

(1990) 09 RAJ CK 0008

In the Rajasthan High Court

Case No : Civil Writ Petition No's. 3710, 3778 and 4002 of 1989

Prakash Chand and Others

APPELLANT

Vs

That State of Rajasthan and Another

RESPONDENT

Date of Decision : 14-09-1990

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 309

Citation : (1990) 2 RLW 582 : (1990) 2 WLN 317

Hon'ble Judges : G.S. Singhvi, J;D.L. Mehta, J

Bench : Division Bench

Final Decision : Allowed

Judgement

G.S. Singhvi, J.—In all these three writ petitions, a common question of law is involved and, therefore, they are being disposed of by this common order.

2. Petitioner Prakash Chand Bansal has filed this writ petition in the form of public interest litigation. He is a freedom fighter and Journalist. He has approached this court against the alleged irregularities committed by the respondents in the matter of selection for the post of Constable in the Police Department of the Government of Rajasthan.

3. Rakesh Kumar Sharma who possesses the qualification of Higher Secondary, has challenged the action of non-consideration of his case of appointment of the post of Constable on the ground of his being over-age. He has challenged the vires of Rule 11 of the Rajasthan Police Subordinate Service Rule, 1989 (hereinafter referred to as "1989 Rules").

4. Dharamveer Singh and some other addressed letters to this court against the rejection of their candidatures on the ground of over age. Their letters were ordered to be registered as writ petition under Article 226 of the Constitution of India. Thereafter, notices were issued by this court. On 26.7.1990, the court directed Shri Ashok Kaur, advocate to appear and argue the case on behalf of the petitioner in this case.

5. The petitioners' case is that vide Notification dated 21.12.1988, the Director General of Police had issued an advertisement for filling up the posts of Constables, Civil Polic/R.A.C. for different districts and units. This advertisement was issued in terms of the provisions contained in the Rajasthan Police Subordinate Service Rules, 1974 (hereinafter referred to as "1974 Rules"). The applications were to be received by 13th January 1989 and selections were scheduled to be held at different places between 20th January 1989 to 19th February 1989. So far as the age is concerned, it was laid down that the candidates must have attained the age of 18 years as on 1.1.1990 and must not have completed 25 years as 1.1.1990. This selection was however kept in abeyance by another Notification dated 27.12.89 by the Director General of Police in contemplation of framing of the new rules. The Rajasthan Police Subordinate Service Rules, 1989, were promulgated and notified in the Rajasthan Gazette dated 14.8.1989. A new advertisement was thereafter issued on 19.8.1989 by the D.I.G. Police for the post of Constable in the Rajasthan Police/ R.A.C./Mewar Bheel Corps Kherwadu and Wireless Services. In this advertisement, it was specified that the candidates must have attained the age of 18 years and must not have completed the age of 21 years as on 1.1.1990, with a provision for relaxation of five years in favour of the candidates belonging to SC/ST candidates as well as women candidates and 3 years for Government employees and the dependents of the Police employees who had died while on duty. For Ex-service men, the maximum age limit was 40 years. The applications were to be submitted on 4.9.1989 itself and selections were scheduled between 7th September 89 to 27th September 1989 for different districts.

6. The petitioners have submitted that they were qualified to appear in the selection to be made in pursuance of the advertisement dated 21.12.1988 but have been deprived of their eligibility in view of the reduction, of upper age limit under 1989 Rules. According to the petitioners, over 1500 vacancies had been advertised on 21.12.1988. These vacancies were also included in the advertisement issued on 19.8.1989. However, those candidates who were eligible with reference to age under the first advertisement, were declared ineligible because of reduction in the upper age limit i.e., those who were eligible under the 1974 Rules were rendered ineligible under 1989 Rules.

7. Notices of these writ petitions were issued to the respondents calling upon them to show cause as to why the Writ petitions should not be disposed of.

