
(1996) 03 RAJ CK 0004

In the Rajasthan High Court

Case No : Civil Special Appeal No. 876 of 1995, 66 and 72 of 1996

State of Rajasthan and Others

APPELLANT

Vs

Prakash Chandra and Others

RESPONDENT

Date of Decision : 11-03-1996

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (1996) 1 RLW 675 : (1996) 3 WLC 585 : (1996) 1 WLN 212

Hon'ble Judges : P.C. Jain, J;B.R. Arora, J

Bench : Division Bench

Final Decision : Allowed

Judgement

B.R. Arora, J.—These three appeals arise out of the judgment dated 31.7.95 passed by the learned Single Judge, by which the learned Single Judge allowed the writ petitions filed by the respondent-petitioners, set-aside the orders of termination of their services and directed the appellants to allow the respondents to continue in service as they were appointed after due selection under the Rules.

2. The respondents" (petitioners in the writ petitions) case as set-up in the writ petitions, is that in pursuance to the advertisement dated 5.7.93 issued by the District Education Officer, Rajasamand, they applied for the post of Lab. Boys/ Class IV Servant in various schools in Rajsamand District. They were called for interview. The interviews were held on 9.9.93 . They were selected and were given appointments as Lab. Boys in the pay scale of Rs. 775-1025/- by the appointment orders issued on 10.9.93, 11.9.93, 13.9.93, 14.10.93, 21.11.93 and 26.11.93. They were appointed on temporary basis for a fixed term, i.e., upto 31.3.94, which was extended upto 30.4.94. No order for extending the services of the respondents was thereafter issued and they were relieved from service on 30.4.94 and in some cases thereafter but before 14.5.94. The respondent-petitioners challenged the orders of termination of their services in the writ petitions.

3. The learned Single Judge, by his judgment dated 31.7.95 allowed the writ petitions filed by the petitioner-respondents, set-aside the orders of termination of the services of the petitioners and directed the appellants to allow them to continue in service. It is against this judgment that the appellants have preferred these three appeals.

4. It is contended by the learned counsel for the appellants that Rules 14, 15 and 16 of the Rules, 1963 have not been complied with. Rule 14 requires that the applications for direct recruitment to the posts in the service shall be invited by advertising the vacancies to be filled-in while in the present case the vacancies were not properly advertised and the appointing authority only placed the advertisement on the Notice Board of his office. It has, also, been contended by the learned counsel for the appellants that while making appointments, the appointing authority, as per the Rules, was required to call for the names of the eligible candidates from the Employment Exchange which was not done. It has further been submitted that the appointments were made during the period when there was a complete ban on appointments to be made. His further submission is that the learned Single Judge, also, did not take into account the fact that certain complaints were made by various organisations like National Students Union of India, Rajasthan Rajya Karamchhari Mahasangh and the District Employment Officer regarding the irregularities and illegalities committed by the District Education Officer in the process of appointments. An enquiry was held, in which the complaints were found correct and, therefore, the whole appointments made by this process were cancelled.

5. Learned counsel for the respondent-petitioners, on the other hand, has supported the judgment passed by the learned Single Judge and submitted that Rules 14, 15 and 16 of the Rules regarding selection of the candidates have been fully complied with. Rule 14 leaves the appointing authority free to issue advertisement in the manner as he thinks fit. The appointing authority not only placed the advertisement on the notice board of his office but, also, sent the copies of the same to the Commissioner, Udaipur, Deputy Secretary, General Administration, Jaipur as well as to the Collector, Rajsamand, Tehsil Headquarter of Panchayat Samiti and the District Employment Exchange Officer, Rajsamand for placing it on their notice boards and, therefore, there is no violation of Rule 14 of the Rules, 1963. It has, also, been contended by the learned counsel for the respondent- petitioners that the Employment Exchange Act is not applicable to the government offices and is applicable only to the establishments in public sector. Even this requirement of calling the names from the employment exchange was put to an end on 29.1.90 and was revived on 1.9.93 and this condition was not in force on the date when the advertisement was Issued. It has, also, been submitted that the condition only requires that the persons registered with the employment exchange should be given appointments and all the petitioner-respondents, who were, given appointments, were registered with the employment exchange. Regarding the ban on the appointments it is submitted by the learned counsel for the respondents that the "No Objection

