
(2015) 03 RAJ CK 0094

In the Rajasthan High Court

Case No : Civil Writ Petition Nos. 2522, 2546, 2583, 2591, 2592, 2593, 2594, 2595, 2683, 2689, 2690, 2691, 2692, 2695, 2706, 2707, 2708, 2709, 2710, 2711, 2712, 2713, 2717, 2718, 2719, 2720, 2722, 2724, 2725, 2727, 2729, 2730, 2734, 2735, 2737, 2742, 2754, 2743 and

Sohan Kanwar Naruka and Others

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 19-03-2015

Acts Referred:

Citation : (2015) 03 RAJ CK 0094

Hon'ble Judges : Nirmaljit Kaur, J.

Bench : Single Bench

Advocate : Nupur Bhati, Arjun Purohit, Kailash Jangid, B.S. Deora, I.R. Choudhary, V.R. Choudhary, Tanwar Singh, Vikram Singh Rathore, V.N. Kalla, Ramniwas Choudhary, Shree Kant Verma, Bhupendra Singh, M.S. Godara, Rajendra Singh and Parikshit Nayak, for the Appella

Judgement

Nirmaljit Kaur, J.—Issue notice.

2. Mr. S.S. Ladrecha, Additional Advocate General, accepts notice on behalf of the respondents.

3. To be come up for hearing on 20.04.2015.

4. Learned counsel for the petitioners are directed to supply three sets of petition to the learned counsel for the respondents in each case.

5. All the above writ petitions pertain to the appointment on the post of Teacher Grade-III, Level-I and II in pursuance to the Teacher Grade-III Direct Recruitment Competitive Examination, 2013. However, they are divided in three categories:-

"(1) The first category pertains to the candidates who have been granted relaxation in the marks from 10% to 20% under the reserved category in pursuance to the instructions of the State Government but have been ignored as

they did not have 60% marks in the R.T.E.T. Examination.

(2) The second category pertains to the candidates who want their category to be changed from General to O.B.C. Category.

(3) The third set of the petitions have been filed by the candidates who have cleared C.T.E.T. But could not participate in the R.T.E.T. as no such examination was held after 2012 and want their C.T.E.T. result to be considered."

6. Various advertisements were issued in 2013 inviting applications from eligible aspirants of the Rajasthan against said post.

7. With respect to first category, it is noticed that 60% marks were prescribed as minimum marks for the general category in the R.T.E.T. Examination - 2011 and 2012. 10% to 20% relaxation was provided for various reserved categories under the instructions of the State Government. The petitioners are those candidates who have been granted relaxation under the instructions of the State. However, they are not being considered as eligible on the ground that they have not got 60% marks in the R.T.E.T. The learned Single Bench at Jaipur in the case of Vikas Kumar Agrawal Vs. State of Rajasthan and others (S.B. Civil Writ Petition No. 13488/2012) and bunch of connected writ petitions decided on 06.10.2012 held that a reserved category candidate is eligible to migrate to open category, if he has secured higher marks, however, a candidate would not be allowed to migrate, if he has taken any relaxation or concession during selection and disposed of the said petitions in terms of the judgment rendered in the case of Madan Lal Vs. State of Rajasthan (S.B. Civil Writ Petition No. 15152/2011) decided on 27.04.2012 by observing as under:-

"In the instant case, if concession or relaxation in age and fee are given to the candidate to become eligible for selection to the post of Teacher Grade-III, then reserve caste candidate would be eligible to migrate to open category if he has secured higher marks. However, a candidate would not be allowed to migrate, if he has taken any relaxation or concession during selection. For illustration, if in the selection test, a candidate is allowed concession in qualifying marks or granted any relaxation, then he would not be entitled to migrate to open category but if a candidate is given concession or relaxation before selection test, then he would be eligible to migrate to open category." 8. The said judgment was challenged before the Division Bench. The Division Bench vide Order dated 02.07.2013 passed in D.B. Civil Special Appeal (Writ) No. 1484/2012 (State of Rajasthan and ors. Vs. Vikas Kumar Agrawal and ors.) and other connected matters dismissed the said appeals by holding as under:-

