

(1991) 12 RAJ CK 0003

In the Rajasthan High Court

Case No : Civil Writ Petition No's. 4282, 4500, 5697, 5699, 5783 and 6074 Of 1991

Smt. Baljit Kaur and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 18-12-1991

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1991) 2 RLW 602 : (1991) 2 WLN 522

Hon'ble Judges : Rajesh Balia, J;A.K. Mathur, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

A.K. Mathur, J.—All the writ petitions, mentioned above, involve common question of law, therefore, they are disposed of by this common order.

2. For the convenient disposal of all these writ petition, the facts mentioned in D.B. Civil Writ Petition No. 4282/1991; Baljit Kaur and Ors. v. State of Rajasthan and Ors. are taken into consideration.

3. The petitioners by this writ petition have prayed that the notification dated 22-2-1991 (Annex. 3) may be declared illegal and be struck down. Petitioners have also prayed that the circular dated 26-2-1991 (Annex. 4) may be declared illegal and be quashed. It has also been prayed that the respondents may be restrained from making selections in pursuance of the notification dated 22-2-1991 (Annex. 3) and the Circular dated 26-2-1991 (Annex. 4).

4. The petitioners were employed as Teachers Gr. III in the Panchayat Samiti, Sri Karanpur. The petitioners were first appointed vide order dated 8-2-1989, but their services were brought to end at the end of the academic session 1988-89. Thereafter, these petitioners were again appointed vide order dated 1-7-1989. It is alleged that these petitioners were appointed after inviting their names from the Employment Exchange and they were subjected to selection. The academic

qualifications of the petitioners have been given in the schedule annexed to the writ petition. A perusal of the Schedule would show that some of them are M.A.; B.Ed., and some of them are B.A., B.Ed, and one is M.A., B.S.T.C. way back in the year 1989, 400 posts of Teachers were advertised by the Zila Parishad, Sri Ganganagar. The petitioner applied and were interviewed, but they could not be selected. That out of the 400 candidates selected only 200 candidates could get appointment and, thereafter the Government stayed the appointments. Even those selected candidates could not be appointed because of the litigation before this Court. It is alleged that according to the petitioners' information a merit list has been prepared after allotting marks in accordance that this fact of preparation of merit list was not known to the petitioners earlier but now that fact has come to their notice and, therefore, they are challenging the preparation of that merit list by filing the present writ petition. It is alleged that the earlier selections made by the Zila Parishad were considered to be illegal by this Court in the case of *Rajvendra and Ors. v. State of Rajasthan and Ors.* (S.B. Civil Writ Petition No. 3663/1990, decided on 20-11-1991) as the selections were made on the basis of the instructions issued by the State Government, which were found to be illegal. Thereafter, the State Government in order to overcome of that, amended Rule 17 of the Rajasthan Panchayat Samitis and Zila Parishads Service Rules, 1959 (hereinafter referred to as "the Rules of 1959") and added a new proviso by the notification dated 22-2-1991 and issued a circular in pursuance thereof dated 26-2-1991. Therefore, in these circumstances, the petitioners have filed the present writ petition challenging that proviso added to Rule 17 by the notification dated February 22, 1991 and the Circular dated February 26, 1991 issued in pursuance thereof.

5. A return has been filed by the State Government as well as by the respondents N6.2 and 3, Panchayat Samiti and the District Establishment Committee, Zila Parishad, Sri Ganganagar, respectively. The detailed academic achievements of all these petitioners have been mentioned and it has been pointed out that the petitioners were initially appointed temporarily for a period of six months or till the selected candidates are made available. It is also submitted that some of the candidates who have obtained B.Ed. degree their degree has not been recognised by the Government. It is also submitted that the Government amended the Rules of 1959 in the purported exercise of the powers conferred by Section 79 of the Act, and, thereafter issued the circular for general guidance so as to bring uniformity in the recruitment all over Rajasthan.

6. Now, in this back-ground, the principal submission of the learned Counsel for the petitioners is regard to the competence of the State Government to add the proviso to Rule 17 of the Rules of 1959 and the circular issued thereunder.

7. In order to appreciate the controversy which has been raised by the learned Counsel for the petitioners, it is necessary to first refer to the relevant provisions of the Act and the Rules bearing on the subject.

8. The Rajasthan Panchayat Samitis and Zila Parishads Act, 1959 (referred to

hereinafter as "the Act of 1959") regulates the working of the Panchayat Samitis and Zila Parishads all over Rajasthan. Section 79 of the Act of 1959 confers power on the State Government to make the Rules. Section 79 of the Act of 1959 reads as under:

79. Power to make rules.-(1) The State Government may, by notification, make rules for carrying out the purposes of this Act.