Certificate." was obtained from the Divisional Commissioner before making the appointments and even if there was a ban imposed by the administrative order then that can be considered to be mandatory between the State and its officers and not qua the third party. In support of his contention learned counsel for the respondents has placed reliance over: G.S. Lamba and Others Vs. Union of India (UOI) and Others, and Ship Lal v. Jalore Central Cooperative Bank Ltd. and Anr. D.B. Civil Special Appeal No. 303 of 1985 and other connected appeals decided on 8.9.87. Lastly, it is submitted by the learned counsel for the respondent-petitioners that the termination of the services of the respondents is clearly discriminatory as those persons selected and appointed in the same manner by the District Education Officer, Udaipur have been allowed to continue in service while the services of the respondent-petitioners have been terminated.

6. We have considered the submissions made by the learned counsel for the parties.

7. The learned Single Judge, while allowing the writ petitions, held that it is not necessary under the Rules (i) to publish the advertisement inviting applications for the posts in the official gazette or in the news papers and the vacancies may be advertised in such a manner as he deems fit; (ii) it is not necessary that the candidates should be sponsored by the employment exchange; (iii) the compliance of Rules 14, 15 and 16 of the Rules, 1963 have been properly made; (iv) giving appointments during the period of ban is an internal matter between the State Government and the officers and the third parties are not concerned with it; and (v) after issuing the appointment orders and after the candidates joined the posts, their selection cannot be set-aside unless something is specifically found against the candidate(s) so appointed.

8. The first question which requires consideration, therefore is: whether the vacancies were properly advertised or not by the appointing authority and whether placing the notice on the notice board showing the vacancies and inviting applications and by sending it to the Commissioner, Deputy Secretary to the Government and the Collector, Rajsamand, Tehsil Headquarters of Panchayat Samiti, District Employment Exchange Officer for placing it on their notice board, is a sufficient compliance of Rule 14 of the Rules ?

9. Rule 14 of the Rules, 1963, which deals with the procedure of recruitment, provides that the applications for direct recruitment to the posts in the service shall be invited by the appointing authority from the persons whose names are registered in the employment exchange(s) by advertising the vacancies to be filled-in in such manner as he may deem fit. This rule casts a duty on the appointing authority to call the list of eligible candidates from the employment exchange and to advertise the vacancies to be filled-in in such a manner as he may deem proper . Advertising the vacancies is an action of the officer to invite the attention of the public regarding the existence of vacancies and the initiation of the process for filling the same. The intention of the rule is to give wide publicity of the vacancies and to call the attention, of the public and the persons

interested who are eligible and interested in the service, to apply for the same. According to Webster's Dictionary, the meaning of "advertising" is: the action of calling something (as a commodity for sale, a service offered or desired) to the attention of the public esp. by means of printed or broad-cast paid announcements.

10. Rule 14 of the Rules, therefore, envisages that the notification inviting applications and offer of service to the attention of the public should be made in such a manner that the persons interested, in general, must know regarding the existence of the vacancies and that the process for filling the same has been started. Though the discretion has been left with the appointing authority to advertise the vacancies in such a manner as he may deem fit but that discretion is not an arbitrary discretion and he cannot act upon in advertising the vacancies in the manner contrary to the wishes of the Rules. Though in the Rules it has not been provided that the notification should be published in the daily news papers having a large circulation in the area or in the official gazette but in order to give an opportunity to the candidates desiring employment to make an application for the same, the notification has to be published in the daily news paper(s) having the circulation in the area with a view to give wide publicity. It is, however, not necessary that the notification may be published in the official gazette as that is not the requirement of the law.

