
(2001) 10 RAJ CK 0067

In the Rajasthan High Court

Case No : Civil Special Appeal Writ No. 324 of 2001

Shiv Prakash Maheshwari

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 08-10-2001

Acts Referred:

Rajasthan Agriculture Subordinate Services Rules, 1978 — Rule 17, 21
Rajasthan Service Rules, 1951 — Rule 23A(1)

Citation : (2002) 4 RLW 2110 : (2002) 2 WLC 122

Hon'ble Judges : M.R. Calla, J;K.S. Rathore, J

Bench : Division Bench

Advocate : Ajay Rastogi, B.C. Charania and R.S. Rathore, for the Appellant;
Inder Jeet Singh, for the Respondent

Final Decision : Allowed

Judgement

Calla, J.—This Letters Patent Appeal u/s 18 of the Rajasthan High Court Ordinance, 1949 is directed against the judgment and order dated 19.4.2001 passed by the learned Single Judge. By this common judgment and order dated 19.4.2001, five writ petitions were decided. Out of five writ petitions, one writ petition i.e. SB Civil Writ Petition No. 2987/2000 was allowed and rest of the four writ petitions No. 3125/2000, 3126/2000, 3653/2000 and 3654/2000 were dismissed. There four petitioners, aggrieved against the judgment and order dated 19.4.2001, passed by the learned Single Judge, have filed appeals u/s 18 of the Rajasthan High Court Ordinance, 1949.

2. Briefly stated the facts of the case are that vide advertisement issued in the year 1996-97 on 5.8.1996, the Rajasthan Public Service Commission invited applications for filling up 10 posts of Assistant Agriculture Research Officers (Botany) in the pay scale of Rs. 2000-3200. The Rajasthan Public Service Commission after holding recruitment, recommended ten names for appointment to the aforesaid posts and ten persons who were recommended by the Rajasthan Public Service Commission were appointed on the said posts and all of the had

joined also. Besides this list of ten persons, the Rajasthan Public Service Commission had also prepared a reserve list of six persons and the names of all these four appellants did find place in reserve list including two others; one of them being Mr. Ashok Kumar Bansal who was at SI. No. 1 and Shiv Prakash Maheshwari who was at SI. No. 2.

3. On receipt of the recommendations of the aforesaid ten names, the Government of Rajasthan gave appointments to all the ten persons as per the merit list. However certain representations were made to the government than certain vacancies were still lying vacant. The State of Rajasthan, Department of Agriculture, however, vide its letter dated 3.10.1997, addressed to the Rajasthan Public Service Commission, intimating that two vacancies were still lying vacant which were to be filled up and, therefore, request was made to send two names as per the merit. Thereupon, Rajasthan Public Service Commission vide its letter dated 21.10.1997 sent all the six names as per the merit with the request that two of the said persons as per the merit of the reserve list and on the roster point can be filled up. Mr. Ashok Kumar Bansal and Mr. Shyam Sunder Meena who were at SI. No. 1 and 5 respectively in their serve list were appointed and it may be mentioned that appointment of Mr. Shyam Sunder Meena was from the category of Scheduled Tribe in the reserve list but Mr. Shyam Sunder Meena declined to join and therefore, his appointment was cancelled on 6.4.1998. Therefore, the remaining four persons who were selected as per the reserve list, whose names were sent on 21.10.1997 were appointed on 22.7.1998. While all these candidates whose names were included in the reserve list and who had been appointed on that basis were continuing in service as Assistant Agriculture Research Officers (Botany) on the basis of the order dated 27.7.1998, an order was passed on 30.6.2000, whereby, the appointment of five candidates mentioned therein including the present four appellants were put to notice that they had been given temporary appointments on the basis of the reserve list sent by the Rajasthan Public Service Commission but the Government of Rajasthan on reconsideration had found that according to the decision of the Supreme Court in case of Ashok Kumar and Ors, v. Chairman, Banking Service Recruitment Board and Ors. (1), in case of Prem Singh and Ors. v. Electricity Board of State of Haryana and Ors. (2), in case of Madanlal v. State of Jammu and Kashmir and Ors. (3) and in case of State of Bihar and Anr. v. Madan Mohan Singh and Ors. (4), the future vacancies could not be filled up on the basis of the reserve list and their appointments had been made without the concurrence of Rajasthan Public Service Commission and it was in breach of the fundamental rights of other eligible candidates who could have competed against the further vacancies-had the vacancies been notified and therefore their appointments were contrary to the Article 19(1)(g) of the Constitution of India and were unconstitutional and liable to be set aside. In this very notice, it was mentioned that therefore, according to the directions issued by the State Government on 3.6.2000, the services of the appellants are discharged in terms of Rule 23A (1) of Rajasthan Service Rules with the expiry of period of one month from the date

of notice and from such date, the services will be deemed to have been terminated.

