
(2017) 07 RAJ CK 0018
In the Rajasthan High Court
Case No : 506 of 2017

State of Rajasthan

APPELLANT

Vs

Chandra Shekhar Dave S/o Sh. Mishri Lal

RESPONDENT

Date of Decision : 10-07-2017

Acts Referred:

[Rajasthan Educational Service Rules, 1970](#), [Rule 4](#), [Rule 6](#), [Rule 6\(1\)](#), [Rule 9](#), [Rule 6\(2\)](#)

Citation : (2017) 07 RAJ CK 0018

Hon'ble Judges : Ramchandra Singh Jhala

Bench : SINGLE BENCH

Advocate : P.R.Singh, ?Dinesh Ojha, M.S.Singhvi, Hemant Dutt, Kuldeep Mathur, M.R.Singhvi, Hukam Singh, B.S.Sandhu

Final Decision : Dismissed

Judgement

1. The private respondents in the three captioned appeals were the writ petitioners before the learned Single Judge. Working as Lecturers (School Education), under the State of Rajasthan they filed writ petitions praying that for purpose of promotion to the post of Principal, for the vacancy year 2017-18, 2843 vacant posts notified be filled up in the ratio of 67:33 inter-se Lecturers and Head Masters. The claim in the writ petitions filed was premised on the Schedule to Rule 6 of the Rajasthan Educational Service Rules, 1970 as amended on 25.3.2015. As amended in the year 2015, as per the Schedule, the post of Principal Higher Secondary, has to be filled up 100% by promotion. Column 3 of the Schedule

which prescribes the method of recruitment specifies that 33% promotion would be from Head Masters of Secondary Schools and 67% from Lecturers.

2. The stand of the State of Rajasthan was that as per the Schedule, 67% and 33% reservation for Lecturers and Head Masters respectively did not relate to the vacancies but to the posts. In other words the quota had to apply on the cadre strength.

3. Based on the cadre strength and the existing Head Masters and Lecturers working on being promoted in the previous years as Principals, the department had earmarked 1728 posts in the quota of Head Masters and 1121 in the quota of Lecturers.

4. The argument of the Lecturers was premised on Rule 6 of the Rajasthan Educational Service Rules, 1970. The precise argument was that as per sub-rule (1) of Rule 6 the recruitment to the service has to be by the methods prescribed: (a) by direct recruitment; and (b) by promotion. Emphasis was laid upon sub-rule (2) of Rule 6 where the words used are "recruitment to the service by the aforesaid method shall be made in such a manner that the persons appointed to the service by each method do not at any time exceed the percentage laid down in the rules/schedule of the total cadre strength as sanctioned for each category from time to time". Pithily put the argument was that if there was a single channel of recruitment the question of any quota applicable did not arise. Only if there were two channels of recruitment (1) by direct recruitment; and (2) by promotion, quota had to be applied. It was argued that the channel of appointment was singular i.e. promotion.

5. The learned Single Judge has noted the argument advanced in the impugned decision and we note the same. The argument is

as under:-

"He further contended that the stance of the respondents that in light of sub-rule (2) of Rule 6 and Clause (c) of Rule 9 (1) of the Rules of 1970, the State is required to maintain the cadre strength or quota of School Lecturers and Head Masters in tune with the ratio given in the Schedule is per se fallacious, if not preposterous. He strenuously contended that sub-rule (2) of the Rule 6 is applicable only when there is more than one method of appointment and that is why sub-rule (2) emphasizes upon maintaining the percentage from each method. Explaining his argument, Mr. Singhvi submitted that the purpose behind incorporating sub-rule (2) of Rule 6 is that in case, there is more than one method of recruitment viz, Direct Recruitment or Promotion, the quota or percentage fixed for the appointees from Direct Recruitment and Promotion should be strictly maintained."

6. Accepting the argument the reasoning of the learned Single

Judge is as under:-

"If the provisions contained in sub-rule (2) of Rule 6 of the Rules of 1970 are read and considered as they exist, there is hardly any scope for such an exercise. This sub-rule is meant to govern only those contingencies, when there is more than one method of recruitment. The conscious use of the word "the aforesaid method" and "service by each method of the total" and "the total cadre strength as sanctioned for each category" clearly proves that sub-rule (2) seeks to maintain the cadre strength for each category, viz, the category based on the method of recruitment namely promotion or direct recruitment. In the considered opinion of this Court, sub-rule (2) commands to maintain the percentage or ratio of quota of each cadre so as to ensure that the number of persons appointed through one method does not exceed the quota prescribed in the Schedule. Sub-rule (1) of rule 6 itself makes it clear that the recruitments under these rules are required to be made in the following methods, in the proportion indicated in Column 3 of the Schedule (a) direct recruitment, (b) promotion. Sub-rule (2) uses expression "the aforesaid method" which expression is clearly used for