11. Admittedly, in the present case, the advertisement, was not published in any of the news papers and it was pasted on the notice board of the Office of the District Education Officer, Rajsamand. The copies of this notification were, also, sent to the Divisional Commissioner, Udaipur, Deputy Secretary, General Administration, Jaipur, Collector, Rajsamand and the District Employment Exchange Officer, Rajsamand. It was, also, sent for fixing on the notice boards to the Office of the District Collector, Rajsamand, Tehsil Office as well as to the Panchayat Samiti, Rajsamand. It was, also, sent to the Deputy District Education Officer, Nathdwara and Deogarh for sending the list of the daily wages employees working in their offices. There is nothing on record to suggest that the notification sent by the appointing authority were affixed on the respective notice boards of the departments. In all 332 applications were initially received by the last date which was fixed as 21.8.93. The appointing authority thereafter extended the date and notified on its own notice board that the persons interested may directly appear before the Selection Committee alongwith the particulars on 9.9.93 and 750 persons were interviewed. Merely because 750 persons appeared for interview, it cannot be said that the wide publicity has been given, the compliance of the Rules has properly been made and the vacancies have been properly advertised. As the vacancies were not properly advertised, therefore, the complaints were made by the President, N.S.U.I., District Employment Exchange Officer and the other organisations. Without publication in the daily news paper having circulation in the area, it cannot be said that the vacancies have been properly advertised and the requirement of Rule 14 of the Rules, 1963 has been satisfied. The finding of the learned Single Judge that the

notification does not require to be published in the news paper, is against the wishes of Rule 14 of the Rules, 1963.

12. The next question which requires consideration is: whether the Employment Exchange Act is applicable in the case of the appointments in government offices and whether it is necessary that the names of the eligible candidates should be sponsored by the employment exchange or for giving appointments it is only necessary that the persons registered with the employment exchange should be given appointments ?

13. The controversy: whether the Act is applicable to the Government Establishment or not, came-up for consideration before the Supreme Court in: Union of India (UOI) and Others Vs. N. Hargopal and Others, and the Supreme Court held that:

If the definition of "establishment" which includes an "office" is read along-side the definition of "establishment of public sector" it will be clear that the government offices are, also, included in the expression "establishment in public sector". That is the interpretation which the government itself is advancing before us and that is how the government has always understood as remembered during these three decades.

14. The object with which the Act has been enacted, is that all the vacancies should be notified to the employment exchange before being filled-up. The Preamble of the Act says "An Act to provide for the compulsory notification of the vacancies to the employment exchanges." In view of the aforesaid judgment of the Supreme Court, the contention of the learned counsel for the respondents that the Employment Exchange Act is not applicable to the government establishment, or government offices, is bereft of any substance.

15. The next question which requires consideration is: whether it was necessary for the appointing authority to call the names from the employment exchange or he can give appointments to the persons who are registered with the employment exchange(s) ? The title and the Preamble of the Employment Exchange Act suggests that the compulsion is only to the extent of notifying the vacancies to the employment exchange and the appointing authority is not under an obligation or compulsion to give employment only to those persons whose names have been sponsored by the employment exchange. The field of choice is not limited only to the candidates sponsored by the employment exchange and the employer cannot be compelled to make appointments out of those persons only who were sponsored by the employment exchange. An obligation has been placed upon the employer to notify the vacancies that may occur in its establishment before filling these vacancies, to the employment exchange, is only with a view to give an opportunity to the persons interested whose names have been registered with the respective employment exchange offices for consideration of their claim for appointments.

