

(2015) 03 RAJ CK 0165

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 1336/2011 with Stay Application No. 11778/2011 in Civil Writ Petition No. 9785/2009 and Civil Special Appeal (Writ) No. 549/2011 with Stay Application No. 5453/2011 in Civil Writ Petition No. 9759/2009

Satya Narain and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 20-03-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 15(4), 16, 16(4)

Citation : (2015) 03 RAJ CK 0165

Hon'ble Judges : Prakash Gupta, J.; Mohammad Rafiq, J.

Bench : Division Bench

Advocate : Tanveer Ahmed, Counsel, for the Appellant; D.V. Tholia, Additional Advocate General, Varun Choudhary, Sumit Tetarwal and S.N. Meena, Counsels, Advocates for the Respondent

Final Decision : Dismissed

Judgement

1. These two appeals are directed against common judgment/order dated 01.03.2011 of learned Single Judge by which writ petitions filed by petitioners-appellants, by which their writ petitions have been dismissed.

2. Petitioners-appellants in Appeal No. 1336/2011 were selected for undergoing promotion cadre post on the recommendation of the Board. They were at the relevant time working on the post of Constable in 2nd Battalion, RAC, Kota, Rajasthan. They were, on recommendation of the Board, selected for undergoing promotion cadre course. Similarly, petitioners-appellants in Appeal No. 549/2011 were working on the post of Constable in the 5th Battalion, RAC, Jaipur. They were also recommended for promotion cadre course on the recommendation of the Board. Certain candidates belonging to Scheduled Castes and Scheduled Tribes categories, who were senior to the petitioners-appellants, made a complaint to the Director General of Police, Rajasthan. On examination, it was

found that selection of the petitioners-appellants was not in conformity with the instructions contained in the Circular of the Government dated 20.10.2000. The Director General of Police, in exercise of the powers conferred on him under Rule 33 of the Rajasthan Subordinate Police Service Rules, 1989, by order dated 26.05.2009 in the case of the petitioners-appellants in Appeal No. 1336/2011 and by order dated 18.06.2009 in the case of the petitioners-appellants in Appeal No. 549/2011, cancelled the selection of the petitioners-appellants and constituted new Board consisting of Inspector General of Police RAC-I as Chairman and Commandant 2nd Battalion, RAC, Jaipur, and Additional Superintendent of Police, CID, CB, Legal Cell, as its Members, to select the candidates for undergoing promotional cadre course. The Board submitted its proceedings to the Director General of Police, recommending selection of fresh candidates. The Director General, by order dated 27.07.2009, ordered that the entire promotional cadre course undertaken by the petitioners-appellants would be treated as refresher course and entry to this effect may be made in their service book. Aggrieved by both the orders, the petitioners-appellants filed writ petitions, which have been dismissed by learned Single Judge by aforesaid common judgment/order. Hence these special appeals.

3. Shri Tanveer Ahmed, learned counsel for petitioners-appellants, has argued that the petitioners-appellants, after participating in the written examination for promotion on the post of Head Constable, were duly selected by the Board for promotional cadre course and thereafter by order of the respondents, they were sent to attend the said promotional cadre course, which commenced from 16.02.2009. The petitioners-appellants completed the said course on 24.02.2009 and were relieved to join their respective battalion by order passed on that date. The respondents have wrongly cancelled their selection on the basis of Circular dated 20.10.2000 but the said Circular has already been amended by another Circular dated 09.04.2008. The petitioners-appellants did not make any misrepresentation or concealment at the time of their selection to undergo promotional cadre course. The U.O. Note prepared by the Government, has been reproduced in Para 12 of the memo of appeal. Referring to that U.O. Note, learned counsel for the petitioners-appellants submitted that therein it has been noted that the petitioners-appellants, on being duly selected, have successfully completed the promotional cadre course and they were at fault. If their seniors were not selected, they may be accommodated against six posts which remained vacant against the vacancies of the year 2008-09 and remaining three may be kept in reserve list for being promoted against the post of future vacancies. This fact was specifically argued before learned Single Judge.

4. Learned counsel for petitioners-appellants, argued that learned Single Judge instead of giving any categorical instruction to the respondents, has merely left it open for the respondents to consider their candidature in terms of the scheme of the Rules of 1989. Since no specific mandamus was issued to the respondents, the case of the petitioners-appellants has not been considered and they were not promoted against the vacancies of the subsequent year.

5. Shri D.V. Tholia, learned Additional Advocate General appearing for the respondents State, submitted that the aforesaid U.O. Note does not in any manner help the petitioners-appellants because the promotions, as per practice of the respondents, are made within the battalion itself and vacancies, of which reference has been made, pertains to newly created Hadi Ram Mahila Battalion. Vacancies of that battalion can be offered for promotion to female constables of only that battalion and not to the constables of other battalions. No clear foundation was laid by the petitioners-appellants before learned Single Judge in this behalf.

