

(2018) 07 RAJ CK 0035
In the Rajasthan High Court
Case No : Civil Writ No. 6949 of 2018

Suman Choudhary @APPELLANT@Hash State of Rajasthan & Ors.

Date of Decision : 09-07-2018

Acts Referred:

Rajasthan Education Subordinate Service Rules, 1971 — Rule 20, 21

Citation : (2018) 07 RAJ CK 0035

Hon'ble Judges : P.K. LOHRA, J

Bench : Single Bench

Advocate : Hinglaj Dan Charan, Sunil Joshi

Final Decision : Disposed Off

Judgement

Issue notice.

Mr. Sunil Joshi, Govt. Counsel, accepts notice on behalf of the State.

It is stated at Bar by learned counsel for the petitioners that pertaining to the same recruitment, similarly circumstanced petitioners had approached

Jaipur Bench of this Court in Om Prakash & Ors. V/s. State of Rajasthan & Ors. : S.B. Civil Writ Petition No.21214/2017 and the said petition is

decided on 21st of November, 2017 granting reliefs to the petitioners in the light of judgment in case of Hemlata Shrimali & Ors. V/s. State of

Rajasthan : S.B. Civil Writ Petition No.3247/2015 " decided on 1st of April, 2015 by relying upon the adjudication made in case of Suman Bai &

Anr. V/s. State of Rajasthan & Ors. [2009 (1) WLC (Raj) 381].Â Learned counsel has therefore rejected that present petition may also be decided

in the light of judgment in case of Om Prakash (supra).Â

In case of Om Prakash (supra), Jaipur Bench of this Court, after considering verdict in case of Hemlata Shrimali (supra) and Suman Bai, has

observed as under:-

Learned counsel for the petitioners, at the very outset, submits that the controversy raised in the instant writ application stands resolved in view of

the adjudication made by a Coordinate Bench of this Court in a batch of writ applications lead case being S.B. Civil Writ Petition Number 3247/2015:

Hemlata Shrimali & Ors. Versus State of Rajasthan & Ors., decided on 1st April, 2015, relying upon the adjudication in the case of Suman Bai &

Anr. Versus State of Rajasthan & Ors.: 2009 (1) WLC (Raj.) 381, observing thus:

5. Upon consideration of the arguments aforesaid and the judgment of the Division Bench in Hari Ram and the subsequent order dated 21.7.2001

whereby clarification application of the State Government was dismissed, I find that the entitlement of the petitioner for appointment on the basis of

originally prepared merit list cannot be denied. If admittedly the candidates, who are lower in merit, have been granted appointment, those who are

above them in the merit cannot be denied such right of appointment. Seniority as per the rules in the case of direct recruitment on the post in question

is required to be assigned on the basis of placement of candidates in the select list and when the selection is common and the merit list on the basis of

which appointments were made is also common, right to secure appointment to both the set of employees thus flows from their selection which in turn

is based on merit. Regard being had to all these facts, merely because one batch of employee approached this Court later and another earlier, and both

of them having been appointed, the candidates who appeared 6 lower in merit cannot certainly be placed at a higher place in seniority. It was on this

legal analogy that Division Bench of this Court in Niyaz Mohd.Khan (supra) held that the petitioner therein entitled to be placed in seniority in order of

merit of common selection amongst persons appointed in pursuance of the same selection with effect from the date person lower in order of merit

than the petitioner was appointed with consequential benefits.

6. I am not inclined to accept the argument of the learned counsel for the respondents No.4 to 8 that the judgment of the learned Single Judge should

be so read so as to infer therefrom that though the petitioners would be entitled to claim appointment but not seniority above the candidates who are

already appointed even though they admittedly are above them in the merit list. Infact, the judgment of the learned Single Judge merely reiterated the

direction of the Division Bench in Hari Ram (supra) in favour of the petitioners.

But construction of that judgment in the manner in which the respondents want this Court to do, would negat the mandate of the Rules 20 and 21 of the Rajasthan Education Subordinate Service Rules, 1971, which requires seniority to be assigned as per the inter-se merit of 7 the candidates in the merit list based on common selection. Even otherwise, no such intention of the Court is discernible from reading of that judgment. Mere appointment of the petitioner was a sufficient compliance of the judgment and not total compliance was the view taken by this Court also when contempt petition filed by the petitioners was dismissed. Question with regard to correct and wrong assignment of seniority having arisen subsequent to appointment of the petitioners would obviously give rise to a afresh cause of action. The writ petition filed by the petitioners, therefore, cannot be thrown either barred by resjudicata or otherwise improperly constituted.

7. In the result, this writ petition is allowed and therespondents are directed to treat the petitioners senior to respondents No.4 to 8 as per their placement in the merit list.â??

Learned counsel for the petitioners further submits that instant writ application be also disposed off in terms of the order dated 24th May, 2017, as extracted herein above.

Ordered accordingly.â??

In view of the above, present writ petition of the petitioners is also disposed of in the light of order passed in case of Om Prakash (Surpa).Â