
(2002) 05 RAJ CK 0081

In the Rajasthan High Court

Case No : Civil Writ Petition No. 5109 of 1992

Prem Kumar Purohit and Another

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 01-05-2002

Acts Referred:

Rajasthan Subordinate Offices Ministerial Staff Service Rules, 1957 — Rule 7(1)

Citation : (2003) 1 RLW 16 : (2002) 5 WLC 934 : (2002) 4 WLN 1

Hon'ble Judges : Sunil Kumar Garg, J

Bench : Single Bench

Advocate : M. Mridul and R.N. Upadhyaya, in Writ Petition No. 5109/92 and B.D. Purohit, in Writ Petition No. 3038/1998, Rajesh Shah, for J.P. Joshi, for the Appellant; M. Mridul and R.N. Upadhyaya, for Respondent Nos. 4 and 5 in Writ Petition No. 3038/1998 and R.P. Singh, for Respondent Nos. 1 to 4 in Writ Petition No. 5109/92 and for Respondent Nos. 1 to 3 in Writ Petition No. 3038/1998, for the Respondent

Final Decision : Allowed

Judgement

Garg, J.—Both the abovementioned writ petitions are being decided by this common order as in both of them some questions are identical in nature and apart from this, through Writ Petition No. 3038/98 the appointments of the petitioners of Writ Petition No. 5109/92 are also challenged and, therefore, from this point of view also, both petitions are being decided together.

S.B. Civil Writ Petition No. 5109/92

2. This writ petition has been filed by the petitioners against the respondents on 24.9.1992 with the prayer that by an appropriate writ, order or direction, the orders Annex. 8 and Annex. 9 dated 17.9.1992 passed by the respondent No.2 District Education Officer (Boys), Bikaner terminating the services of the petitioners be quashed and further, the respondents be directed to continue the petitioners on the post held by them and to consider their cases for regularisation of service in the light of the Rajasthan Employment of Physically

Handicapped Rules, 1976 (hereinafter referred to as "the Rules of 1976")

3. It arises in the following circumstances:-

Both the petitioners, namely, Prem Kumar Purohit and Girja Shankar Acharya are physically handicapped persons, as is evident from the Certificates Annex. 1 and Annex. 13. Both the petitioners are possessing requisite minimum qualifications for appointment on the post of LDC. The petitioner No. 1 did Higher Secondary from Shri Sardar Vallabh Bhai Vidhyapeeth, Anand in the year 1983 and the copy of the marked sheet is marked as Annex. 3. The petitioner No. 2 did Secondary from the Board of Secondary Education, Rajasthan in the year 1989.

The petitioner No. 1 submitted an application to the Director, Primary & Secondary Education, Rajasthan, Bikaner and on that application, he sent the case of the petitioner No. 1 to the District Education Officer (Boys) (respondent No.2) for giving him appointment on the post of LDC against the post falling in the quota of physically handicapped persons. A copy of the letter dated 25.3.1992 whereby the case of the petitioner No. 1 was forwarded by Director, Primary & Secondary Education, Rajasthan, Bikaner to the respondent No.2 District Education Officer (Boys), Bikaner is marked as Annex. 4.

Likewise, on an application submitted by the petitioner No.2, his case was also forwarded by the Dy. Director (Admn.), Primary & Secondary Education, Rajasthan, Bikaner to the respondent No.2 District Education Officer (Boys), Bikaner through letter dated 13.1.1992 (Annex. 5) for giving appointment on the post of LDC against the post reserved for physically handicapped persons.

In compliance of the aforesaid letters/orders, the respondent No.2 District Education Officer (Boys), Bikaner issued order dated 27.5.1992 whereby he appointed both the petitioners as LDC on temporary basis in the pay scale of Rs. 950-1680. A copy of the said order dated 27.5.1992 is marked as Annex. 6.

In pursuance of the said order dated 27.5.1992 (Annex. 6), both the petitioners Prem Kumar Purohit and Girja Shankar Acharya joined duty on 27.6.92 in the Government Secondary School, Bhikampur and Government Secondary School, Pugal respectively. The copy of the joining report of the petitioner No. 1 is marked as Annex. 7.