8. In response to the notices given by this court, replies have been filed by the respondents. In para 4 of the reply filed in Prem Chandel's case, the respondents have stated that initial advertisement, Exhibit-1 was issued for recruitment of the Constables-in various Districts of Rajasthan and the last date as notified was postponed because of the amendment in the Rules. In Para 5, it has been stated that the Notification dated 19.8.1989 was issued for inviting applications as per the revised rules, under which the upper age limit had been reduced from 25 years to 21 years. According to the respondents, the Government if competent to

change the eligibility of the candidates. The age limit was reduced on the basis of National Police Commission Report and the Report of the Committee of the Police Training, The, respondents have in extenso referred to these reports in their replies. It has been asserted that there has been no violation of the provisions of Articles 14 and 16 of the Constitution. of India. As far as fixation of one date for submission of forms is concerned, the respondents have stated that in order to avoid multiplicity of applications by same applicant this was done. Similar replies have been filed in two other cases.

9. We have heard Shri S.R. Surana and Shri Ashok Gaur, learned Counsels for the petitioners and Shri M.I.Khan, learned Additional Advocate General as well as Shri N.L.Parcek, Additional Government Advocate.

10. Learned Counsels" for the petitioners have made two fold submissions. Firstly, it has been submitted that when the petitioners were eligible with reference to the vacancies which were available prior to 1988, there cannot be any justification for treat ing them ineligible merely because subsequently the upper age limit has been reduced from 25 years to 21 years. They nave submitted that once the petitioners had acquired eligibility and were eligible to apply and to be selected under 1974 Rules, their eligibility cannot be taken away by substitution of 1974 Rules, They have submitted that if the amendment had been made in the Rules of 1974, the same could not have been retrospective in such a manner so as to take away the vested right of eligibility available to the petitioners. Merc fact that instead of amending the Rules, new Rules have been framed, the rights of the petitioners for being considered, cannot be abridged. They have submitted that the respondents had postponed the selection in pursuance of the advertisement dated 21.12.1988 and merely because subsequently, a fresh advertisement was issued, the eligibility of the petitioners cannot be adversely effected.

11. The second submission made by the learned Counsel for the petitioners is that within the Rules of 1989 a discrimination has been made. Under Rule 11 (b) for the post of Constable, a condidate is required to attain the age of 18 years as on 1.1.1990 and the upper age limit of 21 years as on 1.1.1990. However, for the post of Constable (Driver) the upper age limit is 24 years. It has been submitted by them that this differentiation is without rational, reason or rhyme and results in hostile discrimination.

12. Shri M.I.Khan, learned Additional Advocate General has urged that once advertisement dated 21.12.1988 was not acted upon, the petitioner cannot claim that they should be treated as eligible for the purpose of age merely because they were eligible under the Advertisement dated 21.12.1988. Shri Khan submitted that new rules had become effective from 14.8.1989 and thereafter the advertisement was issued under the Rules of 1989. Therefore, the eligibility etc. would be governed by 1989 Rules and not by 1974 Rules.

13. Regarding the second plea of the petitioners, Shri Khan has submitted that in

the present case, the advertisement has been issued only for the posts of Constables and not for the posts of Constables (Driver) and since, the petitioners claim to be aspirant for the posts of Constables only, they cannot claim that they are being discriminated. Shri Khan invited our attention to the abstract of the 5th Report of the National Police Commission and the Report of the Committee on Police Training and submitted that as per the recommendations contained in these two reports, the Government had decided to reduce the upper age limit for recruitment to the post of Constable from 25 to 21 years. These two Committees were expert bodies. They had dealt with the matter relating to recruitment of constables and took into consideration the factors like organization of the police set-up, requirements of physical fitness, efficiency etc. before giving opinion that the upper age limit should be 21 years. These reports have been accepted and acted upon by the Government. Rules have been promulgated keeping in mind these recommendations, and as such the Rules cannot be held to be Arbitrary, unreasonable or discriminatory.

14. We have given our thoughtful consideration to the submission made by the learned Counsels for the parties.

15. To decide the controversy raised in the present cases; it would be appropriate to notice the scheme of the Rules of 1974 as well as the Scheme of 1989 Rules.

