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Devi Singh Dewal and Ors Vs. State and Ors

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Court : Rajasthan Jodhpur

Decided On : Aug-28-2015

Appellant : Devi Singh Dewal and Ors

Respondent : State and Ors

Judgement :

1 IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

ORDER

(1) D.B.Civil Writ Petition No.8062/2015 Rajni Purohit vs. The State of Rajasthan & ors & ors. (2) D.B.Civil Writ Petition No.8224/2015 Mahendra Kumar vs. The State of Rajasthan Shrotriya & anr. & ors. (3) D.B.Civil Writ Petition No.8262/2015 Vatika Pandya vs. The State of Rajasthan & ors. & ors. (4) D.B.Civil Writ Petition No.8508/2015 Raja Ram Tiwari vs. The State of Rajasthan & ors. & ors. (5) D.B.Civil Writ Petition No.8542/2015 Poonam Chahar vs. The State of Rajasthan & ors. & ors. (6) D.B.Civil Writ Petition No.8543/2015 Kokila Yadav vs. The State of Rajasthan & ors. & ors. (7) D.B.Civil Writ Petition No.8554/2015 Devi Singh Dewal vs. The State of Rajasthan & ors. & ors. (8) D.B.Civil Writ Petition No.8555/2015 Narendra Singh vs. The State of Rajasthan Shekhawat & ors. & ors. (9) D.B.Civil Writ Petition No.8669/2015 Chail Singh vs. The State of Rajasthan Ranawat & ors & ors. (10) D.B.Civil Writ Petition No.8750/2015 Smt.Rajani Trivedi vs. The State of Rajasthan & ors. (11) D.B.Civil Writ Petition No.8805/2015 Arvind Dave vs. The State of Rajasthan & ors. & ors. (12) D.B.Civil Writ Petition No.8920/2015 Manisha Pandya vs. The State of Rajasthan & anr. &

ors. 2 (13) D.B.Civil Writ Petition No.9248/2015 Sumitra Devi vs. The State of Rajasthan & anr. & ors. (14) D.B.Civil Writ Petition No.9258/2015 Hari Shankar Garg vs. The State of Rajasthan & ors. & ors. Date of Order :

28. of Aug.

2015. PRESENT HON'BLE MR. JUSTICE GOVIND MATHUR HON'BLE MISS JUSTICE JAISHREE THAKUR. Dr. Nupur Bhati, Mr. M.S. Godara, Mr. P.S. Chundawat, Mr.Vimal Mathur, Mr. B.S. Tanwar, Mr. T.S. Tanwar,Mr. Yashpal Khileri, Mr. Jamwant Gurjar and Mr. Sukesh Bhati, Advocates for the petitioners. Mr. P.R. Singh, Addl. Advocate General for the Respondent State REPORTABLE BY THE COURT:(Per Hon'ble Ms. Jaishree Thakur,J.) 1. By this judgment, we propose to dispose of a batch of writ petitions filed under Article 226 of the Constitution of India questioning the Constitutional validity of Rule 25 of the Rajasthan Vidhyalay Sahayak Subordinate Service Rules, 2015 , to the extent that the said rule denies weightage of experience gained by persons while working in different projects of the Government of Rajasthan on account of being employed through placement agencies..

2. The Government of Rajasthan in exercise of powers conferred by the proviso to Article 309 of the Constitution of India, notified Rules called as Rajasthan Vidhyalay Sahayak Subordinate Service Rules, 2015 (hereinafter referred to as 'the Rules of 2015') in which recruitment was to be made to the post of Vidhyalay Sahayak . The method of recruitment was 100% by direct recruitment. 3 As per Schedule I of the said Rules, the minimum educational qualification and experience required for recruitment was specified as Senior Secondary (10+2) from a recognised Board or its equivalent along with minimum one year's experience of academic/non academic work in State Government School/State Recognized Non-Government School/State Government Educational Project (other than those engaged through placement agency), viz. Lok Jumbish Pariyojana/Sarva Shiksha Abhiyan/District Primary Education Programme/Rajiv Gandhi Pathshala/Shikshakarmi Board and Madrasa listed under the Madrasa Board. The term 'Experience' has been defined under section 2(j) of the Rules of 2015, which reads as under:- 2(j) Experience. wherever prescribed in these rules

means the experience gained by Academic/Non-Academic work in State Government School/State Recognized Non- Government School/State Government Educational Project (other than those engaged through placement agency) viz. Lok Jumbish Pariyojana/Sarva Shiksha Abhiyan/District Primary Education Programme/Rajiv Gandhi Pathshala/ Shikshakarmi Board and Madrasa listed under the Madrasa Board.

