
(2013) 03 SC CK 0058

In the Supreme Court Of India

Case No : Civil Appeal No. 2634 of 2013 (Arising out of SLP (C) No. 12406 of 2011) , Civil Appeal No. 2635 of 2013 (Arising out of SLP (C) No. 18102 of 2012) and Civil Appeal No. 2636 of 2013 (Arising out of SLP (C) No. 20706 of 2011)

Tej Prakash Pathak and Others

APPELLANT

Vs

Rajasthan High Court and Others

RESPONDENT

Date of Decision : 20-03-2013

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 309

Citation : (2013) 8 JT 498 : (2013) 2 KLT 83 : (2013) 5 SCALE 1 : (2013) 4 SCC 540 : (2013) 2 SCC(L&S) 353 : (2013) 2 SCT 699 : (2013) 2 SLJ 139

Hon'ble Judges : R.M. Lodha, J;Madan B. Lokur, J;Jasti Chelameswar, J

Bench : Full Bench

Advocate : S.K. Keshote, Shashank Pareek, Sarad Kumar Singhanian, Aishwarya Bhati, Pawan Kumar Saini, Amit Verma, Aditya Singh and M.P. Shorawala, for the Appellant; Pawanshree Agarwal, Madhur Jain for Sunil Kumar Jain, for the Respondent

Final Decision : Dismissed

Judgement

J. Chelameswar, J.—Leave granted

....the rules of the game the criteria for selection cannot be altered by the authorities concerned in the middle or after the process of selection has commenced¹

... changing the rules of the game after the game was played ...is clearly impermissible²

2. The above, and statements to the similar effect have petrified into a rule of law in the context of employment under the State or its instrumentalities. Whether such principle of law is immutable, what are those 'rules of the game' which cannot be changed after the game is either commenced or played, in our opinion requires an authoritative pronouncement by a larger Bench of this Court.

3. Such a question arises in the case in hand in the background of the following facts:

4. The Respondent High Court undertook the recruitment process for filling up of 13 posts of Translators by issuing a notification dated 17th September, 2009. It appears that under the Rajasthan High Court Staff Service Rules, 2002, "eligible candidates" are required to appear for a Written Examination consisting of two papers of translation from English to Hindi and vice versa carrying 100 marks each followed by a Personal Interview for 50 marks.

5. 21 candidates appeared for the above-mentioned examination of whom only three candidates were declared successful by the first Respondent. Three unsuccessful candidates challenged the said decision of the High Court by filing a writ petition which came to be dismissed by the judgment under appeal dated 11th March, 2010.

6. From the reply filed by the first Respondent in the writ petition as reflected in the judgment under appeal, it appears that after the examination was conducted, the Chief Justice ordered that the examination be treated as a Competitive Examination and only those candidates who secured a minimum of 75% marks be selected to fill up the posts in question. In view of the decision of the Chief Justice, only three candidates were found suitable for appointment and a list of selected candidates was accordingly published by the High Court. This triggered the instant litigation.

7. Admittedly, the requirement of securing the minimum qualifying marks of 75% is not a stipulation of the Service Rules (referred to earlier) of the first Respondent High Court as on the date of initiation of the recruitment process in question (i.e. 17th September, 2009). It appears that such a prescription had existed earlier under the Rules, but by an amendment, the said prescription was dropped with effect from 14th July, 2004.

8. Therefore, the Appellants challenged the selection process on the ground that the decision of the Chief Justice to select only those candidates who secured a minimum of 75% marks would amount to "changing the rules of the game after the game is played" - a cliché whose true purport is required to be examined notwithstanding the declaration of this Court in Manjusree's case (supra) that it is "clearly impermissible".

9. The question whether the 'rules of the game' could be changed was considered by this Court on a number of occasions in different circumstances. Such question arose in the context of employment under State which under the scheme of our Constitution is required to be regulated by "law" made under Article 309 or employment under the instrumentalities of the State which could be regulated either by statute or subordinate legislation. In either case the 'law' dealing with the recruitment is subject to the discipline of Article 14.

10. Legal relationship between employer and employee is essentially contractual.

Though in the context of employment under State the contract of employment is generally regulated by statutory provisions or subordinate legislation which restricts the freedom of the employer i.e. the 'State' in certain respects.

11. In the context of the employment covered by the regime of Article 309, the 'law' - the recruitment rules in theory could be either prospective or retrospective subject of course to the rule of non-arbitrariness. However, in the context of employment under the instrumentalities of the State which is normally regulated by subordinate legislation, such rules cannot be made retrospectively unless specifically authorised by some constitutionally valid statute.

12. Under the Scheme of our Constitution an absolute and non-negotiable prohibition against retrospective law making is made only with reference to the creation of crimes. Any other legal right or obligation could be created, altered, extinguished retrospectively by the sovereign law making bodies. However such drastic power is required to be exercised in a manner that it does not conflict with any other constitutionally guaranteed rights, such as, Articles 14 and 16 etc. Changing the 'rules of game' either midstream or after the game is played is an aspect of retrospective law making power.