16. The District Education Officer, Rajsamand, in the present case, by his letter

dated 23.7.93 requested the District Employment Exchange Officer, Rajsamand to send the list of the candidates registered with the employment exchange by 27.7.93. The District Employment Exchange Officer returned the letter with the remark that the time left at his disposal is very short and at least 21 days are required to send the list. He, also, informed the appointing authority that in the letter it has, also, not been mentioned that how much posts are reserved for Scheduled Castes, Scheduled Tribes and the Handicapped persons and in the absence of any Roster Point, the list of the candidates cannot be submitted. The District Education Officer, in reply, by his letter dated 31.7.93 did not inform the category-wise vacancies and informed that the appointments will be given only in accordance with the Roster System and the names should be sent within a week. Without waiting for the list from the Employment Exchange, the appointing authority proceeded with the process. Asking the Employment Officer, without intimating the Roster Point as per the directions of the Home Ministry and giving one week's time to the Employment Exchange Officer for sending the names, cannot be said to "advertising the vacancies through employment exchange as per Rule 14 of the Rules, 1963." It was merely a formality observed by the District Education Officer but the compliance of Rule 14 of the Rules, 1963 has not been made. The selections made by the District Education Officer in contravention of Rule 14, were, therefore, rightly cancelled by the concerned authorities.

17. It has been held by the Supreme Court in: Union of India (UOI) and Others Vs. N. Hargopal and Others, that:

We, therefore, consider that insistence of recruitment through employment exchange advances rather than restricts the right guaranteed by Articles 14 and 16 of the Constitution of India. The submission that the employment exchange did not reach everywhere applies equally to whatever method of advertising the vacancies is adopted. Advertising in the daily press, for example is, also, equally ineffective as it does not reach everywhere desiring employment. In the absence of a better method of recruitment we think that any restriction that employment in government department should be through the medium of employment exchange does not offend Articles 14 and 16 of the Constitution of India.

18. The importance of the employment exchange relating to the appointments again came-up for consideration before the Supreme Court in: Delhi Development Horticulture Employees' Union Vs. Delhi Administration, Delhi and others, and the Supreme Court, in para No. 15 of the judgment, held that:

Although there is Employment Exchange Act which requires the recruitment on the basis of registration in the employment exchange, it has become a common practice to ignore the employment exchange and the persons registered in the employment exchange and to employ and get employed directly those who are either not registered with the employment exchange for those whose registrations are lower in the waiting list in the employment exchange. The Court can take judicial notice of the fact that such employment is sought and given

directly for various illegal considerations including money. The employment is given first to circumvent the relevant Rules and is continued for 240 or more days with a view to give the benefit of regularisation knowing the judicial trend that those who have completed 240 days or more are directed to be automatically regularised. A good deal of illegal employment market has developed resulting in a new source of corruption and frustration of those who are waiting at the employment exchange for years.

19. In: State of Haryana and others Vs. Piara Singh and others etc. etc., the controversy before the Supreme Court was: whether the employees of III and IV Class Services in the State of Punjab and Haryana, who were given appointments on ad hoc basis for the last several years without reference to the Public Service Commission, their services may be regularised or not, where the State Government has issued the order for regularising the services only of those employees who have been sponsored by the employment exchange ? The Supreme Court held that there is no unreasonableness or invalidity in the same and, in para No. 29 of the judgment, held:

The next question is: whether the orders issued by the two governments were arbitrary or unreasonable in so far as they prescribe that "only those employees who have been sponsored by the employment exchange should alone be regularised. In our opinion this was a reasonable and whole-some requirement designed to curb and discourage back door entry and irregular appointments. The government orders say that all those who have been sponsored by the employment exchange or have been appointed after issuing a public advertisement alone should be regularised. We see no unreasonableness or invalidity in the same.

20. The condition of notifying the vacancies to the employment exchange and sponsoring of the names by the employment exchange to the appointing authority for consideration for the appointment, is a condition which has been inserted only with a view to curb and discourage the back-door entries and irregular appointments and to see that the persons who are registered with the employment exchange, their cases for appointment should, also, be considered and the persons who are not registered with the employment exchange or whose names have been registered much below those persons may not get preference to get appointment and this condition cannot be said to be, in any way, arbitrary or unjust. Since the names of any candidate, who was called for interview, was not sponsored by the employment exchange, the selection of such candidate and the appointment given by the appointing authority were in violation of the Act/ Rule and the conditions laid down by the government and as such the appointments of such persons were rightly cancelled.

