

B.P. Joshi and ors. Vs. State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Apr-23-1976

Reported in : 1976WLN209

Judge : V.P. Tyagi, Ag. C.J. and; P.D. Kudal, J.

Appeal No. : D.B. Civil Special Appeal No. 771 of 1974

Appellant : B.P. Joshi and ors.

Respondent : State of Rajasthan and ors.

Disposition : Petition dismissed

Judgement :

P.D. Kudal, J.

1. This is a special appeal against the order of the learned Single Judge dated October 8, 1974 whereby the writ petition filed by Shri Mohan Lal Mujoo S.B. Civil Writ Petition No. 163/1969 against the State of Rajasthan and Ors. was allowed.

2. Shri Mujoo filed a writ petition on February 10, 1969 alleging therein that he was appointed as Resident Assistant Master in the Sadul Public School at Bikaner on November 1, 1949s in the pay scale of Rs. 165 300. The pay scale was, later on, revised to 200--10--360. He was then promoted as Headmaster on officiating basis of a High School on August 27, 1955 and was then substantively appointed as

such on October 31, 1958. By order dated January 8, 1960 he was confirmed as Head Master of Higher Secondary School with effect from August 12, 1957. On September 22, 1958 the Director of Education published a list of Head Masters selected for Multipurpose Higher Secondary Schools in order of seniority, and Shri Mujoo was shown at No. 46. A list of selected Head Masters of the High and Basic S.T.C Schools and Deputy Inspectors of Schools in order of seniority was also published simultaneously by the same order of September 22, 1958.

3. Vide Notification dated August 11, 1969 the interlaced seniority list of various categories of Head Masters as on November 1, 1956 was published, wherein the name of the applicant was shown at No. 148 amongst Head Masters and Dy. Inspectors of Schools. By the time, the first Departmental Promotion Committee was constituted, some teachers retired and the applicant stood at No. 67. The Departments Promotion Committee met in the year 1967, and at that time, the petitioner's name stood at No. 29, as by then some more teachers had retired the final seniority list of the Head Masters of all schools was notified on November 30, 1968. In this seniority list, the petitioner's name was at No. 39. The Rajasthan Educational Service Rules, 1960 (hereinafter called as the 1960 Rules); were published on September 12, 1960 whereby the Educational Service (hereinafter referred to as Service) came into existence. A Member of 'Service' has been defined to mean a person appointed substantively to a post in the 'Service' under the provisions of these Rules or under the Rules superseded by these Rules. The post of Head Master of Multipurpose and Higher Secondary School was shown as a junior post classified into two categories, viz.;

A. Selection grade in Part II of the Schedule appended to the Rules

B. Ordinary grade in Part III of the Schedule

4. It was contended that the petitioner became a member of the Service by virtue of Clause (a) of Rule 7 read with Clause 'g' of Rule 4, Clause (c) of Rule 8 provides that the recruitment to the selection grade posts under III Junior Posts and II Senior and I selection posts shall be made by, graded promotions within the 'Service' on the basis of seniority cum-merit. Rule 10 provides that the Government in respect of selection of senior posts and the Director in respect of

junior posts shall determine from time to time the number of vacancies anticipated during a particular period of recruitment. Rule 28 provided the criteria for selection. Rule 25 provided the procedure for selection. A Committee consisting of (i) the Chairman of the Commission, or a Member thereof nominated by him as Chairman; (ii) the Secretary to the Government in the Education Department; and (iii) the Director, shall consider the cases of those persons in the list, interviewing such of them as they deem necessary and shall select such candidates twice the number of vacancies. The list prepared by such a Committee shall be forwarded by the Director to the Commission together with the Character Rolls, personal files of the candidates included in the list, and also of such persons who have been superseded. As soon as the vacancies in the selection grade of the III Junior posts, the II Senior posts and selection posts as envisaged in the Schedule is finalised, they will be filled up by promotion. The Director shall prepare a list containing the names of the candidates eligible for promotion, not exceeding five times the number of vacancies, from amongst the senior-most members of the 'Service'. A Committee consisting of (i) Secretary to the Government in the Education Department, (ii) Director of Education; (iii) A representative of the Appointment Department not below the rank of a Deputy Secretary shall consider the cases of all the persons included in the list. This Committee shall select a number of candidates equal to twice the number of vacancies in each category, prepare a list to be forwarded to the Government. The final selection then shall be made from the lists received under Rule 25(i)(c) and Rule 25(2)(b) by the Director and the Government as the case may be. Rules 26, 27 and 28 provide for the appointments to the 'Service'- Rule 26-A was substituted for Rule 23(2) which provide for procedure for promotion strictly on the basis of merit, and on the basis of seniority-cum merit in proportion to 50:50. By a second amendment in 1968, Rule 26-A was amended, which provided for a cyclic order of promotion.