13. Those various cases³ deal with situations where the State sought to alter 1) the eligibility criteria of the candidates seeking employment or 2) the method and manner of making the selection of the suitable candidates. The latter could be termed as the procedure adopted for the selection, such as, prescribing minimum cut off marks to be secured by the candidates either in the written examination or viva-voce as was done in the case of Manjusree (supra) or the present case or calling upon the candidates to undergo some test relevant to the nature of the employment [such as driving test as was the case in Maharashtra State Road Transport Corporation (supra)].

14. If the principle of Manjusree's case (supra) is applied strictly to the present case, the Respondent High Court is bound to recruit 13 of the "best" candidates out of the 21 who applied irrespective of their performance in the examination held.

15. In such cases, theoretically it is possible that candidates securing very low marks but higher than some other competing candidates may have to be appointed. In our opinion, application of the principle as laid down in Manjusree case (supra) without any further scrutiny would not be in the larger public interest or the goal of establishing an efficient administrative machinery.

16. This Court in the case of *The State of Haryana Vs. Subash Chander Marwaha and Others*, while dealing with the recruitment of subordinate judges of the Punjab Civil Services (Judicial Branch) had to deal with the situation where the relevant Rule prescribed a minimum qualifying marks. The recruitment was for filling up of 15 vacancies. 40 candidates secured the minimum qualifying marks (45%). Only 7 candidates who secured 55% and above marks were appointed and the remaining vacancies were kept unfilled. The decision of the

State Government not to fill up the remaining vacancies in spite of the availability of candidates who secured the minimum qualifying marks was challenged. The State Government defended its decision not to fill up posts on the ground that the decision was taken to maintain the high standards of competence in judicial service. The High Court upheld the challenge and issued a mandamus. In appeal, this Court reversed and opined that the candidates securing minimum qualifying marks at an examination held for the purpose of recruitment into the service of the State have no legal right to be appointed. In the context, it was held:

12. ...In a case where appointments are made by selection from a number of eligible candidates it is open to the Government with a view to maintain high-standards of competence to fix a score which is much higher than the one required for more (sic mere) eligibility....

17. Unfortunately, the decision in Subash Chander Marwaha (supra) does not appear to have been brought to the notice of their Lordships in the case of Manjusree (supra).

18. This Court in the case of Manjusree (supra) relied upon P.K. Ramachandra Iyer and Others Vs. Union of India (UOI) and Others, Umesh Chandra Shukla Vs. Union of India (UOI) and Others, and Durgacharan Misra Vs. State of Orissa and Others, In none of the cases, the decision in Subash Chander Marwaha (supra) was considered.

19. No doubt it is a salutary principle not to permit the State or its instrumentalities to tinker with the 'rules of the game' insofar as the prescription of eligibility criteria is concerned as was done in the case of C. Channabasavaiah Vs. State of Mysore and Others, etc. in order to avoid manipulation of the recruitment process and its results. Whether such a principle should be applied in the context of the 'rules of the game' stipulating the procedure for selection more particularly when the change sought is to impose a more rigorous scrutiny for selection requires an authoritative pronouncement of a larger Bench of this Court. We, therefore, order that the matter be placed before the Hon'ble Chief Justice of India for appropriate orders in this regard.

1 Maharashtra State Road Transport Corporation and Others Vs. Rajendra Bhimrao Mandve and Others, Para 5

2 K. Manjusree Vs. State of A.P. and Another,

3 a). C. Channabasavaiah Vs. State of Mysore and Others, The State of Haryana Vs. Subash Chander Marwaha and Others, P.K. Ramachandra Iyer and Others Vs. Union of India (UOI) and Others, and Umesh Chandra Shukla Vs. Union of India (UOI) and Others, Durgacharan Misra Vs. State of Orissa and Others, , State of U.P. Vs. Rafiquddin and Others, , Maharashtra State Road Transport Corporation and Others Vs. Rajendra Bhimrao Mandve and Others, , Pitta Naveen Kumar and Others Vs. Raja Narasaiah Zangiti and Others, , K. Manjusree Vs. State of A.P.

and Another, Hemani Malhotra Vs. High Court of Delhi, K.H. Siraj Vs. High Court of Kerala and Others, Ramesh Kumar Vs. High Court of Delhi and Another, Rakhi Ray and Others Vs. The High Court of Delhi and Others, Hardev Singh Vs. Union of India (UOI) and Another, - Where procedural rules were altered.

b) P. Mahendran and others Vs. State of Karnataka and others, Madhya Pradesh Public Service Commission Vs. Navnit Kumar Potdar and another, Gopal Krushna Rath Vs. M.A.A. Baig (Dead) by Lrs. and Others, , Umrao Singh Vs. Punjabi University, Patiala and Others, , Mohd. Sohrab Khan Vs. Aligarh Muslim University and Others, - Where the eligibility criteria altered.