

(2002) 01 RAJ CK 0028

In the Rajasthan High Court

Case No : Civil Review Petitions No"s. 1 and 2 of 1999

Pema Ram and Another

APPELLANT

Vs

Rajendra and Others

RESPONDENT

Date of Decision : 24-01-2002

Acts Referred:

Rajasthan Subordinate Accounts Service Rules, 1963 — Rule 23(iii)

Citation : (2002) WLC 526 : (2002) 3 WLN 375

Hon'ble Judges : Arun Kumar Mishra, C.J;P.P. Naolekar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

P.P. Naolekar, J.—These review petitions have been moved questioning the directions issued by Division Bench in four Special Appeals by a common judgment dated 16.11.1998, whereby candidates who were selected from reserve list for giving appointment on the post of Junior Accountant in the Rajasthan State Electricity Board, were directed to be excluded for consideration in giving appointments to fill up 41 vacancies on the basis of merit, in State Service.

2. Facts in brief are, that the Rajasthan Public Service Commission issued an advertisement for filling up of 500 vacancies of the post of Junior Accountant under the Rajasthan Subordinate Accounts Service Rules, 1963. Later on, number of vacancies were increased to 600. In pursuance of the examination held, the Public Service Commission prepared a select list of 600 candidates for giving appointment by direct recruitment in the order of merit of candidates. The Public Service Commission also prepared a reserve list of 50% of the advertised vacancies keeping the names of suitable candidates in accordance with their merit, as per Clause (iii) to Rule 23 of the Rules of 1963. 584 vacancies were filled, out of the total number of 600 advertised vacancies. Out of 584 candidates, 15 selected candidates did not join and 8 selected candidates left service after joining. Therefore, 41 vacancies were available to be filled out of the

advertised vacancies, but the vacancies were not filled and therefore, 28 petitioners, whose name appeared in the reserve list, filed writ petitions seeking relief that the reserve list may be made operative for filling up the unfilled 41 advertised vacancies of the post of Junior Accountant by the State. In the meanwhile the reserve list was summoned by the appointing authority from the Public Service Commission for the purposes of filling up the vacancies in Electricity Board from the candidates whose name appear in the reserve list. The reserve list candidates from Sl. Nos. 1 to 52 and from 206 to 210 (57 in total) were given appointment by the Electricity Board with their consent.

3. The learned Single Judge allowed the writ petitions directing activation of reserve list but at the same time directed that the appointments shall be given only to the petitioners with liberty that if meritorious candidates challenge the appointment of petitioners and are able to establish that they have superior claim for appointment on the ground that they are higher in merit in the reserve list, then the order passed would not come in their way. This direction of the learned Single Judge was subject matter of the 4 special appeals filed before the Division Bench. The Division Bench partly allowed the appeals and directed that the State Government shall fill up 41 vacancies on the basis of order of merit in the reserve list; without confining it to the petitioners, it is also directed that the candidates in reserve list already given appointment in the Electricity Board, shall not be considered for giving appointments. Thus, the Division Bench gave a direction for making the reserve list operative for filling all the vacancies with the rider that cases of candidates in the reserve list, who had already been given appointment, shall not be considered. It is this direction which is under challenge in review petitions.

4. The scope and ambit of review has been settled by various decisions of the Apex Court wherein it has been held that the High Court shall see that the power of review shall be exercised on the discovery of new and important matter of evidence which, after the exercise of due diligence, was not within the knowledge of the persons seeking the review or could not be produced by them at the time when the order was made; Or it may be exercised where some mistake or error apparent on the face of the record is found. It may also be exercised on facts analogous to those grounds. But, it can not be exercised on the ground that the decision was erroneous on merits. That would be the province of appellate court. Power of review is not to be confused with appellate power which shall enable the appellate court to correct all manner of errors committed by the subordinate court.

5. What has been challenged in these review petitions is the order passed by Division Bench on merits and not on any of the grounds enumerated above. Review petition is neither based on the new factual discovery, nor on the ground of error apparent on the face of the record. Direction given by the Division Bench, challenged in review petitions, is conscience statement by the Court after consideration of the facts placed on record on merits. Non-inclusion of the name

of petitioners who have been selected by the Electricity Board was a direction based on the premises that the appointments were made with their consent, operating the reserve list. Once the reserve list is made operative with the consent of the parties for giving appointment in the Electricity Board, their names can not continue in the reserve list which was made operative on later date.

6. For the aforesaid, no case for review is made out. The review petitions dismissed.