

**(2015) 12 RAJ CK 0014**

**In the Rajasthan High Court**

**Case No :** Civil Writ Petition Nos. 9918, 9390, 10026, 10103, 10123, 10264, 10573, 10575, 10588, 10598, 10599, 11161, 11884, 11941, 12939 and 13003/2015

Raju Singh and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

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**Date of Decision :** 08-12-2015

**Acts Referred:**

Constitution of India, 1950 — Article 14, 309

**Citation :** (2015) 12 RAJ CK 0014

**Hon'ble Judges :** Ajit Singh, Actg. C.J. and Arun Bhansali, J.

**Bench :** Division Bench

**Advocate :** V.R. Choudhary, Hanuman Singh, Himmat Jagga, Hemant Choudhary and S.P. Sharma, T.C. Sharma, Nitin Trivedi, Vikram Rajpurohit and Kailash Jangid, for the Appellant; S.S. Ladreacha, Addl. Advocate General, Vikash Choudhary, P.R. Singh, Addl. Advocate Generals and Dinesh Ojha, for the Respondent

**Final Decision :** Partly Allowed

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## **Judgement**

Ajit Singh, Actg. C.J.

1. This order shall decide the present bunch of writ petitions because they involve the same issue and were heard together.
2. The petitioners have completed their school education and are looking forward to be employed in the State Government Service. But, they do not have the experience of working in the State Government School/State Government Educational Projects. Instead they have the experience of working in State recognized non-government school. Some of them also have crossed the age of 35 years and some have not. The State Government has published an advertisement for filling up large number of posts of Vidhyalay Sahayak. And the petitioners are candidates for these posts.
3. The recruitment of Vidhyalay Sahayak is required to be done in accordance

with the Rajasthan Vidhyalay Sahayak Subordinate Service Rules, 2015 (in short "Rules"). These Rules have been framed by the Governor of Rajasthan in exercise of powers conferred under Article 309 of the Constitution. The nature of work of Vidhyalay Sahayak, as provided in Schedule-II of the Rules relates to Mid-day Meal-Supervision, Monitoring and Record keeping, Child Tracking Survey, Student Dropouts Monitoring, School Building and Campus Sanitation, Supervision, Monitoring of Child Enrolments in schools, Collection of DISE Datas (District Information System for Education) and any other non teaching work assigned by Authority. Vidhyalay Sahayak has, therefore, nothing to do with any teaching work in school.

4. Rule 15 deals with the requirement of age of a candidate and relaxation of upper age limit. The relevant extract of Rule 15 reads as under:--

"15. Age.- A candidate for direct recruitment to a post enumerated in the Schedule-I must have attained the age of 18 years and must not have attained the age of 35 years on the first day of January next following the last date fixed for receipt of applications.

Provided that-

....

(x) the person serving under State Government school/State Government Educational Projects (other than those engaged through placement agency) viz. Lok Jumbish Pariyojana/Sarva Shiksha Abhiyan/District Primary Education Programme/Rajiv Gandhi Pathshala/Shiksha Karmi Board and Madarsa listed under the Madarsa Board shall be deemed to be within age limit, had they been within the age limit when they were initially engaged even though may have crossed the age limit at the time of direct recruitment."

5. Rule 16 provides for academic and technical qualifications and experience. It reads as under:--

"16. Academic and technical qualifications and experience.- A candidate for direct recruitment to the post enumerated in the Schedule-I shall possess:--

- (i) the qualifications and experience given in column 4 of the Schedule-I; and
- (ii) working knowledge of Hindi written Devnagri script and knowledge of Rajasthani culture."

6. Schedule-I appended to the Rules is as follows:--

7. Rule 25 deals with scheme of selection. It is quoted hereinbelow:--

"25. Scheme of Selection.- (1) The Committee shall award marks to the candidates, whose names included in the list prepared under rule 24, on the basis of such weightage as may be specified by the State Government for the marks obtained in qualifying examination mentioned in the Schedule-I and such marks as may be specified by the State Government having regard to experience

of working in State Government School, State Government Educational Projects (other than those engaged through placement agency) viz. Lok Jumbish Pariyojana/Sarva Shiksha Abhiyan/District Primary Education Programme/Rajiv Gandhi Pathshala/Shiksha Karmi Board and Madarsa listed under the Madarsa Board. After awarding marks, the Committee shall arrange the list in order of merit and five times candidates of the total number of vacancies category wise and district wise to be filled in, shall be called for interview.

