

(2003) 07 RAJ CK 0075

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1098 of 1999

Ravi Shankar Purohit and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 29-07-2003

Acts Referred:

Citation : (2004) 2 RLW 896

Hon'ble Judges : Sunil Kumar Garg, J

Bench : Single Bench

Advocate : G.K. Vyas, for the Appellant; Anil Upadhyay, for the Respondent

Judgement

Garg, J.—This writ petition under Article 226 of the Constitution of India has been filed by the petitioners on 30.3.1999 against the respondents with the prayer that by an appropriate writ, order or direction, the respondents be directed to provide appointments to the petitioners on the post of Physical Teacher Gr.III in pursuance of advertisement Annex. 1 dated 11th Sept. 1998 as per their stand in the merit against the existent vacancies before expiry of the date of filling up the vacancies before expiry of the date of filling up the vacancies or in the alternative, the appointments given to the persons through order Annex. 4 dated 21.2.1999 be declared illegal and discriminatory and the same be quashed and set aside.

2. The case of the petitioners as put forward by them in this writ petition is as follows:-

The case of the petitioners is that through advertisement Annex. 1 dated 11.9.1998, the respondents invited applications for recruitment on the post of Physical Teacher Gr.III and since the petitioners were having all requisite qualifications, therefore, they applied for the said post.

According to the petitioners, the respondents had initially advertised only 8 vacancies and in pursuance of the advertisement Annex. 1, a tentative merit list Annex. 2 was prepared and objections were invited from the persons, who were

in the merit list prepared by the Department. Thereafter, after receiving the objections with regard to inclusion of names in the merit list, a final merit list Annex. 3 dated 15.12.1998 was prepared by the respondents and in that merit list Annex. 3, 164 persons were included.

The further case of the petitioners is that though as per advertisement Annex. 1, 8 vacancies were advertised, but since more vacancies were available, therefore, merit list of 164 candidates was prepared through Annex. 3 and as many as 41 candidates were given appointment as Physical Teacher Gr.III through order Annex. 4 dated 21.2.1999.

The further case of the petitioners is that 4 candidates, whose names were not found in the appointment order Annex. 4 dated 21.2.1999, filed a civil suit before the Munsiff Court, Bikaner and by the order of civil court, appointments were given to these four persons, namely, Girdharidan, Devendra Kumar, Ram Kishan and Yugal Narain through Annex. R/1, Annex. R/2, Annex. R/3 and Annex. R/4 respectively.

The further case of the petitioners is that the life of the aforesaid merit list was to expire on 31.3.1999.

The further case of the petitioners is that the recruitment on the post of Physical Teacher Gr.III was conducted under the Rajasthan Educational Subordinate Service Rules, 1971 (hereinafter referred to as "the Rules of 1971").

In this petition, the following submissions were raised by the petitioners:-

(i) That through advertisement Annex. 1 dated 11.9.1998, when 8 vacancies of Physical Teacher Gr.III were advertised and merit list of 164 candidates was prepared through Annex. 3, giving of appointments to only 41 candidates through order Annex. 4 dated 21.2.1999 was against the object of the Act of 1971 and furthermore, when more vacancies were available, the other persons mentioned in the merit list Annex. 3 should have also been given appointments and by not giving appointment to them, their rights have been infringed.

(ii) That four persons, who were given appointments through Annex. R/1. Annex. R/2, Annex. R/3 and Annex. R/4 in pursuance of order of civil court, were less meritorious than the petitioners and their names have been shown much below the petitioners in the merit list and therefore, since appointments were given to them, therefore, a right has accrued in favour of the petitioners to seek appointment.

(iii) That since only 8 vacancies were advertised through advertisement Annex. 1, therefore, giving of appointments to 41 candidates through Annex. 4 dated 21.2.1999 is wholly illegal and thus, all appointments made through order Annex. 4 dated 21.2.1999 should be quashed and set aside.

Hence, this writ petition with the prayers as stated above.

A reply to the writ petition was filed by the respondents and their case is as

follows:-

(i) That the relief that all appointments, which were made through order Annex. 4 dated 21.2.1999, be declared illegal and be quashed and set aside, cannot be granted to the petitioners unless and until the persons, who were given appointments through order Annex. 4 dated 21.2.1999, were made party and since they have not been made party, therefore, such relief cannot be granted to the petitioners.