(2) All rule made under this section shall, as soon as may be after they are made, be laid for not less than fourteen days before the House of the State Legislature and shall be subject to such modification whether by way of repeal or amendment, as the said House may make during the session in which they are so laid.

9. Section 86 deals with the constitution of Rajasthan Panchayat Samiti and Zila Parishad Service and it lays down as to how the Panchayat Samitis and Zila Parishads shall make recruitment. Section 86 which is relevant for our purposes reads as under:

86. Constitution of Rajasthan Panchayat Samiti and Zila Parishad Service.-(1) There shall be constituted for the State a service designated as the Rajasthan Panchayat Samiti and Zila Parishad Service and here-after in this section referred to as the Service and recruitment there-to shall be made District wise.

(2) The service may be divided into different categories, each category being divided into different grades, and shall consist of:

- (i) village level workers,
- (ii) Gram Sevikas,
- (iii) primary school teachers,
- (iv) ministerial establishment (except accounts clerks)
- (v) fieldmen,
- (vi) stockmen, and
- (vii) vaccinators,

(3) The State Government may encadre in the Service any other category or grade of officers and employees of Panchayat Samitis and Zila Parishads not included in Class IV services.

(4) The State Government may prescribe the duties, functions and powers of each grade and each category of officers and employees encadred in the service.

(5) XXX XXX XXX XXX XXX

(6) Appointment by direct recruitment shall be made by a Panchayat Samiti or Zila Parishad, as the case may be, in accordance with the rules made in this

behalf by the State Government, from out of the persons selected for the posts in a grade or category in the district by the District Establishment Committee referred to in Sub-section (1) of Section 88.

(7) xxx xxx xxx xxx xxx

(8) The appointing Authority may, so long as selection is not made by the District Establishment Committee or selected persons are not available for appointment, make appointments in the prescribed manner on a temporary basis for a period not exceeding six months and the said period may be extended only after consultation with the District Establishment Committee."

xxx xxx xxx xxx xxx

10. Section 88 deals with the constitution and functions of the District Establishment Committees, which reads as under:

88. District Establishment Committees and their functions.-(1)For each district there shall be a District Establishment Committee consisting of the following:

(1) Zila Pramukh, as the Chairman;

(ii) Collector,

(iii) Additional/Deputy District Development Officer; and

(iv) Senior Deputy District Education Officer (where the matter before the said Committee related to the appointment of, or disciplinary proceeding against, a teacher of a primary school).

(2) The District Establishment Committee shall:

(a) make selection for the posts in different grades and categories existing in the service in the Panchayat Samitis and the Zila Parishad in the district accordance with the rules made by the State Government in this behalf;

(b) regulate the mode of temporary appointment and recommend the names of persons for extending such appointment beyond six months;

(c) prepare lists of persons for promotion in the prescribed manner; and

(d) advise the Panchayat Samitis and the Zila Parishad of the district on all disciplinary matters affecting the officers and other employees thereof, other than those referred to in Sections 26 and 55. which may arise u/s 89.

11. A perusal of these sections would show that the State Government is competent to frame the rules for carrying out the purposes of the Act and such rules shall have to be laid before the House of the State Legislature for not less than fourteen days and they are subject to modification whether by way of repeal or amendment, as the case may be Section 86(6) confers the power of appointment on the Panchayat Samiti or the Zila Parishad as the case may be in accordance with the rules made in this behalf by the State Government from out

of the select list prepared by the District Establishment Committee and the District Establishment Committee is constituted u/s 88 and is the District Establishment Committee which makes the selection for the posts in different grades and categories in accordance with the rules made by the State Government in this behalf.

12. The State Government in the purported exercise of power conferred by Section 79 of the Act framed the Rules known as the Rajasthan Panchayat Samitis and Zila Parishads Service Rules, 1959 (referred to hereinafter as "the Rules of 1959"). The Rules of 1959 lay down the mode of recruitment for various posts in different categories in the Panchayat Samitis. Rule 6 of the Rules of 1959 lays down the sources of recruitment. Rules 7 lays down the reservation of vacancies for the Scheduled Castes and Scheduled Tribes and Rule 8 lays down the determination of vacancies. Rule 8 reads as under:

8. Determination of vacancies-Subject to the provisions of these Rules, and the directions of Government, if any, the Panchayat Samiti or the Zila Parishad shall determine and intimate to the commission twice in every year i.e. first January and first July, the number of vacancies anticipated under each category during the following six months period and the number of persons likely to be recruited by each method.