5. Eleven costs of Inspectors of Schools had fallen vacant within the category No. II of the Senior Posts. Hence, a Departmental Promotion Committee was constituted for adjudging merit and seniority cum-merit of the incumbents in the year 1966. The Committee recommended certain names; but there was specific objection to the inclusion of name of Shri G.N. Bhatnagar who was not in the list, though his name appeared in the list of Head Masters of High Schools at No. 27 in

the separate list, of September 22, 1958. The Committee made recommendations for 16 names in the vacancies of 11 persons

6. It was further contended that the Departmental Promotion Committee was again constituted to make recommendations for appointment of 28 available posts in the general categories and to the two posts reserved for females, thus totalling 30. In the seniority list of August 11, 1959, and in the list of September 22, 1958 the names of the persons who were selected by the Department! Promotion Committee were at much lower places and as such they could not have been considered for promotion. The petitioner contended that he is aggrieved by the appointment of respondents. No. 4 to 23 to the post of Inspector of Schools, and that the Circular dated August 27, 1966 issued by the Chief Secretary was ultra vires of the rules and was ex facie illegal. The petitioner also contended that he had very bright chances of being selected on the basis of merit. It was also contended that in regard to second Departmental Promotion Committee, had the respondents No. 8, 9, 10 and 11 promoted on ad hoc basis and had the respondents No. 19, 20 and 21 also been selected and had respondents No. 15 and 22 not been promoted to occupy general posts, then there should have been 32 available posts out of which 11 persons could be selected on merit. The petitioner had obtained 9th position in merit and therefore he should have been promoted as an Inspector of Schools on 19-12-1967. The appointment of Miss Wali and Mrs. Sayal by orders dated December 19, 1967 and July 22, 1968 were also challenged as being illegal, It was further contended that their seniority has been computed on the basis of list of seniority of female incumbents to the next below category, Had the consolidated seniority list of males and females been relied upon they would have been very much junior to the petitioner. The appointment of Mrs. Sayal was also challenged as being illegal and against the 1960 Rules. The petitioner has, thus, challenged the promotion of various respondents to the posts of Inspectors of Schools, and prayed that the Circular Ex. 1 dated August 27, 1986 be quashed and that the appointment of respondent No. 6 as Deputy Director of Education also be quashed

7. None of the respondents except the State of Rajasthan filed reply to the writ petition. In the reply dated December 10, 1969, the State of Rajasthan contended

that it is not disputed that the applicant was appointed as an Assistant Teacher in the Sadul Public School, Bikaner on November 1, 1948. The Rajasthan Civil Services (Unification of Pay Scales) Rules, 1960 revised the pay scale to Rule 200--10--280--ER--10 350 with effect from 1-4-1950. This pay scale was admissible to those who were at least holding a second class M.A. degree. The petitioner, according to the respondent No. 1, was confirmed on October 31, 1956 as Head Master. It was pointed out by the Accountant General of Rajasthan Jaipur that definite dates of confirmation on permanent posts should be given to the incumbents. By an error the heading of the second list in the order dated January 8, 1960, the same heading as was of the first list was repeated. The State Government did not challenge that there was no adverse entry against the applicant and that the record of his service was meritorious. The Director of Education did prepare a list of Headmasters from time to time. By the order dated September 22, 1958 no inter se seniority of Head Masters of the Multipurpose and Higher Secondary Schools as well as other categories of officers was issued. By an order dated August 11, 1959 the interlaced seniority list of the Head Masters and Head Mistresses of the High Schools as on November 1, 1956 was issued. As the lists were not prepared in accordance with the directions given by the Central Government under the State Re organisation Act, these lists had to be dropped, and a fresh seniority list was published on May 27, 1969. The State Government also denied having published a final seniority list of Head Master and Head Mistresses of the High Schools and Multipurpose Higher Secondary Schools. The list published on November 30, 1968 was only a compilation of the lists published by the Director or the Addl. Director of Education from time to time. With reference to para 9 of the writ petition, it was contended that there were 14 clear vacancies and 4 vacancies were likely to occur in the month of June, 1967 in the Senior posts of the Rajasthan Educational Service. The Departmental Promotion Committee met in October, 1966 and made its recommendations. It was also contended that another meeting of the Departmental Promotion Committee took place in October, 1967 with made recommendations to the Government. In pursuance of these recommendations the Government promoted 20 persons by orders dated December 11, 1967, and by another order of the same date against vacancies occurring during the academic year 1967-68. The Government also