. The scheme of selection is laid down in Rule 25:

25. Scheme of Selection.- (1) The Committee shall award marks to the candidates, whose names included in the list prepared under rule 24, on the basis of such weightage as may be specified by the State Government for the marks 4 obtained in qualifying examination mentioned in the Schedule-1 and such marks as may be specified by the State having regard to experience of working in the State Government, State Government Educational Projects (other than those engaged through placement agency) viz. Lok Jumbish Pariyojana/Sarva Shiksha Abhiyan/District Primary Education Programme/ Rajiv Gandhi Pathshala/ Shiksha Karmi Board and Madarsa listed under the Madarsa Board. After awarding marks, the Committee shall arrange the list in order of merit and five times candidates of the total number of vacancies category wise and district wise to be filled in, shall be called for interview. Explanation: Wherever percentage of the marks cannot be ascertained due to grade awarded to the candidate in the particular examination, the median of the grade awarded to the candidate in such examination shall be basis for the preparation of merit list. (2) The interview shall carry such marks as may be determined by the State Government. The Committee shall award marks to each candidate interviewed by it. The marks, so awarded in interview, shall be added to the marks awarded to the candidate under sub-rule (1) above, for the qualifying examination and working experience. The Committee shall prepare final merit list on the basis of aggregate marks awarded to each candidate.. 3. Pursuant to the notification of the Rules of 2015, an advertisement was issued on 21.7.2015 inviting online applications for the post of Vidhyalay Sahayak. As the petitioners were possessing educational qualifications as 5 required and had also gained experience while working in Government School/State Recognized Non-Government School/State Government Educational Project in different capacities,

being appointed through placement agencies, have challenged Rule 25 of the Rules of 2015 since the said rule excludes giving of weightage of experience for working in the State Government, State Government Educational Projects to those engaged through placement agency . The grievance is also to the definition .Experience in section 2(j) of the Rules of 2015 which excludes those persons who have the necessary experience gained in working in Government Projects/ Schools but had been recruited through placement agencies.

4. Mr. M.S. Godara and Dr. Nupur Bhati, learned Counsels for the petitioners have contended that the petitioners have been deprived of getting the benefit of experience gained by them on account of being engaged through placement agencies. Rule 25 of the Rules of 2015 pertains to the process of selection wherein a Committee shall award marks to the candidates on the basis of such weightage as may be specified by the State Government for marks obtained in qualifying examination mentioned in the Schedule-I and such marks as may be specified by the State Government having regard to experience of working in the State Government School/State Government Educational Project other than those engaged through placement agencies (emphasis supplied). It is argued 6 that in case the Rule 25 is allowed to stand , the petitioners who have been appointed on various Government projects through placement agencies would be denied the weightage given for the experience gained while working on these projects. Relying upon the judgment reported as Mitendra Singh Rathore vs. State of Rajasthan & ors., 2013(4) WLC(Raj.) 523, the counsel for the petitioners contend that this Court has already gone into this issue wherein it had been held:- The object of granting weightage to the experienced hands is to have meritorious persons with insight, skill and knowledge of the job and that in no manner shall have adverse effect on giving weightage to the persons who acquired experience on being employed through placement agencies. The classification sought to be made under Proviso Second to Rule 273 of the Rules of 1996 on the basis of mode of employment or to say by denying weightage to the persons employed on posts of Junior Technical Assistant (J.T.A.), Junior Engineer, Gram Rozglar Sahayak, Data Entry Operator, Computer Operator with Machine, Lekha Sahayak, Lower Division Clerk,Co-ordinate IEC, Coordinator Training and Coordinator Supervision through placement agencies in MGNREGA or any other scheme of