13. Then, Rule 10 Says down the age and the Rule 11 lays down the academic qualifications. Rule 11 reads as under:

11. Academic qualifications and qualifying service.-A recruit to the various categories of Service must possess the minimum educational qualification or technical qualification and experience detailed in schedule to these Rules.

14. Then, Rule 15 onwards lays down the procedure for direct recruitment. Rule 17 reads as under:

17. Scrutiny of applications.-The Commission shall scrutinise the applications received by them and require as many candidates qualified for appointment under these rules as seem to them desirable to appear before them for interview:

Provided that for direct recruitment to the posts of Panchayat Primary School teachers for the year 1973-74 the Commission may assess the suitability of the candidates on the basis of their qualifications, experience etc. without requiring them to appear before them for interview.

15. In Rule 17 a new proviso has been added by the Notification dated 22-6-1991, which was published in the Rajasthan Gazette Extraordinary dated 22-2-1991, which reads as under:

Rural Dev. and Panchayatiraj Department

Notification

Jaipur, February 22, 1991

G.S.Rule 33.-In exercise of the powers conferred by the Sub-section (1) of Section 79 of the Rajasthan Panchayat Samitis and Zila Parishads Act, 1959 (Rajasthan Act 37 of 1959) and all other powers enabling it in this behalf, the State Government hereby makes the following amendment in the Rajasthan Panchayat Samitis and Zila Parishads Service Rules, 1959, namely:

Amendment

In Rule 17 after existing first proviso the following second proviso to the rule is added as under:

Provided further that the District Establishment. Committee shall make selections for the various posts in accordance with the general directions giving by the Government from time to time without calling for interview if so provided in those instructions.

(No. F. 4(2) L&J/RDP/91/484)

By Order of the Governor,

Sd/:

Special Secretary to Government.

16. Under this proviso the Government has issued the Circular dated 26-2-1991 laying down a detailed criteria for selection and awarding marks each Heads, which shall be dealt with hereinafter.

17. Now, in this set of Rules and the circular the learned Counsel for the petitioners submitted that the newly inserted proviso to Rule 17 of the Rules of 1959 amounts to abdication of essential legislative function. It is submitted that this arms the State Government with a power which is more than the one conferred by Section 79 of the Act and there are no guidelines as to when and under what conditions it will be open for the State Government to issue the general directions for appointment. In short, the argument of the learned Counsel is that the newly added proviso conferred unguided, unbridled and uncanalised power on the State Government to issue the directions and such an unbridled power is violative of Article 14 of the Constitution of India. Learned Counsel submitted that this amounts to abdication of the essential legislative function. In support thereof, learned Counsel has invited our attention to N.K. Papiiah & Sons v. The Excise Commission and Anr. AIR 1965 SC 1007 ; Ram Dial and Others Vs. The State of Punjab, A.N. Parasuraman and Ors. v. State of Tamil Nadu (1989) 4 SCC 683 and State of Maharashtra Vs. Mrs. Kamal Sukumar Durgule and Others,

18. As against this, Mr. Udawat, learned Additional Advocate General submitted that it is wrong to contend that there is abdication of the essential legislative function. Learned Counsel submitted that there is sufficient guidelines already contained in the Act and the criteria has been laid down only for bringing uniformity in the recruitment all over Rajasthan and minimising the arbitrariness.

Learned Additional Advocate General has invited our attention to Dinesh Kumar and Others Vs. Motilal Nehru Medical College, Allahabad and Others,