4. Aggrieved from this order dated 30.6.2000, the writ petitions were filed and the same had been rejected by the learned Single Judge, it is this order passed by the learned Single Judge read with the basic impugned order passed by the Director of Agriculture, (which was made the subject matter of challenge before the learned Single Judge) is under challenge before us in these appeals. The learned Single Judge has rejected the four petitions out of five petitions and this is how these four appeals are before us. One of the five petitions i.e. the petition of Shri Ashok Kumar Bansal i.e. SB Civil Writ Petition No. 2987/2000 was allowed because he was at SI. No.1 in the reserve list and two names had been called for by the Government.

5. It may be mentioned that as a part of the pleadings, a reply dated 31.7.2000 had been filed seeking to traverse the claim of the petitioners. Reply dated 18.9.2001 was also filed in the Special Appeal. An application dated 28.9.2001 with documents dated 3.10.1997 and 13.4.1998 has also been filed by the respondents in these appeals. Whereas all these appeals are directed against the common judgment and order and involve same question based on identical facts- we proceed to decide all these four appeals by this common judgments and order as under:-

6. We have examined the challenge thrown by the appellant's counsel with reference to the Rajasthan Agriculture Subordinate service Rules, 1978 (hereinafter referred as the Rules of 1978). The scheme of the Rules provides the determination of vacancies under Rule 10 and procedure for direct recruitment has been given in Part-IV of these Rules in Rule 17 and onwards. Rules 17 and 21 which are relevant to decide the controversy of the case are reproduced as under:-

"17. Inviting of Applications:- Applications for direct recruitment to posts in the Service shall be invited by the Commission or the Appointing Authority, as the case may be, by advertising the vacancies to be filled in, in the official Gazette or in such other manner, as may be deemed, fit"

Provided that while selecting candidates for the vacancies so advertised, the Commission or the Appointing Authority, as the case may be, may if intimation of additional requirement not exceeding 50% of the advertised vacancies, is received by them before selection, also select suitable persons to meet such additional requirement.

"21. Recommendation of the Commission or the Appointing Authority :- The Commission or the Appointing Authority, as the case may be, shall prepare a list of the candidates whom they consider suitable for appointment to the posts concerned, arranged in the order of merit. The Commission shall forward the list to the Appointing Authority"

Provided that the Commission or the Appointing Authority, as the case may be, may to the extent of 50% of the advertised vacancies, keep names of suitable candidates on the reserve list. The Commission may, on requisition, recommend the names of such candidates in the order or merit to the Appointing Authority within six months from the date on which the original list is forwarded by the Commission to the Appointing Authority.

7. According to the Proviso under Rule 17 of the Rules of 1978, the Commission may if intimation of additional requirement not exceeding 50% of the advertised vacancies, is received before selection, it may select suitable candidates to meet such additional requirement. It may be mentioned that in this Proviso the words "before selection" have been used and therefore, to the extent of 50% of the advertised vacancies, the suitable candidates may be selected to meet such additional requirement, if received before selections. In the instant case whereas ten vacancies had been advertised, therefore on intimation of the additional requirement, the candidates upto 5 could be selected, had the additional requirement been received before selection.

8. According to the Rule 21 of the Rules of 1978, the Commission has to prepare a list of the candidates whom it considers suitable for appointment to the post in question. It has to arrange the names in order of merit and forward the list to the Appointing Authority, it has been further provided in Proviso to Rule 21 of the Rules of 1978 that the Commission may to the extent of 50% of the advertised vacancies may keep the suitable candidates on the reserve list and Commission may on requisition recommend the names of such suitable candidates in the order of merit to the Appointing Authority within six months from the date on which the original list has been forwarded by the Commission to the Appointing Authority. So far as the period of six months is concerned, the same is not in controversy at all. The learned counsel for the appellant has submitted that whereas ten vacancies had been advertised, the reserve list to the extent of 50% i.e. 5 candidates could be prepared. The concept of reserve list as contemplated under rule 21 of the Rules of 1978 is entirely different and it has nothing to do with the proviso under Rule 17 of the Rules of 1978. Rule 21 of the Rules of 1978 essentially makes it permissible the preparation of the reserve list and we find that Rules 17 and 21 of the Rules of 1978 have to be applied in the context in which these Rules have been enacted and under Proviso to Rule 21, it is permissible for the Commission to prepare a reserve list of the selected candidates upto 50% of the advertised vacancies. It has not been explained as to why six names were there in the reserve list - but it appears that in the reserve list five names were of general category candidates and one was of schedule tribe - who was appointed but declined to join and therefore, his appointment was cancelled.

9. In the instant case, the sole defence taken by the State is that the vacancies against which the appellants had been appointed were, in fact, not borne on the cadre of the service and whereas the appointments had been wrongly given to

these appellants without notifying the same and they could not have been appointed on the basis of the reserve list, their appointments were bad in the eye of law and they have no basis to challenge the impugned order.

