
(2015) 03 RAJ CK 0064
In the Rajasthan High Court
Case No : Civil Writ Petition No. 6756/2006

Satish Kumar

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 26-03-2015

Acts Referred:

Citation : (2015) 03 RAJ CK 0064

Hon'ble Judges : Sunil Ambwani, C.J.;Ajit Singh, J.

Bench : Division Bench

Advocate : Arun Sharma, for the Appellant; Dheeraj Singhal on behalf of Rajendra Prasad, A.A.G, Advocates for the Respondent

Final Decision : Allowed

Judgement

1. This Writ Petition is pending since 2006, challenging the orders, by which the petitioner's empanelment for promotion as Head Constable, was directed to be cancelled, and his name was removed from the panel on the ground that he sired the third child after 01.06.2002.

2. A request has been made, on behalf of the State/respondents, to adjourn the matter. Since the matter is pending since 2006, the request for adjournment made by the respondents, is rejected, and the matter was heard.

3. The petitioner was appointed as Constable in the Rajasthan Police on 30.09.1989. He was selected for promotion to the post of Head Constable vide order dated 22.12.2005, issued by the Superintendent of Police, Baran. His name was empanelled at serial No. 13. The petitioner joined and was posted at Seeswali, vide order dated 09.01.2006. By the impugned order dated 18/20.03.2006 passed by Inspector General of Police, Kota Range, Kota, the petitioner's name was removed from select list, and he was directed to be demoted as Constable, on the ground that a third child was born to him after 01.06.2002, on 05.04.2005. The order was passed in pursuance to the directions issued by the Director General of Police on 18.11.2005, in pursuance to Rule 26

of the Rajasthan Police Subordinate Service Rules, 1989, which provides that if a third child is sired by a public servant after 01.06.2002, he is not entitled to promotion, for a period of five years.

4. It is submitted by learned counsel appearing for the petitioner that when the petitioner had applied for promotion, he had clearly mentioned that twins were born to him on 26.04.1998, and that, one daughter was born to him on 05.04.2005. The twins were born with 100% disability, as both were deaf and dumb. A certificate was issued by the competent authority to them, certifying the disability suffered by them.

5. In the reply given by the respondents, it is not denied that the two children, born to the petitioner on 26.04.1998, were twins, and that, both were disabled.

6. It is submitted by learned counsel appearing for the petitioner that the statutory Service Rules applicable to the civil servants in the State of Rajasthan, were amended by notification dated 24.02.2011, notifying the Rajasthan Various Service (Amendment) Rules, 2011, by which the existing last proviso to rule, as mentioned in column No. 4 against each of the Service Rules, as mentioned in column No. 2 of the Schedule, were amended, to read as follows:-

"Provided also that while counting the total number of children of a candidate, the child born from earlier delivery and having disability shall not be counted."

7. Rule, which prohibited appointment and promotion for five years, as it was provided for the first time, by the Rajasthan Various Service (Amendment) Rules, 2001, notified on 20.06.2001, reads as follows:-

"3. Amendment. - After the existing sub-rule (1) of rules as mentioned in column No. 4 against each of the service rules as mentioned in column No. 2 of the schedule appended hereto the following new sub-rule shall be added, namely:-

"1(A) No person shall be consider for promotion for 5 recruitment years from the date on which his promotion become due, if he/she has more than two children on or after 1st June, 2002:

Provided that the person having more than two children shall not be deemed to be disqualified for promotion so long as the number of children he/she has on 1st June, 2002, does not increase:

Provided further that where a Government Servant has only one child from the earlier delivery but more than one child are born out of a single subsequent delivery, the children so born shall be deemed to be one entity while counting the total number of children."