19. We have considered the rival submissions of the learned Counsel at length. As per the scheme of the Act, so far as the power of the State Government to amend the Rules is concerned, there is no two opinion. Section 79 of the Act of 1959 lays down that the Government shall frame the Rules in order to implement the purpose of the Act. The only rider placed, is that such rules shall be laid before the House for not less than fourteen days and Mr. Udawat, learned Additional Advocate General submitted that the same was placed before the house. He has also submitted that moreover such provision is directory and not mandatory. In this connection, learned Counsel has invited our attention to M/s. Atlas Cycle Industries Ltd. and Ors. v. State of Haryana AIR 1979 SC 1149. wherein it has been held by the Hon"ble Supreme Court that such a provision is directory and not mandatory. Therefore, so far as the competence of the State Government in framing these Rules is concerned, there is no two opinion and the State Government is competent to frame such Rules. But the question is as to whether the State Government has abdicated the essential legislative function, or not. u/s 79 it is the State Government which has to frame the rules in the purported exercise of its power and there is no question of abdication of the essential legislative function of the State Legislature. The State Legislature by framing the Act of 1959 has conferred a power on the State Government to frame the necessary rules for implementing the purposes of the Act and it only put a rider that such rule shall be laid before the House of State Legislature for not less than fourteen days when the house meets. This condition has been complied with. Therefore, it cannot be said that by framing these Rules, there is abdication of any essential legislative function. The whole argument in this background is utterly misconceived. If the Legislature has amended the Act and has conferred any blanket power on the State Government without laying down any guidelines then perhaps it could be said that the State Legislature has abdicated its essential function. The Legislature has already enacted Section 79 of the Act of 1959 and has conferred the power on the State Government to frame the Rules in order to implement the purpose of the Act. That means the State has to frame the necessary rules for implementing the provisions of the Act. The State Govt. in the purported exercise of its power framed the Rules of 1959 and laid down the method by which the recruitment in the Panchayat Samitis shall be made. Section 88 of the Act of 1959 has conferred this power on the District Establishment Committee to make the selections, and the Panchayat Samitis and the Zila Parishads shall appoint the persons on the basis of the selections made by the District Establishment Committees. This is the only requirement under the Act of 1959. The Rules of 1959 also do not go beyond the provisions of the Act nor does it deprive the District Establishment Committee from making the selections nor does it deprives the Panchayat Samitis and Zila Parishads from making appointment of the candidates so selected by the District Establishment Committees. Therefore, no essential legislative function has been taken away by

amending the Rule 17 of the Rules of 1959.

20. Now, reverting back to the proviso to Rule 17, which only lays down that the District Establishment Committees shall make the selections for the purpose of appointments on various posts in accordance with the general directions given by the Government from time to time, without calling for interview if so provided in those instructions. This proviso nowhere runs counter to any of the provisions of the Act or the Rules of 1959. Rule 17 lays down that the District Establishment Committee shall scrutinise the applications and require as many candidates qualified for appointment under the Rules of 1959 as seem to them desirable to appear before them for interview. This nowhere lays down that what shall be the criteria for selection by the District Establishment Committee. In the case of *Rajvendra and Ors.* (supra), this court took the view that when the circular was issued by the State Government directing the District Establishment Committees to make appointment recruitment without there being any power conferred on the State Government, then it was held that such circular is beyond the scope of the provisions of the Rules and as such the same was struck down relying on the decision given in the case of *Gurnam Singh v. State of Rajasthan and Ors.* 1971 (2) SLR 799. But now the State Government has realised this that the circular issued by the State Government has gone beyond the provisions of the Rules, therefore, the State Government has amended the Rule 17 and inserted the second proviso acquiring the power to give a direction to the District Establishment Committees that they shall make the selections on the basis of the marking formula laid down in the Circular. This acquisition of power by adding the proviso to Rule 17 does not amount to abdication of the essential legislative function of any authority. More-so, it was not out of place to mention here that there are thousands of vacancies of teachers Gr. III available in the various Panchayat Samitis and Zila Parishads. But there are no guidelines for recruitment to these vacancies for the various District Establishment Committees and a number of cases have come to the notice of this Court that bungling has been made in the recruitment of these teachers. It is common knowledge that at this level the situation is not very happy one and the recruitments have been made without due regard to the merit of the candidates and all sorts of allegations have been made against the recruitments. It is alleged that in the recruitment the political and other power has been playing a big role thereby making the recruitment to these posts arbitrary. Therefore, in such a back-ground when the situation is getting muddier and muddier and in order to avoid this kind of arbitrariness and large scale of bungling being made in the recruitment at this level a need has been felt by the State Government to lay down in arithmetic formula so as to avoid any kind of discretion with these District Establishment Committees. The formula which has been prepared by the Government which shall hereinafter be dealt with leaves little room for the discretion of the District Establishment Committees and lays down the marking system for each of the item so that the candidate can pin point the illegality or irregularity committed by the District Establishment Committee and it is also easier for the courts to

scrutinise the same if any illegality is done by an District Establishment Committee the same can conveniently be led bare. Therefore, by no stretch of imagination it can be said that such amendment of the proviso amounts to abdication of the essential legislative function.

