

(2018) 09 RAJ CK 0126

In the Rajasthan High Court

Case No : Civil Writs Petition(PIL) No. 21375 of 2018

Pramod Singh @APPELLANT@Hash State of Rajasthan & Ors

Date of Decision : 18-09-2018

Acts Referred:

Rajasthan Police Subordinate Service Rules, 1989 — Rule 26, 26A, 27, 27(1), 27(3), 27(7), 30
Constitution of India, 1950 — Article 309

Citation : (2018) 09 RAJ CK 0126

Hon'ble Judges : Pradeep Nandrajog, CJ;G R Moolchandani, J

Bench : Division Bench

Advocate : Madhav Mitra, Vibhuti Bhushan Sharma, N.M. Lodha, Kunal Jaiman, G.S. Gill, Rajendra Prasad, Rajeev Sharma

Final Decision : Disposed Off

Judgement

1. On a caveat filed respondents appear. Reply filed is taken on record.
2. List the writ petition on 23.10.2018.
3. We are declining interim stay prayed for. Our reasons for the same.
4. Appointments to various posts in the Police Department of the State of Rajasthan is governed by the Rajasthan Police Subordinate Service Rules, 1989.
5. Since grievance in the writ petition concerns promotion of 6000 Constables to the post of Head Constables, relevant would it be to note that Rule 26 of the Rules of 1989 prescribed conditions of eligibility for promotion and Rule 27 of the Rules of 1989 prescribed procedure of selection.
6. On 09.07.2018 by a Notification exercising power under the proviso to Article 309 of the Constitution of India, the Rajasthan Police Subordinate Service Rules, 1989 were amended. After existing Rule 26, Rule 26A was inserted in the Statute Book.

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6. On 09.07.2018 by a Notification exercising power under the proviso to Article 309 of the Constitution of India, the Rajasthan Police Subordinate Service Rules, 1989 were amended. After existing Rule 26, Rule 26A was inserted in the Statute Book.
It reads as under:-
 26A. Promotion on the post of Head Constable- Notwithstanding anything contained in these rules, post of the Head Constable shall be filled in by the following methods of promotion, namely:-
 (a) 50% of vacancies shall be filled in by screening on the basis of seniority and service record in manner specified in clause (ab) of sub-rule (3) of rule 27.
 (b) 50% of vacancies shall be filled in through procedure laid down under sub-rule (1) of rule 27:
 Provided that the posts of Head Constables created in year 2018-19 shall be filled up 100% by promotion from the post of Constable by screening on the basis of seniority and service record in manner specified in clause (ab) of sub-rule (3) of rule 27.
7. Simultaneously amendment was made in sub-rule (1) of Rule 27. The effect of the amendment to Rule 27 was the insertion of clause (aa) pertaining to the constitution of the Screening Committee. Clause (ab) was also inserted requiring the Screening Committee constituted under clause (aa) to consider the service record of the eligible candidates.
8. From a perusal of the proviso to the newly inserted Rule 26A, it becomes evident that the posts of Head Constables created in the year 2018-19

were to be filled up 100% by promotion from Constables by screening of the record in the manner specified in clause (ab) of sub-rule (3) of Rule 27.

9. As per the respondents, 6000 posts of Head Constables were created in the year 2018-19 and thus on 19.07.2018, in view of the amendment to the

Rules effected on 09.07.2018, the process of constituting the screening committees and guidelines as to how screening has to be effected were prescribed.

10. Relevant record has been produced for our perusal and we find that pursuant to the Office Order dated 19.07.2018, the Screening Committees

have been constituted which started screening the service record of the Constables who had rendered more than 18 years service. Record shows that

number of Constables who had rendered more than 18 years service was 21120.

11. It appears that when the Notification dated 09.07.2018 was issued, attention of the rule makers was not brought to Rule 30 of the Rules of 1989,

sub-rule (1) whereof requires a promotion cadre course to be successfully undertaken by a force personnel of Rajasthan Police before they can be promoted.

12. Pertaining to Head Constables the relevance would be, as urged by learned counsel for the petitioner, that in small police stations or police

outposts, Head Constables are in-charge of the police station or the police outposts i.e. act as the Station House Officer and conduct investigation.

13. Since the Rules as amended in July, 2018 did not do away with the requirement of having successfully undergone a promotion cadre course, on

17.09.2018 i.e. yesterday only, once again exercising power under proviso to Article 309 of the

Constitution of India, amendment has been made to sub-rule (6) of Rule 27 and a proviso has been inserted. The proviso reads as under:-

â??Provided that constables, screened under

proviso to clause (b) of rule 26A for promotion to the post of Head Constables created in the year 2018-19 to be filled up 100% by promotion from the

post of constables by screening, shall be promoted without undergoing the promotion cadre course. However their obtaining further annual increment

in the pay scale of Head Constable shall be granted only after successful completion of a course, designed specifically for this purpose by the Director

General of Police.â??

14. Needless to state the effect of the proviso is that Constables who are screened for purposes of promotion as per the screening norms may not have successfully cleared the designed course for promotion. However, it has been made clear that these Head Constables on earning promotion would have to undergo the course as a condition for grant of annual increments in the pay scale of Head Constable.

15. The contention of the petitioner is that this being election year in the State of Rajasthan the Government is acting post haste.

16. Now, the record shows that 6000 posts of Head

Constables were created in the year 2018-19. Record shows that more than 21000 Constables have rendered more than 18 years service and have

not earned a promotion. Thus having the power to increase the sanctioned strength of Head Constables and prima facie having the power to grant one

time relaxation the rules were amended. 100% promotions for these newly created posts are proposed to be made by amending the rules by inserting

Rule 26A. There being legislative competence to do so, the motive becomes irrelevant.

17. The contention is that at State expense a public function would be held where 6000 Constables on being promoted as Head Constables would

undergo the pipping ceremony and this is nothing but a pre-election stunt to benefit the Ruling Party in the ensuing elections

18. Prima facie, to honour the promotee officers in the presence of their relatives cannot be frowned upon by the Court and thus at the pipping

ceremony if relatives of the police officers who are present are provided refreshment as also boarding and lodging, would not attract the vice of

misuse of power.

19. These are our reasons to decline the stay prayed for. However, expenses incurred in boarding and lodging as also at the ceremony would be

maintained and before the next date of hearing an affidavit would be filed disclosing under various heads the expenses incurred.

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