

(2015) 07 RAJ CK 0122

In the Rajasthan High Court

Case No : Civil Writ Petition Nos. 6834/2014, 17062/2013, 19445/2013, 20386/2013 and 9357 of 2014

Nanu Ram and Others

APPELLANT

Vs

The Rajasthan Public Service Commission and Others

RESPONDENT

Date of Decision : 23-07-2015

Acts Referred:

Constitution of India, 1950 — Article 246 (2), 246(2), 254, 309

Citation : (2015) 07 RAJ CK 0122

Hon'ble Judges : Alok Sharma, J

Bench : Single Bench

Advocate : Vijay Poonia, Prahlad Singh, Amit Kuri, Kuldeep Aswal, H.K. Sharma and Sandeep Garsa, for the Appellant; S.N. Kumawat, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Alok Sharma, J—This judgment disposes of five petitions raising an identical legal issue. Writ Petition 6834/2014, Nanu Ram v. RPSC is taken as a lead case for reference to relevant facts and grounds agitated.

2. The Rajasthan Public Service Commission (RPSC) published an Advertisement on 20-9-2011 inviting applications online from eligible candidates under the Rajasthan Forest Service Rules, 1962 (hereinafter "the 1962 Rules") for appointment to the post of Assistant Conservator Forest (ACF). It is the petitioner's admitted case that in pursuance to the aforesaid advertisement the examination for the post in issue was held between 26-6-2013 and 30-6-2013, wherein the petitioner participated. It appears that on 30-8-2013, the RPSC published a corrigendum to the advertisement dated 20-9-2011, whereby the candidates seeking the post of ACF were notified that in pursuance to obtaining rule 24 of the 1962 Rules, only those candidates, who secured minimum 35% marks in compulsory subjects and 40% marks in aggregate in whole of the written examination would be called for interview. RPSC thereafter published

result of the examination in issue. The petitioner was shown to have secured 28 marks in English, a compulsory subject, and in terms of Rule 24 of the 1962 Rules and RPSC's corrigendum dated 30-8-2013, declared unsuccessful and held not eligible for the interview.

3. Having been so declared unsuccessful in the Examination, 2011 for the post of ACF, the petitioner laid Writ Petition No. 17361/2013, inter alia to challenge the prescription of minimum marks of 35% in the compulsory subjects. The petition was dismissed on 26-9-2013. A DB Civil Special Appeal (W) No. 1026/2013 followed. This too was dismissed on 20-11-2013. Yet persistent in his grievance of having failed, the petitioner filed a review petition now seeking to agitate an additional ground that the entire selection process for the post of ACF pursuant to Advertisement dated 20-9-2011 was vitiated on the ground of inconsistency of the 1962 Rules, under which the recruitment process was undertaken and the Entrance and Training Rules (Revised), 2004 (hereinafter "the 2004 Rules") issued by the Central Government after consultation with the State Governments. The said review petition No. 217/2013 was disposed of by the Division Bench of this court granting on the askance of the petitioner, liberty to challenge by way of a fresh petition the recruitment process for the post of ACF under Advertisement dated 20-9-2011 for reason of its alleged non compliance with the 2004 Rules, issued by the Central Government. Hence this second round of litigation.

4. Counsel for the petitioners has submitted that the RPSC has committed a gross legal error in conducting the selection process for ACFs by confining it to the 1962 Rules, ignoring the mandate of the 2004 Rules. It has been submitted that the training Rules, 2004 being Central Government Rules, to the extent the 1962 Rules are repugnant thereto, they would be overridden by virtue of Article 254 of the Constitution of India and the Rules of 2004 prevail. Referring to rule 9 and 11 of the 2004 Rules, it has been submitted that RPSC was under an obligation to prepare the merit list of candidates who appeared at the Examination, 2011 between 26-6-2013 and 30-6-2013 on the basis of "total number of marks" obtained in written examination and that such "total number of marks" should have been ascertained in respect of all candidates, irrespective of their having not or having obtained minimum of 35% marks in the compulsory papers, such as in English. It has been submitted that exclusion of applicants, who failed to secure minimum 35% marks in the compulsory subject of English with reference to rule 24 of the 1962 Rules was thus wholly illegal as they were left out from the select list despite higher aggregate marks. It has been submitted that a combined reading of rules 4 and 11 of the 2004 Rules does not require adherence to any minimum marks in any compulsory paper for determination of inter se merit of the competing candidates. It has also been submitted that the 2004 Rules also find support in the rule 29 of the 1962 Rules, which provides that all candidates selected under Rule 28 on the basis of their merit in the select list prepared may be sent for training. It has been submitted that in this view of the matter the select list prepared by the RPSC under Rule 25 of the 1962 Rules and the selection made by the Government under Rule 28 of