Department of Rural Development and Panchayati Raj, as a matter of fact, is having no nexus with the object sought to be achieved by granting weightage in the form of bonus marks to the experienced hands, therefore, the classification made under Proviso Second to Rule 273 of the Rules of 1996 on the basis of the mode of employment, is having no rational, hence, is in violation of Article 14 and 16 of the 7 Constitution of India.. 5. Mr. P.S. Chundawat counsel appearing on behalf of the writ petitioners in D.B. CWP No 8669 of 2015 has contended that the petitioners are already working under various post under the Lok Jumbish Project under a scheme as set up by the Central Government and have the necessary experience as required but are put to a great disadvantage on account of the fact that they have been appointed through placement agencies.

6. Reply has been filed on behalf of the State wherein a stand has been taken that the Rules have been correctly framed and that weightage of marks for experience will only be given to those who have gained experience of working in State Government Project and employed other than through placement agencies. It is further argued that legislation can be struck down and declared ultra vires only if it has been enacted by a person not competent to do so and that such law does not take away any of the fundamental rights as guaranteed under the Constitution of India.

7. We have heard the learned counsel for the parties and have perused the record of the case.

8. The Government of Rajasthan promulgated the Rules of 2015 by which the conditions of service of persons appointed to the Rajasthan Vidhyalay Sahayak Subordinate Service came to be regulated. The mode of recruitment was 100% by direct recruitment and a Vidhyalay Sahayak was to supervise/monitor mid-day 8 meals, record keeping, child tracking survey, students drop out monitoring, school building and campus sanitation, supervision, monitoring of child enrollment in schools, collection DISE date (District Information System for Education) and any other non teaching work assigned by the authority. For this, the basic minimum qualification and experience was specified in Schedule-I, as Senior Secondary from any recognized Board or equivalent plus a minimum one year's experience of

working in academic/non academic State Government School/State Recognized Non-Government School/State Government Educational Project (other than those engaged through placement agency) viz. Lok Jumbish Pariyojana/Sarva Shiksha Abhiyan/District Primary Education Programme/Rajiv Gandhi Pathshala/ Shikshakarmi Board and Madrasa listed under the Madrasa Board. However, those persons engaged to work in such Projects/ State Government School etc. employed through placement agencies were excluded from getting the benefit of any weightage in terms of marks by virtue of Rule 25 of the Rules of 2015 .

9. The case of the petitioners is that by denying giving of weightage for the experience while working in State Government Project only on account of being appointed by placement agencies is illegal being discriminatory in nature, especially when the experience gained by such persons while working in Government Schemes and Government Departments is the same as those otherwise 9 appointed. The person appointed indirectly, namely through placement agencies fulfill the same duties and they shoulder the same responsibilities, as persons appointed directly. In the case of Mitendra Singh (supra), a proviso was added to Rule 273 of the Rajasthan Panchayati Raj Rules, 1996, wherein an amendment had been made under notification dated 29.1.2013, where the persons who have acquired experience of working for more than one year as Junior Technical Assistant (J.T.A.), Junior Engineer, Gram Rozglar Sahayak, Data Entry Operator, Computer Operator with Machine, Lekha Sahayak, Lower Division Clerk, Co- ordinate IEC, Coordinator Training and Coordinator Supervision in MGNREGA or any other scheme of Department of Rural Development and Panchayati Raj, were entitled to have additional weightage as specified by the State Government but while providing weightage of bonus marks, an exclusion has been made under the proviso for excluding persons who gained such experience on specified post if they had been employed through placement agencies. A similar argument had been raised in the said writ petition to the effect that persons employed on different posts, either directly or through placement agencies, were discharging the same duties and as such acquired the same experience and, therefore, the classification among them while assessing experience acquired does not meet any intelligible criteria. The writ petition was allowed holding that no difference could be 10 made on account of mode of

employment and benefit/ weightage of bonus marks could not be denied merely on account that appointed was through a placement agency.

10. Similarly in D.B. Civil Writ Petition No.10038/2013 and other connected matters-Atar Singh Gurjar & ors. v. State of Rajasthan & ors. Decided on 26.11.2014, the Court while dealing with Rules 15 and 25 of the Rajasthan Education Assistant Services Rules, 2013, relied upon the judgment rendered in Mitendra Singh v. State of Rajasthan and others (supra), reiterated and held that the experience gained while working on the post, cannot be denied to those persons who have been appointed on the said post through placement agencies.