Thereafter, orders dated 17.9.1992 were issued by the respondent No.2 District Education Officer (Boys), Bikaner whereby the services of the petitioners were terminated on the ground that their names were not found in the select list of Rajasthan Public Service Commission and further that they have not been appointed as per Rules. The copy of the order dated 17.9.1992 terminating the services of the petitioners Prem Kumar Purohit and Girja Shankar Acharya are marked as Annex. 8 and Annex. 9 respectively and in this petition both the termination orders Annex. 8 and Annex. 9 have been challenged on various grounds and some of them are as follows:

(1) That through Notification dated 7.12.1989, an amendment was made in Sub-

rule 1 (b) of Rule 7 of the Rajasthan Subordinate Offices Ministerial Staff Rules, 1957 (hereinafter referred to as "the Rules of 1957") in the following manner:-

"1. After the existing proviso to Sub-rules 1 (b) of Rule 7 the following proviso shall be added, namely:-

" Provided further that the Appointing Authority may appoint a physically handicapped person to any post of the service in accordance with the provisions of the Rajasthan Employment of Physically Handicapped Rules, 1976. Such appointment shall be treated as regular appointment."

and thus, after amendment, the requirement for appointment of LDC through competitive examination to be conducted by the Rajasthan Public Service Commission has been relaxed and therefore, the ground which was taken by the respondents in the impugned termination orders that since the petitioners did not come through RPSC, therefore, their appointments were bad, has no meaning and their appointments are to be governed by the Rules of 1976 alone. Further- more, proviso to Sub-rule 1(b) of Rule 7 of the Rules of the 1957 authorises the Appointing Authority to make appointment of physically handicapped persons in accordance with the provisions of the Rules of 1976, but in the Rules of 1976, there is no provision that before making appointment of handicapped persons on the post of LDC, RPSC should be consulted on handicapped persons cannot be appointed without passing the examinations conducted by the RPSC. Thus, the termination of services of the petitioners is arbitrary and discriminatory and, therefore, in violation of the mandate of Articles 14, 16 and 21 read with Articles 41 and 46 of the Constitution of India.

(2) That since the petitioners are in service since 27.6.1992, therefore, their services should have been regularised and termination of their services after such a long period is violative of Articles 14 and 16 of the Constitution of India and thus, from this point of view also, they are entitled to be regularised in service.

A reply to the writ petitioner was filed by the respondents No. 1 to 4 in which it has been averred by them that the District Education Officer (Boys) (respondent No. 2) had issued appointment order Annex. 6 of both the petitioners in doubtful circumstances and furthermore, it was averred that no official copy of the said order was available on record which was maintained by the respondent No. 2 District Education Officer (Boys) and the said order was not despatched from that office and apart from this, the facts and circumstances of the case reveal that the appointments of the case reveal that the appointments of both the petitioners were not validity made and the entire affairs were fishy and furthermore, since the posts were not advertised, therefore, the appointments of the petitioners are per se illegal and against the Rules of 1957. Hence, this writ petition be dismissed.

A rejoinder to the reply was also filed by the petitioner No. 2 to clarify on some points and through which he also submitted Certificate (Annex. 13) showing that

he is physically handicapped person.

4. I have heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondents and gone through the materials available on record.

5. There is no dispute on the point that both the petitioners are physically handicapped persons and they were appointed by the respondents No. 2 District Education Officer (Boys) on the post of LDC against handicapped quota vide order dated 27.5.1992 (Annex. 6) and in pursuance of the said order dated 27.5.1992 (Annex. 6), they joined their duties on 27.6.1992. There is also no dispute on the point that the services of both the petitioners Prem Kumar Purohit and Girja Shankar Acharya were terminated vide orders 17.9.1992 (Annex. 8) and 17.9.1992 (Annex. 9) respectively and they were relieved through order dated 18.9.1992 (Annex. 10). But, in view of the stay order of this Court dated 19.11.1992 staying the operation of the orders Annexs. 8 and 9 dated 17.9.1992 till the final disposal of the writ petition, the petitioners are still in service and there is no dispute on that point.

Legal aspect of executive power versus statutory rules

6. In *State of Haryana and Ors. v. Piara Singh and Ors.* (1), the Hon"ble Supreme Court has held that it is the Executive again that lays down the conditions of service subject, of course, to a law made by the appropriate Legislature. This power to prescribe the conditions of service can be exercised either by making Rules under the proviso to Article 309 of the Constitution or (in the absence of such Rules) by issuing Rules, instructions in exercise of its executive power.