the 1962 Rules thereafter are vitiated for reason of the petitioners' exclusion despite having secured higher marks in the aggregate, than the selected candidates- all on count of the illegal requirement of minimum marks in the compulsory subject of English.

5. Reply to the writ petition has been filed. It has been submitted that the writ petition is liable to be dismissed at the threshold, inasmuch as it is founded upon seeking a declaration in the face of rule 24 of the 1962 Rules, which mandates that to pass the ACF Examination a candidate must obtain 35% marks in the compulsory subject/s. The said rule has not been challenged and binds the petitioners as also this court. It has been further submitted that in any event the writ petition should also otherwise not be entertained in view of dictum of the Hon'ble Supreme Court that challenge to an examination at the instance of failed candidates are unsustainable. It has been pointed out that the petitioner had appeared in the Examination, 2011 pursuant to RPSC's Advertisement 20-9-2011 without demur and has thereafter repeatedly sought to challenge the result of the examination since having failed therein. For this reason alone, counsel submits, the writ petition should be dismissed.

6. On merits of the case, it has been submitted that recruitment to the post of ACF has been made in accordance with the 1962 Rules as was specifically advertised on 20-9-2011. Rule 24 mandates minimum 35% marks in each compulsory subject and minimum 40% marks in the aggregate in written test for a candidate to be qualified and thereafter to be considered for selection on the basis of merit. It has been submitted that the 2004 Rules brought into force under Notification of the Ministry of Environment Forest of Central Government, only prescribe minimum standards required of the candidates to be eligible for training by MoEF. And under the 2004 Rules, albeit the candidates for the training courses are to be sponsored inter alia by the States, the discretion for the selection of such candidates rightly has been left entirely to the State Governments in accordance with their recruitment Rules. Reference has been made to rule 4 of the 2004 Rules, which provides that the selection of candidates shall rest with the concerned "Sponsoring Authority" on the basis of Rules of respective State Government (Emphasis mine). Rule 6 of the 2004 Rules indeed provides that selection procedure must confirm to the minimum standards as set out under rules 7 to 11 for the candidates selected by Sponsoring Authority. Higher standards in the selection procedure, such as for ACF, under the Rules of 1962, would however be permissible, submitted counsel. It has been submitted that there is no inconsistency in the 2004 Rules and the 1962 Rules, as the standards adopted by the State Government in selection of Forest Officers including ACF are higher than those prescribed in the 2004 Rules, inasmuch as the requirement of minimum marks in compulsory subjects puts a higher bar in the selection of candidates seeking appointment as Officers in Forest Service under the 1962 Rules. It has been submitted that the words "total number of marks obtained in the written examination and interview" in Rule 11 of the 2004 Rules can refer only to those candidates who had passing the examination under

the State's recruitment Rules, as by securing the minimum marks in compulsory papers in the State of Rajasthan. The marks of those who failed to secure 35% marks in compulsory papers cannot be reckoned at all. The Rules of 2004 do not and cannot alter the scheme of the State Recruitment Rules framed under the proviso to Article 309 of the Constitution of India. Such an intent cannot be attributed to the Central Government as it would be contrary to the Constitutional silence. It has been further submitted that in terms of proviso to Article 309 of the Constitution of India, the Governor alone is competent to the exclusion of all others--including the Central Government to prescribe conditions for selection of its officers. It has been pointed out that reference to Article 254 of the Constitution of India, in the context of dispute agitated by the petitioner, is a complete misdirection as the 1962 Rules have been made under the proviso to Article 309 of the Constitution of India and not under Article 246 (2) of the Constitution of India or under List III of Schedule VII to the Constitution of India. It has been submitted that the notification dated 30-8-2013 issued by the Secretary, RPSC requiring minimum passing marks of 35% in each compulsory subject and minimum 40% in the aggregate in the written examination was in consonance with the position as obtained under rule 24 of the 1962 Rules, at the time of the issue of the advertisement for recruitment of ACF, and cannot thus even remotely be impugned for alleged retrospectively. It has been pointed out that selected candidates for the post of ACF pursuant to Advertisement dated 20-9-2011 have been sent for and admitted to training under rule 29 of the 1962 Rules without any demur.

