SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

State of Raj and anr Vs. Datar Singh

State of Raj and anr Vs. Datar Singh

SooperKanoon Citation : sooperkanoon.com/1009067

Court : Rajasthan Jodhpur

Decided On : Jul-31-2013

Appellant : State of Raj and anr

Respondent : Datar Singh

Judgement :

1 IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR :JUDGMENT:

1. State of Rajasthan & Another Vs. Datar Singh (D.B. Special Appeal (Writ) No.875/2012) 2. State of Rajasthan & Another Vs. Chena Kumari Kewatiya (D.B. Special Appeal (Writ) No.859/2012) 3. State of Rajasthan & Another Vs. Jyoti Nagla (D.B. Special Appeal (Writ) No.968/2012) 4. State of Rajasthan & Others Vs. Indu Bala Kothari (D.B. Special Appeal (Writ) No.982/2012) 5. State of Rajasthan & Another Vs. Jayant Vyas (D.B. Special Appeal (Writ) No.983/2012) Reportable 6. State of Rajasthan & Another Vs. Santosh Kumari Meena (D.B. Special Appeal (Writ) No.984/2012) 7. State of Rajasthan & Another Vs. Surya Tabiyar (D.B. Special Appeal (Writ) No.985/2012

8. State of Rajasthan & Others Vs. Renu Tiwari (D.B. Special Appeal (Writ) No.1017/2012) 9. State of Rajasthan & Others Vs. Radha Kumari (D.B. Special Appeal (Writ) No.68/2013) 10. State of Rajasthan & Another Vs. Satyendra Vyas (D.B. Special Appeal (Writ) No.69/2013) 11. State of Rajasthan & Others Vs. Roop Narayan (D.B. Special Appeal (Writ) No.70/2013) 12. State of Rajasthan & Others

Vs. Asha Modi (D.B. Special Appeal (Writ) No.73/2013) 13. State of Rajasthan & Another Vs. Chetna Panwar (D.B. Special Appeal (Writ) No.74/2013) 14. State of Rajasthan & Others Vs. Santosh Kumar Meghwal (D.B. Special Appeal (Writ) No.77/2013) 15. State of Rajasthan & Another Vs. Maina Kumari Tiwari (D.B. Special Appeal (Writ) No.79/2013

16. State of Rajasthan & Another Vs. Manju Redu (D.B. Special Appeal (Writ) No.80/2013) 17. State of Rajasthan & Others Vs. Sheela Sen (D.B. Special Appeal (Writ) No.81/2013) 18. State of Rajasthan & Others Vs. Pinka Kumari Parmar (D.B. Special Appeal (Writ) No.88/2013) 19. State of Rajasthan & Another Vs. Ratan Lal Kumhar (D.B. Special Appeal (Writ) No.89/2013) 20. State of Rajasthan & Another Vs. Mangi Lal (D.B. Special Appeal (Writ) No.448/2013) 21. Sunita Vishnoi Vs. Smt. Arpana Arora & Another (D.B. Writ Contempt No.181/2013) DATE OF JUDGMENT : July 31st, 2013 PRESENT HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS HON'BLE MRS. JUSTICE NISHA GUPTA _____ Mr. G.R. Punia, Addl. Advocate General with Mr. Jamwant Gurjar for the State. Mr. (Dr.) P.S. Bhati/Mr. P.R. Mehta/Mr. R.S. Choudhary/Mr. Arjun Purohit for the respondents. 4 BY THE COURT (Per Hon'ble Mr. Vyas, J.) : All the above special appeals are being disposed of by this common judgment. For the sake of convenience, record of D.B. Special Appeal (Writ) No.875/2012, arising out of S.B. Civil Writ Petition No.9170/2012 is perused and discussed. The respondent writ-petitioner preferred writ petition before this Court for seeking direction to the appellants (herein) to consider his candidature for the post of General Teacher Grade-III (PH) (Low Vision) in pursuance of the advertisement dated 24.02.2012 published for direct recruitment to the posts of Teacher Grade-III. Further, it is prayed that upon being found suitable the respondents (in the writ petition) may be directed to provide appointment in accordance with merit on the post of General Teacher Gr.-III (Physically Handicapped) (Low Vision) with effect from the date the similarly situated candidates were provided appointment, with all consequential benefits. Brief facts of the case are that the writ-petitioner having low vision of 45% of permanent disability acquired qualification of Sr. Secondary examination from the Board of Secondary Education, Rajasthan, Ajmer, Bachelor's degree from MDS University, Ajmer and also acquired B.Ed. degree from the Kashmir University.