16. Both these sets Of Rules have been enacted by the Governor of Rajasthan in exercise of the powers conferred upon him by the Proviso to Article 309 of the Constitution of India. These Rules regulate the recruitment to the post in the Rajasthan Subordinate Police Service and the conditions of service of the persons appointed to the posts included in such service. Part-I of these Rules contain general provisions. Mainly the definitions of various terms used in other parts of the Rules are contained in this Part. Part-II deals with cadre and initial constitution of the service. Part-III provides for methods of recruitment after the commencement of the rules, reservation of vacancies in favour of SC/ST candidates, provisions for determination of vacancies, conditions of age, eligibility, academic and technical qualifications, character and physical fitness etc. Part-IV lays down the procedure for direct recruitment, -whereas, Part v. provides for procedure for appointment by promotion". Part VI contains provisions regarding appointment, probation and confirmation including seniority. Part-VII makes a provision for pay scales, increments, efficiency bar, leave allowances. The scheme is more or less identical for 1974 as well as 1989 Rules. In the Schedules appended to these rules, Subordinate Service posts have been indicated in different Section s. A perusal of the Schedules shows that the lowest posts in all the Sections are that of Constables. Then there are higher posts, f Assistant Sub Inspectors, Sub-Inspectors and Inspectors in different Section s. Whereas, the lowest posts are required to be filled in 100% by direct recruitment, the highest posts are required to be filled by and large 100% by promotion. Middle order posts are required to be filled by both the methods;

namely, direct recruitment as well as promotion, Rule 9 of 1974 Rules and Rule 10 of 1989. Rules provide for year wise determination of vacancies. Rule 9 of 1974 Rules has been substituted twice, once by Notification No. F. 3/DOP/A-II/77 dated 6.10.79 and again by Notification No. F.7(2) DOP/A-II/81 dated 21/12/1989. This substitution has been done in order to bring the Rule in tune with the law laid down by this Court in the decision of Amar Singh and Others Vs. State of Rajasthan, and number of other similar decisions. It would be useful to quote Rule 9 as it stood prior to its substitution by Notification dated 6.10.1979 and 21.12.1981 and after substitution by Notifications dated 6.10.1979 and 21.12.1981:

Rule 9

Determination of vacancies: (1) Subject to the provisions of the se rules, the Inspector General of Police or such authority as may be nominated by him shall deter-mine each year the number of vacancies anticipated during the following twelve months and the number of persons likely to be recruited by each method. Such...vacancies shall be determined again before the expiry of 12 months of the last determination of such vacancies.

(2)xxxxxxxxxxxxxxxxx Determination of vacancies:--1 (a) Subject to the provisions of these rules, the Appointing Authority shall. determine on 1st April every year, the actual number of vacancies during the final year.

(b) Where a post is to be filled in by a single method as prescribed in the Rule or Schedule, the vacancies so determined shall be filled in by that method.

Rule 9 as Substituted Vide 6.10.1979

(c) Where a post Is to be filled in by more than one method as prescribed in the rules or Schedule, the apportionment of vacancies, determined under Clause (a) above, to each 6.10.1979 such method shall be done maintaining the prescribed proportion for the over all number of posts already filled in. If any fraction of vacancies is left over, after apportionment of the vacancies in the manner prescribed above, the same shall be apportioned to the quota of various methods prescribed in a continuous cyclic order giving precedence to the promotion quota.

(2) The Appointing Authority shall also determine the vacancies of earlier years year wise which were required to be filled in by promotion, if such vacancies were not determined and filed earlier in the year in which they were required to befilled in.

Rule 9 as "Determination of vacancies: Substituted Vide Notification dated 21.12.1981

1(a) Subject to the Provisions of these rules, the Appointing Authority shall determine every year the number of existing vacancies and those anticipated during the following twelve months and the number of persons likely to be appointed to the Service by each method. The next determination of vacancies

shall be done just before the expiry of twelve months of the last, determination of vacancies.

