
(2012) 09 RAJ CK 0027

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1731 of 2012

Prithviraj Meena and Others

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 06-09-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2013) 1 CDR 511 : (2013) 3 RLW 2714

Hon'ble Judges : Arun Mishra, C.J.;Narendra Kumar Jain, J

Bench : Division Bench

Advocate : S.P. Sharma assisted by Mr. R.D. Meena in Civil Writ Petition No. 17321/2011, SAW Nos. 403/2012 and 913/2012, for the Appellant; S.N. Kumawat, Additional Advocate General, for the Respondent

Final Decision : Dismissed

Judgement

Narendra Kumar Jain-I, J.—Heard finally with the consent of the parties. In these writ petitions as well as intra-Court appeals, the facts are similar and a common question of law is involved. Therefore, they were heard together and are being disposed off by this common order.

2. The relevant facts, for disposal of these cases, in brief, are that Rajasthan Public Service Commission issued an advertisement dated 9th September, 2008 for the posts of Accountants, Jr. Accountants and Tehsil Revenue Accountants (back log posts) under the provisions of the Rajasthan Subordinate Accounts Service Rules, 1963 (hereinafter referred to as, "the Rules of 1963") and Rajasthan Revenue Subordinate Accounts Service Rules, 1975 (hereinafter referred to as, "the Rules of 1975"). The petitioners appeared in the examination on 25th June, 2011 and result thereof was declared on 19th October, 2011. All petitioners failed in the competitive examination as they could not obtained the minimum qualifying marked in compulsory subjects as per rules.

3. Shri Narottam Meena and other filed S.B. Civil Writ Petition No. 17251/2011

and Shri Anil Kumar Meena & others filed S.B. Civil Writ Petition No. 15319/2011 before Single Bench. Both the writ petitions were dismissed by learned Single Judge vide common order dated 3rd November, 2011. Shri Narottam Meena & others have preferred D.B. Civil Special Appeal No. 403/2012 and Shri Anil Kumar Meena has preferred D.B. Civil Special Appeal No. 913/2012. The other petitioners have preferred writ petitions directly before Division Bench challenging the constitutional validity of Rule 22 of the Rules of 1963 being violative of Arts. 14 & 16 of the Constitution of India.

4. Shri S.P. Sharma, learned Sr. counsel appearing along with Shri R.D. Meena on behalf of petitioners/appellants challenged the validity of Rule 22 of the Rules of 1963 on the ground that this rule is arbitrary and unconstitutional as it provides minimum qualifying marks in compulsory subjects and no minimum qualifying marks have been provided for optional subjects. He submitted that the advertisement relates to the post of Accountant, whereas for optional papers like Book Keeping & Advanced Accountancy, Indian Economics and Business Methods, Auditing, Elements of Cost Accounting etc., no minimum marks have been provided. A person, who has obtained even 2 to 3 marks in optional subjects can be selected, if he has obtained the minimum qualifying marks in compulsory subjects, whereas, looking to the post of Accountant, the minimum marks should have been provided in optional subjects and, not in compulsory subjects. Therefore, there is no reasonable nexus behind framing of this rule and as such it is arbitrary and violative of Arts. 14 & 16 of the Constitution.

5. Shri Sharma also submitted that vide notification dated 5th July, 2011, a relaxation was granted in minimum qualifying marks for the SC and ST candidates. However, in the present matter the amended rule has not been applied though result was declared subsequent to amendment. He, therefore, submitted that action of the respondents in not applying the amended rule vide Notification dated 5th July, 2011 relating to relaxation is illegal and bad in law. Shri Sharma also submitted that petitioners obtained very good marks in optional subjects but they could not be awarded minimum marks in the compulsory subjects and they were not granted the benefit of relaxation of 5% in compulsory subjects in view of the amendment made vide Notification dated 5th July, 2011. Therefore, they could not be selected. Some of the petitioners filed writ petitions before Single Bench, which were dismissed. One of the ground for dismissal of the writ petition by Single Bench was that constitutional validity of Rule 22 has not been challenged. Therefore, the other petitioners have preferred writ petitions challenging the constitutional validity of Rule 22 of the Rules of 1963. He, therefore, submitted that Rule 22 be declared as ultra vires to the provisions of the Constitution and respondents be directed to apply the relaxation rule, which has come into force vide notification dated 5th July, 2011 in the present selection and thereafter to revise the merit list and to appoint petitioners in case their names come in the merit list.