The petitioner also acquired TET qualification while appearing in the 5 Rajasthan Teachers' Eligibility Test 2011 conducted by the Board of Secondary Education, Rajasthan, Ajmer. The writ petitioner filed an application in the office of respondent No.2 Zila Parishad, Sriganganagar in pursuance of advertisement dated 24.02.2012 issued under the Rajasthan Panchayati Raj Rules, 1996. In the advertisement dated 24.02.2012 posts of Teacher Grade- III (Level-I and Level-II) were separately published and the petitioner filed application for the post of Teacher Gr.- III (Level II). In the advertisement issued by the Zila Parishad, Sriganganagar, 7 posts are reserved for the Physically Handicapped category for Social Studies subject and requisite qualification for the candidate was specified in column 7(2) of the advertisement dated 24.02.2012. In the advertisement, age-limit, Pay Scale, qualification and other terms and conditions were also incorporated. In the writ petition, the petitioner pleaded that as per guidelines issued for the candidates, the candidates were required to fill up on-line applications in the format attached with the guidelines and in clause (iii) of the guidelines it is specifically provided that so as to avoid any error in filling up application form the candidates are instructed to take off-line application form from the website of the Panchayat Raj Department and, after filling up the on-line applications the same may be submitted through e-Mitra by way of on- 6 line application. The petitioner being qualified for the post, filled in his on-line application in the prescribed format within stipulated time for the purpose of selection to the post of Teacher Grade-III. Column No.5 and 6 of the application form are marked for educational qualification possessed by the candidate in which the petitioner specified that he has completed B.A. And B.Ed. As per the petitioner, it is clear from the fact that the petitioner applied for only General Teacher Grade-III (physically handicapped) as he does not have the qualification for being appointed as Special Teacher. But, respondent No.2 issued admission card to the petitioner for the purpose of examination conducted on 02.06.2012 wherein, in the column of post at the top of the admission card the respondents specified the category II Level, Special Teacher (Visually Impaired). A representation was submitted by the respondent- petitioner in the office of the appellant in which it is clarified that he is possessing qualification for appointment general education teacher and does not have any qualification to be appointed as special teacher,

therefore, he cannot be appointed as special teacher as such his application form may be considered for appointment on the post of general teacher. After filing aforesaid representation, the petitioner appeared in the examination conducted on 01.06.2012 and 7 also marked his category as general teacher (physically handicapped) (Low Vision). The respondents issued result of the examination conducted on 02.06.2012 wherein the petitioner secured total marks 93.88 and the last cut off marks for the General Teacher (PH) (LV) is 37.01 for Social Studies subject which is much lower than the marks secured by the petitioner. The petitioner again submitted representations on 29.08.2012 and 31.08.2012 wherein it was pointed out that he is possessing qualification for appointment as General Teacher (PH) (Low Vision) and cannot be appointed as special teacher, however, his category of post has wrongly been shown in the admission card, therefore, a request was made by the petitioner to treat his candidature for the category of general teacher but the representation filed by the petitioner was not decided, therefore, the petitioner preferred writ petition before this Court. In the writ petitions, notices were issued in so many cases but reply was filed in S.B. Civil Writ Petition No.6762/2012 , in which, the appellant State submitted that a special note was made at item No.1 of the advertisement dated 24.02.2012 in which all the candidates were informed that in case of any incorrect or incomplete information the application form will be liable to be rejected and no correspondence for rectification of error will be accepted. Further, it is submitted that note not V of 8 item No.5 of the advertisement, it was made clear that it was expected from the candidates to take print out of the on-line application form before sending it so as to check and verify the informations filled in and, then, to send the on-line application form. Therefore, from the candidates it was expected to abide by the guidelines issued in the advertisement itself. If the petitioner himself wrongly filled in application form, then, his candidature in General category cannot be considered in view of the guidelines. It was also replied that looking to the rights of other aspirants who have filled in correct form and mentioned correct category there was no question to change the category or to allow any candidate to make any corrections. Therefore, all the candidates were required to fill in on-line applications as per the guidelines and if they failed to give correct information or committed any mistake, then, there is no question of allowing the candidates to