the methods (a) and (b) enumerated in sub Rule (1). As such, the entire purpose of sub-rule (2) is to maintain the ratio and quota in sync with the Schedule, vis-a-vis method or manner of recruitment, namely direct recruitment and promotion. Similarly, Clause (c) of sub-rule (1) of Rule 9 of the Rules of 1970 also uses the expression "more than one 25 method" and then provides for maintaining the prescribed proportion for the over all number of posts. According to this Court, both the provisions, namely sub-rule (2) of the Rule 6 and Clause (c) of sub Rule (1) of Rule 9 are meant to deal with the contingencies when the recruitment is being done or required to be done by one of the two or more methods. However, when there is only one method provided for recruitment, as is in the present case, i.e. "promotion", the question of

maintaining the quota of feeder posts, as attempted to, by the respondents is uncalled-for rather unsustainable."

7. To appreciate the reasoning of the learned Single Judge it

would be necessary for us to note Rules 4, 6 and 9 of the

Rajasthan Educational Service Rules, 1970. They read as under:-

4. Composition and strength of the Service- (1) The service shall consist of the posts as arranged in the various groups specified in the Schedules. (2) The nature of posts included in each group of the Service shall be specified in column 2 of the Schedules. (3) The Strength of posts in each groups of the service shall be such as may be determined by the Government from time to time. (4) There shall be separate cadres in each Group of service specified in the Schedules I to VI such as- Schedule I for Boys Institutions, Schedule II for Girls Institutions, Schedule III for Science and General Institutions, Schedule IV for Institutions of Language Studies, Schedule V for Institutions of Physical Education, and Schedule VI for Institutions of Arts, Music and Others. The posts mentioned in each Group of service in a particular Schedule shall be interchangeable within the same Group of any Schedule, provided such posts carry identical time scale of pay. Provided that Government may from time to time- (a) create any post, permanent or temporary as may be found necessary; and (b) leave unfilled or held in abeyance or abolish or allow to lapse any post, permanent or temporary, without thereby entitling any person to any claim or compensation. 6. Methods of recruitment- (1) Recruitment to the service after the commencement of these rules shall be made by the following methods in the proportion indicated in column 3 of the Schedule, namely- (a) by direct recruitment in accordance with the provisions of part IV of these rules; and (b) by Promotion in accordance with the provisions of part V of these rules; (2) Recruitment to the service by the aforesaid method shall be made in such a manner that the persons appointed to the service by each method do not at any time exceed the percentage laid down in the rules/schedule of the total cadre strength as sanctioned for each category from time to time... 9. Determination of vacancies- (1)(a) Subject to the provision of these rules, the Appointing Authority shall determine on 1 st April every year, the actual number of vacancies occurring during the financial year. (b) Where a post is to be filled in by a single method as prescribed in the rule or Schedules, the vacancies so determined shall be filled in by that method. (c) Where a post is to be filled in by more than one method as prescribed in the rules or Schedules, the apportionment of vacancies, determined under clause (a) above, to each such method shall be done maintaining the prescribed proportion for the over all number of posts already filled in. If any fraction of vacancies is left over, after apportionment of the vacancies in the manner prescribed above, the same shall be apportioned to the quota of various methods prescribed in a continuous cyclic order giving precedence to the promotion quota. (2) The Appointing Authority shall also determine the vacancies of earlier years, yearwise which were

required to be filled in by promotion, if such vacancies were not determined and filled earlier in the year in which they were required to be filled in."

8. A perusal of Rule 4 would show that it contemplates the service as comprising of such posts as are arranged in the various groups specified in the Schedules. As per sub-rule (3) of Rule 4, the strength of posts in each group of the service shall be such as may be determined by the Government from time to time. As per Rule 6, the recruitment to the service shall be made by the two methods prescribed in sub-rule (1) of Rule 6 i.e. direct recruitment and promotion. But what is relevant to be noted is the use of the words "in the proportion indicated in column 3 of the Schedule" .

9. Inherent in sub-rule (1) of Rule 6 is the concept of proportion indicated in column 3 of the Schedule.

10. Sub-rule (2) of Rule 6 stipulates that recruitment to the service by the aforesaid method i.e. method prescribed under sub-rule(1) of Rule 6, has to be made in such a manner that the persons appointed to the service by each method do not at any time exceed the percentage laid down in the rules/schedule of the total cadre strength as sanctioned for each category from time to time.