21. In the case of Ram Dial (*supra*), the question was regarding removal of member in public interest u/s 14(e) of the Punjab Municipalities Act, 1911 which provided the removal of the incumbent in public interest. But there was no provision of hearing of the member to be removed whereas u/s 16(1) the removal could be for the reasons mentioned in Clauses (a) to (g) and this was also in public interest and it also provided a hearing. Therefore, the question was that whether now far Section 14. could be held to be valid. In that context, it was observed as under:

There is no guidance in the Act for determining what matters, though not in public interest, may yet be capable of being deemed to be in the public interest, by the State Government. In the circumstances it must be held that the power which conferred upon the State Government being unguided is unconstitutional. For this reasons Section 14 in so far as it confers power on the State Government to require a seat of a member of a committee to be vacated for any reason which it may deem to affect public interest is violative of Article 14 of the Constitution and, therefore, unconstitutional.

22. That is not the case here. Here, on the contrary in public interest detailed guidelines have been laid down by the State Government so as to minimise the arbitrariness and illegality in the selections of teachers spreading all over Rajasthan, rather the present formula is more in the public interest so that those who are not selected could themselves scrutinise their own candidature and can come to the conclusion as to what were the reasons on account of which they have not been selected. Similarly it will be more conducive to judicial scrutiny also because it will be possible to find out that why one particular candidate has been selected and others have been left out.

23. Next, learned Counsel also invited our attention to N.K. Papiiah's case (*supra*). This was a case under the Karnataka Excise Act, 1966, wherein it was found that the power to fix the rate of excise duty conferred on the Government by Section 22 is valid. It was also observed that the dilution of parliamentary watch dogging of delegated legislation may be deplored but in the compulsions and complexities of modern life cannot be helped. In fact, the problem of making recruitment in the new developing situation is complex and it is not possible to amend the service rules every now and then. In order to keep pace with the development and requirement of the situation so as to bring a uniformity in the recruitment all over Rajasthan, instructions can be issued easily from time to time.

24. In case of A.N. Parasuraman (*supra*) the question was that whether there is guidelines laid down by the Tamil Nadu Private Educational Institutions

(Regulation) Act, 1966 or not. In that context, it was found by the Hon'ble Supreme Court that the provisions do not lay down any guidelines or conditions for exercise of power by the delegate viz. competent authority and these provisions being inextricably bound up with other parts of the Act so as to form part of a single scheme and as such being not severable from the other parts, therefore, the entire Act was declared ultra vires of Article 14 of the Constitution of India.

25. Mrs. Kamal Sukumar Durgule (supra) was a case in which initially the Act was unconstitutional and thereafter certain rules were framed a few years after removing the infirmities from which the Act was suffering. In that context, it was observed that if the Act was initially unconstitutional then its invalidity cannot be cured by framing rules few years after removing the infirmities. But that is not the case here.

26. As already mentioned above, we have already observed that in the present context the argument of abdication of essential legislative function is wholly misconceived as no-provisions of the Act of 1959 have been contravened by providing this proviso. In fact, the Act only provided that the State Government shall frame the rules for implementing the purposes of the Act. No provisions of the Act or the Rules have been pointed out that this proviso has exceeded that jurisdiction. The question of abdication of essential legislative function does not arise in the present case as Sub-section (2) of Section 79 only lays down a check on the State Government that the Rules will have to be placed before the House of the State Legislature for not less than fourteen years and it will be open for the House to modify and amend as the case may be during the session in which they are so laid. This condition was complied with. Therefore beyond this there is no requirement under the Act. As such there is no question of abdication of the essential legislative function, Thus, we are of the opinion that the newly added proviso to Rule 17 is valid and it is intra vires of the Act and the Rules.

27. Now, the next question, which has been agitated before us is that whether the formula, which has been evolved by the State is fair or not. In this connection, before we advert to the argument of the learned Counsel, it will be necessary to dilate on that formula in greater detail. The Clause 1 of the guidelines deals with the determination of vacancies. It lays down that in the month of April every year the Vikas Adhikari shall collect the information regarding the vacancies from all the primary schools and the same will be sent by him in the first week of May along with the anticipated vacancies to be occurred in the next 12 months i.e. 31 st March next, such statement shall be sent to the Zila Parishad by the Vikas Adhikari.

28. Clause 2 requires that the District Establishment Committee shall advertise the vacancies in the daily newspaper for selection of teachers against the existing as well as anticipated vacancies. This should be done for inviting the applications in not less than two daily newspapers.