11. Mr. P.R. Singh, Addl. Advocate General for the Respondent State relying on a judgment of Atar Singh Gujar and others (supra) has argued that the experience gained by the petitioners who are employed in different main streams cannot be given weightage as they form a separate class. It is further contended that the Rules of 2015 do not cause any discrimination for counting the weightage of those employees who are employed directly and exclusion of those persons, who have been employed through placement agencies is justifiable.

12. Reliance placed upon the judgment rendered in Atar Singh's case(supra) by the counsel for the State of Rajasthan, is wholly misplaced as the question before the court was whether the persons working as Prerak/Nodal Prerak and 11 in other category of employment on daily wages, contract or in temporary employment, should be given the same weightage in awarding of bonus marks and age relaxation as those persons who had gained experience in any State Government School/ State Government Educational Project. It was in those circumstances that the Division Bench of this High Court held in Atar Singh's case that:- In view of the aforesaid discussion, we are of the view that the classification under the Rules of 2013 for counting the experience for giving weightage is confined to those employees, who are employed in connection with school education and are directly under the control and supervision of the State Government and their salary and wages are paid directly from the public exchequer. All such employees, who have been given weightage of experience, have been working in connection with school education under the supervision of

the Education Department of the State Government and thus, they form a separate class, which is identifiable and is distinct from the other categories of employment. The Rules of 2013, therefore, do not cause any discrimination for counting the weightage of only those categories of employees, and that the age relaxation to them also does not cause any discrimination to other categories of employments. The prayers made in the writ petition to declare the Rules 15 and 25 of the Rajasthan Education Assistant Services Rules, 2013 as ultra vires is without any substance and further, to provide the relaxation in age and other benefits to the petitioners, is merit-less.

..

13. In the present case, the question for consideration before this Bench is whether or not, the petitioners would be put 12 to hostile discrimination in case they are not given due weightage for the experience gained and bonus marks being denied to them only on account of being employed through placement agencies. The Co-ordinate Benches have already gone into this question and have held that denial of bonus marks/weightage to those persons who have been employed through placement agencies is unfounded and unsustainable. It is also noted that the petitioners who are working in different projects of the State Government, be it State Government School/ State Recognized Non-Government School/State Government Educational Project etc. are persons employed through the placement agencies as per the Governments own policy . The ultimate control over the work of such persons is with the State Government/such authority who has all details regarding the work of persons employed through the placement agencies. There is no explanation forth coming as to why the State while promulgating the Rules of 2015 chose to again deny weightage/ bonus to persons employed through placement agencies, especially in view of the fact that the State has accepted the principles laid down in Mitendra Singh judgment which has attained finality. In no unequivocal terms, the judgment in Mitendra Singh's case clearly lays down that weightage is to be given to those persons working on different posts even though the mode of employment might be different.

14. In our considered opinion, the denial of granting weightage of experience to those appointed through 13 placement agencies as stipulated in Rule 25 of the Rules of 2015 does not stand the test of reasonable classification , especially when the nature and the scope of duties performed by persons employed directly or indirectly through placement agencies is the same. It has been held in Mohd. Hanif Quareshi and ors. v. State of Bihar (AIR 1958 SC731 and subsequently followed in State of Madhya Pradesh v. Rakesh Kohli and anr. (2012) 6 SCC312that while dealing with the meaning and scope of Article 14 and to pass the test of permissible classification, two conditions must be fulfilled, namely , (1) the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and (ii) such differentia must have rational relation to the object sought to be achieved by the statute in question. Keeping the aforesaid principles in mind the differentiation and classification created under Rules 25 of the Rules of 2015 does not stand the above specified scrutiny.

15. Looking at it from another angle it can also be said that once a person is employed through a recognised mode of employment, as in the present case through a placement agency, such person can legitimately expect from the State to treat him on the same footing as those employed directly since the nature of work and duties performed is the same.