7. In *J & K Public Service Commission v. Dr. Narinder Mohan and Ors.* (2), the Hon"ble Supreme Court has held that the existence of Statutory Rules is not a condition precedent to appoint an eligible and fit person to a post. The executive power is co- extensive with legislative power of the State and under Article 162, the State can create civil posts and fill them up according to executive instructions consistent with Articles 14 and 16 of the Constitution. It is settled law that once statutory rules have been made, the appointment shall be only in accordance with the rules. The executive power could be exercised only to fill in the gaps but the instructions cannot and should not supplant the law, but would only supplement the law.

8. In the present case, there are Rules of 1957 regulating appointment of LDCs and for appointment of handicapped persons, there are Rules of 1976.

9. Through Notification dated 7.12.1989, an amendment was made in Sub-rule 1 (b) of Rule 7 of the Rules of 1957 (quoted above) and the contention of the learned counsel appearing for the petitioners is that after that amendment, physically handicapped persons can be regularly appointed without examination being conducted for their selection by the RPSC, as required by Rule 7(1)(b) of

the Rules of 1957. Proviso to Rule 7 of the Rules of 1957, which authorises the Appointing Authority to appoint physically handicapped person under the Rules of 1976, has to be read harmoniously with the other provisions of Rule 7 of the Rules of 1957 in such a way that a full effect has to be given to both the Rules.

10. Thereafter, another circular dated 27.5.1991 (Annex. 15) was issued by the Government of Rajasthan pertaining to the appointment of handicapped persons and in that Circular (Annex. 15), the earlier Notification dated 7.12.1989 was referred to and it was made clear that the appointment of handicapped persons should be made under the Rules of 1976 and appointment made under the Rules of 1976 would be considered as regular appointments.

11. Thereafter, another Circular dated 1.12.1997 has been issued by the Government in which it was made clear that the Rules of 1976 have the over riding effect upon all the Recruitment Rules.

12. Without entering into the controversy whether the appointments of both the petitioners at the initial stage made through order dated 27.5.1992 (Annex. 6) was regular one or not, but the fact is that their appointment was made by the respondent No. 2 District Education Officer (Boys), who was responsible Officer and furthermore, since then they are in service and discharging duties as such and there is no complaint about their work.

13. It may be stated here that if any employee's case for regularisation is considered, he must have possessed prescribed qualification for the post at the time when initial appointment was made and in this case, for appointment on the post of LDC, both the petitioners had requisite qualifications when their appointments were made through order dated 27.5.1992 (Annex. 6).

14. In Piara Singh's case (supra), the Hon'ble Supreme Court has held that if for any reason, an adhoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularisation provided he is eligible and qualified according to rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the State.

15. It may be stated here that this fact should also be kept in mind that this case pertains to the appointment of persons known as physically handicapped persons and these persons by nature they have been made handicapped and, therefore, if they face hurdles from place to place, what would be their position that can be imagined and visualised only if their cases are being examined on equitable considerations.

16. In *Uttam Kumar v. U.P. Higher Education Service Commissioner, Allahabad* and Ors. (3), the Hon'ble Supreme Court has held that it would be a travesty of justice if we dismiss the appeal and throw the appellant out of service after he has served for about 15 years and in that case, the respondents were directed to treat the appellant in regular service of the College.

17. The Hon'ble Supreme Court in *Arun Kumar Rout and Ors. v. State of Bihar*

and Ors. (4), has held that no doubt the initial appointments might be irregular, but since the appellants of that case had satisfactorily served department for more than five years, such type of persons deserve sympathetic consideration though they could not claim regularisation as a matter of course and thus, the Hon"ble Supreme Court issued directions in favour of the appellants of that case.

18. Similarly, in Ghan Sham Sunder and Ors. v. State of Punjab and Ors. (5), the Hon"ble Supreme Court has observed that since the appellants of that case had already rendered service for more than seven years, therefore, some relaxation be made in the eligibility conditions.

19. It may be stated here that where the work taken is not for a short period or limited for a season or where the work is not of a part time nature and if pattern shows that the work is to be taken continuously year after year, in such circumstances, there is no justification to keep such persons out of employment and such person should be accommodated by relaxing the qualifications or rules on equitable grounds.

20. In Shangrila Food Products Ltd. v. Life Insurance Corporation of India (6), the Hon"ble Supreme Court has held that the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India can take cognizance of the entire facts and circumstances of the case and pass appropriate orders to give the parties complete and substantial justice, keeping in mind the principles of equity which aim to promote honesty and fair play.

