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**Rajandar Singh Vs. State and ors.**

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**SooperKanoon Citation** : sooperkanoon.com/760593

**Court** : Rajasthan

**Decided On :** Aug-01-1990

**Reported in** : 1990(2)WLN566

**Judge** : Inder Sen Isranl, J.

**Appeal No.** : S.B. Civil Writ Petition Nos. 221, 285, 299 to 302, 379, 385, 549, 585 to 589, 638 to 642, 763, 831,

**Appellant** : Rajandar Singh

**Respondent** : State and ors.

**Disposition** : Petition allowed

**Judgement** :

**Inder Sen Israni, J.**

1. In all the above-mentioned writ petitions, common questions of law have been raised, therefore, all the petitions are decided by single order. It is claimed by the petitioners that the Combined Competitive Examinations for Lower Division Clerks, for which advertisement was issued on July 23,1987 (Ex.1) were not held in accordance with the Rajasthan Subordinate Offices Ministerial Staff Rules, 1957 (for brevity, 'Rules, 1957') and option of giving two Districts for appointment was not given, therefore, meritorious Candidates could not get appointment. It has

been prayed that the selection made and appointments given be, therefore, quashed & set aside. Alternatively, out of the remaining vacancies in Bikaner district, the petitioners be given appointment as lower Division Clerks.

2. The Rajasthan Public Service Commission (for brevity, 'RPSC') issued an advertisement dated July 23, 1986, inviting applications for Lower Division elerks combined Competitive Examination for filling up the vacancies in Subordinate offices, Rajasthan Secretariat & RPSC in accordance with the procedure Laid down in Rules 19,20 &21 of the Rules, 1957. There were, in all 888 vacancies in Subordinate offices. Exhibit Number, as given in petition No. 299/90 are given in this order; although in other petitions also, more or less, similar documents have been filed. A printed Information Pamphlet (E.2) was also supplied by RPSC along with application form obtained by the petitioners for the said examination. In E.2 number of vacancies in subordinate offices has been shown District-wise. It has also been shown that the candidate has to mention one District, in which he desires to serve, as is mentioned in clause 3 (ga) on page 3 and clause 8(BA) on page 4 of Ex.2. Bach of the petitioners mentioned name of one District for appointment in Subordinate offices in Column 10 of the application. The petitioners appeared in the typing test conducted in the months of December 1987 and October, 1988. The result of the aforesaid examination was declared by RPSC on April 17, 1989 and recommendations were sent to respondent No. 1 in July, 1989, but the marks sheet (E.5) of the said examination was sent to the petitioners around December, 1989. All the petitioners, except one in petition No. 927/90, have secured 45.5 % marks to 66.5 % marks However, in Bikaner District, appointment were given to candidates, who even secured 38% marks. Thus, petitioners, who have secured much better marks, have not been able to get appointment, since they did not give choice of Bikaner District for appointment.

3. It is submitted by Mr. B.L.Samdaria, MR. S.K.Paul, Mr. Prahlad Singh and Mr. Ashok gaur, learned Counsel that the selections made by RPSC are liable to be aside, as the same have not been done in accordance with the Rules, 1957. Further, it is submitted that the vacancies in Bikaner District were increased from 6 to 408, in Jaipur District from 41 to 156 and in Ajmer District from 4 to 36, on account of which the petitioners who were more meritorious. could not get choice

of proper District, since the number of vacancies originally given in the advertisement was quite less as shown above. In Para 17 of the Petition No. 299/90, the comparative list of seats originally advertised and subsequently raised is given. It is also pointed out that as required by Rule 21, the RPSC should have asked the candidates to mention names of two Districts in order of preference, in which they wanted to be appointed. However in contravention of this mandatory rule, the candidates were asked to give name of only one District, in which they desired to get appointment. It is submitted that on account of this, the candidates could not give choice of second District, due to...of which, the less; though petitioners have obtained higher marks than several of the appointed persons. It is further contend that when the vacancies were enormously in creased in Bikaner, Jaipur, Ajmer & other District from 888 to 1882, it was necessary for the RPSC to have issued a corrigendum and invite from the candidates fresh options for two Districts, which has not been done. It is pointed out that the Rules of 1957 are Statutory Rules framed under Article 309 of the Constitution and the RPSC is legally bound to work within framework of the said Rules. It is also pointed out that is the whole selection is not set aside for any reason, in the alternate, the petitioners, who are more meritorious, should be given appointment in 140 vacancies, still lying vacant in Bikaner District, where candidates, who have secured only 38% marks, have been given appointment.