correct the error committed by the candidate in the on-line applications. Admittedly, a special note was made in item No.1 of the advertisement dated 24.02.2012 that in case of wrong information no correspondence for rectification of the error will be considered and the same will be cancelled for which the applicant himself or herself will be liable. The candidates were required to take print out of the on-line application form before sending it so as to check and verify all the details and, thereafter, to send 9 the on-line application correctly. Therefore, there is no question of allowing any candidate to rectify the error committed by them in the on-line application. Once it was made clear in the advertisement itself, then, obviously allowing any candidate to rectify the mistake certainly deprived the other candidates who filled in correct application forms. The learned Single Judge after considering the entire facts of the case finally decided the writ petition vide judgment dated 11.09.2012, in which, the learned Single Judge directed the respondents to make necessary correction in the application form submitted on-line by the petitioners or persons alike on or before 30.09.2012 if such persons pointed out errors on or before 24.09.2012 the candidature of such candidates is also required to be considered afresh after making necessary corrections and further it is directed that if they stand in merit in their category, appointment be accorded to them if otherwise found eligible. In all the above special appeals, the appellant State Government and Panchayati Raj Department is challenging the validity of the aforesaid judgment. Learned counsel for the appellant vehemently submits that recruitment to the post of Primary School Teacher in the Panchayati Department is to be made through competitive examination and, for the same, the 10 appellant department issued advertisement and guidelines in which it is specifically mentioned that incorrectly filled in on-line applications forms will not be considered and false and incorrect information will lead to rejection of the application form. In the present case all the respondent writ-petitioners filled in application forms with open eyes, therefore, they cannot blame the appellants about issuance of the admission card under wrong category or for other reasons and they gave their information and claimed the post for which they applied, therefore, the appellants are not under obligation to allow the candidates to rectify their own errors. In some of the cases, the categories of physically handicapped were not correctly mentioned and, in some of the cases, wrong reservation was

claimed; but, the appellant and all the Zila Parishads of the State considered their candidature as per information furnished by them in the on-line application form. Therefore, in view of the fact that in the advertisement itself it was made clear that no change will be made after furnishing the information, the learned Single Judge ought to have considered this aspect of the matter but ignoring all the above facts learned Single Judge issued directions whereby it is ordered that necessary corrections in the application form may be permitted to the petitioners and persons alike on or before 30.09.2012. 11 Learned Addl. Advocate General Mr. G.R. Punia assisted by Mr. Mahendra Choudhary vehemently argued that a candidate who applied for the post of Teacher Grade-III through on-line application is required to first read all the instructions given in the advertisement and he is required to fill in on-line application with open eyes because it was made clear in the advertisement that incorrect on-line application forms will not be accepted and false and incorrect information will lead to rejection of the application form. Therefore, the learned Single Judge was required to decide the matter on merit; but, upon perusal of the judgment it will reveal that the learned Single Judge enlarged the scope of the writ petition and issued direction to the State Government ignoring the fact that appellant State cannot be blamed for incorrect information submitted in the application form, therefore, the judgment impugned deserves to be quashed. Learned counsel for the respondents vehemently argued that in so many writ petitions decided while following the adjudication made in Datar Singh's case, being S.B. Civil Writ Petition No.9170/2012, decided on 11.09.2012, compliance has already been made and candidates have been provided appointment and, in this case, the Division Bench of this Court, on 11.02.2013, passed an order that in the interest of justice will be served if the appellants carried out the compliance of the 12 order passed by the learned Single Judge. In other words the respondents were directed to consider the representation of the petitioners and like persons pursuant to the order of the learned Single Judge but subject to the decision of the appeal and, at the same time, not investing them with any additional right merely for compliance of the order of the learned Single Judge. It is also considered appropriate to observe that if at all while carrying out compliance the appellants or the respondents find any difficulty or the process gives rise to any dispute the same can always be brought before the Court by way of appropriate application for