29. Clause 3 lays down the qualifications for appointment. It lays down that all the necessary academic qualification, age limit, reservation for Scheduled Castes and Scheduled Tribes shall be in terms of the Rules of 1959 and the instructions issued by the Government from time to time.

30. Clause 4 lays down that there should a 15 days margin in the last date and the date of publication of the advertisement.

31. Clause 5 lays down that all the desired certificates like marks-sheet, caste certificate, domicile certificate, character certificate should accompany the application.

32. Clause 6 lays down that all these application shall be registered in the annexed proforma register. It was also directed that all those applications should be registered atleast by the next day.

33. Clause 7 lays down that in order to adjudge the merit of the candidates marking system has been provided. The maximum marks lay down is 100. For educational qualifications 50 marks, for other extra activities 20 marks, 20 marks for the bona fide residents of Rajasthan and particular district and 10% marks for experience have been provided. The educational qualification has been further divided as to how those 50 marks shall be given. For that a detailed procedure has been given, which reads as under:

1- ;ksX;rk vad ?50?

ek;/fed ;k led{k ijh{kk ds izkIrkadks dk izfr"kr fudkyk tk;s ijUrq izfr"kr fudkyus ds fy, ,sls fo"k;ks ds vad lfEefyr ugh fd;s tk;s] ftuds vk/kkj ij Js.kh fu/kkZfjr ugh dh tkrh gSA d{k 10 dh x`g ijh{kk gksus dh n"kk es mPp izkFkfed ijh{kk izfr"kr fudkyk tkosA blh izdkj iz"kSf{k.kd ijh{kkvks vFkkZr ,lOVh0lh0 ?ch-,M-? IS)kfUrd ,oa izk;ksfxd vadks lfgr izkIrkad dk Hkh izfr"kr fudkyk tkosxA ;fn fdlh izR;k"kh us ,lOVh0lh0 ,oa ch0,M0 nksusk ijh{kk,a ikl dj j[kh gks rks fti ijh{kk ds izkIrkad T;knk gks mlh dks vk/kkj ekudj vkSlr fudkyk tkos AvkSlr fudkyus ds fy, mu fo"k;ks dks lfEefyr ugh fd;k tkosxk ftukdks Js.kh fu/kkZj.k es lfEefyr ugh fd;k tkrk gSA blds mijUr "kS{kf.kd ,oa iz"kSf{k.kd nksusk ijh{kkvks ds izkIrkad dks tksM+dj tksM+h gqbZ la;k dks 2 ls Hkkx nsdj bu ijh{kkvks dk vkSlr vk/kkj fudkyk fy;s tkosxs A ;fn fdlh izR;k"kh us iwjd ijh{kk ds fo"k;ks ds izkIrkadks dks lfEefyr djds vkSlr fudkyk tkosxk A bl vkSlr ds vk/kkj ij izkIrkadssk dk izfr"kr fudky fy, tkus ds ckn ;ksX;rk gsrq fu/kkZfjr 60 vadks ds vuqikr es izfr"kr fudkyk tkosxk A mnkgj.k ds rkSj ij ;ksX;rk vk/kkj ij fdlh izR;k"kh us ;fn 80 izfr"kr vad izkIr fd;s gS rks 50 ds vuqikr es mls 40 vad izkIr gksxs A nwljs izR;k"kh us ;fn eku yhft, 60 izfr"kr vad izkIr fd;s gks rks ml izR;k"kh dks 50 ds vuqikr es 30 vad izkIr gksxs vFkZkr ftrus izfr"kr vad izkIr gksrs gS ml la;k dks 5@10 ls Hkkx fn;k tkrk gS mlls fd 50 es ls izkIr vad fudy vkosxs A bl izdkj tks la;k vkrh gS ml la;k dk vadu jftLVj ds ;ksX;rk vadks ds [kku es dj fn;k tkuk gSA mnkgj.k Lo:i ?ij fn;s x;s nks izR;k"kh;ks ds laca/k es igys izR;k"kh dks ;ksX;rk vad [kkus es 40 vad ntZ gksxs ,oa nwljs izR;k"kh ds ;ksX;rk vad [kkus es 30 vad vafdr gksxs A

34. For other extra curricular attainments, 20 marks have been sub-divided as under:

2&izofr vad ?20?