10. During the course of hearing of these appeals an affidavit was filed along with an application dated 28.9.2001 by the respondents with two documents dated 3.10.1997 and 13.4.1998 and it was contended that the vacancies on the posts in question could not be made available for use of any candidates whose names were included in the reserve list. These vacancies were in fact intimated by the Rajasthan State Seed Certification Agency vide its letter dated 13.4.1998, wherein a request was made to the Directorate of Agriculture, Govt. of Rajasthan that it requires four officers-one each at Sri Ganganagar and Peelibanga and two at Suratgarh and therefore, officers from the Department be sent on deputation and in case such officers are not available in the Department, the candidates from the reserve list sent by the Rajasthan Public Service Commission be appointed and sent on deputation. In this view of the matter, the case was considered by us in the light of the position projected in the respondent's application dated 28.9.2001. By the very reading of the Rule 21 and proviso thereunder reserve list upto 50% of the advertised vacancies is permissible.

Preparing the main select list of initially advertised vacancies plus the additional requirement received by the Commission before selection under Rule 17, is different thing and preparation of the reserve list to the extent of 50% of the advertised vacancies under Rule 21 is entirely different thing.

11. We do not find that merely because the entire reserve list had been sent against the requisition of two vacancies, it could not be acted upon for more than two vacancies to the extent of 5. The fact is that, in such cases with the lapse of time, the number of available posts may increase and therefore, until the next selections are held, the reserve list may be acted upon and the same can certainly be used so long as it is alive under proviso to Rule 21 of Rules of 1978. It also appears from the document dated 13.4.1998 which has been filed during the course of the hearing of these appeals that the vacancies in question, in fact, were already existing and were available in the Rajasthan State Seed Certification Agency and it was on the request of the Seed Certification Agency that these four appellants were appointed and for that purpose the reserve list sent by Rajasthan Public Service Commission was made use of as mentioned by the Rajasthan State Seed Certification Agency in its letter dated 13.4.1998. Now, it can be said with certainty:-

(i) that the vacancies were, in fact, not available in the cadre.

(ii) that the vacancies were available in the Seed Certification Agency for quite sometime.

(iii) that the Government resorted to make appointments against these vacancies on the request of Rajasthan Seed Certification Agency and for that purpose, the reserve list prepared by the Rajasthan Public Service Commission, which was

alive, had been utilised.

12. These vacancies were neither available on the cadre of the service of the Department nor they could be branded as future vacancies as was the stand taken by the respondents. There vacancies were independently and already available in Rajasthan Seed Certification Agency and the same have been made use of he appointing the appellants on the basis of the reserve list of Rajasthan Public Service Commission as desired by the Rajasthan Seed Certification Agency itself.

13. In such a fact situation, the correct course of action which should have been appropriately followed was to send the name from the reserve list sent by Rajasthan Public Service Commission at the disposal of the Rajasthan Seed Certification Agency for appointment. It appears that the said Seed Certification Agency avoided to take up the task of recruitment upon itself and sought to rely upon the reserve list of Rajasthan Public Service Commission for filling up the posts which were already available with it. No exception, therefore, can be taken to the appointment of the appellants against these posts in the Rajasthan Seed Certification Agency. The procedural error committed by the Government in making these appointments could be rectified by suitable modification or by issuing another order in appropriate terms rather than cancelling the appointments.

14. The judgments to which the reference has been made in the order dated 30.6.2000 are not, at all, applicable to the facts of the present case, while there cannot be any quarrel with the propositions of law laid down in these cases. The respondents were not right when they took the stand with reference to Rule 17 of the Rules of 1978. In fact, the relevant rule is 21 of the Rules of 1978. Besides this, it may also be pointed out that before passing the basic impugned order dated 30.6.2000, the Department did not even take care to give an action inspired notice to the appellants and although they had worked for a period of two years on the basis of appointment earned by them after facing the process of direct recruitment before Rajasthan Public Service Commission, their appointment was cancelled and they were subjected to termination without following the minimum requirements of natural justice and fair play and the order was passed against them in unreasonable manner.

15. We may observe with regrets, no less than surprise that the respondents failed to make a correct and complete disclosure of full facts before the learned Single Judge, and therefore, the case was considered on a wrong premise leading to the rejection of the petitions. We have also called for the record and perused the same and we find that the whole basis on which the impugned order was passed was incorrect.

16. Therefore, these appellants have to be treated to have been appointed against the vacancies on the post in the Rajasthan Seed Certification Agency from the date of their appointment as such and the respondents may revise the

orders accordingly in the light of this order. Accordingly, this group of four appeals succeeds, all these four appeals are allowed and the order passed by the learned Single Judge is hereby set aside in each of the four writ petitions, the impugned order dated 30.6.2000 is also set aside qua each of the appellants and their writ petitions are allowed. There respondents are directed to reinstate the appellants, ad restore their employment against the vacancies on posts in Rajasthan State Seed Certification Agency which they were holding prior to the date on which they were holding prior to the date on which their appointments were cancelled.

17. Whereas it has been submitted before us that out of the four appellants Mr. Shiv Prasad Maheshwari and Mr. Bhanwar Dan Detha were already in the employment of the Department as Agriculture Supervisor prior to the appointment in question and two other appellants namely Mr. Bansidhar Palsania and Ramesh Chand were not employed with the Department prior to 1998, We direct that these appellants shall also be entitled to all consequential benefits accordingly as if the impugned order had never been passed against them.

18. All these four appeals are allowed in terms as above. No order as to costs.