

(2014) 10 RAJ CK 0127

In the Rajasthan High Court

Case No : Civil Writ Petition Nos. 4424, 4426, 4745, 4495, 5160, 5302, 7285
and 10269/2013

Vikram Kumar Maheriya

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 01-10-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 19(1)

Citation : (2014) 10 RAJ CK 0127

Hon'ble Judges : Sunil Ambwani, Acting C.J.; Vijay Bishnoi, J

Bench : Division Bench

Advocate : Kuldeep Mathur, Ravindra Singh, Nupur Bhati, Manish Patel, Deepak Nehra, Anirudh Purohit and Bhanwar Singh, Advocate for the Appellant; P.R. Singh, Addl. Advocate General and S.S. Ladrecha, Addl. Advocate General, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Vijay Bishnoi, J.—The petitioners, who are working as District Coordinator, Block Coordinators, Coordinators Supervision/Trainer, Resource Persons and Social Scientists under Nirmal Bharat Abhiyan, Total Sanitation Campaign, School Water Sanitation and Hygiene Education, Integrated Watershed Management Programme and Swarn Jayanti Gram Rozgar Yojna in various Districts of State of Rajasthan, have challenged the substitution to the first proviso to Rule 23 of Rajasthan Rural Development and Panchayati Raj State and Subordinate Service Rules, 1998 (hereinafter after referred to as "the Rules of 1998") vide Notification dated 06.03.2013. In the substituted first proviso to Rule 23 of Rules of 1998, stipulation about the grant of bonus marks in recruitment to the post of Junior Engineer, Assistant Programme Officer, Computer Instructor, Accounts Assistant, Coordinator Training, Coordinator I.E.C. and Coordinator Supervision, has been provided.

2. The petitioners are claiming that non-inclusion of the posts held by them, for

the purpose of grant of bonus marks is discriminatory because the petitioners, while working on these posts under the various schemes, have gained similar kind of experience while discharging the duties of same nature, as has been discharged by the employees who have been included in the substituted first proviso to Rule 23 of the Rules of 1998.

3. It has strenuously been argued by the learned counsel for the petitioners that when the respondents have provided bonus marks on the basis of experience, there is no justification for differential treatment to the persons like the petitioners, who are discharging similar kind of duties under the different schemes floated by the State Government or the Central Government on the posts other than referred to in first proviso to Rule 23 of the Rules of 1998. According to the petitioners, there is no intelligible differentia in treating the different candidates, who are engaged in particular Government scheme from the other persons, who have effective and actual working experience. It is also contended that the baseless differentiation has no relation with the object sought to be achieved. It is submitted that when the ultimate object in providing bonus marks is to make sure the availability of skilled persons, there is no justification or logic in making unnecessary classifications.

4. Having considered the pleadings and the arguments advanced on behalf of the petitioners, we are clearly of the view that these writ petitions are devoid of merits.

5. It is settled proposition of law that a law made by the legislature can be struck down by the Courts only on two grounds namely (i) that the Legislature, who has enacted the law, does not have competence to enact such law and (ii) that it does not take away or abridge any of the fundamental rights as guaranteed under Part-III of the Constitution of India or any other constitutional provisions.

6. Hon"ble Supreme Court in State of M.P. Vs. Rakesh Kohli and Another, has held as under:

"16. The statute enacted by Parliament or a State Legislature cannot be declared unconstitutional lightly. The court must be able to hold beyond any iota of doubt that the violation of the constitutional provisions was so glaring that the legislative provision under challenge cannot stand. Sans flagrant violation of the constitutional provisions, the law made by Parliament or a State Legislature is not declared bad."

