
(2011) 01 RAJ CK 0075

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1226 of 1997

Munshi Lal Verma

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 04-01-2011

Acts Referred:

Rajasthan Motor Garage Subordinate Service Rules, 1979 — Rule 17, 21
Rajasthan Subordinate Service (Recruitment and Other Service Conditions) Rules,
1960 — Rule 16, 17, 17(5), 18

Citation : (2011) 01 RAJ CK 0075

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mohammad Rafiq, J.—This writ petition has been filed by Petitioner Munshi Lal Verma inter-alia with prayer that two orders dated 13.01.1997 appointing private Respondents as Driver be quashed and set-aside and Respondents may be directed to make appointment of Petitioner on the post of Driver in accordance with Rajasthan Motor Garage subordinate Service Rules, 1979 (for short, "the Rules of 1979") and to consider case of Petitioner for appointment on post of Driver with effect from date when persons similarly situated were given appointment vide orders dated 13.01.1997 with all consequential benefits.

2. Shri Virendra Dangi, learned Counsel for Petitioner, has argued that Petitioner was having qualification of higher secondary certificate from Board of Secondary Education, Rajasthan, Ajmer, and he had also passed his T.D.C. in Arts in 1987 from University of Rajasthan Jaipur; he completed his Sanitary Inspector Diploma Court from All India Institute of Local Self Government, Bombay in 1988. Petitioner got himself enrolled with Employment Exchange Office vide registration No. D/25/93; he was informed by employment officer vide letter dated 06.01.1997 that since few vacancies of drivers are available in office of Medical & Health Officer, therefore, Petitioner should appear before Deputy Chief

Medical & Health Officer, Family Welfare, Sawai Madhopur, on 13.01.1997; Petitioner appeared for interview for post of driver on that date and produced all original documents of his qualification including copy of light/heavy motor vehicle driving licence. A copy of certificate issued by Development Officer, Panchayat Samiti, Karauli, showing that Petitioner was belonging to below poverty line. Learned Counsel cited Circular issued by government in its department of Labour & Employment, dated 06.02.1978 to argue that government has decided to give preference to members of below poverty line family in matters of appointment and that in such a case requirement of registration with employment exchange has been completely given go-bye. They have been further held entitled to age relaxation and that while sending their names, employment exchange office was required not to adhere to seniority of unemployed persons with reference to date of their registration. Learned Counsel submitted that above 150 persons were called for interview for 20 posts of driver in Kota Zone in various districts and candidates were given appointments on the posts. There was no guideline or criteria laid down by Respondents and appointments have been made by method of pick and choose. Learned Counsel relied on Rajasthan Motor Garage Subordinate Service Rules, 1979, especially Rule 17 to 21 thereof to argue that procedure contained in those Rules has not been followed. It is contended that name of Petitioner was included in reserve list of five candidates. Even though number of vacant posts became available with Respondent subsequently, they did not operate reserve list and thereby denied Petitioner right of appointment. Learned Counsel in this connection referred to his pleading in rejoinder wherein mention is made of four such drivers who retired on different dates on attaining age of superannuation or voluntarily retired. It is therefore prayed that writ petition be allowed.

3. Per contra, Shri Vibhuti Bhushan Sharma, learned Additional Government Counsel, opposed writ petition and argued that for making appointment to Department, Rules of 1979 would not be applicable and that relevant Rules would be Rajasthan Subordinate Service (Recruitment and Other Service Conditions) Rules, 1960, which is a general rule for various departments. Learned Counsel while citing from schedule appended to that Rules argued that a clearcut guideline and criteria has been laid down for making appointment. The department of personnel vide notification dated 03.12.1982 has amended Rules of 1960 to provide that 90% posts of driver shall be filled in by direct recruitment and 10% shall be filled in by promotion from members of Class IV service of department concerned having qualification of 8th standard with heavy and light duty driving licence and three years" experience as a driver and must also possess weight not more than 65 kg., sight 6x6 with or without glasses and knowledge of roadside repairs and efficiency in driving to be examined through a trade test by appointing authority. It is contended that selection of private Respondents and other candidates was made on 13.01.1997 strictly in accordance with law and they have been discharging their duties satisfactorily with Respondents for last more than 13 years. Learned Counsel lastly argued

that according to Rule 18 of Rules of 1960 procedure for making appointment by direct recruitment against substantive vacancies would be same as contained in Rules 16 and 17 of the Rules of 1960. Rule 17 (5) of the Rules in its proviso provides that a reserve list to the extent of 50% of advertised vacancies, may be prepared and appointment out of such reserve list may be made in order of merit within six months from the date on which original list is prepared. Petitioner, in rejoinder filed by him, has submitted that four vacancies were available with Respondent department on retirement of four drivers on their attaining age of superannuation or on their voluntary retirement, but that were after expiry of six months, Whereas Petitioner has been granted age relaxation in accordance with government circular; that was always happened to him to apply such subsequent vacancies if and when advertised and his case was then liable to be considered in terms of that circular.

4. Having heard learned Counsel for parties and perused material on record, I find that so far as appointment of private Respondents and other candidates is concerned, who have now been working with Respondents for last 13 years, Petitioner has not made any subsequent assertion as to how and in what manner their appointments were illegal. Even though Petitioner has asserted that he was a member of other backward class but then it is also not his case that as to how and in what manner Respondents have not adhered to quota of other backward class in appointment. Petitioner's contention that Motor Garage Subordinate Service Rules, 1979 should have been applied, does not help him because those Rules are in para-materia with the Rajasthan Subordinate Service (Recruitment and Other Service Condition) Rules, 1960, which Rules would actually apply to make appointment in question. Even it is not asserted that as per those Rules the selected candidates were not eligible to be appointed or should not have been appointed. It is also clear from proviso to Sub-rule (5) of Rule 17 of the Rules of 1960 that validity of reserve list would be only six months from the date original list was prepared. Even if the date on which private Respondents were appointment i.e. 13.01.1997 is taken as the date on which original select list was prepared, the validity thereof would come to an end on 13.07.1997. Reference has made by Petitioner in his rejoinder regarding four posts of drivers became available with Respondent department on retirement of drivers on attaining superannuation age or on account of voluntary retirement, but those vacancies occurred much after 13.07.1997. For example, Ganga Singh Rajput, according to Petitioner, retired in March, 1999, Radhey Shyam Nai retired in September, 1998, Ram Kalyan Meena died on 18.04.1998 and Mool Singh Driver was voluntarily retired on 31.03.1999. As regards to circular of government issued by its department of Labour and Employment Exchange, this circular also does not make out a case in favour of Petitioner because circular merely seeks to give relaxation to members of below poverty line family from registration with employment exchange; it was also mentioned therein that in regard to age relaxation instructions are being issued separately by department of personnel. It is always open to Petitioner to apply for any other vacancy with Respondent

department or any other department during pendency of writ petition or now he can apply for the post seeking age relaxation in accordance with circular issued by department of personnel thereafter with regard to members of below poverty line.

5. I therefore do not find any merit in this writ petition and same is dismissed, however, with aforesaid observations.