16. The argument raised by the counsel appearing for the State that the petitioners working in different capacities 14 be it as computer operator or computer instructors form a separate class and cannot be considered for employment is noted to be rejected. The Rajasthan Education Assistant Services Rules, 2013 were enacted to appoint teaching aides and weightage was to be given to those who had gained experience in Government School/ State Government Educational Project viz. Lok Jumbish Pariyojana/Sarva Shiksha Abhiyan/ District Primary Education Programme/ Rajiv Gandhi Pathshala/ Shikshakarmi Board and Madrasa listed under the Madrasa Board , whereas the area of gaining experience from various institutions has now been widened in the Rules of 2015. Thus persons who are working in various Government projects in Academic/ Non-Academic work in State Government School/State Recognized Non- Government

School/State Government Educational Project viz. Lok Jumbish Pariyojana/Sarva Shiksha Abhiyan/District Primary Education Programme/ Rajiv Gandhi Pathshala/ Shikshakarmi Board and Madrasa listed under the Madrasa Board would also be entitled to be given weightage of bonus marks.

17. In view of the above, it is held that by incorporating the word other than those employed through placement agencies., the petitioners and similarly situated persons have been put to great disadvantage, even though they are on the same footing as persons directly employed by the State Governments under the various projects. Resultantly , the State Government has acted in a manner 15 which is prejudicial and without any nexus or relation to the object sought to be achieved by the statute in question.

18. The above noted writ petitions are hereby allowed and in view of the discussion made herein above, Rule 25 of the Rules of 2015 to the extent that persons employed through placement agencies would not be given benefit of weightage, is declared illegal and ultra vires the Constitution. Consequently, Rule 25 of the Rajasthan Vidhyalay Sahayak Subordinate Service Rules 2015 is to read as under:-

25. Scheme of Selection.- (1) The Committee shall awlard marks to the candidates, whose names included in the list prepared under rule 24, on the basis of such weightage as may be specified by the State Government for the marks obtained in qualifying examination mentioned in the Schedule-1 and such marks as may be specified by the State having regard to experience of working in the State Government, State Government Educational Projects viz. Lok Jumbish Pariyojana/Sarva Shiksha Abhiyan/District Primary Education Programme/ Rajiv Gandhi Pathshala/ Shiksha Karmi Board and Madarsa listed under the Madarsa Board. After awarding marks, the Committee shall arrange the list in order of merit and five times candidates of the total number of vacancies category wise and district wise to be filled in, shall be called for interview. Explanation: Wherever percentage of the marks cannot be ascertained due to grade awarded to the candidate in the particular examination, the median of the grade awarded to the candidate in 16 such examination shall be basis for the preparation of merit list. (2)

The interview shall carry such marks as may be determined by the State Government. The Committee shall award marks to each candidate interviewed by it. The marks, so awarded in interview, shall be added to the marks awarded to the candidate under sub-rule (1) above, for the qualifying examination and working experience. The Committee shall prepare final merit list on the basis of aggregate marks awarded to each candidate.

. Similarly, definition of 'Experience' as enumerated in Section 2(j), is to read as under:- 2(j) Experience. wherever prescribed in these rules means the experience gained by Academic/Non-Academic work in State Government School/State Recognized Non- Government School/State Government Educational Project viz. Lok Jumbish Pariyojana/Sarva Shiksha Abhiyan/District Primary Education Programme/ Rajiv Gandhi Pathshala/ Shikshakarmi Board and Madrasa listed under the Madarasa Board.

. The eligibility given under the Schedule-'A. too stands amended according and that shall be as follows:-

1. Senior Secondary (10+2) from recognized Board or its equivalent.

2. Minimum one year experience of working is essential in State Government School/State Recognized Non-Government School /State Government Educational Projects viz Lok Jumbish Pariyojana/Sarava Shiksha Abhiyan/District Primary Education Programme/ Rajiv Gandhi Pathshala/ 17 Shikshakarmi Board and Madarsa listed under the Madarsa Board.. 19. The respondents shall make necessary changes in the application format for recruitment under the notification pertaining to -2015. to enable the petitioners and the candidates alike to fill up the forms online.

20. In the light of above, the respondents are required to extend the experience/weightage to the persons employed through the placement agencies also. (JAISHREE THAKUR),J (GOVIND MATHUR),J.

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