made orders of ad hoc promotion including Smt. Savitri Sayal by order dated July 22, 1968. The petitioner's seniority. it was alleged, was kept intact as it was before November 1, 1956. The seniority list published by the respondent No. 3 on August 11, 1959 was not in accordance with the national formula approved by the Central Government, and therefore, the Government by its order dated December 28, 1967 directed the respondent No. 3 to prepare the inter laced seniority lists accordingly. By notification dated May 27, 1969 the State Government published the provisional in enlaced seniority list as so November 1, 1966. It was further contended that the petitioner made a representation on December 16, 1968. There was no record showing whether the petitioner met the Director of Education on January 31, 1969, and the Secretary to the Government in the Education Department on December 31, 1968. If the petitioner had any grievance about his interlaced seniority, he should have made a representation upon the publication of the provisional interacted seniority list It was also contended that the respondents No. 4, 6, 7 10, 11, 17 19, 20, 21 and 23 were senior to the petitioner even before November 1, 1956 The State Government contended that the validity of the Circular dated August 27, 1963 issued by the Chief Secretary could not be questioned. It was further contended that the respondents No. 10 and 11 are senior to the petitioner, whereas according to the preceding paragraph in reply to the para No. 10, respondent's No. 8 and 9 were no doubt junior to the petitioner. All those four respondents are still officiating The petitioner cannot make any grievance on their promotions on the ground stated in reply to para No. 10 It was further stated that estimated vacancies numbering 11 was not correct. It has been stated that there were 18 likely vacancies It was further contended on behalf of the State that with reference to sub-head 4, it is submitted that Miss Wali was appointed against the general quota because of her merit, whereas Mrs. Sayal has been appointed as Inspectress of Girls Schools under the Rules. It was further pointed out that since some officers had been sent on deputation on posts outside the cadre, vacancies occurred and the Government in exercise of its powers made ad hoc appointments to fill up the vacancies It was also contended that the respondent No. 6 was very much senior to the petitioner.

8. The learned Single Judge by his judgment dated October 8, 1974 allowed the writ petition basically on the ground that there were no final, seniority lists either

before the First Departmental Promotion Committee or the reviewing committee. The learned Single Judge further observed that the tentative seniority list was published on September 3, 1974 only. It was further observed that there was no final seniority list for making selections on the basis of seniority-cum-merit either in 1967 or in 1973. The learned Single Judge was also of the opinion, that ground No. 4 at page 34 of the writ petition concerning the female appointees had also not been met. It was further observed that in the absence of final seniority list, promotion made in 1967, or the review made in 1973 cannot be said to be in consonance with justice. Accordingly, the writ petition was allowed and the promotions of the respondents made in 1967 and 1968 were set aside.

9. The non applicants feeling aggrieved by the judgment of the learned Single Judge preferred this special appeal on November 26, 1974. While the writ petition was pending before the learned Single Judge the State Government passed an order dated September 4, 1974. An application dated March 12, 1975 for amendment of the writ petition was moved by Shri M.L. Mujoo, in this special appeal, praying that by an appropriate writ, order or direction the order dated September 4, 1974 may be quashed, and that the respondents No. 1 to 3 be directed to proceed to make selections according to law.