"In the wake of the determinations made hereinabove, the appeals fail and are dismissed. To reiterate, the results of the RTET 2011 are set aside to the extent of participation of the reserved category candidates benefited by the relaxation granted by the State Government in excess of its extant reservation policy. The results of RTET 2011 has, therefore, to be re-cast. The participation of the reserved category candidates in the final recruitment test, who would thus have

to be declared unsuccessful in the RTET 2011, has also to be declared illegal. Consequently, the eventual final results in the selection process have to be prepared afresh and declared accordingly. In undertaking this exercise to prepare the final results, the decision recorded herein on the aspect of migration of reserved category candidates into the quota of general category candidates would also be complied with." 9. The same was challenged before the Apex Court in Special Leave to Appeal (Civil) No(s). 23508-23513/2013. The Apex Court vide its" Order dated 26.07.2013 was pleased to stay the operation of the impugned order and judgment passed by the High Court. Subsequently, another Order dated 12.11.2013 to maintain status quo as it existed on the said date was passed by the Apex Court. Meanwhile, the selection process has proceeded for the year 2013. Number of writ petitions have been filed by the candidates before this Court to allow them to participate in the said examination on the ground that their applications are being rejected as they do not have 60% marks in the R.T.E.T. Examination, whereas, the said controversy is pending before the Apex Court and that the judgments rendered by this Court have been stayed by the Apex Court.

10. Learned counsel for the respondents, however, while disputing the same submits that the said order of stay has been modified and only status quo as it existed on 12.11.2013 has been passed.

11. On a specific query, the learned counsel for the State submits that the State itself is in a dilemma as to whether to go ahead and to consider only those who have got 60% and above in the R.T.E.T. Examination and eligible or whether they are required to take into account the order granting stay dated 12.11.2013 and consider the candidates in the reserved category who are otherwise granted relaxation in vide notification dated 23.08.2010. Meanwhile, the State had already started the selection process. It was in these circumstances that this Court passed a direction to allow one of the petitioners who had filed S.B. Civil Writ Petition No. 2349/2015 to participate provisionally in the ongoing selection process. Thereafter, number of similar writ petitions have been filed seeking the same relief as the selection process was still going on.

12. Learned counsel for the respondents has brought to the notice of this Court that all such persons who had filed writ petitions have been allowed to participate in the selection process but now the selection process to the extent of verification of documents is over.

13. Admittedly, the result has not been finalized and no appointment orders have been issued till date and the State is awaiting the final decision of Hon"ble the Supreme Court. It is further stated by the learned counsel for the State that those candidates who have got more than 60% marks, will be duly given appointment but others in favour of whom the interim directions have been passed by this Court will also be considered but their result shall not be declared.

14. If that is so, all the petitioners whose petitions have come up for hearing

today cannot be discriminated. The cut off date was only qua those candidates who had secured 60% marks and above. No cut off date was prescribed either by this Court or the respondents for those who have secured less than 60% marks but were otherwise eligible for relaxation under the reserved category.

15. In order to remove this anomaly and to ensure that neither of the parties suffer, this Court deems it proper to pass a general order and fix a particular date, on which all those candidates who have got less than 60% marks but are otherwise eligible for relaxation under the reserved category as per the notification dated 23.08.2010 shall be allowed to participate in the selection process.

16. With respect to the second category, it is pointed out that the coordinate bench of this Court in S.B. Civil Writ Petition No. 2253/2015 has granted interim directions to consider such candidates in the O.B.C. Category in view of the subsequent notification issued after the date of publication of advertisement for the said post.

17. Similarly, in the third category, the third set of petitions have been filed by all those candidates who have cleared C.T.E.T. Examination but could not participate in the R.T.E.T. Examination as no such examination was held after 2012.

18. In view of the above, the following general order is passed:-

"(1) The State shall publish a common notice for all the districts in the "Rajasthan Patrika", "Dainik Bhaskar" and "Dainik Navjyoti" which are having mass circulation in the State of Rajasthan calling for the candidates who are covered in 1st 2nd and 3rd category to file their representations on or before 15.04.2015.

(1) Such candidates will be provisionally allowed to participate in the selection process on the date fixed by the respondent State."

19. It is, however, clarified that no application or writ petition shall be entertained by this Court on behalf of a candidate after said cut off date i.e. 15.04.2015 on the ground that for some reason or other, he has not been able to file representation within the said stipulated period.

20. It is further clarified that this order shall not give any right to the petitioners to seek appointment and the parties will be bound by the orders passed by the Apex Court in the S.L.P.

21. A copy of this order be supplied to the learned counsel for the respondents under the seal and signature of Court Master.