

**(1976) 10 RAJ CK 0013**  
**In the Rajasthan High Court**

State of Rajasthan and Others

APPELLANT

Vs

V.K. Bhatia and Others

RESPONDENT

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**Date of Decision :** 14-10-1976

**Acts Referred:**

Constitution of India, 1950 — Article 233, 233A, 309, 318, 320

**Citation :** (1977) 1 LLJ 245 : (1976) RLW 631 : (1976) 9 WLN 488

**Hon'ble Judges :** M.L. Jain, J;A.P. Sen, J

**Bench :** Division Bench

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**Judgement**

M.L. Jain, J.—This judgment will dispose of the above mentioned seven cases.

2. Shri K.K. Bhatia an Assistant Engineer in the Rajasthan Ground Water Board filed a S.B. Civil Writ Petition No. 329 of 1971. He was appointed on ad hoc and temporary basis as an Assistant Engineer in the Rajasthan Ground Water Board by the Government of Rajasthan, Agricultural Department Order dated 16th January, 1967. The Rajasthan Public Service Commission (hereinafter called the Commission) issued an advertisement on 12th June, 1970, inviting applications for the posts of 16 Assistant Engineers in accordance with the Rajasthan Ground Water Board Service Rules, 196J. The petitioner also applied and appeared before the Commission on 3-2-1971 for interview. The Commission made the selections but he was not selected. He challenged the selections on the ground that all the members of the Commission did not participate in any of the sittings of the Commission and the interview was taken only by the Chairman and one other member aided by two experts and one departmental representative.

3. On the identical ground was a S.B. Civil Writ Petition No. 330 of 1971 made by Shri S.C. Sachdev.

4. The learned single Judge by his judgment dated November 1, 1971, disposed of the said two writ petitions, holding that according to Rule 10 of the aforesaid Service Rules, "Commission" means the Rajasthan Public Service Commission but the result of the interviews held in the aforesaid manner was not placed

before the other members of the Commission and they did not see that result and the list prepared was not approved by the full Commission before it was forwarded to the Government. It was necessary that the Commission should have considered the mark-sheet or list prepared by the examiner and given it its sanction or approval. By the very nature of the responsibility which was placed on the Commission by Rule 20 of the aforesaid Rules, it was necessary that it should have been discharged by the Chairman and all the members of the Commission and not merely by the Chair, man and one member. The failure to do so vitiated the list which was forwarded by the Secretary of the Commission to the State Government. The list of the candidates who came out successful on the viva voce examination could not ipso facto assume the status of the list of the suitable candidates which was required to be prepared by the Commission in accordance with the said Rule 20. It cannot even be forwarded by the Commission's Secretariate to the Government and was not a valid list on the basis of which the Government could select the candidates under Rule 21 of the said Rules. The learned Judge also lestrained the State from giving effect to it. Aggrieved by this judgment the State has filed the Special Appeal Numbers 32/1972 and 62/ 1972 on 20-12-1971.

5. The facts of the third Special Appeal No. 721 of 1972 are like this; Amar Singh was a Drilling Supervisor in the office of the Assistant Engineer, Rajasthan Ground Water Board, Jodhpur. He was appointed on a temporary basis for a period of 6 months on 11-4-1967. Commission invited applications on 2-9-1970 for filling some posts of the Drilling Supervisors. The petitioner applied for one of the posts and was into viewed by one member of the Commission with the assistance of three other persons. The other members of the Commission did not associate with the interviews. The result of the interviews was sent by the Commission's office to the State Government, Since the petitioner was not selected, his services were directed to be terminated after one month's notice with effect from 6th October. 1971. The petitioner filed a S.B. Civil Writ Petition No. 1602/1971 challenging the said order of termination. He also got a stay order.