(b) In calculating the actual number of vacancies to be filled, in by each method on the basis of percentage prescribed in the Schedule, the Appointing Authority shall adopt an appropriate, continuous cyclic order to. Correspond with the proportion laid down of the Schedule by giving precedence to promotion quota.

(2) The Appointing Authority shall determine every year the number of, existing vacancies and those anticipated in next twelvemonths which are. to be filled by promotion of persons already in service.

(3) The Appointing Authority shall also, determine the corresponding vacancies of earlier year if any, year wise which were required to be filled in by promotion, if such vacancies were not determined and filled earlier in the year in which they were required to be filled in accordance with Sub-rule

17. To far as the Rules of 1989 are concerned, Rule 10 of these Rules is identical to Rule 9 of 1974 Rules in its form substituted vide Notification dated 21.12.1981. Rule 24 of 1974 Rules contains procedure for selection for appointment by promotion. This Rule postulates preparation of eligibility list containing names upto five times the number of vacancies after the determination of vacancies under Rule 9 has been done. Likewise, Rules 27 of 1989 Rules postulates preparation of correct and complete list upto 3 times the number of vacancies out of senior most eligible" members of the service after the determination of vacancies under Rule 10. Rule regarding seniority is Rule 33 of 1974 Rules or Rule 36 of 1989 Rules. Both these rules contain a provision that if there are more than one persons appointed to a post in a particular Section in the same calendar year/s, a person appointed by promotion shall be senior to a person appointed by direct recruitment.

18. It is thus clear from a perusal of Rule 9 of 1974 Rules as well as Rule 10 of 1989 Rules that the Rule making authority has intentionally laid strong emphasis on year wise determination of vacancies and regular recruitment by the prescribed mode against yearly determined vacancies. Regarding promotion quota vacancies, a further mandate has been given that the appointing authority shall also determine the vacancies of earlier year year wise, which are required to be filled in by promotion, if such vacancies were not determined and filled earlier in the year in which they were required to be filled in. Rule 9(1)(c) contains a salutary provision intended to maintain balance of quota between the direct recruitment and promotion. It is borne out by this Rule that with reference to the posts already filled in, prescribed proportion specified in the rules has to be maintained. This Rule lays down that where a post is to be filled by more than one method, apportionment of vacancies determined under clause (a) to each such method shall be done maintaining prescribed proportion for the over all number of posts already filled in. This means that if direct recruitment has been made in excess of the quota prescribed for direct recruitment, efforts have to be

made to bring about a balance by making promotions. Similarly, if the promotion quota has been filled in excess, more direct recruitment posts have to be filled to bring about a balance.

19. This provision reflects the anxiety of the Rule making authority to give the Rule real content and meaning to the Rule of seniority also while keeping in mind the fact that the quota Rule must be adhered to. The promotion quota vacancies were not being filled regularly and this had led to the enactment of the Rajasthan Service (Recruitment By Promotion against the vacancies of earlier years) Rules, 1972. Later on disparity started with the direct, recruiters on account of failure of various selecting bodies to make continuous and regular efforts to fill up the direct quota posts and Rule 9(1)(c) of 1974 Rules and Rule 10 (1)(c) of 1989 Rules are intended to, remove this discrimination. The Supreme Court has laid great emphasis on Compliance of this principle in the matter of seniority in the recent judgment in *Awadh Prasad Singh and others Vs. State of Bihar and others*, In that case, the Hon'ble Supreme Court has held as under;

When promotion has been made in excess of the quota the promotees who have been promoted in the quota of direct recruits will be pushed down and will be absorbed in the quota of promotees of subsequent years and the direct recruits made with their quota would be deemed to be senior to those promotees recruited in excess of their quota.