21. The next contention raised by the learned counsel for the respondent-petitioners is that the requirement of calling the names from the employment exchange was put to an end on 29.1.90 and was revived on 1.9.93 and as this condition was not in force on the date when the advertisement was issued,

therefore, it was not necessary for the appointing authority to have called the names from the employment exchange before giving appointments. This condition that the appointments should be made by calling the names from the employment exchange was made applicable vide notification dated 1.9.93 and before the interviews were held it was, also, brought to the notice of the appointing authority. The object of the Employment Exchange Act is to provide an opportunity to the persons registered with the employment exchange to have their claim for appointment to be considered without knocking at the doors of any other person and when the list was not sent by the employment exchange to the appointing authority, their cases could not be considered and, therefore, the complaints were made by various unions. When the interviews were held and the appointments were given, at that time the notification and the condition were in existence and, therefore, it was necessary for the appointing authority to call- for the names of the eligible candidates from the employment exchange(s) before making appointments. The contention of the learned counsel for the respondents that on the date when the applications were invited, the condition was not applicable and, therefore, it was not necessary for the appointing authority to call the names from the employment exchange, is bereft of any substance in view of the fact that when the interviews were held and the appointments were given, the condition was application.

22. The next question which requires consideration is: whether the appointment given to the petitioner-respondents during the period when there was a ban imposed by the State Government on the employment, can be cancelled or not ? The facts on record do show that when the appointments were given, there was a complete ban on the appointments in the Education Department. The appointments given to the respondents cannot be set-aside on this ground because the respondent-petitioners were not at fault. They have no say in the matter of giving them appointment. The government cannot be permitted to take advantage of the lapse of its own functionary i.e, the District Education Officer, who was the person responsible for holding the selection by advertising the vacancies, inviting applications, appointing the Selection Committee, calling the persons for interview and after selection issuing letters of appointment. Except for the ban on appointments, the District Education Officer, Rajsamand was the officer competent to hold this process and to make appointments of Lab. Boys/ Class IV employees. The appointments, thus, once given by the appointing authority, cannot be set-aside or cancelled on the ground that there was a ban on the appointments and the appointment orders were Issued In contravention of the conditions. These conditions may be mandatory for the District Education Officer for not holding the selections but it cannot bind the respondent and invalidate their selection and appointments.

23. Similar controversy came-up for consideration before the Division Bench of this Court in: Shiv Lal v. Jalore Central Cooperative Bank Ltd. and Ors. and other eleven Special Appeals (supra) wherein some persons were interviewed by the Selection Committee, and they were appointed as Lower Division Clerks in the

bank. The Selection Committee, which interviewed them was not properly constituted. It consisted of two Members only while the law required that the Selection Committee should consist of three Members. Their selections were set-aside by the Bank and their services were terminated. The Division Bench while considering this aspect held that "It is settled that a provision may be mandatory and binding between the parties to the transaction, even though it may be invalid as against third person. In other words, the requirement even though binding on the employer Bank, it is ineffective against other persons so as to disentitle the employer Bank from taking advantage of its own lapse."

24. The Supreme Court, in similar circumstances, in: *G.S. Lamba and Others Vs. Union of India (UOI) and Others*, held that:

Assuming there was a fault to consult the Union Public Service Commission before exercising the power to relax the mandatory quota Rule and further assuming that the post in the grade were within the purview of the Commission and accepting for the time being that the Commission was not consulted before the power to relaxation the Rule was exercised, yet the action taken would not be vitiated nor would it furnish any help to the Union of India which itself cannot take advantage of its failure to consult the Commission.

