

(1990) 10 RAJ CK 0001

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 263 and 264 of 1990

Secretary, Raj. Public Service Commission

APPELLANT

Vs

Om Dutt Sharma and Another

RESPONDENT

Date of Decision : 10-10-1990

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 21, 226

Citation : (1990) WLN 278

Hon'ble Judges : G.S. Singhvi, J;D.L. Mehta, J

Bench : Division Bench

Judgement

G.S. Singhvi, J.—These special appeals have been filed against the order dated August 1, 1990 of the learned Single Judge, by which 58 writ petitions have been decided.

2. Learned Single Judge has given a direction that against 140 seats of Lower Division Clerks, which remained unfilled in Bikaner District shall be filled by considering the candidature of the petitioners who have given their second choice for option in Bikaner District. It has also been observed that they shall be given appropriate seniority at appropriate place in accordance with their merit.

3. The respondents has filed writ petitions before the High Court Under Article 226 of the Constitution of India challenging the selection made by the Rajasthan Public Service Commission (hereinafter to be referred as "the Commission") for appointment to the post of L.D.C. on the basis of combind competetive examination held by the Commission in pursuance to the Advertisement dated July 23, 1986. In the petitions, it was alleged that the Commission had invited applications for 888 posts of L.D.Cs. to be filled in accordance with the Rajasthan Subordinate Offices Ministerial Staff Rules, 1957. In addition to this, 67 posts of L.D.Cs. for Rajasthan Public Service Commission were also advertised. District wise distribution of seats were given in the Information Pamphlet, which was furnished to the candidates together with the printed copy of Syllabus, along with the application from. According to this pamphlet the candidates applying for

recruitment to the post of L.D.C. in subordinate offices had to mention the name of one district in which he wanted appointment. The Commission conducted examination sometimes in the year 1987 and also in the year 1988. The result of the examination was announced on 17.4.1989. The names of selected candidates were forwarded by the Commission in July 1989 to the State Government for the purpose of making appointments. It was stated in the petitions that a large number of appointments had been made in favour of the candidates who have secured much lower percentage of marks than the petitioners in the writ petitions. This had happened because option was given to the candidates to choose only one district for the purpose of appointment. As per the statements contained in the petitions, number of posts were increased in different districts. In case of Bikaner district, initially 6 posts were advertised, but subsequently, the number was raised to 408 and 76 candidates who had secured just 30% marks i.e. pass-marks had been given appointments in Bikaner district. The Commission had recommended the names of 1700 candidates. For Bikaner district 268 names against the vacancies of 408 posts were recommended to the Government for subordinate offices. The petitioners submitted that as per the scheme of Rules 19, 20, 21 and 24 of the Rajasthan Subordinate Offices Ministerial Staff Rules, 1957 the candidates were entitled to be given option for more than one district for the purpose of appointment and the Commission had committed a serious error in restricting the choice of the candidates to only one district.

4. The Commission who was respondent No. 2 in the writ petitions, filed a reply. In the reply it was asserted that in all 98537 applications were received in pursuance of the Advertisement dated July 23, 1986. It was also stated that number of posts in different districts had been increased after issuance of advertisement. It was within the competence of the State Government to increase or reduce the number of posts and the Commission was bound to make selection on the basis of final number of posts given by the Government. It has also been made clear in the pamphlet given to the candidates that number of posts can be increased or decreased at any time and it was not necessary to issue any corrigendum. According to the respondents, rule 21 of 1957 Rules had become redundant after the amendment dated 3.2.1976.

5. As already referred hereinabove, the learned Single Judge has allowed 58 writ petitions by the impugned order dated 1-8-1990.