20. Now once we have found that there is an obligation to determine the vacancies for direct recruitment as well as for promotion every year, the question arises as to what should happen to the candidates who were eligible in a particular year for direct recruitment but did not have an opportunity of consideration because of the failure on the part of the competent authority either to determine the vacancies or to make selection in a particular year. As far as promotion quota is concerned, this problem is resolved by Sub-rule (2) of Rule 9 of 1974 Rules and Sub-rule (2) of Rule 10 of 1989 Rules. However, problem is for the persons, who are aspirants for direct recruitment, with reference to the question of age limit. As we have noticed earlier, the upper age limit for recruitment to the posts of constable was 25 years in 1974 Rules and the same has been reduced to 21 years in 1989 Rules. The petitioner and other large number of persons who were eligible within the age limit of 25 years have all been rendered ineligible because the first advertisement dated 21.12.1988 was not acted upon. If the respondents had made selection in pursuance to that advertisement, the question of their being debarred on the ground of over age would not have arisen.

21. We find that in the Rajasthan State and Subordinate Service (Direct Recruitment by Combined Competitive Examinations) Rules, 1962 there is a special provision regarding the age. The candidates who are eligible in a particular year, but are rendered ineligible in the subsequent years, they are treated as eligible to appear in the examination irrespective of age requirement in case no examination is held in the particular year in which they were eligible.

It would be appropriate to quote Proviso (9) to Rule 11 (B) of these Rules:

11 B. Age, Notwithstanding anything contained regarding age limit in any of the Service Rules governing direct recruitment through the agency of the Commission to the posts in the State Service and in the Subordinate Service, mentioned in Schedule I and in Schedule II respectively, a candidate for direct recruitment to the posts to be filled in by Combined Competitive Examinations conducted by the Commission under these Rules must have attained the age of 21 years and must not have attained the age of 28 years on the first day of January next following the last date fixed for receipt of applications:

Provided:

(1) To (8)XXXXXXXXXX

(9) If a candidate would have been entitled in respect of his age to appear at the examination in any year in which no such examination was held, he shall be deemed to be entitled in respect of his age to appear at the next following examination.

We also notice that in the Rajasthan Judicial Service Rules, 1955 also similar provision is contained in Proviso (1) to Rule 10. This proviso is also reproduced for ready reference:

10. Age: A candidate for recruitment to the service may not have attained the age of 35 years on the first day of January next following the date of commencement of the examination by the Commission for recruitment to the Service: Provided:

(i) That barring the first examination to be held under the provisions of these Rules, if a candidate would have been entitled in respect of his age to appear at an examination in any year in which no such examination was held, he shall be deemed to be entitled in respect of his age to appear at the next following examination.

22. Thus under the Rules of 1962, for the posts included in the Rajasthan Administrative Service, Rajasthan Police Service, Rajasthan Accounts Service, Rajasthan Cooperative Service, Rajasthan Employment Exchange Service, Rajasthan State Insurance Service, Rajasthan Commercial Taxes Service, Rajasthan Subordinate Dives than Service, Rajasthan Subordinate Cooperative Service, R.T.S. Service, Rajasthan Commercial Taxes Subordinate Service, Rajasthan Food and Civil Supplies Subordinate Service and the various posts under the Rajasthan Subordinate Service (Recruitment and other Service Conditions) Rules, 1960 as well as under the Rajasthan Judicial Service Rules, 1955, a candidate is not denied consideration for direct recruitment on the ground of age limitation if he was within the age limit in a year in which the examination was not held. These provisions contained in the rules of 1962 as well as the rules of 1955 are intended to protect the rights of the persons against the failure of the competent authorities to hold selections for direct recruitment

year wise. The Rules of 1962 and the Rules of 1955 gives benefit of relaxation in upper age limit, if examination is not held in a particular year. Even this is not necessary that there must have existed vacancies in that particular year. If the competent authority makes determination of vacancies for direct recruitment quota on yearly basis and fill them up regularly in the year in which the vacancies occur, no such difficulty could arise. However, in practice v/e find that the Rajasthan Public Service Commission as well as other appointing authorities are having multifarious functions to perform. The R.P.S.C. is required to make recruitment for over 50 services apart from consultative functions in the matter of framing of service rules and disciplinary actions in respect of the gazette offices. It is more or less impossible for the R.P.S.C. to make regular selection year wise. That leads to a situation where large number of eligible candidates are rendered ineligible on account of their having become over age merely because in the particular year when they were eligible, recruitment is not made by the competitive body or Commission or other authority.... We do not find any justification as to why a provision like one contained in Rule 11 B of 1962 Rules or Rule 10 of 1955 Rules has not been made in other Rules. This would have/eliminated wholly unnecessary litigation of this nature.