1- [ksy dwn& jkT; Lrjh; izfr;ksfxrkvks es Hkkx ysus ij &3 vad

jk"V?h; Lrj ij izfr;ksfxrkvks es Hkkx ysus ij &5 vad

2- ,u0lh0lh0& mPpre lfVZfQdsV vFkkZr lh Js.kh ds izkIrdkZ &3 vad

^ ^lj^ ^ lfVZfQdsV izkIr dSMsV ;fn jk"V?h; Lrj ij dksbZ izek.k&i= ;k bZuke izkIrdkZ gks rks&5 vad

3- LdkmV xkbM& izFke Js.kh izek.ki= /kkjd & 3 vad

jk"V?h; LdkmV@xkbM &5 vad

4- laxhr@u`R; jkT; Lrj ij Hkkx ysus ij &3 vad

jk"V?h; Lrj ij Hkkx ysus ij & 5vad

35. For other items 20 marks have been prescribed, which has been sub-divided as under:

3&vU; vad ?20?

1- jkTkLFkku jkT; ds ewy fuoklh ?fof/kor :i las izek.k i= ds vk/kkj ij ? &10 vad

2- ftu ftys es HkrhZ dh tk jgh gS ;fn izkFkhZ mlh ftys ds fdLh uxjh; {ks= ?vFkkZr uxj ifj"kn vFkok uxj ikfydk {ks=? dk fuoklh gks rks ml fLFkfr es &5vad

3- ftl ftys ds fy, HkrhZ dh tk jgh gS ;fn vkM+Zj mlh ftys ds xzkeh.k {sk= dk ewy fuoklh gks rks ml fLFkfr es &10 vad

36. For experience 10 marks have been provided, which has been further sub-divided as under:

4&f" k{k.k dk;Z vuqHko vad ?10?

1- izf"kf{kr v;/kid ds :i es f" k{k.k dk;Z ds vuqHko ds fy, izfr iwjs o" kZ rd ds fy, nks vadks ?vf/kdre 10 vad?

2- vizf"kf{kr v;/kid ds :i es f" k{k.k dk;Z ds vuqHko ds fy, izR;sd iwjs o" kZ ds fy, ,d vad ?vf/kdre vad la[;k &5 ?

37. Then, further administrative directions have been given for maintenance of the register and other necessary requirements.

38. Learned Counsel has also challenged this criteria on various grounds. Learned Counsel submitted that in Rule 8 of the Rules of 1959 it has been provided that the vacancies have to be determined and intimated to the District Establishment Committee twice in every year i.e. first January and first July, where as under this circular it has been laid down that the vacancies upto 31st

March of the following year have to be determined. So far as the question of determination of the vacancies is concerned, it is essentially an administrative matter and simply because under Rule 8 it has been provided that the vacancies have to be determined every year upto 31st March of the following year. Then such kind of direction cannot be said to be illegal. More-so, in an educational institution the vacancies have to be determined in accordance with the academic session and Clause 1 provides that all the vacancies which are available as well as the anticipated vacancies upto 31st March should be taken into consideration. It was further directed that all these information should reach to the Zila Parishad upto first week of May every year so that the vacancies could be advertised in time and recruitment could be made before the commencement of the next academic session. Therefore, specially in matters of appointment of teachers, if the academic sessions has been made the basis for determining the vacancies then on that count it cannot be said that the circular being in variation of Rule 8 should be struck down. It has to be kept in view that any infraction of the rules is not necessarily result in striking down of the action. What has to be seen is that the non-compliance of the rule has resulted in graver miscarriage of justice or not. In the present case, simply because the vacancies have to be determined keeping in view the particular need of the academic session then such criteria cannot be said to be illegal and the same cannot be struck down. Number of cases have been cited by the learned Counsel regarding determination of vacancies, namely, *M.P. Agarwal v. The State of Rajasthan and Anr.* 1980 (1) SLR 291; *H.K. Hingorani v. The State of Rajasthan and Ors.* 1979 WLN 421; *Prakash Chand etc. v. State of Rajasthan and Anr.* 1990 (2) RLR 1; *Dr. Omnarain Purohit v. State of Rajasthan and Ors.* WLR 1991 Raj. 345).

39. All these cases lay down a general proposition that the vacancies have to be determined each year. This proposition has been well established and Clause 1 also lays down regarding determination of the vacancies. Therefore, Clause 1 takes proper care of determination of vacancies and it cannot be said to be illegal so as to be struck down.