necessary orders. While passing the above order the interim order dated 12.12.2012 was modified. Learned counsel for the respondents submits that intention of the above order was to decide the representation as ordered by the learned Single Judge; meaning thereby, the directions issued by the learned Single Judge are required to be complied with by the appellant State because there is nothing wrong in the direction issued by the learned Single Judge to make necessary corrections in the application forms submitted by the petitioners and like persons on or before 30.09.2012 if such person submits representation on or before 24.09.2012. all the learned counsel appearing on behalf of the respondents vehemently submits that it is a 13 case in which learned Single Judge has exercised power on the basis of adjudication made in Datar Singh's case, therefore, there is no error in the judgment rendered by the learned Single Judge. Hence, these special appeals may be rejected. After hearing learned counsel for the parties, we have considered the arguments and grounds taken in these special appeals. It is true that advertisement was issued by the Zila Parishads of the State including Zila Parishad Sriganganagar in which the following note was given which reads as under : :- 1. Online Application Form ! % * * , 1

3. ! 5 * Upon perusal of the above note incorporated in the advertisement it was made clear to the candidates that upon incorrect information or wrong information no candidate will be permitted to correct the error committed in the on-line application form and no correspondence will be accepted. The appellants are taking shelter of said note for the purpose of denial of corrections by the candidates. It is true that the said note was given in the advertisement but, at the same time, this Court cannot lose sight of the fact that error can be committed by any 14 human being and error can be committed by the equipments due to technical faults used for the purpose of accepting on-line applications. Learned Single Judge has observed in the order that in the on-line applications the petitioners either committed some error or some columns remained unfilled for several reasons. In some of the cases, persons belonged to tribal area and belong to scheduled tribe failed to fill up columns pertaining to category. In few cases, the aspirants belonging to the category of general teacher made wrong entry for appointment on the posts of special teacher. It emerges from the judgment of the learned Single Judge after due consideration of the facts and circumstances of the

case in totality observed that aspirants committed errors in mentioning categories, in which, their respective candidature was to be considered and as per the advertisement there was no possibility of correction of error as the application forms were submitted on-line. Therefore, the learned Single Judge reached the conclusion that errors crept in are quite minor but have far reaching effect including non-consideration of the petitioners' candidature because as per the advertisement any error in mentioning the information excludes them from consideration against the vacancies relating to their own actual category. However, upon filing representation, the respondents refused to allow corrections, therefore, 15 learned Single Judge while following the adjudication made in the case of Savita Bajaj in S.B. Civil Writ Petition No.9062/2012, decided on 04.09.2012, issued directions to the respondents to make necessary correction in the application form submitted on-line by the petitioners on or before 30.09.2012. In our considered opinion, while modifying the stay order granted earlier by this Court, it was made clear that interest of justice will be served if the appellants carried out the compliance of the order passed by the learned Single Judge. In other words the respondents were directed to consider the representation of the petitioners and like persons pursuant to the order of the learned Single Judge but subject to the decision of the appeal and, at the same time, not investing them with any additional right merely for compliance of the order of the learned Single Judge. It is also considered appropriate to observe that if at all while carrying out compliance the appellants or the respondents find any difficulty or the process gives rise to any dispute the same can always be brought before the Court by way of appropriate application for necessary orders. In all these appeals, no application has been filed by the respondent candidates. However, an application has been filed by the State Government in which following defects are pointed out in para 4 to 6, which reads as 16 under :