23. However, once we have/that there is an obligation to make year wise determination of vacancies for direct recruitment as well as promotion, the competent authority cannot avoid this responsibility by sheer inaction or omission and failure on the part of the competent authority cannot be used as a basis for denying eligibility to those who are eligible in a particular year but becomes ineligible on account of absence of determination of vacancies on yearly basis. So far as the promotion quota posts are concerned, all problems regarding eligibility etc. are solved in view of the provisions contained in Rule 9(2) of 1974 Rules and Rule 10(2) of 1989 Rules. For direct recruitment quota, we have to take notice of Rule 9(1) and particularly, Clause (c) of 1974 Rules and Rule 10 (1) (c) of 1989 Rules. We are of the view that the vacancies for direct recruitment must also be determined on yearly basis and efforts should be made to fill those vacancies during the course of the year. After determination of vacancies, the same shall be advertised immediately or within reasonable time, so that the candidates, who are eligible, can apply. The process of selection may be completed at a subsequent point of time. In that event, the disputes relating to eligibility with reference to age and qualifications would be obviated. For the subsequent years, the same very process can be repeated. After the, vacancies of different years are advertised the process of selection shall be held separately and panel shall be drawn separately, so that the charge of clubbing the vacancies may also not be leveled against the appointing authority. If, on account of administrative difficulties, vacancies for direct recruitment cannot be filled in for a particular year, the candidates who are within the age limit with reference to the vacancies of a particular year must be treated as eligible even if the selection is held subsequently.

24. The Supreme Court had in *Y.V. Range/in v. J. Shrivasa Rao* 1983 (3) SCC 28

clearly laid down that eligibility with reference to particular vacancies must be judged with reference to the year in which the vacancies relate. A subsequent amendment in the Rules cannot take away the right of a person who is eligible against the vacancies created prior to such amendment. It would be appropriate to quote the following observations of the Hon''ble Supreme Court from the said decision:

The Tribunal on consideration of the materials on record came to the conclusion that the vacancies that arose between the preparation of the panels in December, 75 and April, 77 were eight, and that there was no reason why panel for that period should not have been drawn up at all. It is true that after October 18, 1975 the zones came into existence and, therefore, promotions to the grade of Sub-Registrar were required to be made on zonal basis, but after the personnel had been located to various zones, the task of preparing the annual panel with reference to the vacancies arising during the period 1976-77 should have been taken up on the basis of the seniority list for Zone IV. Had such a list been prepared according to Andhra Pradesh Registration and Subordinate Service Rules, the eligibility of the candidates would naturally have been considered without reference to the amendment issued in March, 1977. On these findings the Tribunal held that the action taken by the Inspector General of Registration and Stamps to make appointment against vacancies arising during the period 1976-77 from amongst the "left-over" of the panels drawn up in April, 1975 and to dispense with the preparation of panel for 1976-77 was in violation of the rules and thus liable to be set aside, and it directed the State of Andhra Pradesh and the Inspector General of Registration and Stamps to draw up a fresh panel for the year 1976-77 with reference to the vacancies that arose during that period, strictly in accordance with the rules as they existed at the time, and the vacancies pertaining to that period should be filled on the basis of such a panel.

The Supreme Court further observed:

The vacancies which occurred, prior to the amended rules would be governed by the old rules and not by the amended rules....

But the question is of filling. The vacancies that occurred prior to the Amended rules. We have, not the slightest doubt that the posts which fell vacant prior to the amended rules would be governed.

