Secretariat Service even though the vacancies were available. The vacancies in fact were not available upto 6-5-1988 when the RPSC invited applications for the vacancies available at that time. 7. The petitioners were not entitled to have been appointed in the Subordinate Offices since they had been selected under Subordinate Service Rules, 1957, but with a view to provide them employment, since they had been declared successful in the test held by RPSC under Secretariat Service Rules, 1970, an amendment vide notification dated May 30, 1985 in the Subordinate Rules, 1957 was made and Rule 24(a)(3) was inserted. This evidently is a beneficial piece of legislation and by amending Rule the respondents provided avenues for

employment of the petitioner who would have otherwise remained unemployed. None of the petitioners was forced to join the service in Subordinate Offices, but was given option to do so, with clear understanding that if the vacancies are available in Secretariat Services they will be absorbed in Secretariat. However, since there were no vacancies in Secretariat Service it cannot be said that the respondents were bound by doctrine of promissory estoppel. *M/s Vij Resins Pvt. Ltd. (supra)* was a case in which on the basis of representation made by the State Government parties set up industries in the State by making substantial investments, but later on an Act was enforced which provided for State monopoly of the industry set up by the private parties, obliterating rights of private parties and enabling the State to get out of its commitment. It was therefore, held by the Apex Court that doctrine of promissory estoppel will be applicable against the State. There is no such situation in the petitions under consideration. The respondents had made it abundantly clear that the petitioners shall get appointment in Secretariat Services only when there were vacancies in the Secretariat. Since there were no vacancies and after the list expired, the petitioners cannot claim applicability of doctrine of promissory estoppel. Thus, there is no question of any discrimination and there is no violation of Articles 14 and 16 of the constitution, as contended by the petitioners.

8. We, therefore, do not find any force in these petitions, which are dismissed with no order as to costs.