4. It is submitted by Mr.M.I.Khan, learned Additional Advocate General, appearing for Respondent No. 2, and Mr.Ashok Parihar, learned Additional Government Advocate, appearing for Respondent No. 1 that in the advertisement (Ex.1) itself, it is mentioned that the posts can be increased or decreased. Therefore, it was not necessary for the RPSC to issue any corrigendum regarding increase of the posts in various Districts. It is also submitted that candidates were asked in the said advertisement to verify the Rules, therefore, it was for the candidates themselves to have verified and pointed out any discrepancy in the advertisement were examination was held and not when the results were announced. Now, since these petitioners have not been given appointments, they have raised these questions. It is contended that Rule 21 of the Rules, 1957 was amended on August 18,1987 with retrospective effect from February 3,1986 and there after, the proviso to the same became redundant. Hence, it was not necessary for RPSC to

have given choice of two Districts, since the appointment was to be made District-wise, the candidates were asked to given choice of one District.

The examination was conducted District-wise, so, the merit list was also prepared District-wise and the petitioners, who were less meritorious, so far as the District in which they opted to be appointed than those who have been given appointment, question of giving them appointment did not arise. It is therefore submitted that the petitioners are not entitled to be considered for Bikaner District. It is also contended that merely because there is alight deviation of non-application of redundant proviso to Rule 21 of the Rules 1957 the same should not be held to be fatal, sofar as the whole selection is concerned.

4A. For the purposes of these petitions, Rules 19, 20, 21 & 24 of Rules, 1957 are relevant. Rule 19, as it existed prior to February 3, 1986,was substituted by amendment dated February 3, 1986. Previously, the examinations for the post of Lower Division Clerks in Subordinate Offices were to be held zone-wise, but as per the substituted Rule 19, the same were to be held District-wise by the Commission. Before the deviation in the advertisement from Rule 21 of Rules 1957 is considered, it will be desirable to extract the same to know exactly the requirement of this Rule, in accordance with which, the RPSC was to conduct the Competitive Examination. Rule 21 reads as under:

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Rules 21, Existing as on 23.7.86, the date Rule 21 as amended on 18.8.87 made

of issue of Advertisement Ex.1. effective retrospectively from 3.2.86

i.e. before the date of issue of

Advertisement Ex.1.

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1. Inviting of Applications: Rule 21 (AMENDED)

The applications to sit at the examination In the said Rules:

shall be invited by the Commission by For the Existing Rule 21, the following advertising the posts in such manners as shall be substituted and shall always be they may deem fit and shall be made in deemed to have been substituted with such form as they may approve and (each effect from 3.2.86, namely- candidate shall be required to state in his '21. Inviting of Applications- application form the name of 3 Districts or The applications to sit in the examina- Departments in which he desires to serve): tion either competition or qualifying Provided further that in case of compe- examination for L.D.C. and Stenogra titive examination for the post of Lower Stengoraphers shall be invited by the Division Clerks, candidates shall be requi- Commission by advertising the posts in red to apply zone-wise as referred to in such manner, as they may deem fit, and Rule 19 and each candidate, in his applica- shall be made in such form as they may tion shall mention the names of two approve: Districts in the order of preference in which he wants his appointment Provided that in case of competitive examination appointments, for the post of LDC candidate shall be required application form the name of 2 Districts or Departments in which he desire to serve. But in case of non-availability

of vacancies to the Districts of his desire

he may be posted in any of the Distt.

of the State. (Published) In Raj. Gaz.

Ex.Crdi.4 (Raj.) Dt. 20.8.87 Page 64).

5. It may be pointed out that the proviso in Rule 21, as it exists before amendment, clearly provided that the applicant shall mention name of two Districts or Departments in order of preference, in which he wants his appointment. The Legislature in its wisdom, even after amending Rule 21,did not change the proviso regarding requirement to be stated in the application form to mention name of two Districts or Departments, in which he desires to serve. Thus, it is clear that the Legislature deliberately retained this probise and the candidates according to Rule 21, were required to state in the application form the name of two Districts or Departments, in which they desire to serve. However, as already stated above, in the advertisement (Ex.1), the candidates were called upon to give choice of one District only, in which they desired to be appointed. The Rules of 1957 have been made in exercise of powers conferred by the proviso to Article 309 of the Constitution of India and are therefore, Statutory Rules. The Rules are, thus mandatory and the RPSC is bound to follow the same and has no discretion to deviate from the said Rules. I do not find any force in the contention of Mr. M.I. Khan learned Counsel for RPSC that after amendment of Rule 19, since the appointments were to be made District-wise proviso to the amended Rule 21, which provided that the 'candidate shall be required to state in the application form name of two Districts or Departments in which he desires...', has become redundant. This is a mandatory and merely because an.... To hold. Examination District-wise was made in Rule 19, this provide to amended Rule 21 can, by no stretch of imagination, he said to have become redundant. Reference may be made to the case of State of Maharashtra v. Jagannath Achyut Karandikar (?), in which departmental examination for promotion was to be held within a stipulated period. However, the Government failed to hold examination for several years. It was, therefore, held by the Apex Court that executive instructions may supplement but not supplant statutory rules and that person who had not exhausted all his