6. Counsel for the respondents supported the impugned order of Single Bench

and also submitted that Rule 22 is in existence since 1963 and a period of about 50 years has passed. All selections after 1963 have been made in accordance with Rules of 1963. Therefore, the settled position of 50 years should not be unsettled. He further submitted that Rule 22 is in accordance with the provisions of Constitution and there is no arbitrariness or discrimination in it. He also submitted that the advertisement was issued in the year 2008 in respect of the posts relating to the period prior to 10.10.2002. The written examination took place on 25th June, 2011. Therefore, a decision was taken not to apply the relaxation rule dated 5.7.2011 to the present selection vide advertisement of 2008, as all those vacancies were prior to the year 2002. He also submitted that all the petitioners appeared in the written examination and since they could not clear their written examination, therefore, cannot be allowed to challenge the constitutional validity of Rule 22 or the selection process of the posts of Accountants in pursuance of advertisement of 2008 now.

7. We have considered the submissions of learned counsel for the parties.

8. Rule 22 of the Rules of 1963 is under challenge. Therefore, it will be appropriate to reproduce the same. Thus,

22. Qualifying marks at the Examination.--Candidates who have obtained minimum of 35% marks in each of the compulsory subjects and minimum of 40% marks in the aggregate in the competitive examination shall be considered to have obtained qualifying marks at the examination. The Commission may in its discretion award grace marks upto one in each of the compulsory papers and upto three in the aggregate:

Provided that grace marks awarded by the Commission shall not be added in the total marks for merit and shall be for the purpose of qualifying a person for recommendation by the Commission for appointment.

9. There is no dispute between the parties that the above Rule 22 is in existence since 1963. All selections after 1963 have been made in accordance with this Rule 22. Therefore, settled position for last 50 years cannot be unsettled now. Even otherwise, we find that the respondents were entitled to frame Rule providing minimum marks in compulsory subjects and minimum aggregate marks in competitive examination. The Commission has also been empowered, in its discretion, to award grace marks upto one in each paper of the compulsory papers and upto three in aggregate. It is for the rule making authority to provide or not to provide minimum marks in compulsory subjects or optional subject. If no minimum marks have been provided in optional subjects, the rule cannot be said to be arbitrary. We do not find any illegality or arbitrariness in providing the minimum marks for compulsory subjects and minimum aggregate marks in competitive examination. The rule is in force for last 50 years. All competitive examinations under these rules have taken place in last 50 years. The rule was and is applicable on all candidates and not on petitioners alone. Therefore, it cannot be said to be arbitrary or violative of Art. 14 of the Constitution.

10. Apart from above, the petitioners have no right to challenge the Rule, at this stage, after appearing in the examination and having declared failed in the same. The advertisement was issued way back in the year 2008 and no writ petition was filed challenging the constitutional validity of Rule 22 of the Rules of 1963 immediately thereafter. The petitioners, therefore, cannot be allowed to challenge the constitutional validity of Rule 22 on this ground also.

11. So far as amendment made in the Rules of 1963 vide notification dated 5th July, 2011 is concerned, the same cannot be made applicable retrospectively or to the present selection for the reason that all these posts advertised vide notification of 2008 relate to the vacancies prior to the period 10.10.2002. The written examination took place on 25th June, 2011 prior to the issuance of the notification dated 5th July, 2011. The respondents have taken a decision not to apply the said rule to the selection pursuant to the advertisement of 2008 as all these vacancies relate to the period prior to 2002. The advertisement of 2008 relates to back log posts prior to 2002, which could not be filled due to non-availability or non-selection of SC/ST category candidates. The competitive examination held in the years prior to 2002 were conducted as per unamended Rules. If this amended Rule is made applicable in this examination then it will amount to applying the two sets of Rules, for vacancies, relating to one particular year, or advertised vide one advertisement, which is not legal as per law. Further, amended rule was not in force on the date of written examination. In these circumstances, we are of the view that respondents were right in not applying the amended rule of 5th July, 2011 to the recruitment pursuance of the advertisement issued in the year 2008 particularly for the back log vacancies relating to the period prior to 10.10.2002.

12. We have also considered the reasons assigned by the learned Single Judge for dismissal of the writ petition challenging the action of the respondents for not applying the amended rule of 5th July, 2011 on the present selection and on other grounds and we are satisfied that reasons assigned by learned Single Judge for not accepting the contention of the learned counsel for the petitioners are absolutely legal and justified and no interference in the same is called for.

13. In view of above discussion, we do not find any force in any of the submissions of the learned counsel for the petitioners/appellants.

14. The writ petitions as well as intra-Court appeals are devoid of any merit and the same are liable to be dismissed and are, hereby, dismissed. Stay Application No. 9093/2012 and I.A. No. 2144/2012 in SAW No. 913/2012 are also dismissed. Registry is directed to place on record a copy of this judgment in each connected file.