6. Learned Additional Advocate General submitted that the private respondents had a superior and better right as they were senior to the petitioners-appellants. There was no reason why they be ignored only for the reason that they belong to reserved categories of Scheduled Castes and Scheduled Tribes.

7. Learned Additional Advocate General submitted that the petitioners-appellants despite being called to attend the promotional cadre course in subsequent years, opted not to attend the same and therefore their case for promotion cannot be considered on the basis of promotion cadre course, to which they were allegedly selected. Learned Additional Advocate General in support of the arguments, has relied on judgment of this court in Sohan Lal Verma and Another Vs. Board of Revenue Rajasthan, Ajmer and Others, , and argued that the criteria for promotion being seniority-cum-merit, the private respondents, even though they belong to reserved category, were entitled to consideration for promotion on the basis of their seniority even against the posts meant for unreserved category.

8. Learned counsel for the private respondents also opposed the appeals and supported the judgment of the learned Single Judge.

9. On consideration of rival submissions and perusing the impugned judgment/order, we do not find any infirmity or illegality in the impugned judgment passed by learned Single Judge as has been rightly argued that a reserved category candidate, whether belonging to Scheduled Castes or Scheduled Tribes, if he is senior to general category candidate, cannot be superseded for promotion against the unreserved posts only because it happened to be the unreserved post, particularly when the criteria is seniority-cum-merit. This court in Sohan Lal Verma, supra, has elaborately considered this aspect of the matter and, on consideration of various judgments of this court, analyzed the law on this aspect of the matter in para 16 to 18 of the judgment, which, for ready reference, are reproduced here as under:-

"16. Critical analysis of the law referred so discussed would show the underlying philosophy of reservation made in favour of SC, ST and OBC with reference to Article 15(4) and 16(4) of the Constitution of India. These provisions confer certain benefits on the persons belonging to these categories which are not in substitution of any other right, which may be otherwise available to them as citizens of country. Benefit of reservation does not substitute or supplant any

other right of a person belonging to SC, ST and OBC. Such benefit would be in addition to an already existing right including the fundamental right of equality. If any scheme of reservation or the procedure evolved with a view to giving effect to such scheme, is made to depend upon the condition of truncating the fundamental or any other right of an individual, such scheme of reservation would be contrary to the constitutional provisions and law, to the extent it curtails fundamental right or any other right of a person belonging to such category would be liable to be declared illegal. Reserving certain posts for different groups of the community in the first instance means that these posts are meant for members belonging to such specified group. This is an additional benefit conferred on them. On account of such additional benefit however they are not precluded from claiming ordinary benefits otherwise available to them. Members belonging to SC, ST and OBC for whom reservation of posts is made are not reserved for these posts although its converse is true. They cannot be asked to occupy only reserved posts. They would be free to occupy any posts including unreserved posts. However, the requirement of law is that while claiming appointment against unreserved posts, they should prove their merit like any other citizen, who is not entitled to the benefit of reservation. No provision of law whether substantive or procedural, can be so interpreted as to run contrary to this basic tenet of the Constitution of India.

17. What are often described as general posts, to borrow the expression used by their Lordships in *Indra Sawhney*, were in fact "in the open competition filed." The Supreme Court referred them to "non-reserved posts". They can also be called as unreserved posts.

18. Examined in the light of the settled proposition of law as discussed above, it must be held that the respondents have misapplied the law of reservation. Petitioners had the right to be considered for promotion against unreserved posts. They cannot confine the right of the candidates of Scheduled Casts category of consideration for promotion on the basis of seniority-cum-merit only against the posts reserved for Scheduled Caste. Right to consideration for promotion cannot be denied to petitioners only because the vacancies meant for their category stood exhausted or that no vacancy in their category (SC) was available. Such a procedure negates their fundamental right to consideration as envisaged in Articles 14 and 16 of the Constitution of India."

10. Coming now to the alternative submission that the case of the petitioners-appellants should be considered against unfilled posts of unreserved category of the year 2008-09, we would observe that such consideration of the petitioners-appellants can be confined only if there remain unfilled posts of Head Constable in their own battalion and not in any other battalion. As regards subsequent years, if the petitioners-appellants have deliberately taken the risk of not appearing in the promotion cadre course, this court cannot direct that they should be deemed to have cleared the promotion cadre course for the vacancies of subsequent years because they were wrongly selected for such course in the

year 2008-09.

11. We therefore do not find any infirmity or illegality in the judgment passed by learned Single Judge and, therefore, are not inclined to interfere with the same, except observing that in terms of the observation made by learned Single Judge in the operative part of the judgment that, "in regard to future vacancies if arise or having remained unfilled for the year 2008-09, it is always open for the respondents to consider candidature of the petitioners for promotion, but that would obviously be in terms of the Scheme of Rules, 1989.", if any vacancies have remained unfilled in the quota of year 2008-09 in the respective battalion of the petitioners-appellants, the respondents may consider their candidature for promotion on the basis of promotion cadre course completed by them in that year, we accordingly reiterate that direction of the learned Single Judge.

12. The appeals are accordingly dismissed. Stay applications are also dismissed.