21. Keeping in mind the above aspect of law laid down by the Hon"ble Supreme Court in a catena of decision and looking to the entire facts and circumstances of the case, the present petitioners, who are physically handicapped persons, are entitled on equitable grounds to remain in service and if their termination orders Annex. 8 and Annex. 9 dated 17.9.1992 are upheld, it would certainly affect their career and after such a long period, it would be difficult for them to get new job and apart from this, there is a policy of the State Government that physically handicapped persons should be given appointment even out of priority and there is also reservations of 3% for handicapped persons in all appointments.

22. Thus, looking to all aspects and keeping in mind the principles of equity, justice and good conscience, the termination of the petitioners vide orders Annex. 8 and Annex. 9 dated 17.9.1992 cannot be upheld and since the petitioners have rendered service for a very long period, therefore, if termination orders Annex. 8 and Annex. 9 dated 17.9.1992 are given effect to that will infringe the legal right to the petitioners, which they had got by doing valuable service.

23. The learned counsel for the respondents contended that in view of the interim order passed by this Court, the petitioners are in service and they gained the unfair advantage because their appointment was not as per the Rules and, therefore, no benefit should be given to them of the fact that they are in service till today and for that, reliance was placed on the decisions in Smt. Ageela v.

State of Rajasthan and Ors. (7), and Committee of Management v. Sree Kumar Tiwary and Anr. (8).

24. No doubt in view of the interim order passed by this Court, the petitioners are in service, but the fact is that they are in service with effect from 27.6.1992 and there is no dispute on that point and for the reasons mentioned above, since the petitioners had rendered service, it would be taken into consideration and thus, they are entitled to remain in service and their termination from service is bad in law and cannot be sustained. Thus, the above authorities, in the peculiar facts and circumstances of the case, would not be helpful to the respondents.

25. For the reasons stated above, this writ petition deserves to be allowed on equitable grounds and the impugned orders Annex. 8 and Annex. 9 dated 17.9.1992 terminating the services of the petitioners are liable to be set aside and they are entitled to regularisation in service.

Accordingly, this writ petition filed by the petitioners is allowed and the impugned orders Annex. 8 and Annex. 9 dated 17.9.1992 passed by the respondent No. 2 District Education Officer (Boys), Bikaner are set aside and the respondents are directed to regularise the services of the petitioners.

However, it is made clear that this case should not be treated as precedent and looking to the peculiar facts and circumstances of the case, the above directions are being given in this petition since granting of relief under Articles 226 of the Constitution of India is discretionary and when relief touches the conscience of the Court, then such relief should be awarded and the present case is one of those cases where the conscience of the Court compels that these physically handicapped persons should be allowed to remain in service.

S.B. Civil Writ Petition No. 3038/1998

26. This petition under Article 226 of the Constitution of India has been filed by the petitioner on 4.9.1998 against the respondents with the prayer that by an appropriate writ, order or direction, the order dt. 29.6.1998 (Annex.7) by which the petitioner was refused appointment on the post of LDC finally, be quashed and the respondents be directed to appoint the petitioner on the post of LDC against the quota of handicapped person from the date when the respondents No. 4 and 5 of this petition and petitioners of Writ Petition No. 5109/92 were appointed through order dated 27.5.1992 (Annex. 4).

27. It arises in the following circumstances:-

The petitioner is a Graduate in Commerce. He passed his B.Com. Examination from the University of Rajasthan. The petitioner knows typing, both Hindi as well as English.

The petitioner is a person registered as physically handicapped person. The Certificate obtained under Rule 7(1) of the Rules of 1976 bearing No. 43 dated 25.8.1985 is marked as Annex. 1.

The petitioner submitted an application for appointment to the post of the Lower Division Clerk before the Dy. Director (Admn.), Primary and Secondary Education, Rajasthan, Bikaner in the year 1989. The petitioner's application was forwarded by the Dy. Director (Admn.) to the respondent No. 3 District Education Officer, Bikaner on 15.5.1989. Thereafter, the petitioner contacted the respondent No. 3 District Education officer a number of times, but he assured the petitioner of the action being taken on his application. A directive was later on issued by the Dy. Secretary to the Government of Rajasthan dt. 27.5.1991 directing the Appointing Authorities to appoint handicapped persons on any post reserved for them and such appointments shall be treated to be the regular appointments. A copy of the said directive dated 27.5.1991 is marked as Annex.2. Despite the Govt. order, the respondent No. 3 District Education Officer did not pass any order on the application of the petitioner despite the existence of the vacancies. The petitioner, therefore, submitted applications dated 2.12.1991, 6.1.1992 and 16.1.1992 before the Director, Primary and Secondary Education, Rajasthan, Bikaner. The Dy. Director (Admn.) vide letter dated 8.1.1992 also advised the respondent No. 3 District Education Officer to pass appropriate orders on the application of the petitioner. A copy of the said letter dated 8.1.1992 is marked as Annex. 3. However, no action was taken by the respondent No. 3 District Education Officer. The petitioner, therefore, again submitted reminders before the Director, Primary & Secondary Education, Rajasthan, Bikaner dt. 28.3.1992, 30.4.1992, 17.6.1992, 27.6.1992 and 1.5.1993.