40. Next, learned Counsel has objected to distribution of marks for educational qualifications and he marks allotted for each academic attainment. Mr. Mridul, learned Counsel for the petitioners, submitted that no weightage has been given to higher educational qualification and all the marks have been uniformly allotted for the qualifications and in support thereof learned Counsel has invited our attention to *Dr. Dinesh Kumar and others*" case (supra) and submitted that on account of the mark obtained from different institutions there cannot be a uniform standard for awarding the marks. Before referring to Sub-clause (1) of Clause 7 of the circular regarding awarding of 50 marks for educational qualifications we have to keep in view the nature of the appointment. The appointment in the Panchayat Samitis is that of a IIIrd Gr. Teacher and the minimum qualification prescribed under the Rules is Higher Secondary with training i.e. B.S.T.C. or B.Ed. Therefore, one has to see the minimum academic qualification and training. An incumbent may be M.A. or B.A. but we have to go

by the minimum qualification and specially the training in the education i.e. B.S.T.C. or B.Ed, or any other training. Keeping in view this educational qualification a criteria has been laid down as to how marks should be awarded to each candidate. Therefore, if some one has a higher qualification that makes no difference. But we have to see the minimum required qualification for the post and marking has to be made on the basis of the minimum qualification prescribed for the post. It does not prohibit the persons who have higher qualification to their credit to compete for this post but when the minimum qualification has been given then marking has to be for the minimum qualification for the post as such it is not necessary that if separate marks have not been provided for higher qualifications then the rule is necessarily bad. Moreover, there is no ground to interfere in the criteria simply because a better criteria could have been provided. We are not sitting here as an appellate authority. As a matter of fact, a latitude has to be given to the administrative authorities for laying down the qualifications looking to the needs of the situation as well as the local requirements before them and they are more aware of the day to day working conditions in the Panchayat Samitis. Therefore, after taking into consideration the minimum requirement under the rules if the marking formula has been provided then such formula cannot be rendered bad because no marks have been provided for higher qualifications.

41. In Dinesh Kumar's case, the question was of admission to the professional college for medical education like M.B.B.S. and Post Graduate Courses. But here we are concerned with the teachers who are to be employed at the grass root level and a due regard has to be given to the rural set up social structure of the villages and to provided more and more job opportunities to people living in villages so as to avoid pressure on urban areas. There are the essential factors which have to be taken into consideration and we should not lose sight of the social milieu of our country side. Therefore, we are of the opinion that keeping in view that back-ground this circular issued by the State Government cannot be frowned upon. Thus, we are of the view that the criteria is a valid criteria which reflects the need of the situation and minimise the arbitrariness and leaves a little room for bungling. In fact, this was a better way for bringing uniformity in the recruitment all over Rajasthan so as to prevent the misuse of the office.

42. It was also urged by the learned Counsel that this criteria is prospective in character and, therefore, cannot be applied retrospectively. All the vacancies which have been determined prior to the coming into force of this criteria and the selections have been made earlier cannot put to naught by invoking this criteria as neither the rule nor the criteria has been made retrospective. In support thereof, learned Counsel has invited our attention to P. Mahendran and others Vs. State of Karnataka and others,

43. So far as this proposition is concerned there is no quarrel. As neither the amendment in the rule nor the criteria can be given retrospective effect. Therefore, this criteria and the circular can only be made applicable to the future

recruitment and the vacancies which arise in future. It has been brought to our notice that in some of the Panchayat Samitis recruitments have been made prior to the amendment in the rules and the circular issued in pursuance thereof. If any where recruitments have taken place prior to the coming into force of the amendment to proviso to Rule 17 of the Rules of 1959 then that recruitment shall follow and appointments may be issued accordingly. But all the future recruitment and the vacancies arising after this amendment shall be governed by the amended provisions of the Rules and the circular issued thereunder. In the case of P. Mahendran (supra) the Hon''ble Supreme Court took the same view in case of recruitments made under the Karnataka General Service (Motor Vehicles Branch) (Recruitment) Rules, 1962 and it was observed as under:

It Is well settled rule of construction that every statute or statutory rule is prospective unless it is expressly or by necessary implication made to have retrospective effect. Unless there are words in the statute or in the Rules showing the intention to affect existing rights the Rule must be held to be prospective....

Thus, the selection and appointment of the appellant candidate could not be held as illegal as the process of selection had commenced in 1983 which had to be completed in accordance with law as it stood at the commencement of the selection.

44. Therefore, the selection and recruitment which have already been made prior to the coming into force of the amended proviso and the circular issued thereunder shall be completed and those candidates who have been selected may be appointed.

45. In the result, we do not find any merit in these writ petitions and the same are dismissed. No orders as to costs.