(emphasis supplied)

Explanation: Wherever percentage of the marks cannot be ascertained due to grade awarded to the candidate in the particular examination, the median of the grade awarded to the candidate in such examination shall be basis for the preparation of merit list.

(2) The interview shall carry such marks as may be determined by the State Government. The Committee shall award marks to each candidate interviewed by it. The marks, so awarded, in interview, shall be added to the marks awarded to the candidate under sub-rule (1) above, for the qualifying examination and working experience. The Committee shall prepare final merit list on the basis of aggregate marks awarded to each candidate."

8. The petitioners have challenged the validity of proviso (x) to Rule 15 on the ground that it is discriminatory and violative of Article 14 of the Constitution. The petitioners submit that denial of age relaxation to them merely because they are/were not engaged in a Government school amounts to violation of Article 14 . The petitioners have also challenged the validity of Rule 25(1) to the extent it provides for awarding of additional marks to the candidates having experience of working in the State Government school, State Government Educational Projects and not to those candidates, having experience in State recognized non-government school. The learned Additional Advocate General, on the other hand, has strongly defended the validity of Rules under challenge.

9. As regards to the validity of proviso (x) to Rule 15, we are of the considered view that it is neither discriminatory nor violative of Article 14 because the person to whom it applies was within the age limit when he was initially engaged and he is now being given an opportunity for appointment to the Government service by direct recruitment for the purpose of giving him regular service. Such relaxation in upper age limit to a person, who was within the age limit at the time of his initial engagement in service, is also in consonance with the law laid down by the Supreme Court in *State of Haryana and others Vs. Piara Singh and others etc. etc.*, . We therefore uphold the validity of proviso (x) to Rule 15.

10. We shall now examine the validity of Rule 25(1) of the Rules in the light of submissions made by the petitioners. There is a distinction between experience and merit. The above quoted Rule 16 provides that a candidate for direct recruitment to the post enumerated in the Schedule-I shall possess the experience given in column-4 of Schedule-I. In column-4 it is provided that for

appointment to the post of Vidhyalay Sahayak, minimum one year experience of working is essential in State Government School/State Recognized non-Government School/State Government Educational Projects (other than those engaged through placement agency) viz. Lok Jumbish Pariyojana/Sarva Shiksha Abhiyan/District Primary Education Programme/Rajiv Gandhi Pathshala/Shiksha Karmi Board and Madarsa listed under the Madarsa Board. Thus, a candidate to be eligible to apply for the post of Vidhyalay Sahayak must have a minimum one year experience of working either in a Government School or in a State recognized non-Government School.

11. Rule 25 quoted above is titled "scheme of selection" and as per scheme the merit of eligible candidate is to be determined by awarding marks in the manner mentioned in the Rule. The Rule provides that Committee shall award marks to the candidates on the basis of such weightage as may be specified by the State Government for the marks obtained in qualifying examination mentioned in Schedule-I. The qualifying examination in Schedule-I is Senior Secondary (10+2) from a recognized Board or its equivalent. The determination of marks on the basis of marks obtained in the qualifying examination is non-discriminatory and not violative of Article 14 of the Constitution. But, the Rule 25 further provides that Committee shall award such additional marks as may be specified by the State Government having regard to the experience of working in State Government School and the merit of the candidates will be finally arranged accordingly by the Committee and the candidates will be called for interview. The Rule in so far as it provides for adding of additional marks to the candidates who have the experience of working in the Government School is discriminatory to those candidates, who have the working experience in the State recognized non-Government School and is violative of Article 14 of the Constitution. The object of the selection under the Rules is to determine the merit of the candidates for direct recruitment and the classification on the basis of the experience in State Government Schools and the State recognized non-Government Schools for giving additional marks has no rational relation to the object of the scheme of selection on the basis of merit. The merit amongst eligible candidates must be determined by performance of the candidates on the basis of common examination or common interview and not by giving additional marks to some of the eligible candidates, while denying such additional marks to other eligible candidates, who for some reason or the other, could not work in the State Government Schools. It is not unknown that in private institution employees are required to work more rigorously and then to say that experience of such candidates will not carry any mark is a grim issue. We, therefore, declare Rule 25(1) ultra vires to the Constitution in so far as it provides awarding of additional marks as may be specified by the State Government only to the candidates, who have working experience in Government School/State Government Educational Projects and not to the candidates having working experience in State recognized non-Government school. In the result, the respondents shall now prepare the merit list in the light of our finding in paragraph 11 of this order.

12. The writ petitions are partly allowed.