6. At the time of the hearing of the writ petition, the counsel for the petitioner Amar Singh curtailed his arguments and only urged that the list of the selected candidates prepared by one member of the Commission was not placed before the other members of the Commission and as the list was not prepared by the Commission, it cannot be said to be the Commissioner list of the selected candidates within the meaning of Sub-rule (1) of R. 16 of the Rajasthan Subordinate Services (Recruitment and Other Services Conditions) Rules, 1960. In accordance with his decision in K.K. Bhatia's case, the learned single Judge by his judgment dated September 29, 1972, held that the list of the candidates which was forwarded by the office of the Service Commission was not a valid list on the basis of which any appointment could be made under Sub-rule (8) of the said Rule. The list was set aside and the order of the termination of the services of the petitioner was also held illegal. The D.B. Civil Spl. Appeal No. 721 of 1972 is directed against that order.

7. The Writ Petition No. 245 1968 was filed by Sumer Mal Bhandari, Writ Petition No. 246/1968 by M/S. Khemesra, Writ Petition No. 248/1968 by Madan Gopal and Writ Petition No. 240/1968 by Khayali Ram. All the four of them were appointed temporarily as Assistant Mining Engineers on 17-1-1964/7-8-1965, 20-1-1963 and 4-1-1962 respectively. Concurrence of the Commission was also obtained respecting the various extensions of service granted to them on temporary basis. On 20th June, 1967, the Commission issued notification inviting applications for filling posts of Assistant Mining Engineers, under the Rajasthan Mines and Geological Service Rules, 1960. The petitioners also appeared at the interview which was held by the two members of the Public Service Commission assisted by two experts on 27th and 28th September, 1967. But the petitioners were not found suitable for the post. They challenge the selections made by the Commission on the ground that according to the Rajasthan Mines and Geological Service Rules, 1960, the full Commission should have associated with the selection. They, therefore, pray that the selections made by the Commission should be quashed.

8. On August 25, 1975, the Governor of Rajasthan promulgated the Regulation Public Service Commission (Regulation and Validation of Procedure) Ordinance, 1975. (Ordinance No. 16 of 1975) which was replaced by the Act No. 5 of 1976 hereinafter referred to as "the Validation Act." The main features of this legislation are :

(i) It was retrospective in nature brought into operation with effect from January 26, 1950;

(ii) It provided that the powers, duties and functions of the Commission under the Constitution or under the rules made under Article 309 thereof or under any law for the time being in force could be exercised by the Chairman, one or more of the members, or all the members of the Commission, jointly or severally ;

(iii) The Chairman could distribute the business of the Commission among one or more members in relation to a case or class of cases, or generally;

(iv) All things done, actions taken, examinations held, selections made, recommendations made, consultations held advice given, by one or more members of the Commission shall be deemed to be done, taken, held, made, or given by the full Commission, any judgment of any Court notwithstanding.

9. This legislation was undertaken with a view to meet the situation created by the aforesaid decision in K.K. Bhatia's case. Now, it was urged on behalf of the State that after the passing of the Validation Act the decision of the learned single Judge under challenge in the aforesaid special appeals has become infructuous and these appeals must succeed. The learned Counsel appearing on the other side do, however, maintain that though the Legislature had under Entry 41 of List II of the Seventh Schedule to the Constitution power to make a law relating to "State Public Services; State Public Service Commission" the provisions of the Validation Act did not solve the problem which was created by

K.K. Brand's case. The requirement of Article 320 of the Constitution is that it is the duty of the Commission to conduct examinations for appointments to the services of the State, further that the Commission shall be consulted inter alia on all matters relating to methods of recruitment to civil services and for civil posts and on the principles to be followed in making appointments to civil services and posts and making promotions and transfers from one service to another and on the suitability of the candidates for such appointment, promotion or transfer. It is contended that where the Constitution imposes duties and functions on the Commission, it is the entire Commission which is required to act. But what the Validation Act has done is that the Commission in exercise of all these functions can act through one or more members. It is said that this is not permissible because no State Legislature has the power to put a gloss on the provisions of the Constitution or to make an attempt to explain the provisions of the Constitution. That function truly belongs to the judiciary and neither the Executive, nor even by an enactment the Legislature can explain the provisions of the Constitution. Support for this proposition is sought from *Chandra Mohan v. State of U.P.* AIR 1966 S.C. 1987 and *Prem Nath and Others Vs. State of Rajasthan and Others*, in which with reference to Article 233 it was held that High Court means the High Court as a whole and not a committee thereof.