4. That the humble appellants have started process in compliance of the judgment passed by the Hon'ble writ court for amendment in their category and post etc. On scrutiny, the following cases were taken up for amendments in compliance of the order of the Hon'ble Court :- S.No Desired amendment Level-I (Class Level-II Class Total No. I to V) VI to VIII of Cases 1. Cases relating to chang

65. 88 of category 2. Cases relating to chang

31. 73 of posts 3. Total No. of pendin

96. 161

5.

That while taking into consideration the mistake committed by the applicants while submitting online application forms and by amending them now, the final select list prepared by the Administrative Establishment Committee of the Panchayat Samitis will have to be amended as per their category. Resultantly, the candidates appointed on various posts (Level-I and II) in the entire State will be affected, that is to say in view of the rejection of the application form of the petitioners, the candidates stood in merit were appointed and now if the candidature of the petitioner is considered while enabling them to amend their category, and if they stand higher in merit, the candidates those who are already appointed will have to give them way which will not only affect their created rights but will also give rise to litigation. Apart from above, by affecting the corrections in the online application forms submitted by them as per their desire now, will create complications like removing the already appointed persons and will also affect the category-wise posts. Thereby the things which are settled will have to be unsettled which is not otherwise permissible under the law. In our opinion, the defects mentioned in above par

4. to 5 are not tenable in law because for the first time the appellants prescribed the mode of filling in application forms through on-line. In the country like India and, more so, in the State of Rajasthan, these are the most recent technological developments and, of course, such technological advancements are to be appreciated. But, the fact remains that the candidates are not as much aware as these new methods and modes of filing applications require. In the advertisement dated 24.02.2012, however, no opportunity is provided to the candidates to rectify the errors, if any committed, after acceptance of the on-line applications. It is true that a note was appended in the advertisement at item No.1 that in case of any incorrect or incomplete information the application form will be liable to be rejected and no correspondence for rectification of error will be accepted. Further, it is

submitted that note not V of item No.5 of the advertisement, it was made clear that it was expected from the candidates to take print out of the on-line application form before sending it so as to check and verify the informations filled in and, then, to send the on-line application form. In our considered opinion, it is the duty of the welfare State to at least grant opportunity of rectification of error at the stage of initiation of new modes and methods for submitting application forms on- line because until the new system comes in vogue there 18 should be allowance for rectification of errors which may be either human or technical. Therefore, the learned Single Judge while exercising the jurisdiction under Article 226 of the Constitution of India gave directions to the respondents, in which, in the opinion of this Court, there is no error. In this view of the matter, the finding arrived at by the learned Single Judge granting opportunity to correct the errors does not require any interference. More so, the same is in consonance with the principles of natural justice. However, while taking into consideration the difficulties in compliance submitted before this Court we are of the opinion that those difficulties can be sorted out while observing that the appointments as a consequence to the corrections permitted by the learned Single Judge shall be made only against the vacancies available with the appellants and appellant State shall not disturb the appointments already made because, in these cases, for the mistake/omission committed by the candidates themselves the candidates have been permitted by this judgment to remove the errors/mistakes and the appellant State cannot be held responsible. In view of above, all these special appeals are hereby dismissed. It is however made clear that opportunity shall be granted for rectification of error 19 only as per directions given by the learned Single Judge; and, further, the appointments already made shall not be disturbed and appointments shall be made in pursuance of the directions given by the learned Single Judge as per availability of posts. Consequently, D.B. Writ Contempt No.181/2013, Sunita Vishnoi Vs. Smt. Arpana Arora & Another is hereby disposed of. Notices of contempt, if any, stand discharged. There shall however be no order as to costs. (Nisha Gupta) J.

(Gopal Krishan Vyas) J.

Ojha, a.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com