6. The only point raised by the learned Additional Advocate General Shri M.I. Khan, who argued the case on behalf of the appellant, is that the learned Single Judge had committed an error of law in giving directions for consideration of candidature of the petitioners (respondents in appeals) alone. According to Shri Khan, the candidates with higher merit than the respondents were available and, therefore, the learned Single Judge ought to have given direction for inviting options from all remaining candidates and on the basis of a general merit, appointments could be given against the remaining posts. He submitted that the

direction given by the learned Single Judge would amount to infraction of constitutional dictate of equality enshrined in Articles 14 and 16. Shri Khan referred to the recent decision of the Supreme Court in Thaper Institute of Engineering and Technology Patiyala v. Abhinaw Taneja and Ors. AIR 1990 SC 1332 wherein the Supreme Court has reversed the decision of Punjab and Haryana High Court, in which direction was given to admit the petitioners notwithstanding the availability of more meritorious candidates.

7. Shri B.L. Samdaria and Shri S.K. Paul, learned Counsel for the respondents strenuously urged that the direction given by the learned Single Judge was justified. They have urged that if other candidates have not chosen to approach this court by way of writ petitions, they are not entitled to be given relief. The petitioners were vigilant in approaching the High Court and if this Court has given relief to the petitioners only, it can neither be termed as arbitrary nor violative of any constitutional provision. Counsel for the respondents have referred to the Decisions of the Supreme Court in Miss Nilima Sangala v. State of Haryana 1984) 4 SCC 268 and the judgment of this Court in DB Civil Special Appeal No. 33/77 Ramswaroop v. State of Rajasthan and Ors. decided on August 21, 1985.

8. We have considered the rival submissions and have carefully examined the record of the case.

9. Learned Single Judge after interpretation of 1957 Rules concluded that the R.P.S.C. should have asked the candidates to have given choice of two districts departments to which they wanted appointment. Learned Single Judge has also found that in the advertisement itself, it was made clear that number of posts can be increased or decreased and the Government was fully competent to do so. In the event of increase or decrease of posts the Commission was not bound to issue corrigendum. Learned Single Judge observed that looking to the enormous increase in the number of posts from 6 to 408 in Bikaner District, 4 to 65 in Jaipur and 4 to 46 in Ajmer District (total increase from 888 to 1882) warranted that advertisement should have been issued and options for second district should have been taken from the candidates. The failure, of the Commission to do so has resulted in appointment of candidates who have secured just 38% marks in Bikaner district and persons who had secured higher marks have been left out. Learned Single Judge also took notice of the fact that admittedly 140 more posts were still available and after taking note of this fact, the learned Single Judge has given direction, which has been impugned in the appeals.

10. In our view, having found that the Commission had acted arbitrarily in making selection by denying options of atleast 2 districts to the candidates, which has resulted in appointment of candidates securing lower merit as against the candidates having higher merit, the learned Single Judge ought not to have given a direction limiting the right of fresh consideration to the petitioner by giving them choice of two districts. Such a course has resulted in denial of

consideration to the candidates who may be more meritorious than the persons who had approached the court by way of writ petitions. Mere fact that more meritorious candidates could not approach the court or did not chose to come to the court, could hardly be a ground for denial of right of consideration to such candidates on the basis of their merit coupled with the choice of district.

11. In *State of Kerala Vs. Kumari T.P. Roshana and Another*, , the Supreme Court had found that fixation of seats to be allotted to the particular College with reference to the registered students' strength was discriminatory and arbitrary. On this aspect of the matter, the Supreme Court upheld the decision of the High Court of Kerala. However, while giving direction to the additional admit 30 students, the Supreme Court did not confine the relief to those who had moved the Supreme Court or the High Court by way of writ petitions appeals, but directed that it should be made on the basis of merit. It would be appropriate to quote the following observations of the Supreme Court:

The selection of those 30 students will not be confined to those who have moved to this court or the High Court by way of writ proceedings or appeal. The measure is academic excellence, not litigative persistence. It will be thrown open to the first 30, strictly according to merit measured by marks secured.

12. In *Thaper Institute of Engineering and Technology v. Abhinav Taneja (Supra)*, the High Court had allowed the writ petitions of the candidates and directed that the petitioners be given admission to B.E. Courses forthwith. In doing so, the High Court had ignored the affidavits of the respondents that there were more meritorious students than the petitioners who could not secure admission and who were waiting to be admitted to the Institution. The Supreme Court quashed this direction of the High Court and observed that the respondent students could get admission to the appellant institute only if their comparative merits ordained it and not otherwise. They could claim no merit over other meritorious students merely because they had approached the court for securing admission. According to the Supreme Court, the High Court travelled beyond its jurisdiction in giving direction for admission to the students who were less meritorious.