10. The application for amendment of the writ petition has been opposed by the learned Counsel for the appellants on the ground that there are no just and sufficient reasons for allowing the amendment. It was also contended that the provisions of Order 6, Rule 17, CPC did not apply to the amendment of the writ petition, wherein the extraordinary jurisdiction of the Court is invoked.

11. In this special appeal, It was contended on behalf of the appellants that the Departmental Promotion Committee while making selections in the year 1966 and 1967 had taken into consideration the Circular of the Chief Secretary dated August 27, 1966, and therefore, the entire selection made by the Departmental Promotion Committee was vitiated. It was further contended that the learned Single Judge has erred in observing that there was no final seniority list at the time the first Departmental Promotion Committee or the reviewing Committee was constituted. It was further contended that it was never the case of the petitioner that the

seniority list was not final. On the other hand, it had been submitted by the petitioner himself in para No. 7 of the writ petition that the final seniority list of the Head Masters of all Secondary and Multipurpose Higher Secondary Schools had been notified vide Notification dated November 30, 1968. It was also contended that it has been admitted by the petitioner in the writ petition that the final seniority list had been notified on November 30, 1968. It was further contended that it was not now open to the learned Single Judge to make a new case that final seniority list had not been prepared, and therefore the meeting of the reviewing committee in the year 1973 had been vitiated. It was further contended that the seniority of the Head Masters and Headmistresses had been determined by the selection board from time to time, and thus, there was no dispute regarding their seniority. It was on the basis of this seniority that the selection were made in the year 1966 and 1967 under the Rajasthan Educational Service Rules, 1960. In the year 1970, the new rules known as Rajasthan Educational Service Rules, 1970 (herein after referred to as the 1970 Rules) were promulgated and the '1960 Rules' were repealed. Under proviso 7 to Rule 28 of the 1970 Rules, interlaced seniority of the Headmasters of groups E and F, both males and females had been prepared tentatively on July 28, 1974, and objections were invited. It was this tentative interlaced seniority list of Headmasters of groups E and F of both males females which was prepared under proviso 7 to Rule 28 of 1970 Rules which was finalised on September 2, 1974. It was further contended that it does not mean that the seniority list of the petitioner and the respondents to the writ petition as such was not finalised earlier, and therefore, the learned Single Judge has erred in drawing the conclusion that the seniority of the respondents and the petitioner in the writ petition has not been finalised at the time when the Reviewing Committee considered their cases in accordance with the decision of their Lordships of the Supreme Court in Gumansingh's case. It was further contended that under the 1960 Rules, interlaced seniority list was required to be prepared, and therefore, no interlaced seniority list was prepared. It was further contended that so far as the appellants Miss Usha Suodari Wali is concerned, the observations made by the learned Single Judge with due respect, are not correct. It was contended that Miss Usha Sundri Wali had fared with male incumbents on equal terms and she had been selected on the basis of merit in preference to the petitioner, though she was

junior to the petitioner in the interlaced seniority list made by the selection committee, although actually interlaced seniority list was not prepared and published till then. It was further contended this Miss Usha Sundri Wali's selection was not made towards the female set up, namely post of Inspectress The State Government had replied that the allegation made by the petitioner in ground No. 4 of his writ petition and it had been accepted by the State Government that Miss Ushas Sundri Wali was appointed towards general quota on the basis of merit. These allegations made by the petitioner are wholly unfounded and the appointment of the appellant Miss Wali could not be validly challenged. It was further contended that the reply filed by the State Government in this behalf escaped the attention of the learned Single Judge.

12. Dr. Tiwari, learned Additional Advocate General had made available the relevant proceedings pertaining to the selection of the various officers of the Education Department He has also made available the 'Common Seniority List of the persons holding the posts included in Group E and F of the schedule in Rajasthan Educational Service Rules, 1970 (Male and Female) dated December 6, 1972 issued by the Director of Primary and Secondary Education, Rajasthan Bikaner under proviso (1) of Rule 28 of the Rajasthan Education Service Rules, 1970. In the proceedings dated October 24, 1967, it has been clearly mentioned that interlaced seniority list of male and female has not been prepared. There is a seniority list of Head Masters of Secondary/Higher Secondary and Basic STC. Training Schools as on October 24, 1967. The seniority list of Headmistresses of Secondary/Higher Secondary and Basic STC. Training Schools as on October 24, 1967 is also on file. the seniority list of the Dy. Inspectors, Inspectresses of Schools selected on October 20, 1966 and Seniority List of District Social Education Officers selected by the Rajasthan Public Service Commission on January 11, 1958 are also available on file.

