

(1969) 11 SC CK 0011

In the Supreme Court Of India

Case No : Civil Appeal No.1436 , 1437 Of 1967

The State of Rajasthan and Another

APPELLANT

Vs

Fateh Chand and Another

RESPONDENT

Date of Decision : 24-11-1969

Acts Referred:

Rajasthan Ministerial Staff Rules, 1957 — Rule 7
Rajasthan Service Rules, 1951 — Rule 12, 23A, 23A(2), 7

Citation : AIR 1970 SC 1099 : (1969) WLN 87

Hon'ble Judges : J. M. Shelat, J;C. A. Vaidyalingam, J

Bench : Division Bench

Final Decision : Allowed

Judgement

J.M. Shelat, J.—The limited question which arises in these appeals, under special leave, relates to the interpretation of Rule 23A(2) of the Rajasthan Service Rules, 1951.

2. The respondent in C. A. 1436 of 1967 was appointed in 1952 a clerk in the office of the Executive Engineer, Jaipur, on a work charged basis. In 1955 he was appointed a Lower Division Clerk in the same office temporarily for a period of 6 months but was continued as such even after the expiry of that period. The respondent in C. A. 1437 of 1967 was also appointed on work charged basis in 1958 and was in 1960 appointed a temporary Lower Division Clerk but was continued as such even after the said period. The services of both the respondents were terminated under Rule 23A(1) of the said Rules after giving them the requisite one month's notice on the ground that they failed to pass the examination required by Rule 7, Proviso 2, of the Rajasthan Subordinate Offices Ministerial Staff Rules, 1957 and the Order dated March 5, 1964 made by the Government in exercise of the power under the said Rule 7, proviso 2 although two chances to appear at the said examination were given to them. The respondents thereupon filed writ petitions in the High Court of Rajasthan challenging the right of the Government to terminate their services on the

ground that both of them had the necessary academic qualifications required under the recruitment Rules, that they had put in service of more than 3 years as temporary clerks and that therefore their services could only be terminated under Rule 23A(2) in the same manner as the services of a permanent Government servant could be terminated, in other words, by following the procedure laid down in Article 311(2) of the Constitution.

3. The High Court, on interpretation of Rule 23A of the Rajasthan Service Rules and Rule 7, Proviso 2, of the Ministerial Staff Rules, held (a) that the objects of the two Rules were distinct, (b) that Rule 7, proviso 2, did not provide for the consequences of failure of a temporary Government servant to pass the requisite examination, (c) that it would not be proper to induct into Rule 23A the conditions in and the consequences of Rule 7, proviso 2 and (d) that the term 'qualifications' in Rule 23A(2) meant only the academic qualifications and not any other qualification flowing from Rule 7 of the Ministerial Staff Rules. In this view the High Court held that on account of the respondents having had the academic qualifications as envisaged by Rule 23A(2) and having served as temporary clerks for over 3 years, Clause 2 and not Clause 1 of Rule 23A applied, and therefore, their services could not be terminated except in the manner of a Government servant in permanent service. On this reasoning, the High Court quashed the Orders of termination of their services. The result of this Order meant that all temporary servants who have put in service for over 3 years would be placed in a position equivalent to that of permanent servants and their services could only be terminated in the same manner as those of the permanent servants, i.e., in accordance with the procedure laid down in Article 311(2).

3A. The question is whether the construction of Rule 23A(2) adopted by the High Court is sustainable.

4. The Rajasthan Service Rules were made in 1951 by the Rajpramukh in exercise of the power under Article 309. A perusal of their contents shows that they are general in character, in that, they apply to all categories of Government servants and deal with their conditions of service. Rule 23A(2) reads:

The service of a temporary Government servant,

(a) who has been in continuous Government service for more than three years; and

(b) who satisfies the suitability in respect of age and qualifications prescribed for the post and has been appointed in consultation with the Rajasthan Public Service Commission, where such consultation is necessary, shall be liable to termination -

(i) in the same circumstances and in the same manner as a Government servant in permanent service;

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These Rules clearly do not deal with the classification of Government servants, their recruitment eligibility or qualifications of recruitment. Obviously, the term qualifications in Rule 23A(2) has to be read and construed in the light of the qualifications relating to the post held by a Government servant as laid down elsewhere. The Ministerial Staff Rules also under Article 309 were first made in 1957 and amended from time to time. Part I of those Rules lays down certain general provisions and definitions. Part II consists of Rule 6 only and deals with the strength of the staff and the cadres which are (a) of stenographers, and (b) of different categories of posts therein enumerated which include those of Upper and Lower Division Clerks. Part III deals with recruitment. So far as is relevant, Rule 7 provides that recruitment to the staff shall be made:

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(b) to the general cadre of the Lower Division Clerks from amongst those who pass or have passed the Junior Diploma Course.. The remaining vacancies, if any, shall be filled in by a competitive examination to be conducted by Commission.

Proviso 2 of Rule 7 provides:

that a person who joined service on a temporary basis before 1st January, 1962, shall be made permanent as a Lower Division Clerk...on his/her passing an examination to be held by the Appointing Authority concerned, on such terms and conditions as may be laid down by the Government.

Rule 10 requires that:

A candidate for appointment to the service must be:-

- (a) a citizen of India, or
- (b) a subject of Sikkim, or
- (c) a subject of Nepal, or of a former French possession in India, or
- (d) a person of Indian origin who has migrated from Pakistan with the intention of permanently settling in India....

