
(2016) 03 RAJ CK 0031

In the Rajasthan High Court

Case No : Civil Writ Petition Nos. 13134, 14303 and 50/2016

Sher Singh Chouhan and Others

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 17-03-2016

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (2016) 03 RAJ CK 0031

Hon'ble Judges : Jaishree Thakur, J.

Bench : Single Bench

Advocate : H.S. Sidhu and C.S. Kotwani, Advocates, for the Appellant; K.L. Thakur, AAG, Rishab Tayal, Advocate and B.L. Bhati, GC, for the Respondent

Final Decision : Dismissed

Judgement

Jaishree Thakur, J.—1. Challenge in the present writ petitions is to Circular dated 16.10.2015 issued by Deputy Secretary to the Government of Rajasthan, by which guidelines are issued for allotting posts of Head Masters in Upper Primary Schools sanctioned in Elementary Education Department and posts of Head Teachers sanctioned in Secondary Education Department to Senior Teachers of Hindi, English, Maths, Science, Social Science, third language and Senior Teachers (General).

2. The brief facts are, petitioners were appointed as Teacher Grade-III in Commerce subject and since the date of their appointment, are holding the post of Teacher Grade-III without there being any promotional avenues. As per the Rules of Rajasthan Educational Subordinate Service Rules, 1971 (for short "the Rules of 1971"), appointment to the post of Senior Teacher was by way of 50% by direct recruitment and 50% by way of promotion. Rule 8-A of Rules of 1971 came to be amended by notification dated 18.7.2008 by which teachers in six subjects were mentioned for promotion to the post of Senior Teachers, namely in Hindi, English, Maths, Science, third language and Social Science. As Teachers of Grade-III of Commerce subject and likewise were deprived of avenue of

promotion to post of Senior Teachers, the Notification dated 18.7.2008 was challenged in D.B. Civil Writ Petition No. 8648 of 2014. During the pendency of the writ petition, a new amendment by way of Rajasthan Educational Subordinate Service (Amendment) Rules 2015 was introduced by notification dated 24.2.2015 whereby S. No. 8(d) was added for promotion to the post of Senior Teacher (General) with retrospective effect, i.e. 18.7.2008, the date when an amendment was made to rule 8-A. The writ petition was disposed as by said Notification opportunity of promotion of Teacher Grade-III of Commerce subject had been provided for promotion to the post of Senior Teacher (General) by 100% promotion. After the incorporation of the amendment, a letter was issued by the Joint Secretary on 15.4.2015 whereby it was directed that DPC be convened up till 30.4.2015 for each subject while taking the ratio of 1:7 of the entire available units. Subsequently, the impugned Circular dated 16.10.2015 was issued recalling the earlier Circular issued on 15.4.2015, wherein a criteria of eligibility was incorporated for promotion. The petitioners are being aggrieved by the Circular dated 16.10.2015, which accordingly to the petitioners, is against the Rules.

3. It is contended by Mr. H.S. Sidhu & Mr. C.S. Kotwani learned counsels appearing on behalf of the petitioners that as per the Rules, the criteria of promotion of a Teacher grade-III to the post of Senior Teacher in Hindi, English, Maths, Science, third language, Social Science was 50% by direct recruitment and 50% by seniority and avenue of promotion for Teacher Grade-III who belong to the stream Commerce, Agriculture, Drawing, Crafts, Music etc to post of Senior teacher (General) is by 100% promotion. It is argued that by the impugned Circular dated 16.10.2015, the post meant for Senior Teacher (General) will be filled up by promotion from Teachers who are eligible to be promoted on the post of Senior Teachers Hindi, English, Maths, Science etc. The formula, as set out in the Circular, has been challenged being de hors the Rules.

4. Per contra, learned counsel appearing on behalf of the respondents submit that guidelines dated 16.10.2015 have been issued in accordance with the Rules. It is contended that initially it was decided to fill up the posts by promotion and the criteria was of 1:7, however certain discrepancies/ambiguities were noticed, namely, (a) since before issuance of the circular dated 18.7.2008 of the Department of Personnel, the posts of Social Science, Hindi, Sanskrit were to be filled in 100% by promotion, therefore, at the time of determination of the vacancies, the posts to be filled in through promotion came to be revealed higher than those to be filled in through direct recruitment which were lesser in number, (b) in the eligibility for the purpose of filling up the posts of Senior Teacher through promotion, the candidates of subjects Mathematics, Science and English revealed to be available lesser and the candidates of social science were more, (c) more discrepancy came to be existed as on account of circular dated 18.7.2008 the posts in subjects like Mathematics, Science and English were to be filled in through promotion thereby the graduate teachers of Mathematics, Science and English were getting promotion on completion of 5 years whereas

the graduate teachers of Social Science, Hindi were not able to get promotion even after putting in 15-20 years of service and it gave rise to anomalies, (d) on account of issuance of the letter dated 15.4.2015 by adopting 1/7th criteria (in other subjects than main 6 subjects Hindi, English, Mathematics, Science, Social Science, third language) the posts meant for being filled in through promotion were getting more, they will further tend to increase and (e) the number of available candidates were for the post of Senior Teacher (General) other than 6 main subjects were also comparatively lesser. Therefore, the recommendation came to be made for promotion to the post of Head Master in Elementary Education and Head Teacher in Secondary Education, which the total posts should be bifurcated in the proportion of availability of the subject candidates and a formula was suggested to ensure promotional avenue to each subject. It is in this back ground that instructions vide letter dated 16.10.2015 came to be issued.