13. The Rajasthan Educational Service Rules, 1960 envisages that the Services consist of three categories I Selection Posts, II Senior Posts III Junior Posts and the strength of the posts in each of the above categories shall be as specified in the schedule, The Service shall be constituted initially as follows:

(a) All persons holding substantively the selected posts, senior posts as mentioned in the schedule, before commencement of those rules, shall be deemed to have been appointed as such under the provisions of these rules,

(b) All posts in which persons not selected by the PSC. are working in a temporary or in an (sic) capacity, shall be filled substantively upto 50% in the first instance by selection from amongst the holders of these posts, by the Government in consultation with the Commission. The persons so selected shall be deemed to have been appointed under these rules.

(c) The persons not found suitable for holding the posts substantively, as mentioned in Sub-clause (b) above, shall be liable to be reverted to their lower substantive post provided they hold a lien on such posts or their service terminated, if there be no such lien as soon as a suitable person is appointed either by direct recruitment or by promotion as provided under these rules.

14. For the purposes of recruitment by promotions, a selection based on seniority cum-merit shall be made from among persons, eligible for such promotion under the provisions of these rules. In selecting the candidates for promotion regard shall be had to their (a) academic qualifications and experience; (b) fact, energy and intelligence; (c) integrity, and (d) previous record of service.

15. The procedure for selection has been laid down in Rule 25, which reads as under:

25 Procedure for selection (1)(a) As soon as it is decided that a certain number of vacancies in the Service is to be filled up by promotion, the Director shall prepare a list not exceeding five times the number of vacancies, from amongst the senior most teachers who are eligible for promotion to the Services and shall forward it together with the character rolls and personal files to the Secretary to the Government in the Education Department.

(b) A Committee consisting of:

(i) Chairman of the Commission or a member thereof nominated by him as Chairman;

(ii) The Secretary to the Government in the Education Department; and

(iii) The Director,

shall consider the cases of all the persons included in the list interviewing such of them as they deem necessary and shall select a number of candidates twice the number of vacancies.

(c) The list prepared by the Committee shall be forwarded by the Director to the Commission together with the Character Rolls, personal files of the candidates included in the list, as also of persons superseded, if any, for advice on their suitability for promotion. The Commission shall then consider the cases of the persons included in the list in the same order in the list as also of those superseded and shall subject to their suitability approve as many of them as the number of vacancies are likely to be filled by promotion. The names shall be arranged in the order of their seniority and the same shall be forwarded to the Director.

Note : For purpose of Sub-rule (1)(a) the names of teachers in High School and Higher Secondary School will be arranged in a common seniority list reckoned with effect from the date of appointment as trained graduate teacher senior teacher whichever appointment was made earlier.

(2)(a) As soon as it is decided that a certain number of vacancies in the selection grade of the III Junior posts, the II Senior posts and selection posts, as mentioned in the Schedule, will be filled up by promotion, the Director, shall prepare a list containing names of candidates eligible for promotion, not exceeding five times the number of vacancies, from amongst the senior most members of the service in the next below category in the manner indicated in Sub-rule (1) above and forward it together with the character rolls and personal files to the Secretary to the Government in the Education Department.

(b) A Committee consisting of:

(i) Secretary to Government in the Education Department;

(ii) The Director of Education;

(iii) A representative of the Appointments Department not below the rank of a Deputy Secretary.

shall consider the cases of all the persons included in the list interviewing such of them as they deem necessary, select a number of candidates equal to twice the number of vacancies in each category and prepare a list to be forwarded to the Government.

(c) The Secretary to Government in the Education Department shall put up the list prepared by the Committee to the Government together with the character rolls and personal files of the candidates included in the list, as also of persons superseded, if any.

(3) The final selection in respect of the list received from the Commission under Rule 25(1)(c) and from the Committee under Rule 25 (2)(b) shall be made by the Director and the Government respectively and the name of persons selected shall be arranged in order of seniority.