8. Learned counsel appearing for the petitioner submits that the second proviso to the Rules, as amended in the year 2001, was applicable to the twins born out of a single subsequent delivery, and thus, the Rules were not applicable to him, but that, the amendment notified on 24.02.2011, as the Rajasthan Various Service (Amendment) Rules, 2011, which amended Rule 26(2) of the Rajasthan

Police Subordinate Service Rules, 1989, is retrospective in nature, inasmuch as the Rule provides for counting the total number of children of a candidate, excludes the child born from earlier delivery, and having disability. The Rules takes into account an event, which is antecedent to the promulgation of the Rules, and thus, by the nature of the amendment, which is beneficial in nature, and takes into account, the birth of a child, not to be counted for the purposes of regulating the number of children under the Rules, is retrospective in nature.

9. It is submitted that the twins were born to the petitioner on 26.04.1998, prior to the enforcement of the amendment in the Rules on 20.06.2001. The amendment made in the Rules in the year 2011, is only explanatory, and cannot be used for the purposes of counting the third child after 01.06.2002. He has relied upon the judgment of learned Single Judge of this Court in Dr. Poonam Parakh Vs. State of Rajasthan and Others--> , in which it was held that the amendment was curative in nature, and thus, would apply to an event, which happened prior to the amendment in the Rules. Paragraphs 19 and 20 of the judgment, which give the reasoning, on interpretation of the Rules, in favour of the petitioner in Dr. Poonam Parakh (supra), are quoted as below:-

"19. The provisions to render the persons having more than two children ineligible for appointment and also for promotion for a term of five years were inserted in the Rules of 1962 vide notification dated 4.10.2001 and 23.7.2003 respectively. The object for such insertion was to streamline the service Rules with the national policy of family planning and welfare. The provisions aforesaid are certainly having a rational and are based on intelligible criteria, but their side effects for the persons having indignant and disabled children were not visualised by the law framer and those were brought on surface by the petitioners through these writ petitions. The rule framing authority quite objectively considered the issue and to cure the harshness of the rule chose to introduce a proviso to the substantive provision vide notification dated 24.2.2011, in the terms that while counting the total number of children, the child born from earlier delivery and having disability shall not be counted. The amendments made in the Rules of 1962 under the notifications dated 23.7.2003 and 4.10.2001, as such, the same is remedial and curative. Need not to say that an ailment of harshness and arbitrariness generating from a statute is required to be curbed from root. In the case of Allied Motors (Supra) it was held by the Apex Court that a proviso inserted as a remedy for unintended consequences and to make a provision workable, a proviso which supplies an obvious omission in the original statute and provides a reasonable interpretation to the statute, requires to be treated as retrospective in operation so that a reasonable interpretation can be given to the statute as a whole. In the case in hand the curative measure taken by introducing the proviso, if given effect only from the date appointed that is 24.2.2011, then that shall be having no curing effect for the period commencing from the date of adding the substantive provision in the Rules of 1962 to the date of the notification of the proviso. True it is, as per the notification dated 24.2.2011 the amendment rules shall come into effect with immediate effect,

meaning thereby, w.e.f. 24.2.2011, however, this statute is to be interpreted in a qualified and intelligible sense. The proviso introduced is curative in nature being inserted as a remedy for unintended consequences of the substantive provisions and also to meet an omission in the original statute, thus, deserve to be interpreted reasonably and that can be done by giving effect to it from the date of the inclusion of substantive provisions in the Rules of 1962, making the persons ineligible for appointment and for consideration for promotion for five years.

20. Accordingly, these petitions for writ are disposed by holding that the amendment made in various service Rules, including the Rajasthan Medical Service (Collegiate Branch) Rules, 1962 vide Rule 3 of the Rajasthan Various Service (Amendments) Rules, 2011 shall be treated as came into force w.e.f. 20.6.2001. The petitioners shall be entitled for all consequential benefits No order as to costs."

10. In the Principles of Statutory Interpretation, 13th Edition 2012, a treatise on the subject, by Justice G.P. Singh, the effect of the Statutes prescribing Posterior Disqualification on Past Conduct in, "Statutes conferring prospective benefit on antecedent facts", has been discussed in Chapter-6 at page 561. Learned Author has, after referring to the decisions of the Indian Courts as well as Courts in England, has opined that just as the fact that a prospective disqualification under a statute results from anterior misconduct, is not always taken as sufficient to make the statute retrospective, so also the fact that a prospective benefit under a statutory provision is in certain cases to be measured by or depends on antecedent facts does not necessarily make the provision retrospective. He has then discussed the principle with the help of decided cases.