25. This has been reiterated in *P. Mahendran and others Vs. State of Karnataka and others*, In that case Karnataka General Service (Motor Vehicles Branch Recruitment) Rules, 1962 prescribed a diploma in Mechanical Engineering for appointment as Motor Vehicle Inspectors. In 1983, the Karnataka Public Service Commission invited applications for the said post from the holders of said post in Automobile Engineers. After the date of interviews had been fixed, some stay was granted by the High Court and the interviews could be completed in July 1987. In the meanwhile the Recruitment Rules were amended in May 1987 and the diploma in Mechanical Engineering were excluded from eligibility. Karnataka

Tribunal quashed the select list on the ground that subsequent to 1987 amendment, the selection could not be made on the basis of pre-eligibility criteria. While reversing the judgment of the Tribunal, the Supreme Court observed as under:

There is no dispute that under the Recruitment Rules as well as under the advertisement dated October 6, 1983 issued by the Public Service Commission, holders of Diploma in Mechanical Engineering were eligible for appointment to the post of Motor Vehicle Inspectors along with holders of Diploma in Automobile Engineering. On receipt of applications from the candidates, the Commission commenced the process of selection as it scrutinized the applications and issued letters for interviews to the respective candidates. In fact the Commission commenced the interviews on August 1985 and it had almost completed the process of selection but the selection could not be completed on account of interim orders issued by the High Court at the instance of candidates seeking reservation for local candidates. The Commission completed the interviews of all the Candidates and it finalized the list of selected candidates by June 2, 1987 and the result was published in the State Gazette on 23rd July 1987. In addition to that, the selected candidates were intimated by the commission by separate letters. In view of these facts, the sole question for consideration is as to whether the amendment made in the Rules on May 14, 1987 rendered the selection illegal. Admittedly, the amending Rule does not contain any provision enforcing, the amended Rule with retrospective effect. In the absence of any express provision contained in the amending rules, it must be held to be prospective in nature. The Rules which are prospective in nature cannot take away or in part the right of candidates holding Diploma in Mechanical Engineering as on the date of making appointment as well as on the date of scrutiny by the Commission they were qualified for selection and appointment. In fact the entire selection in the normal course would have been finalized much before the amendment of rules, but for the interim orders of the High Courts. If there had been no interim orders, the selected candidates would have been appointed much before the amendment of Rules. Since the process of selection had commenced and it could not be completed on account of the interim orders of the High Court, the appellants' right to selection and appointment could not be defeated by subsequent amendment of Rules.

26. In *P. Ganeshwar Rao v. State of Andhra Pradesh* 1988 1 SLR 136 their Lordships of the Supreme Court have held that the amendment does not apply to the vacancies which had arisen prior to the date of amendment.

27. Some what similar view has been taken by the Rajasthan High Court in *Rama Shanker Asopa(sic) v. State of Rajasthan* D.B. Civil writ Petition No. 1359/88 decided on 18.1.1989. In that case, the Rajasthan Public Service Commission had advertised vacancies of Junior Specialists in the month of May/June, 1987. The petitioner had applied for selection in pursuance to the said advertisement. However, interviews could not be held on account of some stay order of the High

Court. In the meanwhile, Rajasthan Medical & Health Service Rules, 1963 were amended vide Gazette Notification dated 7.1.1988 and under the amended Rules, all the posts of Junior Specialists were converted into that of Senior Medical Officers and they were to be filled in 100% by promotion. The Government, thereafter directed the Commissions to withdraw the advertisement and on that basis, the petitioners who were holding the post of Junior Specialists and were eligible to be selected by direct recruitment were sought to be reverted. In striking down the reversion order and the action of the Government in withdrawing the requisition, this Court proceeded to observe as under:

