

(2015) 12 RAJ CK 0052

In the Rajasthan High Court

Case No : Civil Writ Petition No. 17662/2015

Ummed Singh and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 01-12-2015

Acts Referred:

Citation : (2015) 12 RAJ CK 0052

Hon'ble Judges : M.N. Bhandari, J.

Bench : Single Bench

Advocate : Tanveer Ahmed and Manish Parihar, for the Appellant

Final Decision : Dismissed

Judgement

M.N. Bhandari, J.—By this writ petition, a challenge is made to the condition No. 3(H) of the order dated 28th October, 2015. The condition aforesaid denies benefit of OBC category to the Jat community of districts Bharatpur and Dholpur.

2. Learned counsel for the petitioners submit that advertisement for selection on the post of Nurse Grade II was issued by the respondents on 26th February, 2013. The selection in pursuance to it was made followed by declaration of result on 22nd March, 2015 but the respondents have now issued order dated 28th October, 2015 to deny benefit of reservation to the Jat community of Bharatpur and Dholpur districts in the light of the judgment of Apex Court, referred therein. The judgment of Apex Court applies to the service in the Government of India and not to the State Service. It is looking to the fact that central list for reservation was under challenge therein and not the state list. In view of the above, Condition No. 3(H) of the impugned order deserves to be set aside. The petitioners may accordingly be extended benefit of reservation in pursuance to the selection made by the respondents.

3. I have considered the submissions made by learned counsel and perused the record.

4. The respondents issued advertisement for selection on different posts. After selection, the result was declared in the month of March, 2015. The respondent have now issued an order to deny benefit of reservation to Jat community of Bharatpur and Dholpur districts. It is in the light of judgment of Apex Court where reservation is denied to Jat community of Bharatpur and Dholpur districts.

5. A challenge to the condition has been made mainly on the ground that judgment of the Apex Court does not apply to the State services. Learned counsel, however, could not deny that subsequent to the judgment of Supreme Court, even Division Bench of this Court has decided the same issue in the case of Ratan Lal Bagri & Ors. Vs. The State of Rajasthan & Ors. in DB Civil Writ Petition (PIL) No. 6046/1999 vide its judgment dated 10th August, 2015. The Notification to provide reservation to Jat community of Bharatpur and Dholpur districts has been set aside finding it to be unconstitutional.

6. The question for my consideration would be that if a Notification to provide reservation has been quashed, then whether a claim can yet be made for reservation provided for the appointment. It is moreso when, appointments have not yet been made. If the argument of learned counsel for the petitioners that judgment of the Apex Court would apply to the State Service is accepted, then also, when judgment of this Court exists on the same issue, then how it can be ignored while making adjudication of the issue raised by the petitioners.

7. Learned counsel for the petitioners submit that judgment in the case of Ratan Lal Bagri & Ors. (supra) applies to the State Service but therein, protection has been given to those, who have already taken the benefit of reservation as the judgment is made prospective. When the judgment is held prospective, it would not apply to the recruitment of the year 2013 as the judgment was given in the year 2015.

8. The argument aforesaid needs consideration. Para No. 120 of the judgment in the case of Ratan Lal Bagri & Ors. (supra) is quoted hereunder for ready reference:

"120. - The writ petitions are partly allowed. The Notification dated 10.1.2000 issued by the State of Rajasthan including the Jats of Bharatpur and Dholpur, and deleting the words "except Dholpur and Bharatpur" from the original Notification dated 3.11.1999 issued by it, is quashed. The Jats of Bharatpur and Dholpur Districts will be excluded from the State List of OBCs. The quashing of Notification dated 10.1.2000 will however be prospective, and will not affect the benefit of reservation already given and received by the Jats of Bharatpur and Dholpur Districts."

9. The perusal of para, quoted above, shows that Notification dated 10th January, 2015 has been quashed, which provides reservation to Jat community of Bharatpur and Dholpur districts. It is, however, held to be prospective. It is with the direction not to affect the benefit of reservation already given and received by Jat community of Bharatpur and Dholpur districts. The outcome of the

direction aforesaid is that if a benefit has already been given or received, it would not be effected even though the Notification has been quashed. In the instant case, though select list has been issued with the benefit of reservation but it is admitted that appointment order has not been issued.

10. The question would be as to whether placement of the name in the select list would create a vested right of appointment. It is settled law that mere inclusion of the name in the select list does not create a right of appointment. It is in view of the judgment of Apex Court in the case of *Shankarsan Dash Vs. Union of India*, . The judgment aforesaid is referred to find out as to whether a right can be said to have vested for appointment merely on inclusion of name in the select list.

11. The issue aforesaid needs to be elaborated. It is in reference to para No. 120 of the judgment in the case of *Ratan Lal Bagri & Ors. (supra)*. Therein, while quashing the Notification, it is held to be prospective and not to take away the benefit already given and received by the Jat community of Bharatpur and Dholpur districts. The word "given and received" are of significance. It means that the right has been finally vested in the employee. It can be only when appointments have been made and not otherwise. It is for the reason that the provision for reservation is provided for appointment and it gets concluded when appointment order is issued, thus word "giving and received" gets concluded when order of appointment has already been issued. The Division Bench saved those, who have already taken benefit and would obviously in the form of appointment. The right of benefit vests in an employee when it is finally given and not when it is accrued only.

12. If an employee is appointed on the post having hierarchy of promotion, if having particular qualification. Such an employee continuous in service with required qualification for promotion and just before promotion, the establishment amends the Rules and provide higher qualification for promotion then required earlier. If an employee does not possess the higher qualification provided by the amended provision cannot claim the benefit of promotion based on existing right by saying that at the time of appointment, the qualification provided for the promotion was possessed by him, thus should be rendered eligible by subsequent amendment in the Rules. The Apex Court considered the issue aforesaid and held that unless right is finally vested in the employee by getting promotion, it cannot be said to be a vested right merely based on the eligibility as per un-amended Rule existing at the time of appointment. In the instant case, when Notification has been quashed by the Division Bench in the case of *Ratan Lal Bagri & Ors. (surpa)*, can a direction be given by this Court to still make appointment with the benefit of reservation, which does not exist. It cannot be only for the reason that advertisement for it was issued in the year 2013. Mere issuance of the advertisement and appearance in the selection does not create a vested right of appointment unless it is culminated in the form of appointment order. The ratio propounded in the case of *Ratan Lal Bagri & Ors. (supra)* would

apply in those circumstances, thus being having knowledge of the judgment of Division Bench, while adjudicating the issue raised by the petitioner, the aforesaid judgment cannot be ignored by this Court.

13. Learned counsel for the petitioner has referred certain orders of appointment subsequent to the judgment of Division Bench in the case of Ratan Lal Bagri & Ors. (supra).

14. If the government has committed illegality in providing reservation to Jat community of Bharatpur and Dholpur districts despite quashing of Notification to that extent without having existing right in favour of the candidates, this Court cannot issue direction for its perpetuation. If the judgment in the case of Ratan Lal Bagri (supra) is to be applied prospectively, it would definitely apply to all appointments now to be made. It may be in reference to the advertisement issued on a previous date. If the reservation at the time of appointment is to be given, it would nullify the effect of judgment of Division Bench quashing the Notification. In fact, the direction for reservation would be nothing but in reference to a Notification, which does not exist, thus cannot be given.

15. In the light of the discussion made above, I do not find that case is made out for interference in the impugned order even if it is assumed that judgment of Apex Court may not apply to the State Service.

16. The writ petition is accordingly dismissed so as the stay application.