(ii) That the employer reserves a right to increase or decrease the number of vacancies and no doubt 8 vacancies were earlier advertised, but thereafter, some more vacancies were available and meritorious candidates were available to the respondents, therefore, in these circumstances, if appointments to 46 candidates were given through order Annex. 4, no illegality or irregularity has been committed by the respondents in doing so.

(iii) That so far as the argument that the persons lower in merit than the petitioners had been given appointments is concerned, it has been submitted by the respondents that these appointments were given through Annex. R/1, Annex. R/2, Annex. R/3 and Annex. R/4 as per the orders of the civil court and therefore, no legal right has accrued in favour of the petitioners.

Furthermore, it has been clarified by the respondents that except four persons, who were given appointments through Annex. R/1, Annex. R/2, Annex. R/3 and Annex. R/4 as per orders of civil court, no other persons less meritorious than the petitioners were given appointments.

Hence, the writ petition filed by the petitioners be dismissed.

3. 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.

4. So far as the argument that against the 8 vacancies advertised, 46 persons were given appointments through order Annex. 4 dated 21.2.1999 is concerned, in my considered opinion, this aspect should not be allowed to be challenged in this petition unless and until 46 persons, who were given appointments through order Annex. 4 dated 21.2.1999 were made party and since, they were not made party, therefore, this argument carries no weight and stands rejected.

5. So far as the argument that since many vacancies were available when the appointments to 46 candidates were given through order Annex. 4 dated 21.2.1999 and since the names of the petitioners were found in the merit list, therefore, they should also have been given appointments is concerned, in my considered opinion, this argument cannot be accepted because of the following reasons, especially when the life of the panel had already expired:-

(i) That the Hon'ble Supreme Court in State of U.P. and Ors. v. Harish Chandra and Ors. (1), has observed that candidates seeking appointment after expiry of

period of select list had no right.

(ii) That in *J. Ashok Kumar v. State of A.P. and Ors.* (2), the Hon"ble Supreme Court observed that selection having already been over and the selected candidates having been appointed, no relief could be granted to the rest candidates.

(iii) That it is now well settled by series of decisions of the Hon"ble Supreme Court that the empanelment of the candidate in the select list confers no right on the candidates as appointment on account of being so empanelled.

(iv) That mere recommendations of the Public Service Commission forwarding the list of selected candidates or by issuing the list of selected candidates does not accrue a right to a selected candidate for appointment. It is at the discretion of the State Government to decide the number of vacancies to be filled. Selection, if made, for the vacancies likely to occur does not create any legal claim of the petitioners. Mere inclusion of name in the select list does not confer any right on the candidate for appointment.

Thus, since the life of the merit list had already expired, therefore, the petitioners had no right whatsoever to seek appointment. Mere inclusion of names of the petitioners in the merit list does not confer any right for appointment.

6. So far as the argument that persons less meritorious than the petitioners have been given appointments through Annex. R/1, Annex. R/2, Annex. R/3 and Annex. R/4 is concerned, the reply of the respondents is very much clear that appointments to the persons through Annex. R/1, Annex. R/2, Annex. R/3 and Annex. R/4 were given as per the orders of the civil court and when this being the position, no legal right has accrued in favour of the petitioners and thus, this argument stands rejected.

7. During the course of arguments, the learned counsel for the petitioners had tried to develop a case that apart from those persons who were given appointments through Annex. R/1 to Annex. R/4, some other persons less meritorious than the petitioners have been given appointments. In my considered opinion, this argument cannot be allowed to be raised because of the simple reasons that this point has not been raised by the petitioner in the petition and apart from this, there is a categorical reply of the respondents that except four persons, who were given appointments through Annex. R/1 to Annex. R/4, no other person less meritorious than the petitioners was given appointment. If any person less meritorious than the petitioner was given appointment except those four persons, the petitioners could have taken this plea by filing rejoinder and since no rejoinder was filed, therefore, the case of the petitioners that some other persons less meritorious than the petitioners were given appointment, cannot be accepted.

8. For the reasons stated above, there is no merit in this writ petition and the

same deserves to be dismissed.

Accordingly, this writ petition filed by the petitioners is dismissed. No order as to costs.