7. Heard Considered.

8. To my mind the liberty granted by the Division Bench in its order dated 10-4-2014 notwithstanding the writ petition filed by the petitioner in the year 2014 regarding recruitment of 2013 to the post of Assistant Conservator Forest of which the result was declared on 9-9-2013 cannot be entertained. The Hon'ble Supreme Court in the case of Vijendra Kumar Verma Vs. Public Service Commission, Uttarakhand and Others, (2010) 127 FLR 723 : (2010) 11 JT 629 : (2011) 1 SCC 150 : (2011) 1 SCC(L&S) 21 : (2010) 9 UJ 4650 and Ramesh Chandra Shah and Others Vs. Anil Joshi and Others, (2013) 5 AD 52 : AIR 2013 SC 1613 : (2013) 137 FLR 759 : (2013) 8 JT 311 : (2013) 4 JT 441 : (2013) LabIC 2676 : (2013) 5 SCALE 397 : (2013) 11 SCC 309 : (2013) 3 SCT 657 : (2013) 2 SLJ 377 : (2013) AIRSCW 2219 : (2013) 3 Supreme 129 has held that once a candidate appears in an examination with eyes opened on the terms and conditions set out therefor, he should be deemed to have waived his right to question the manner and conduct of examination subsequent to his failure. The judgment of the Hon'ble Supreme Court quite evidently is based on the fundamental legal doctrine that one cannot approbate and reprobate at the same time, accepting a state of affairs participating in it and then impugning it when disappointed. Estoppel by conduct operates. Aside of aforesaid, even otherwise the challenge to recruitment to the post of ACF is also unsustainable in view of the fact that the petitioner has not challenged the 1962 Rules, under which

recruitment process was specifically carried out. Without such a challenge, even at this stage, for whatever its worth would have been, the petitioner is bound by rule 24 thereof, which allows only those candidates who secure minimum 35% marks in compulsory papers and 40% marks in the aggregate in the written examination to be called for an interview. The contention of the counsel for the petitioner based on Article 254 of the Constitution of India with regard to 1962 Rules being eclipsed by the 2004 Rules to the extent of repugnancy on the ground of the 2004 Rules being Central Rules as against the 1962 Rules being State Rules, is untenable. For one, the argument based on Article 254 of the Constitution of India is wholly misplaced, inasmuch as the 1962 Rules have not been made in the exercise of powers of the State Legislature under Article 246 (2) of the Constitution of India in respect of the legislative field enumerated in the concurrent list (List III, VIIth Schedule of the Constitution of India), but with reference to the power of the Governor of the State under the proviso to Article 309 of the Constitution of India. The issue of repugnance of such rules cannot in effect arise within the scope of Article 254 aforesaid. Repugnance operates only vis-?-vis conflict in laws promulgated by the State Legislative on the one hand and the Parliament on the other in respect of competing laws made under Article 246(2) read with List III (the concurrent list) under the VII Schedule to the Constitution of India. Counsel for the petitioner overlooks the fact that under Article 309 of the Constitution of India or in the alternative under its proviso the State/Governor have absolute untrammelled powers to determine the terms and conditions of services in the state subject to Part III of the Constitution of India. Parliament has no manner of legislative power in that regard. Reference in this regard can also be had to Entry 70 of the List I in the VII Schedule (i.e. Union Public Services; All-India Services; Union Public Service Commission) of the Constitution of India, which confines the power of the Parliament to make rules in respect of the Central Services. Contrarily the State Legislature under Entry 41 of List II of the VII Schedule of the constitution of India has the power to make rules with regard to services under it i.e. "State Public Services; State Public Service Commission".