15. These rules were superseded by the Rajasthan Educational Service Rules, 1970 by Notification No. F-16 (17) /Edu/Group 2/69 dated June 11, 1974. The proviso (7) to Rule 28 of the 1970 Rules was added which reads as under:

(7) that the seniority inter se of officers in each group of the service specified in schedule I and II for promotion to the posts included in Schedule III shall be determined with reference to the date of their substantive appointment on a post in each group. The inter se seniority of officers selected by the Departmental Promotion Committee unless determined earlier will be determined on the basis of length of continuous officiation on the post from which promotion is made, except ad hoc and fortuitous, provided further that the seniority of members of the service for general institutions included in schedule III shall be determined from the date they would have been promoted to the posts included in Schedule III irrespective of their earlier promotion to the posts included in Schedule I or Schedule II.

16. In Gumansingh's case the Circular dated August 27, 1966 came up for consideration, in the writ petition before a learned Single Judge, Some parts of the Circular were, held he had as reported in A Special Appeal on behalf of the State was filed against the judgment of the learned Single Judge. The Special Appeal was allowed as per judgment State v. Gumansingh AIR 1971 Raj. 191 Rule 32 and Rule 28B of The Rajasthan Administrative Service Rulse, 1954 were held to be valid. It was further held that no part of the Circular dated August 27 1960 is repugnant to them. Feeling aggrieved against the judgment of the learned Division Bench the validity of the Circular and Rules 27, 28B and 32 of the Rajasthan Administrative Service Rules were challenged before the Supreme Court. In Guman Singh v. State of Rajasthan : (1971)2SCC452 , the judgment of the learned Division Bench was set aside, and it was held that the Circular dated August 27, 1966 is bad and was accordingly struck down. In J.C. Bhatia v. Sate of Rajasthan : AIR 1973 SC2290 , it was ordered that the appointments of 76 Assistant Engineers made on January 8, 1968s shall have to be reconsidered along with the claim of the appellant J.C. Bhatia after excluding the Circular of August 27, 1966, In view of these authoritative pronouncements of the Supreme Court, the Circular dated August 27, 1966 issued by the State Government shall have to be completely ignored.

17. The basic question for determination therefore is, whether all these selections made by the Departmental Promotion Committee without having interlaced seniority list can be sustained or not? The contention of the learned Counsel for the appellant is that separate lists were available and taken into consideration the dates of substantive appointments on the posts by the incumbents the seniority ought to have been determined. While, on the other hand, the contention of the learned Counsel for the respondent is that Rule 25 of 1960 Rules pre-supposes the existence of an interlaced seniority list of male and remale incumbents. It was contended that the State has admitted in categorical terms that The interlaced seniority list of male and female was prepared for the first time on December 6, 1972, The learned Single Judge has also held that as there was no interlaced seniority list of male and female the various appointments made could not be sustained.

18. The contentions of the learned Counsel for the appellants that interlaced seniority list was prepared only under the 1970 Rules, and that there were no provisions for preparation of such a list in the 1960 Rules. The 1960 Rules may not have categorically provided for the preparation of an interlaced seniority list of male and, female, but the requirement of Rule 25 of the 1960 Rules make it abundantly clear that there should have been a seniority list on the basis of which the eligible senior most teachers could be considered. The senior most eligible teachers could be ascertained only when a seniority list was in existence. It thus follows that a seniority must precede selection in terms of Rule 25 of the 1960 Rules. The contention of the learned Counsel for the appellants that seniority could be determined on the basis of substantive appointments to the posts. But there is no such list also available which has been prepared on this basis. When female candidates were considered on merit basis in the general quota their seniority vis-a-vis the seniority of the male incumbents had to be taken into account. As none of these conditions were fulfilled, we have no hesitation in holding that the learned Single judge did not commit any error in allowing the writ petition of Shri M.L. Mujoo.

19. As this appeal falls on the grounds stated above, the application for amendment of the writ petition filed by Shri Mujoo on 12/3/1975 becomes infructuous. The application dated 12/3/1975 for amendment is accordingly dismissed as having become infructuous.

20. For the reasons stated above, there is no force in this special appeal, which is hereby dismissed. The interim stay issued on 17/2/1975 shall stand vacated. The parties shall bear their own costs.