13. In *A.R. Antulay Vs. R.S. Nayak and Another*, , a seven Judges Bench of the Supreme Court by a majority held that the Supreme Court's direction for withdrawal of case against the accused from Special Judge and transfer thereof to the High Court had unintentionally caused denial of rights Under Article 14 of the Constitution. Such a direction was against the statutory provisions and resulted in violation of the procedure prescribed by law and aimed to negation of the rule of law and therefore, also violated Article 21 of the Constitution. Justice Sabyasachi Mukharji (as he then was), Justice G.L.Oza and Justice S. Natrajan gave this opinion. Justice Rangnath Mishra agreed with them on the question of violation of Article 14 but disagreed on the question of violation of article 21. Justice B.C. Ray agreed with the opinion of justice Mukharji, Justice Oza and Justice Natrajan. Justice M.N. Venkatachaliah and Justice S. Ranganathan dissented. Thus in view of the majority opinion, even the Supreme Court cannot

give direction, which would result in violation of the constitutional right of equality guaranteed by Article 14 of the Constitution as well as right to life and liberty guaranteed by Article 21. The Supreme Court held that such a direction would be treated as nullity.

14. In Kumari Nilima Sengal's case (supra) the Supreme Court gave direction in favour of the petitioner alone for appointment and declined to give such direction in favour of others because others had not approached the court and two years' time had elapsed. According to the Supreme Court this would have completely upset subsequent selection, created confusion and multiplicity of all problems. The Court however, observed that in case any other candidate may file petition to the Supreme Court or the High Court, the same would be disposed of in the light of the judgment in Nilima Sangla's case. The peculiar facts of that case show that some other selection had also taken place and it would have caused great injustice if a general direction had been given for the purpose of appointment of those persons who had not approached the court. Long lapse of time was also one of the factor, which was in the mind of the court for giving direction for appointment in favour of the petitioner only. Thus, on facts the case of Kumari Nilima Sangla is distinguishable.

15. In Ram Swaroop's case (Supra) the court had given direction for appointment of the petitioner. There is nothing in that judgment to show as to whether there were more than one person competing for promotion to the post of Kanungo and Inspector, Land Records. The only question involved in that case was as to whether the appellant was entitled to promotion without undergoing training because he had crossed the age limit of 45 years. That case has no similarity with the facts of the present case.

16. In our view, when the candidates with higher merit are available, there can be no justification whatsoever for ignoring their case only on the ground that they had not approached the court by way of writ petitions. Merely because others are more enthusiastic and they can afford to approach the court, the real merit cannot be given a go by. The very basis of the judgment of the learned Single Judge is that more meritorious candidates have been deprived of their appointments because of the error committed by the commission in confining the option of appointment only to one district. If merit is the criteria, it must be judged by taking into consideration the candidature of all persons who have passed by examination conducted by the Commission.

17. In view of the above, discussion, we allow these appeals in part and set aside the order of the learned Single Judge dated August 1, 1990 in so far as it relates to the consideration of candidature of the petitioners alone against the remaining posts of L.D. Cs. Instead, we direct that candidature of all candidates who have passed the combined competitive examination for L.D.C. held by the Commission in the year 1987/1988 be considered on the basis of their respective merits. We direct the Commissions to issue a general notice to be published in the news papers having wide circulation, and call upon all the remaining

candidates who have been successful at the examination to give their options for second District and then prepare a select list on the basis of merit and choice of districts and forward the same to the Government for the purpose of making appointments. The Government shall make appointments from this list against the posts of L.D.Cs., which were available with it, including those which had become available within six months from the date the original list was forwarded by the Commission to the Government in the Department in the Department of Personnel. This would of course include 140, posts which have been referred to in the judgment of the learned Single Judge. This entire exercise must be completed by the Commission and the Government within a period of three months from the date of the this judgment.

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