10 It was further urged that yet another difficulty that still remained was that no consequent amendments in the Service Rules in question have been made. In those rules, the definition of the Commission still remains the same namely, "Commission" means the Rajasthan Public Service Commission that is to say all the members for the time being comprising the Commission. It was pointed out that until the rules were suitably modified, they will continue to be construed in accordance with the definition clause.

11. We have given our careful consideration to this controversy. According to Article 318 of the Constitution the Governor is empowered to make regulations to determine the numbers of the members of the Commission and their conditions of service, etc. Article 320 as stated above provides that it shall be the duty of the Commission to conduct examinations for appointments to the services of the State. The Commission shall be consulted on the matters enumerated therein. It has been held by the Supreme Court in *State of U.P. Vs. Manbodhan Lal Srivastava*, that the words "the Commission shall be consulted" occurring in that Article are not mandatory and are only directory. It is also provided in that very Article that the Governor may make regulations specifying the matters in which it shall not be necessary to consult the Commission; such regulations are subject to such modifications as the Legislature may make therein. Article 321 of the Constitution empowers the State Legislature by law to provide for the exercise of additional functions by the Commission as respect the services of the State and also as respects to the services of any local authority or other body corporate constituted by law or of any public institution. Now, if it is not mandatory for the State Government to consult the Commission and further if the Governor can limit such consultation, then, it is permissible for the State

Legislature to say how and in what manner that consultation with the Commission shall take place whether through all the members or through the Chairman or one or more members of the Commission. It further appears to us that in view of the Entry 41 in the List II, the State Legislature can make law not only in respect of the matters on which the Government is empowered to make regulations or which have been specifically mentioned in the Constitution but also in respect of matters on which there is no provision in the Constitution and while doing so, it can certainly direct how the functions of the Commission shall be discharged and how the business of the Commission in all such matters shall be regulated. That is exactly what the Validation Act has done. It does not explain or interpret or put a gloss on any of the relevant provisions of the Constitution. The first contention, therefore, fails.

12. The second argument is also without force. The Validation Act provides that the functions entrusted to the Commission under the rules made under Article 309 can be discharged in the manner provided in the Validation Act. These provisions shall have to be read in all such rules. It is not necessary to make amendment separately in each set of rules as the provisions of the Validation Act shall be deemed to have been incorporated in all the rules made under Article 309.

13. The next argument addressed in this connection was that an enactment may provide how the Commission shall function in the future but it cannot validate the past acts of the Commission. The argument has two facets: (1) that the Validation Act must lay the basis for validation which has not been done; (2) the past actions of the Commission can be validated only by an amendment of the Constitution as was done when Article 233A was inserted in the Constitution as a sequel to Chandra Motion's case AIR 1966 S.C. 1987.

14. The first part of the argument is based upon *Katikara Chintamani Dora and Others Vs. Guntreddi Annamanaidu and Others*, It was stated therein that if the Legislature acting within its legislative competence wants to neutralize or reopen a Court's decision, it is not sufficient to declare merely that the decision of the Court shall not bind, for that is tantamount to the reversing the decision in exercise of judicial powers which the Legislature does not possess or exercise. A Court's decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances. This part of the argument has no validity because the Validation Act has certainly laid the requisite foundation by providing that the actions of one or more members of the Commission shall be the actions of the entire Commission and having done so, the State Legislature was further empowered to validate the past acts which were found wanting by the Court in *K.K. Bhatia's* case.

15. The second part of the argument could be considered valid only if the provisions of Article 320 were mandatory. If the provisions of consultation are not mandatory, then, the amendment of the Constitution will not be called for and

the State Legislature will be within its power to validate the past acts of the Commission.

16. We, therefore, find no force in any of the arguments advanced on behalf of the employees and uphold the contention of the State Government that the aforesaid Validation Act has succeeded in validating the acts of the Commission impugned in the aforesaid writ petitions.