chances, could not be denied of his seniority, on account of the failure of the Government to hold examinations for several years. I am, therefore, of the considered opinion that the RPSC was legally bound to conduct the examination in accordance with the Rules, 1957,and as required by proviso to amended Rule 21, RPSC should have asked the candidates to give choice of two Districts or Departments, in which they wanted to be appointed.

6. Sofar as the issuing of corrigendum regarding increase of posts in various Districts is concerned, it has been rightly pointed out by the learned Counsel for the respondents that it was mentioned in the advertisement itself that the posts can be increased or decreased. Therefore it cannot be said that RPSC was required to issue corrigendum regarding increase or decrease in the posts made in various Districts. However, it may be pointed out that the candidates give choice of Districts, keeping in view the number of posts available for appointment in a particular District. Therefore, marginal increase or decrease in the posts in various Districts may have no effect on the prospects of the candidates, but when the posts are so enormously increased as from 6 to 408 in Bikaner District 41 to 156 in Jaipur District and 4 to 36 in Ajmer District & in all from 888 to 1882,it can be said that it would have been appropriate that such an increase of posts should have been advertised and then option of Districts taken from the candidates, so that they could re-assess the chance of their success, keeping in view the final number of posts in various Districts. Since this was not done candidates obtaining even 38% marks have been selected in Bikaner District, whereas petitioners who have secured higher percentage marks, could not get any appointment, since the appointments are made District-wise and the Merit is also taken into consideration District-wise. Admittedly, even after giving appointments to all the candidates, who gave choice of Bikaner District 140 seats could not be filled up, because there were no further candidates, who could be appointed in this District. This has.... Candidates who have obtained better marks than those appointed at least in Bikaner District.

7. In all as...about 90,000 candidates appeared in the above-mentioned competitive examination. Out of which final selections in order of District-wise merit have been made. As already stated, the respondent No. 2 was required to

have asked the candidates to give option of two District/Departments, in which they wanted to be appointed. Since this was not done it resulted in infringement of legal & legitimate right of this petitioners and also marred their chances of selection and appointment. This was evidently in violation of Rule 21 of the Rules, 1957.

8. Initially, these petitions were filed and applications for issue of stay orders were considered. At that time, it was not though appropriate by this Court to restrain the respondent No. 1 completely from making appointment but it was felt that ends of justice will be met if the making of further appointments in Bikaner District is stayed. Therefore, various stay orders were issued, restraining the respondent No. 1 from making any further appointments in Bikaner District. The learned Counsel for the respondents that appointments of various candidates have been already made to all other Districts...since quite some time gives it out. I do not find any force in the contention of the learned Counsel for the respondents that petitioner's arc late in approaching this Court because soon after the marks-sheet were received by the petitioners these writ petitions have been filed. But it will not be appropriate to quash & set aside all the selections and appointments made so far, as candidates, who have been appointed and in no way responsible for actions of RPSC are not parties to these proceedings. If the whole selection are quashed & set aside the enormous efforts, which took more than two years to go through before final selections were made, will all go waste and it shall also cause great hardship to those, who have already been selected & appointed. However, it is evident that the petitioners should have been required to give choice of two Districts/Departments, in which they wanted to serve. All the petitioners during the course of arguments & in petitions, have expressed their desire that Bikaner District may be taken to be their second choice for the purpose of appointment.

9. As already given out by the learned Counsel for the respondents, 140 seats remained un-filled in Bikaner District and the petitioners can be given appointment on the vacant posts. It is, therefore, directed that since all the petitioners have given their second choice for appointment in Bikaner District, they shall be considered to be given appointment on the posts still lying vacant in Bikaner District in...less than 38% marks. They shall be given seniority at appropriate place

in accordance with their merit. Sofar as petitioners Ashok Kumar Chordia, Dilip Gupta and Kamlesh Savant are concerned, who have approached this Court by many of letter petition, the RPSC shall verify the marks obtained by them and if they have got not less than 38% marks, they shall also be given appointment in Bikaner District in accordance with their merit. This shall be done within four weeks.

10. The writ petitions are allowed, as indicated above, with no order as to costs.

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