Rule 11 prescribes the minimum and maximum age. Rule 12 deals with academic qualifications and Clause 2 thereof lays down that:-

A candidate for direct recruitment to the category of Lower Division Clerks must have passed the High School or Higher Secondary Examination of the Rajasthan Secondary Education Board, or of a University or Board recognised by the Government for the purpose of this Rule, or must possess Hindi or Sanskrit qualifications recognised by the Government as equivalent to that of Matriculation.

Rules 13 and 14 provides for character and physical fitness. Part IV of the Rules deals with procedure for direct recruitment and Rule 19 therein provides that the competitive examinations prescribed in Rule 7 shall be held every year at such

places as the Commission may decide. Sub-rule (3) of Rule 26 empowers the Government to appoint temporarily Lower Division Clerks from amongst the most suitable candidates available, if no nominee of the Commission is available.

5. Rule 12 thus lays down the minimum academic qualifications required for eligibility to apply for the post of a Lower Division Clerk, while the Rules as to passing the examination held under Rule 7, as to nationality, age and physical fitness etc., are other qualifications required for the purpose of recruitment. It follows, therefore, that before a person can be recruited, he has to have not only the minimum academic qualifications required under Rule 12, but other qualifications also, namely, nationality, age and the necessity of his having to pass the examination under Rule 7 held on such terms and conditions laid down by Government under that Rule. These being the different qualifications necessary for a person to be recruited under these rules, the expression 'qualifications' in Rule 23A(2) of the Rajasthan Service Rules has to be read in the light of the Ministerial Staff Rules, for, it is the latter, and not the former, which provides for the qualifications necessary for recruitment of, among other employees, the which only the Lower Division Clerks. The High Court, therefore, was not correct in construing the word 'qualifications' to mean academic qualifications only. Accepting the High Court's interpretation of Rule 23A(2) would mean reading Rule 12 and not the other Rules in the Ministerial Staff Rules, which apart from the minimum academic qualifications provide for other necessary qualifications before a person can be recruited. It would furthermore mean that a person having the minimum academic qualifications, without the other qualifications required for recruitment, if only because he is in temporary service for more than 3 years, would be placed under Rule 23A(2) in a position equivalent to that of a permanent servant for purposes of termination of his services. Rule 23A, dealing as it does with the Government's right of termination of service, must be read along with the Rules of recruitment relating to the particular post on which the person whose services are sought to be terminated is exercising the power under that Rule. So read, Rule 23A(2) protects only those temporary servants who have been in service of more than 3 years who possess the qualifications for the post and have, been appointed in consultation with the Public Service Commission. The expression 'qualifications to the post' in Clause 2 of the Rule, therefore, means qualifications on the satisfaction of which only the person in question could have been recruited to the post. That being so, the term 'qualifications' in that Rule must relate to the qualifications laid down in the Ministerial Staff Rules. There is, therefore, no question, as the High Court believed of inducing into Rule 23A(2) any additional condition or qualification other than those envisaged by Rule 23A(2). This was the construction canvassed by Counsel who appeared before the High Court on behalf of the Government. But the High Court, it would seem, felt difficulty in accepting it because it thought that if that were accepted the result would be that there would be no cases of temporary servants getting the benefit of Rule 23A(2) as all persons temporarily appointed as Lower Division Clerks would have been made

permanent once they had passed the examination prescribed under Rule 7. That reasoning also is not correct. There is no obligation on the Government to make all temporary clerks permanent once they pass the examination prescribed under Rule 7. Only those would be made permanent who can be filled into the available permanent vacancies. The rest would have to wait till their turn comes. This is precisely what is provided for by Rule 25. There would, therefore, be 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. There is, therefore, no difficulty of there being no temporary servants getting the protection of Rule 23A(2) as apprehended by the High Court.

6. In pursuance of the power under Rule 7, the Government issued the Order dated March 5, 1964 regarding the examination for the Lower Division Clerks appointed on a temporary basis. This became necessary as otherwise there would be temporary clerks appointed before 1957 and those appointed thereafter, the former continuing to be temporary clerks without undergoing the examination necessary under the Rules and the latter having to pass the examination under Rule 7 for being recruited. So far as the latter class of persons are concerned, they would not be recruited if they were to fail in the examination held under Rule 7 and Rule 19. It appears that since the former were in temporary service already, the Government gave them as a matter of indulgence two chances to pass the examination and directed that their services should be terminated only if they failed to pass even after two trials. The Order was competently made as Rule 7 empowers the Government to make such an Order. We do not see how any objection can be validly taken against such an Order when its object clearly was to require temporary servants recruited prior to 1957 to conform to the requirements of the Rules as to recruitment.

7. In our view the respondents did not fall under the category of temporary servants entitled to the benefit of Rule 23A(2) as they did not possess the qualifications there mentioned, i.e., of having passed the examination prescribed under Rule 7. That being so, the Government was entitled to terminate their services under and in accordance with Rule 23A(1). It is true that proviso 2 of the said Rule 7 has been amended in 1969 and the passing of the said examination has been dispensed with. But this amendment, not being retrospective, cannot unfortunately be availed of by the respondents.

8. For the reasons aforesaid, the appeals are allowed and the Order of the High Court is set aside. But as directed by the Order under which special leave was granted, the appellant State will not only bear its own costs but will also pay the costs of the respondents, such costs being only one hearing fee.