11. In Lane Vs. Lane (1896) P 133, Section 4 of the Summary Jurisdiction (Married Women) Act, 1895, which entitled a married woman, "whose husband shall have been guilty of persistent cruelty to her" to apply for an order under the Act, was held to apply even to acts of cruelty committed before the passing of the Act.

12. Learned Author has opined, at page 565, that remedial statutes, though favoured by courts, are not for that reason retrospective to affect vested rights, but since such statutes are to be construed liberally, the inhibition of the rule against retrospective construction may be applied with less insistence. Reference has been made to Rattan Lal Vs. State of Punjab, , The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others, and Bharat Singh Vs. Management of New Delhi Tuberculosis center, New Delhi and Others, .

13. At page 567, learned Author opined, that statutes providing new remedies for enforcement of existing rights will apply to future as well as past causes of action, the reason being that such statutes, since they do not affect existing rights, are classified as procedural. A new law providing a new remedy to the

Government to recover arrears of rent, was held to apply to all claims of that type, whether arising before or after enforcement of the new law. A new law providing for alternative adjudication proceeding for punishment of certain offences will apply for adjudication of the offences committed prior to the coming into force of the law.

14. In the present case, the State Government decides that the restriction on recruitment, and the qualified restriction on promotions should not apply where the child born from the earlier delivery, has disability. By the very nature of things, the amendment was made to apply to an event, which had taken place prior to the amendment of the Rules i.e. event was antecedent in nature. The object of the amendment of the Rules, was to remove the rigour of the Rules, for those persons, whose child, born from earlier delivery, was disabled.

15. In our view that taking into consideration the restriction, which was put by the enactment of the Rules, amending Various Service Rules in 2001, was to discourage the public servants, having more than two children, to have the third child, considering the rising population, and the family welfare programmes, initiated by the State Government. The Rule was however, not applicable, where in a delivery, subsequent from the date of enforcement of the Rules of restriction i.e. 01.06.2002, the twins are born. The State Government, in the same spirit, of the biological event, on which a person has no control when twins are born out of a single delivery, considered the hardships to a family, amended the Rules on 24.02.2011, by which the restriction was partly relaxed, as a social welfare measure, in a case where the child born from earlier delivery, was disabled, was not to be counted, in applying the rule. The disabled child was not to be counted, if it was born from the earlier delivery, as a restriction, in case third child is born, for direct recruitment and promotion.

16. We further find that by necessary intendment, the amendment was applicable to the facts, which were antecedent to the amendment of the Rules, and thus, even if the Rules provide to be enforced with immediate effect, the method of counting number of children would apply to all those persons, who had children born from the earlier delivery, suffering from disability, whether they were born before and after 01.06.2002.

17. We entire agree with the conclusion drawn by learned Single Judge in Dr. Poonam Parakh (supra), with the further reasonings, supplied by us in this opinion.

18. For the aforesaid reasons, the Writ Petition is allowed. The order dated 18/20.3.2006 of the Inspector General of Police, Kota Range, Kota, in pursuance to the directions issued by the Director General of Police dated 18.11.2005 is set aside. The petitioner was empaneled for promotion as Head Constable in the year 2005, and was promoted and posted as Head Constable on 09.01.2006. He will be treated to have been promoted with effect from the date, when he was given promotion as Head Constable, and was posted i.e. 09.01.2006, and will be given

back-wages and consequential seniority with effect from 09.01.2006. We are informed that in the meantime, as the restriction of five years was over, the petitioner has been promoted in the year 2015. He will therefore, not be required to be promoted all over again, but that, his seniority will be counted with effect from 09.01.2006, and the entire differential amount, as arrears, will be paid to him within three months.