25. In the present case, as per the case of the appellants, the appointments given by the appointing authority during the period when there was a ban on appointments imposed by the government. The District Education Officer, who is an appointing authority and is a functionary of the State Government, was competent to give appointments. During this ban period he advertised the vacancies, invited the applications, called the eligible candidates for interview, constituted the Selection Committee, held the interviews and issued appointment letters to the selected candidates. If he acted in contravention of the condition and in neglect of his duties gave appointments to the candidates then that will not affect the validity of his action as the respondent-petitioners have no control over the act of the District Education Officer. Non-compliance of the directions by the appointing authority is an internal matter between the appellants and its functionaries relating to disobedience but the respondents cannot be thrown out of the employment arising out of the fault of the District Education Officer. Whether the directions issued by the State Government relating to the ban on appointments are mandatory or directory: is not necessary to be considered in this case but even if taking it as a mandatory, the ban imposed by the administrative order can be considered to be mandatory qua the appellants and its officer and not qua the third parties and a breach of such condition and giving appointments during the ban period will not invalidate the appointments if otherwise the respondents were eligible and fit to be appointed. Quashing those appointments on this ground will be allowing the appellants to take advantage of the wrong of its functionaries. The fault of the State Government to have an effective control over its functionaries would not vitiate the appointments. The selection and appointments of the respondent- petitioners, therefore, cannot be

set-aside on the ground that the same were made during the period when there was a complete ban on appointments.

26. The next ground which requires consideration is: whether the respondent-petitioners have been discriminated qua the similarly situated persons and their services have been wrongly terminated while the persons similarly situated have been retained in service ? Learned counsel for the respondent- petitioners has relied-upon several judgments of the Supreme Court as well as of this Court to substantiate this argument regarding the discrimination. There is no dispute so far as the legal proposition is concerned that if there is a discrimination exercised by the authority between the similarly situated persons then that attracts Article 14 of the Constitution of India and the order deserves to be quashed and set-aside, but if there is no such discrimination, the order cannot be quashed and set- aside.

27. It is not the case of the respondents that any person selected during this process by the District Education Officer, Rajsamand has been retained in service. The only grievance made by the respondents is that the persons who have been given" appointments by the District Education Officer, Udaipur by the same process, have been allowed to continue in service. The appellants" case is that the enquiry against those appointments was, also, undertaken and the enquiry is still pending. The appointments given to the Lab. Boys in Udaipur District were given by a separate process and forms a separate class and the enquiry in that matter is, also, pending. No person, who was given appointment in Rajsamand District by this selection process has been retained and the whole selection list has been quashed. There is, therefore, no question of any discrimination exercised by the appellants in terminating the services of the petitioner- respondents. Moreover, the appointments of the respondents were for a fixed period which ended on 31.3.94 and the extended period, also, expired on 30.4.94. Thereafter no extension was given to them. After the lapse of the time for which the appointments were given to the respondents, their services automatically came to an end. These appointments were purely temporary and for a fixed period and no order was required to be passed. If any order for relieving them has been passed then that is of no consequence and the services of the respondents were rightly terminated after the expiry of the period for which the appointments were given.

28. The last contention raised by the learned counsel for the respondents-petitioners is that the appointments of the respondents, though mentioned as temporary and for a fixed period, but these were substantive appointments made after following the procedure provided under the Rules. The contention, raised by the learned counsel for the respondents, is devoid of any force. The order of appointment clearly shows that it was for a definite period and on temporary basis. While giving appointments, neither the names of the candidates were sponsored by the employment exchange nor the vacancies, as required under Rule 14 of the Rules, 1963, were properly advertised. The respondents never

held the post for any indefinite period or long duration. They held the posts only upto, 30.4.94. The appointments were, also, not on probation subject to confirmation. The manner and the terms of appointments, therefore, clearly show that the appointments of the respondent-petitioners were purely on temporary basis and for a fixed period which came to an end with the expiry of the fixed period. The learned Single Judge was, therefore, not right in directing the appellants to allow the petitioner-respondents to continue in service. The judgment, passed by the learned Single Judge, therefore, deserves to be set-aside.

29. In the result, the appeals, filed by the appellants, are allowed. The judgment dated 31.7.95 passed by the learned Single judge is quashed and set-aside and the writ petitions, filed by the petitioners, are dismissed.