11. As noted above the learned Single Judge, while laying emphasis on the words "aforesaid method" in sub-rule (2) of Rule 6 has opined that the concept of a quota would apply only when there are two channels of appointment and not a single channel of appointment. In the instant case, the single channel appointment was promotion. But what has been ignored is that the so called single channel is actually two channels flowing from two different reservoirs. The first reservoir comprises Head Masters and the second reservoir comprises of Lecturers.

12. It is settled law that a word or a phrase in a Rule cannot be

read in isolation. The Rule as a whole has to be read. A perusal of sub-rule (1) of Rule 6 shows that the Rule itself mandates the requirement to adhere to the proportion indicated in column 3 of the Schedule. Sub-rule (2) of Rule 6 lays emphasis that the method to appoint persons in the service has to ensure that at no point of time a person is appointed to the service in a manner where the percentage laid down in the Rules for each category is exceeded.

13. A perusal of Rule 9 shows that after the vacancies are determined, the posts shall be filled up as prescribed in the Rules or the Schedules. As per para (b) of sub-rule (1) of Rule 9, where a post is to be filled by single method the vacancies so determined shall be filled in by that method. It only means that vacancies to the posts shall be filled by the method prescribed, and in the instant case, it is promotion. Para (c) of sub-rule (1) of Rule 9 contemplates the filling up of the posts by more than one method and mandates that while following the method prescribed the prescribed proportion i.e. quota has to be maintained.

14. A conjoint reading of Rule 6 and Rule 9 would require the two Rules to be harmoniously interpreted and the only harmonious interpretation would be and can be that where the method of recruitment prescribed is by promotion, but the Schedule fixes quota from two different reservoirs, while effecting promotion, quota from the two reservoirs has to be adhered to.

15. Rule 9 under the caption "Determination of vacancies" lays emphasis on the word "post" and the adherence to a quota. The Schedule as amended also does not contemplate the concept of a vacancy to be filled up. It contemplates a post to be filled up.

16. In the decision reported as 2017(1) SCC 457 Srikant Roy & ors. V/s State of Jharkhand & ors., in para 24 the Supreme

Court has observed as under:-

"24. The High Court has overlooked the distinction between "post" and "vacancy". If the requisite posts were already exhausted by the direct recruits against the earmarked quota for direct recruitment, merely because some vacancies occur, it would not be open to the aspiring candidates against the direct recruit quota to challenge the selection process commenced for the in-service judicial officers by promotion through limited competitive examination. The cadre strength is always measured by the number of posts comprising the cadre. The right to be considered for appointment can only be claimed in respect of a post in the given cadre. The percentage of quota has to be worked out in relation to number of posts which form the cadre and has no relevance to the vacancy that would occur. This aspect has been glossed over by the High Court in the impugned judgment. Suffice it to observe that as no posts for direct recruits existed as on 30.4.2008, the challenge to the selection process to fill up the vacancy by promotion through limited competitive examination, at the instance of aspiring candidates by direct recruitment cannot be countenanced. The writ petition filed by such aspiring candidates (WP(S) No.4159 of 2008), therefore, ought to have been dismissed by the High Court."

17. Notwithstanding the decision of the Supreme Court contemplating three methods of appointment; direct recruitment, promotion based on seniority-cum-merit and promotion through a limited departmental competitive examination, the ratio of law laid down therein that a cadre strength is always measured by the number of posts comprising the cadre and the right to be considered for appointment can only be claimed in respect of a post in the given cadre and that the percentage of quota has to be worked out in relation to the number of posts which form the cadre and has no relevance to the vacancy that would occur, would apply in the instant case as well.

18. In this context it assumes importance to note that for the previous vacancy year the Head Masters had filed a writ petition numbering as S.B.Civil Writ Petition No.7459/2016 Mukesh Kumar Gupta & ors. V/s State of Rajasthan in this Court and had pleaded that on account of not having the necessary experience as contemplated by the rules relaxation be given so

that the 33% quota posts reserved for Head Masters could be filled up. The claim was denied by a learned Single Judge of this Court noting that the quota of the Head Masters would be carried forward to the next vacancy year.

19. We are noting the said decision as an incidental fact, inasmuch as the decision recognized the concept of the quota. Whilst it may be true that the issue raised therein did not impact the Lecturers and thus the decision cannot operate as res judicata on an inter-se dispute between the Lecturers and Head Masters, but for the substantive reasons given by us hereinabove we allow the appeals and set aside the impugned decision dated 26.5.2017. The writ petitions filed by the private respondents in the three captioned appeals are dismissed.

20. Parties shall bear their own costs all through out.