9. Further there is also no substance in the submission of counsel for the petitioner that the 1962 Rules for recruitment to forest services of the State are not in consonance with the rule 11 of the 2004 Rules. A bare look at rule 11 of the 2004 Rules indicates that only the minimum standards for the purpose of State Forest Officers sent for training, in its discretion by State Governments as sponsoring authority, have been set out. The Rules 1962, in my considered opinion do not fall foul of the standards or contravene those minimum standards. In fact the 1962 Rules provide for higher standards than the minimum standard indicated in rule 11 of the 2004 Rules, inasmuch as they create a bar to recruitment of candidates who are unable to secure minimum marks in compulsory papers, such as in English. It cannot be gainsaid that a minimum felicity in a language is a sine qua non for efficient discharge of administrative duties, which without doubt the ACF would be required to discharge in the course

of their services, albeit training in the specific domain of forestry is also essential. Both aspects, not either/or are the requirement under the 1962 Rules. Consequently the submission of counsel for the petitioner that "total number of marks" as obtained in the written examination and interview would exclude the requirement of minimum marks in a compulsory paper as provided for under the 1962 Rules is a non sequitur. The minimum marks inter alia in compulsory subjects required under the 1962 Rules is a matter of policy. That policy suffers from no arbitrariness. The argument thus is not founded upon any known principle of interpretation or based on any precedent but is only a desperate one. It is only in respect of candidates who secure minimum marks as required under rule 24 of the 1962 Rules that the selection has thereafter to be based on "total number of marks obtained in the written examination and interview" by the competing candidates. It is nobody's case that it has not been so done in the instant case after excluding those who failed to obtain minimum marks as prescribed under rule 24 of the 1962 Rules. Besides, the argument as to the unsuitability of the candidates selected by the RPSC for the post of ACF under the 1962 Rules for allegedly not being in consonance with the rule 11 of the 2004 Rules, sounds vacuous, as counsel for the respondents have submitted, and counsel for the petitioner has not denied, that the ACFs selected under the examination in issue have been admitted to training under the 2004 Rules.

10. Other grounds agitated in the connected writ petitions, need no address as they were earlier agitated in SBCWP No. 17361/2013 decided on 26-9-2013 and found untenable resulting in dismissal of the writ. The Hon'ble Division Bench in DB Civil Special Appeal (W) No. 1026/2013 dismissed a challenge to the judgment dated 26-9-2013 vide its judgment dated 20-11-2013. That dismissal has entailed finality and binds this court. In fact aside of challenge to the recruitment to the post of ACF on the ground of determination of merit on the basis of exclusion of those who failed to obtain minimum passing marks in the compulsory subject/s, no other argument has been advanced in the course of hearing of the petitions by counsel for the petitioners.

11. In terms of aforesaid discussion, this writ petition is wholly without force, based as it is on contention clearly untenable and hence liable to be dismissed. The issue that remains is of costs as it should be where warranted unless litigation is to be reduced to a casual exercise. I am of the view that while access to this court has been kept at the lowest threshold of Rs. 25/- as court fee for a petitioner invoking the equitable extraordinary jurisdiction of this court, such that none is excluded from reaching for justice, no matter what one's economic circumstances, yet the easy/cheap access cannot justify reckless petitions or defences. This is both a moral and practical imperative. The moral aspect lies in frivolous petitions drowning out ones where petitioners have suffered real injustice (no matter how subjectively evaluated) and seek redress and the pragmatic part lies in preventing the courts from becoming a place for speculative litigation and lose their character as a refuge for the persecuted, the expropriated and those denied their statutory/legal and fundamental rights. No

doubt this entails a value judgment. But, that is also the nature of the job assigned to the judge. And always, until the Apex Court, subject to appeal. Accordingly this petition is dismissed with costs of Rs. 25000/- to be paid by the petitioner as this writ petition has been filed a second time. The costs be paid to RPSC and the State in equal measure for the wholly frivolous writ petition forced upon them. Non payment of costs within six months without just cause, will allow RPSC/State to move application/s for recovery of costs as arrears of land revenue.

12. In view of aforesaid discussion the connected writ petitions are also stand dismissed.

13. A copy of this order be placed in all concerned files.