5. I have heard learned counsel for the parties and have perused the record of the case.

6. The question that has to be determined is whether the circular/guidelines issued are de hors the Rules of 1971. The rules provide that there is to be promotion to the post of senior teacher in Hindi, English, Maths, Science, third language, Social Science and General and in turn those appointed as senior teachers would be eventually considered for the post of principal/Headmaster. Before the amendment came about in the year 2008 the method of appointing a senior teacher was 50% by promotion by way of seniority irrespective of the subject taught. With the amendment in the rules and introduction of Rule 8 (a), and Rule 8(d) promotion to post of senior teacher came to be subject wise. Initially it was decided that promotion would be by following the criteria of 1/7th. A committee constituted to look into the issue found out that the number post to be filled in through promotion were on the higher side than those to be filled in through direct recruitment, the candidates of subjects Mathematics, Science and English revealed to be available lesser and the candidates of social science were more. the criteria of filling post of 1/7th criteria as withdrawn and a formula came to be developed by which an endeavor was made to ensure that equal promotional avenues to all subjects including the general one was maintained. The formula is as under:

"1. The total posts of Headmaster in Elementary Education - Upper Primary Education and Head Teacher in Secondary Education should be divided in the ratio of subject wise eligible candidates for promotion.

2. For allotment of year wise total posts from year 2008-09 of Headmaster - Upper Primary School in Elementary Education and Head Teacher in Secondary Education the following action be taken:--

(a) For promotion to the post of Senior Teacher the number of available vacant posts for promotion to that subject of Secondary Education be subtracted from

the number of subjectwise available eligible candidates.

(b) On the basis of sum of candidates received in point No. (a) the percentage of subject-wise eligible available candidates be obtained as follows:--

(c) The posts of available Headmaster - Upper Primary School and Head Teacher should be allotted subject-wise on the basis of said percentage.

(d) The number of total posts of a subject should be calculated by adding the posts received from point (c) to subjectwise sanctioned posts.

(e) After calculation of total posts according to point No. (d) the number of posts for direct recruitment and promotion as per rules be calculated.

(f) If the figures of promotion from the final vacant posts are received in negative then nil promotion be made to that subject.(As translated from Circular dated 16.10.2015)"

7. It is a well settled proposition that Executive instructions cannot amend or supersede the statutory rules or add something therein, nor can such orders be issued in contravention of the statutory rules. In *Union of India v. Sri Somasundaram Vishwanath*, , AIR 1988 SC 2255, the Hon'ble Apex Court observed that if there is any conflict between the executive instruction and the Rules framed under the proviso to Article 309 of the Constitution, the Rules will prevail. Similarly, if there is a conflict in the Rules made under the proviso to Article 309 of the Constitution and the law, the law will prevail. The question as regards the right to promotion is well settled in *Syed Khalid Rizvi & Ors. v. Union of India & Ors* [, (1993) supp. 3 SCC 575] where Bench of three judges had held that no employee has a right to promotion but he has only the right to be considered for promotion according to rules. Chances of promotion are not conditions of service and are defeasible in accordance with the law. A person only has a right to be considered for promotion against the vacancies if he fulfills the eligibility prescribed under the Statute/rules. Fixing eligibility falls within the exclusive domain of the legislature and cannot be a subject matter of judicial review unless found to be arbitrary, unreasonable or has been fixed/prescribed without keeping in mind the nature of services for which the appointments are to be made or it has no rational relation to the object sought to be achieved by the Statute. It is always permissible for the Government to prescribe appropriate qualifications/eligibility in the matter of appointments/promotions to different posts.

8. Based on this principle, it can very well be held that the criteria adopted by the respondent state has been done in order to remove the anomalies/discrepancies that have arisen due to higher number of promotions having been made while a lesser number of Senior teacher were appointed by direct recruitment, the candidates of subjects Mathematics, Science and English revealed to be available were lesser and the candidates of social science were more, to name a few anomalies. To give an equal opportunity to all, the

respondent State formulated the criterion which cannot be said to be in contravention to the rules. The rules only provide that promotion is to be made from Teachers to Senior teachers in Hindi and five other subjects by maintaining a ratio of 50% from direct recruitment and 50% by promotion and also 100% by promotion to Senior teacher (General). The chart appended with the additional affidavit clearly demonstrates the formula adopted to remove the imbalance in the ratio of teachers to be promoted is not arbitrary or ill founded. In order to settle the balance, guidelines have been issued on 16.10.2015 and in fact the petitioners have not been able to show how they are being put at a disadvantage or in which manner the guidelines are inconsistent with the rules.

9. The argument raised by the respondent that they petitioners would be entitled to a selection grade in case of stagnation has merit. The State of Rajasthan has formulated the Assured Career Progression scheme by way of offering selection grade to avoid stagnation. The same would be applicable in the present case also.

10. In view of the above, the above noted writ petitions being devoid of any merit are dismissed.