17. This Court has repeatedly stated that legislative enactment can be struck down by Court only on two grounds, namely (i) that the appropriate Legislature does not have competence to make the law, and (ii) that it does not take away or abridge any of the fundamental rights enumerated in Part - III of the Constitution or any other constitutional provisions. In State of Andhra Pradesh and others, etc. Vs. McDowell and Co. and others, etc., while dealing with the challenge to an enactment based on Article 14, this Court stated in paragraph 43 of the Report as follows:

"43....A law made by Parliament or the legislature can be struck down by courts on two grounds and two grounds alone, viz. (1) lack of legislative competence, and (2) violation of any of the fundamental rights guaranteed in Part III of the Constitution or of any other constitutional provision. There is no third ground..... if an enactment is challenged as violative of Article 14, it can be struck down only if it is found that it is violative of the equality clause/equal protection clause enshrined therein. Similarly, if an enactment is challenged as violative of any of the fundamental rights guaranteed by clauses (a) to (g) of Article 19(1), it can be struck down only if it is found not saved by any of the clauses (2) to (6) of Article 19 and so on. No enactment can be struck down by just saying that it is arbitrary or unreasonable. Some or other constitutional infirmity has to be found before invalidating an Act. An enactment cannot be struck down on the ground that court thinks it unjustified. Parliament and the legislatures, composed as they are of the representatives of the people, are supposed to know and be aware of the needs of the people and what is good and bad for them. The court cannot sit in judgment over their wisdom."

17.... to 25.....

26. In Mohd. Hanif Quareshi and Others Vs. The State of Bihar, the Constitution Bench further observed that there was always a presumption in favour of constitutionality of an enactment and the burden is upon him, who attacks it, to show that there has been a clear violation of the constitutional principles. It stated in paragraph 15 of the Report as under:

"15....The courts, it is accepted, must presume that the legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds. It must be borne in mind that the legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest and finally that in order to sustain the presumption of constitutionality the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation."

27. The above legal position has been reiterated by a Constitution Bench of this Court Moti Das Vs. S.P. Sahi, The Special Officer In Charge of Hindu Religious Trusts and Others,

28. In Hamdard Dawakhana and Another, Kalipada Deb and Another, Lakshman Shripati Itpure @ Lakshman Shripati Impore and A.B. Choudhri and Another Vs. The Union of India (UOI) and Others, inter alia, while referring to the earlier two decisions, namely, Bengal Immunity Company Ltd. and Mahant Moti Das, it was observed in para 8 of the Report as follows:

"8. Therefore, when the constitutionality of an enactment is challenged on the ground of violation of any of the articles in Part III of the Constitution, the

ascertainment of its true nature and character becomes necessary i.e. its subject-matter, the area in which it is intended to operate, its purport and intent have to be determined. In order to do so it is legitimate to take into consideration all the factors such as history of the legislation, the purpose thereof, the surrounding circumstances and conditions, the mischief which it intended to suppress, the remedy for the disease which the legislature resolved to cure and the true reason for the remedy..."

In Hamdard Dawakhana, the Court also followed the statement of law in Mahant Moti Das and the two earlier decisions, namely, Charanjit Lal Chowdhary v. Union of India and State of Bombay v. F.N. Balsara and reiterated the principle that presumption was always in favour of constitutionality of an enactment."

7. In the present set of petitions, the petitioners have not questioned the competence of the State Government in substituting first proviso to Rule 23 of the Rules of 1998. We may observe that validity or otherwise of the provision for bonus marks is also not in issue in the present writ petitions. The consideration herein is to the limited extent as to whether the restriction of bonus marks, only to the persons referred to in the first proviso to Rule 23 of the Rules of 1998, suffers from any illegality.

8. Awarding of bonus marks for the purpose of recruitment is itself a matter of concession, and cannot be considered to be a matter of right. As to how, and in what manner, the concession is, if at all, to be given, remains within the domain of the employer concerned. As to what post, on which the experience gained, is to be treated eligible for bonus marks, is again a matter within the domain and jurisdiction of the employer concerned and it cannot be claimed as a matter of right. The petitioners have utterly failed to produce sufficient material on record to satisfy this Court that they are discharging similar kind of duties as has been discharged by the employees, with whom, they are claiming parity.

9. We are clearly of the view that the petitioners have failed to show any illegality or constitutionality in the provisions impugned or any illegality in the action taken by the Government.

10. Hence, there is no force in these writ petitions and the same are hereby dismissed. Stay petitions also stand dismissed.

11. There shall be no order as to costs.