

**(2015) 07 RAJ CK 0092**

**In the Rajasthan High Court**

**Case No :** Civil Writ Petition Nos. 8020/2014, 9480/2014 and 9461 of 2014

Shashi Choudhary and Others

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

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**Date of Decision :** 22-07-2015

**Acts Referred:**

Constitution of India, 1950 — Article 14, 226  
Contract Act, 1872 — Section 23

**Citation :** (2015) 07 RAJ CK 0092

**Hon'ble Judges :** Alok Sharma, J

**Bench :** Single Bench

**Advocate :** R.K. Mathur, Senior Advocate and Aditya Mathur, for the Appellant;  
Rajendra Prasad, A.A.G and Ashish Sharma, Advocates for the Respondent

**Final Decision :** Disposed off

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## **Judgement**

Alok Sharma, J—These writ petitions involve an identical issue and therefore are being decided by a common judgment. Writ Petition No. 8020/2014 is taken as the lead case for reference to relevant facts largely common and grounds agitated.

2. An advertisement was published by the respondent Bureau of Investment Promotion (hereinafter "the BIP") in Rajasthan Patrika, a vernacular newspaper on 2-8-2011 inviting applications for appointment to the post of Secretary Grade-III. A condition in the advertisement for appointment to the post of Secretary Grade-III, relevant to these writ petitions, was that the applicants were to have obtained inter alia, a certificate of English Shorthand and typing with speed of 140/40 words per minute from a recognised University or institute. 22 applications were received, of which six applications were shortlisted, including the three petitioners before this court. Following an interview on 24-8-2011, the petitioners were appointed, on an apparent temporary relaxation of eligibility condition as neither of them had a certificate of English Shorthand and typing with speed of 140/40 words per minute from a recognised University or institute

as warranted by the advertisement. This appears to have been done as BIP was in grave need of Secretaries Grade-III with the ability to take dictation. However condition 2(b) of their letters of appointment dated 13-9-2011 specifically provided that confirmation of the petitioners appointed on probation for two years was subject to their achieving the "prescribed standard" for the post in issue.

3. It appears that during the period of probation the petitioners were given opportunity of achieving the prescribed standard of English Shorthand and typing with speed of 140/40 words per minute but failed to do so. However on the expiry of two years probation, the petitioners sought regularisation to the post of Secretary Grade-III. The respondent BIP however took the view that the petitioners having failed to satisfy condition 2(b) of the letter of appointment dated 13-9-2011 and not having achieved the "prescribed standard", they could not be confirmed on the post of Secretary Grade-III. Further opportunities were allowed by the respondent BIP to petitioners to achieve the "prescribed standard". Not only were the petitioners tested in the office of respondent BIP, but also at the Mahila ITI Jaipur on 19-7-2014. Yet they failed. In these circumstances the respondent BIP terminated the services of two petitioners (in SBCWP No. 9480/2014 and SBCWP No. 9461/2014) vide order dated 8-9-2014. The petitioner Shashi Chaudhary however preferred the writ petition prior to her termination. By various interim orders this court directed the petitioners may not be discontinued from service. They are so continuing as of today.

4. Mr. R.K. Mathur, Senior Advocate appearing with Mr. Aditya Mathur for the petitioners submits that the petitioners were appointed on the post of Secretary Grade-III after going through a regular process of selection despite lacking in the requisite certificate of English Shorthand and typing with speed of 140/40 words per minute from a recognised University or institute. That condition of eligibility thus stood waived. It has been further submitted that since their appointment, the performance of the petitioners has been very good and there has been no dissatisfaction expressed by the respondent BIP with regard to their working. Senior Counsel has submitted that although the petitioners have indeed failed to achieve the requisite "prescribed standard"--of speed--in English Shorthand and typing @ 140/40 words per minute, it now stands to be of little consequence, more so as in the entire duration of their service with the respondent BIP the petitioners have never required to sit for a long dictation. Senior counsel submitted that now for BIP to resurrect a condition of the advertisement earlier waived and in any case irrelevant to the petitioners' efficiency to the post held by them following their selection after due process, is wholly arbitrary, unjust and unfair.

