

(2001) 08 RAJ CK 0087

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 255 of 1996

Shiv Kumar Singh

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 14-08-2001

Acts Referred:

Rajasthan Employment of Disabled Persons Rules, 2000 — Rule 3

Rajasthan Employment of Physically Handicapped Rules, 1976 — Rule 3

Citation : (2002) 2 RLW 915 : (2002) 3 WLN 83

Hon'ble Judges : Shiv Kumar Sharma, J;Khem Chand Sharma, J

Bench : Division Bench

Advocate : Prahalad Singh, Ram Sharma, Radhey Shyam Maheshwari and Shiv Kumar Singh, S.N. Kumawat, for the Appellant; R.N. Mathur, A.A.G. and Jainendra Jain, for the Respondent

Judgement

Sharma, J.—Appellants Radhey Shyam Maheshwari and Shiv Kumar Singh, who are physically handicapped persons, instituted writ petitions before the Single Bench, being aggrieved by the amendment dated December 31, 1981 in Rule 3 of the Rajasthan Employment of Physically Handicapped Rules, 1976 whereby the physically handicapped persons were deprived of the right of appointment in the State Services. Both the appellants sought appointment on the post of lecturer in pursuance to the advertisement published by the Rajasthan Public Service Commission in the year 1985. The writ petitions respectively filed by Shiv Kumar Singh and Radhey Shyam Maheshwari in the year 1986 and 1987 were ultimately decided by the learned Single Judge on September 18, 1995. Though Rule 3 of the 1976 Rules was declared discriminatory and unfair and the State Govt. was directed to constitute a committee to find out the basis for giving reservation to the handicapped persons, yet the appellants were not found entitled to any relief after a lapse of about nine years. This order of learned Single Judge has been assailed by Shiv Kumar Singh and Radhey Shyam Maheshwari as well as Director of College Education in the instant appeals.

2. During the pendency of these appeals Governor of Rajasthan, in exercise of

the powers conferred by the proviso to Article 309 of the Constitution of India enacted "The Rajasthan Employment of the persons with disabilities Rules 2000 (for short New Rules) to regulate the recruitment of persons with disabilities appointed to services and posts in connection with the affairs of the State of Rajasthan and the said rules were notified on Sept. 9, 2000 and published in in the Rajasthan Gazette., As per Rule 3 of the New Rules the physically handicapped persons shall have right of appointment in the State Services also. Details of State Services have been incorporated in Schedule -1 appended to the Rules. AS per serial No. XV of the Schedule, physically handicapped person with disability of blindness can also be appointed as Lecturer in the Rajasthan Education (College) Service. Rule 13 of the New Rules repealed the old Rules of 1976 and the only question that need our answer is as to what should be the appropriate relief that can be awarded to the appellants now?

3. On a close scrutiny of material on record following fact situation emerges-

(i) Before amendment dated December 31, 1981, Rule 3 of the 1976 Rules provided for reservation in all services. However after the amendment the reservation was confined to the posts in Subordinate Ministerial and Class IV services.

(ii) Appellants Radhey Shyam Maheshwari and Shiv Kumar Singh were not considered for appointment on the post of Lecturer in view of 1981 amendment that excluded State services.

(iii) Writ petitions were filed by them challenging the vires of Rule 3 as back as in 1986 and 1987. On Sept. 18, 1995 the learned Single Judge though found Rule 3 discriminatory and unfair yet observed that Radhey Shyam Maheshwari and Shiv Kumar Singh were not entitled to any relief after a lapse of nine years.

Learned Single Judge directed the State Government to constitute a Committee to find out the basis for giving reservation to the handicapped persons and to complete the said exercise within a period of six months.

(v) The State Government has now promulgated new reservation rules and provided reservation to the physically handicapped persons in the State Services also.

4. Having given our anxious consideration to the rival submissions we are of the opinion that the relief sought by the appellants in the writ petitions could not have been denied to them merely on the ground of pendency of writ petitions for a period of more than eight years. The maxim ACTUS CURLE NEMINEM GRAVABIT (an act of the court shall prejudice no man) is founded upon justice and good sense and affords a safe and certain guide for the administration of law. In virtue of it where a case stands over for a long period, the party ought not to be prejudiced by that delay. If in the view of learned Single Judge the amendment introduced in Rule 3 was discriminatory then either old Rule 3 ought to have been revived or some other direction in order to grant relief to the

appellants should have been issued. It is unfortunate that even that State Government did not constitute the Committee and complete the exercise within six months as directed by the learned Single Judge and the appellant did not get justice in time. The relief sought by the appellants could not be granted unless rules provided for the reservation in the State services.

5. Be that as It may, now when the new rules have been enacted and the physically handicapped persons are now entitled to be appointed as lecturer in the Rajasthan Education (College) Service, we direct the State Govt. to consider the cases of appellants Radhey Shyam Maheshwari and Shiv Kumar Singh for giving them appointment on the post of Lecturer against the quota reserved for physically handicapped persons. The appointment shall be made effective from the date of publication of the New Rules in Rajasthan Gazette i.e. from Sept. 9, 2000. This exercise shall be completed within one month from today. The State of Rajasthan shall in the facts and circumstance of the case pay to each appellant a cost of Rs. 10,000 (ten thousand).

6. The instant appeals stand disposed of as indicated above.