The petitioner thereafter came to know that despite the application of the petitioner of the year 1989 pending before the respondent No. 3 District Education Officer, the District Education Officer (Boys), Bikaner (respondent No. 3) appointed two persons, namely, Girja Shanker Acharya and Prem Kumar Purohit (respondents No. 4 and 5 in this petition and petitioners in Writ Petition No. 5109/92) vide order dated 27.5.1992 (Annex. 4) as Lower Division Clerks on temporary basis against the posts reserved for the physically handicapped persons.

Thereafter, the petitioner again approached the Director, Primary and Secondary Education, Rajasthan, Bikaner, but nothing was done. Therefore, the petitioner filed Writ Petition No. 3262/93 before this Court with the prayer that the respondents be directed to appoint the petitioner against the post reserved for physically handicapped persons as per the application submitted by the petitioner. The said writ petition was disposed of by this Court vide order dt. 15.7.1993 with some directions that the District Education Officer (respondent No. 3) should decide the application of the petitioner within a period of three months from the date of submission of copy of that order.

Thereafter, the respondent No. 3 District Education Officer passed order dated 27.10.1993 (Annex. 5) and by that order, the petitioner was denied the appointment on the post of LDC and the only reason given in that order was that

the proceedings were not in accordance with the Rules and therefore, the petitioner could not be given appointment. It was further mentioned in that order that the services of two persons (respondents No. 4 and 5 of this petitioner and petitioners of Writ Petition No. 5109/92) appointed under the handicapped quota had already been terminated.

It was submitted by the petitioner that the order dated 27.10.1993 (Annex. 5) passed by the respondent No. 3 District Education Officer was against the principles of natural justice and that order was not a speaking order, as no reasons have been given for refusing the application of the petitioner. The petitioner, therefore, challenged the said order dated 27.10.1993 (Annex. 5) before this Court by filing another writ petition being S.B. Civil Writ Petition No. 5833/93. The said writ petition was decided by this Court vide order dated 16.9.1997 (Annex. 6) and as per that order Annex. 6, the matter was remanded back to the District Education Officer (respondent No. 3) to re-examine the application of the petitioner keeping in view the latest Rules prevailing on the field. It was further directed by this Court that the District Education Officer (respondent No. 3) would also look into the contention of the petitioner to the effect that his sponsoring through Rajasthan Public Service Commission was not necessary as per the Rules. The respondent No. 3 District Education Officer was further directed to decide the matter within a period of three months from 16.9.1997.

Thereafter, in pursuance of the order of this Court dated 16.9.1997 (Annex. 6) passed in S.B. Civil Writ Petition No. 5833/93, the respondent No. 3 District Education Officer again examined the case of the petitioner and passed a detailed order dated 29.6.1998 (Annex. 7) in which he came to the conclusion that the petitioner could not be given appointment because he has not passed the examination conducted by the RPSC and furthermore, the appointments, which were given to the respondents No. 4 and 5 of this petition and petitioners of Writ Petition No. 5109/92, had already been terminated through order dated 17.9.1992 and, therefore, to say that since respondents No. 4 and 5 of this petition and petitioners of Writ Petition No. 5109/92 were given appointments the present petitioner should also be given appointment, is no ground and thus, the application of the petitioner for giving appointment to the post of LDC against the quota of handicapped persons, was finally rejected by the respondent No. 3 District Education Officer.

In this petition, mainly the order dated 29.6.1998 (Annex. 7) passed by the respondent No. 3 District Education Officer refusing to give appointment to the petitioner on the post of LDC against the quota for handicapped persons, has been challenged on various grounds and some of them are as follows:-

(1) That through Notification dated 7.12.1989, an amendment was made in Sub-rule 1(b) of Rule 7 of the Rules of 1957 (quoted above) and thus, after amendment, the requirement for appointment of LDC through competitive examination to be conducted by the Rajasthan Public Service Commission has

been relaxed and, therefore, the ground which was taken by the respondents in the order dated 29.6.1998 (Annex. 7) that since the petitioner did not come through RPSC, therefore, he cannot be given appointment, has no meaning.