In the instant case before this court, amendment in the Rajasthan Medical and Health Service Rules, 1963 was published in the Rajasthan Gazette dated 7.1.1988 and the vacancies are determined on 1st April of every year. Hence, the vacancies which were determined up to 1.4.1987 should be filled in in accordance with the old rules existing at that time prior to amendment, meaning thereby that the vacancies for the years 1985-86 and 1986-87 as also 1987-88 have to be filled in in accordance with old unamended rules, both from the direct recruitment as well as promotion quota and the variances relating to the year 1988-89 or onwards, will be governed by the amended Rule. Government should determine the vacancies year wise for the year 1985-86, 1986-87 and 1987-88 and fill them up as per the old rules. In the present cases, for the vacancies relating to the years 1985-86 and 1986-87 a requisition had already been sent by the State Government to the Rajasthan Public Service Commission in the month of January, 1987, on the basis of which the R.P.S.C. had issued an advertisement No. 2/87-88 (Annx.6) and applications had been invited and even interviews letters had been issued but after the amendment of rules, the requisition had been withdrawn on 18.5.1988. The Government is directed to request the R.P.S.C. to go ahead with the selection as per the earlier requisition sent in the month Of Jan., 1987.

28. We are, therefore, of the considered opinion that as in the case of promotion quota, vacancies direct recruitment quota must also be determined, on yearly basis. We are also, of the opinion that once direct recruitment vacancies are advertised, the process of selection must be completed on the basis of the Rules, which are in existence at the time of advertisement. Any amendment made subsequently shall not affect the eligibility of the candidates, So far as the age requirement is concerned, the eligibility of the candidates must be adjudged with reference to the year to which the vacancies relate and the candidates cannot be made to suffer merely because of non determination of vacancies or failure of the competent authority to issue advertisement.

29. In the present case, we have noticed find that the advertisement had been issued on 21.12.1988 under 1974 Rules. However, before selection process could be advanced further, the selection was post-poned and fresh advertisement was issued on 19.8.1989 only after the new Rules were promulgated in 1989. In the light of the principles enunciated above, we hold that all candidates who were

eligible with reference to the age requirement on the basis of the advertisement dated 21.12.1988, were erroneously excluded from the zone of consideration when the selection were held in pursuance of the subsequent notification because the vacancies were available at the time of issuance of advertisement dated 21.12.1988 had in fact been again advertised vide advertisement dated 19.8.89 with the additional vacancies. The respondents had clearly acted in a manner so as to discriminate the eligible candidates who fulfilled the requirement of eligibility with reference to the advertisement-dated 21.12.1988.

30. In view of the above discussion, we do not consider it necessary to decide the question of vires of rules regarding the age where in a higher age limit has been prescribed for Constable (Driver).

31. The petitioners have of-course, challenged the entire selection, but Shri M.I.Khan, learned Additional Advocate General gave out that the appointments have been made in pursuance of the selection made vide Notification dated 19.8.1989. Since none of the selected candidates is a party to the proceedings, we do not consider it appropriate to strike down the selection and quash the appointments. However, since the petitioners and other similarly situated persons who were eligible under the advertisement dated 21.12.1988 have unlawfully been deprived of their right of consideration for appointment, we deem it proper to direct the respondents either to hold a special selection in case the vacancies in the cadre of Constable are available at present and to consider the cases of all those persons who were within the zone of consideration eligibility as per advertisement dated 21.12.1988. If such special selection cannot be held, these candidates should allowed an opportunity of being considered for the purpose of selection for appointment on the posts of constables as and when fresh selections are made in future. We are also of the opinion that the respondents should arrange their selection in such a manner, by which the candidates get sufficient opportunity to submit their applications and prepare themselves for selection because fixing of only one date for submission of applications is clearly unreasonable. Similarly, the time-lag between the last date fixed for submission of applications and selection must be reasonable, ordinarily fifteen days, so as to allow the candidates to prepare themselves for competetion.

32. In the result, we allow the writ petitions and hold that the action of the respondents in not considering the candidature of the petitioners and similarly situated persons except Prakash Chand who were eligible under the Advertisement dated 21.12.1988 for appointment to the post of Constable was illegal and the same has resulted in breach of their fundamental right of equality enshrined under Articles 14 and 16 of the Constitution of India. We direct the respondents to either hold a special selection as indicated in the earlier part of the judgment or to consider, the petitoners and other similarly situated persons eligible for selection for appointment to the posts of Constables in future selece.... Costs made easy.