5. Mr. Rajendra Prasad, learned Additional Advocate General appearing with Mr. Ashish Sharma on behalf of respondent BIP, submits that the jurisdiction of this court in these writ petitions can only be to determine whether the petitioners fulfilled the condition of their appointment on 13-9-2011 as Secretary Grade-III,

whereby under clause 2(b) they were required to achieve the "prescribed standard" which contextually related to English Shorthand and typing speed at 140/40 words per minute within the period of their probation. It has been submitted that the eligibility condition of English Shorthand/typing speed at the time of recruitment for appointment to the post in issue was indeed relaxed but only temporarily not in perpetuity. The condition was however relaxed for reason of necessity as BIP was at the relevant time struggling for Secretaries for its officers. But the necessity of BIP at the relevant time cannot be now invoked by the petitioners as a waiver or having conferred on them any right to continue on the posts and claim regularisation despite failing to fulfill condition 2(b) of their letters of appointment and achieve "prescribed standard". That would not only entail a retrospective alteration of conditions of eligibility as advertised and also a modification of the conditions of the letters of appointment dated 13-9-2011. This cannot be done as it would have entailed breach of the equality clause, i.e. Article 14 of the Constitution of India. It has been submitted that this court in the exercise of powers under Article 226 of the Constitution of India cannot negate the conditions of an appointment which is a matter between an employer and an employee. It has been submitted that albeit, the respondent BIP admits that the petitioners' work performance has been largely satisfactory since their appointment, yet the condition of appointment with regard to petitioners' achieving the requisite speed of English Shorthand and typing @ 140/40 words per minute cannot be waived altogether. The respondent BIP is a State instrumentality and has to adhere to the eligibility terms for the appointment as advertised, even if belatedly.

6. Heard. Considered.

7. It is indeed true that this court in the exercise of its powers under Article 226 of the Constitution of India cannot negate any condition on which appointments are made by the state or its instrumentality unless such a condition is in the face of public policy and covered under Section 23 of the Contract Act, 1872. The letter of appointment dated 13-9-2011 issued by the respondent BIP categorically included condition 2(b), which required the petitioners to achieve the "prescribed standard" within the period of probation. The "prescribed standard" referred to in the letters of appointment contextually, with reference to the conditions of eligibility prescribed, necessarily has to relate to the requirement of speed of English Shorthand and typing @ 140/40 words per minute as advertised. It is not in dispute that other conditions of eligibility for appointment to the post of Secretary Grade-III such as of graduation, certificate in computer applications viz. MS words, Excel etc. and five years experience of working in government department/public sector undertaking or organisation of a repute were fulfilled by the petitioners. And now admittedly the petitioners have not been able to achieve the speed of English Shorthand and typing @ 140/40 words per minute, which is a breach of condition 2(b) of their appointment letters dated 13-9-2011.

8. A petition under Article 226 of the Constitution of India has to be founded upon a breach of a legal/constitutional right or from aggrievement of the State or any of its instrumentalities failing to discharge a mandatory statutory duty. The jurisdiction of this court cannot be invoked to circumvent a statutory or contractual obligation or negate a valid condition of eligibility before or subsequent to an appointment. And the petitioners are indeed on their own admission in breach of the condition of their appointment--i.e. Condition 2(b) of the appointment letters dated 13-9-2011.

9. However dismissal of the writ petitions perfunctorily would not in the facts of the case meet the ends of justice. The petitioners have been employed with the respondent BIP for the last about three and half years, helped in part no doubt by the interim orders passed by this court. Further BIP admits that their services were otherwise found satisfactory. It is also on record that the respondent BIP does indeed require Secretaries Grade-III with the ability of English Shorthand and typing speed @ 140/40 words per minute.

10. I would therefore dispose of the petition directing that the order of termination qua the petitioners be kept in abeyance for a period of six months from today, and the BIP allow the petitioners to continue on probation for the said period. The petitioners would be required in the said duration to pass requisite test of English Shorthand and typing 140/40 words per minute and thereby achieve the "prescribed standard" i.e. condition 2(b) of their letters of appointment dated 13-9-2011. The requisite test be conducted by the respondent BIP itself or by outsourcing it but with notice of ten days prior to the date of the test. In the event of the petitioners fail to achieve the requisite "prescribed standard" of English Shorthand and typing speed @ 140/40 words per minute, within six months, the respondent BIP would be free to disengage and remove them from the post of Secretary Grade-III. To this counsel for the petitioners agree.

11. The writ petitions accordingly stand dispose of.

12. A copy of this order be placed in all concerned files.