17. In respect of the appeal relating to the case of Amar Singh, one more point was agitated before us. It is founded upon the provisions of Rule 23 A of the Rajasthan service Rules. According to this rule, the service of a temporary Government servant who has been in continuous Government service for more than 3 years and who satisfied the requirements of suitability in respect of age and qualifications prescribed for the post and has been appointed in consultation with the Commission, where such consultation is necessary, shall be liable to termination in the same circumstances and in the same manner as if he were a Government servant in permanent service. It was urged that Amar Singh has been in service for more than 3 years when the order of termination was served upon him. It is claimed that his services are protected under the aforesaid rule because he was appointed in consultation with the Public Service Commission, fulfilled all the qualifications and has been in service for more than 3 years.

18. This contention is met by the learned Additional Government Advocate in the following manner :

(1) This point was not canvassed before the learned single Judge and all arguments were abandoned before him except one relating to the competence of the Commission. The respondent cannot now be allowed to take up this point.

(2) The non-petitioner Amar Singh was appointed ad hoc subject to the concurrence of the Commission. He no doubt continued for more than three years but he could not do so after the Commission had selected the candidates and had refused further concurrence.

(3) In The State of Rajasthan and Another Vs. Fateh Chand and Another, Rule 23 A came for consideration. It purports to hold that the expression "qualification" occurring in the said rule means qualification on the satisfaction of which only the person in question could have been recruited to the post. The term "qualification" in that rule relates to not only academic qualifications but also other qualifications laid down in the recruitment rules. Rule 23 A has to be read along with the relevant rules of recruitment to a particular post. Rule 23 A protects only that class of temporary servants who, due to the exigencies of the service, cannot be made permanent though they have qualified themselves for being so made. It is this class of temporary servants, who, due to no fault of theirs and who otherwise would have been made permanent, are equated with permanent servants and whose services can be terminated in the same manner as those of the permanent servants. Now, the respondent fulfilled the academic qualifications but he cannot be said to have been qualified unless he has been

selected in accordance with the relevant service rules. Under the rules, the respondent could not be made permanent unless he was recruited in the manner provided by the rules and therefore, he is not entitled to the protection of Rule 23 A.

19. We have carefully considered the matter. In view of the arguments advanced by the learned Additional Government Advocate, the respondent cannot be allowed to raise this contention and it is hereby rejected.

20. It was also mentioned before us that some of the petitioners have subsequently been selected by the Commission and their services have also been continuing without break but they are being treated as fresh recruits in the matter of pay fixation, etc. They desire that this Court should make an order directing that they should be treated as if they were selected initially. But these are matters on which we cannot make any pronouncement because they fall outside the scope of the cases before us.

21. The result of the aforesaid discussion is;

1) that the Special Appeals, namely, State of Rajasthan v. K.K. Bhatia and Ors. (D.B. Civil Special Appeal No. 38 of 1972) ; State of Rajasthan v. S. C, Sachdev and Ors.. (D.B. Civil Special Appeal No. 62 of 1972) and State of Rajasthan v. Amar Singh (D.B. Civil Special Appeal No. 721 of 1972) succeed. The impugned judgment of the learned single Judge is set aside and the S.B. Writ Petitions Nos. 329/1971, 330/1971 and 1602/1971 of the respondents, namely, K.K. Bhatia, S.C. Sachdev and Amar Singh are hereby dismissed;

2) that the writ petitions of Shri Sumer Mal Bhandari v. State (D.B. Civil Writ Petition No. 245 of 1968); M.S. Kltamsera v. Rajasthan Public Service Commission and Anr. (D B. Civil Writ Petition No. 246 of 1968); Madan Gopal V. Rajasthan Public Service Commission and Anr. (D.B. Civil Writ Petition No. 248 of 1968) and Khyali Ram v. Rajasthan Public Service Commission and Anr. (D.B. Civil Writ Petition No. 249 of 1968), are hereby also dismissed,

22. Looking to the peculiar circumstances of all these cases, we leave the parties to bear their own costs here and below.