Furthermore, after that amendment, physically handicapped persons can be regularly appointed without examination being conducted for their selection by the RPSC, as required by Rule 7(1)(b) of the Rules of 1957. Proviso to Rule 7 of the Rules of 1957, which authorises the Appointing Authority to appoint physically handicapped person under the Rules of 1976, has to be read harmoniously with the other provisions of Rule 7 of the Rules of 1957 in such a way that a full effect has to be given to both the Rules.

(2) That the petitioner had filed the application for giving appointment on the post of LDC against the quota of handicapped persons before the applications of respondents No. 4 and 5 of this petition No. 5109/92 were received by the respondents and pending his application, they were given appointments overlooking the case of the present petitioner and he has knocked the door of High Court thrice and being handicapped person, he has mentally and physically exhausted now and, therefore, on humanitarian and equitable grounds, he should be given appointment on the post of LDC as was given to the respondents No. 4 and 5 of this petition and petitioners of Writ Petition No. 5109/92.

The learned counsel for the petitioner has placed reliance on the judgment of this Court in *Vijay Bharti v. State of Rajasthan* and Ors. (9), where this Court found that the case of the petitioner of that case, who is handicapped person, is a hard one, as he was sitting unemployed since 1977 and thus, gave directions to the Government Authorities to give appropriate employment to the petitioner of that case on 16.10.1986. Similarly, in the present case, when there is policy of the State Government that handicapped persons should be given appointment out of priority and the petitioner, who is handicapped person, is roaming here and there and has knocked the door of the High Court thrice, still he has not been able to get appointment and the persons (respondents No. 4 and 5 of this petition and petitioners of Writ Petition No. 5109/92), who have applied after him, got appointments and in these circumstances, on equitable grounds, directions be given to the respondents to give appointment to the petitioner on the post of LDC against the quota reserved for handicapped persons.

28. It may be stated here that the appointments of the petitioners of Writ Petition No. 5109/92 and respondents No. 4 and 5 to this petition are being saved on various grounds mentioned in the Writ Petition No. 5109/92.

29. There is no dispute on the point that the present petitioner filed application for appointment as LDC against the quota of handicapped persons earlier to the respondents No.4 and 5 of this petition and petitioners of Writ Petition No. 5109/92, but the application of the petitioner was not considered and pending his application, the appointments were given to the respondents No. 4 and 5 of this petition and petitioners of Writ Petition No. 5109/92 and inspite of the

directions given by this Court, the respondent No.3 District Education Officer came to the conclusion that because of requirement of passing the examination conducted by RPSC, the petitioner could not be given appointment.

30. There is also no dispute on the point that when the petitioner made application for appointment on the post of LDC against reserved quota of handicapped persons, he was having requisite qualifications for the said post.

31. For the reasons given in S.B. Civil Writ Petition No. 5109/92 and looking to the entire facts and circumstances of the case and keeping in mind the principles of equity justice and good conscience, the present petitioner, who is handicapped person, is also entitled to relief and interest of justice would be met, if the writ in the nature of mandamus is issued directing the respondents to give appointment to the petitioner on the post of LDC against the quota of handicapped persons because the petitioner had moved for appointment on the post of LDC against the quota of handicapped persons prior to respondents No. 4 and 5 of this petition and petitioner of Writ Petition No. 5109/92.

32. So far as the age of the petitioner is concerned, it may be stated here that for handicapped persons, in Rule 8 of the Rules of 1976, there is further relaxation of age limit by ten years and thus, from this point of view also, his appointment is not hit from age point of view.

33. However, it may be clarified here that the petitioner has claimed appointment with effect from 27.5.1992, the date when respondents Nos. 1 and 5 of this petition and petitioners of Writ Petition No. 5109/92 were given appointment, but this aspect of relief cannot be given to the petitioner as it is not appropriate that he be given appointment from back date.

Accordingly, this writ petition filed by the petitioner is allowed and the impugned order dated 29.6.1998 (Annex. 7) passed by the respondent No. 3 District Education Officer, Bikaner is set aside and the respondents are directed to give appointment to the petitioner on the post of LDC against the quota of handicapped persons within a period of three months from today.