

Dr. M.K. Gaur and ors. Vs. State of Rajasthan and anr.

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Court : Rajasthan

Decided On : Apr-26-2002

Reported in : RLW2003(2)Raj870; 2002(3)WLC367; 2002(5)WLN82

Judge : Arun Kumar, C.J. and; P.P. Naolekar, J.

Acts : Rajasthan Educational Service (Collegiate Branch) Rules, 1986 - Rules 16 and 20

Appeal No. : D.B. Civil Special Appeal No. 1158 and 1269 of 1997

Appellant : Dr. M.K. Gaur and ors.

Respondent : State of Rajasthan and anr.

Advocate for Def. : S.C. Gupta and; S.N. Kumawat, Advs.

Advocate for Pet/Ap. : Mahendra Singh and; Shashi Jain, Advs.

Disposition : Appeal dismissed

Judgement :

Naolekar, J.

1. The Director Education Government of Rajasthan sent a requisition vide communication dated 8.8.1995 to the Rajasthan Public Service Commission (for short, 'the Commission') for selection of suitable candidates to fill twenty-five

vacancies of College Lecturers in Geography. The break-up of these vacancies was - twelve of the year 1994-95 and thirteen of the year 1995-96. Out of these vacancies four were reserved for Scheduled Castes, three for Scheduled Tribes and five for Other Backward Classes. In pursuance of the requisition, the Commission invited applications from eligible candidates vide advertisement dated 8.11.1995. Last date fixed for receipt of the applications was 30.12.1995. 118 candidates applied for the post. On scrutiny, 115 candidates were found eligible to appear in the interview. Before commencement of the interviews, demand for additional thirteen vacancies was further sent to the Commission vide communication dated 12.2.1996 by the Director Education Government of Rajasthan under proviso to Rule 16 of the Rajasthan Education Service (Collegiate Branch) Rules 1986 (for short 'the Rules of 1986'). Thereafter interviews were held from 15.4.1996 to 18.4.1996. The Commission prepared select list of thirty-eight candidates, forwarded same to the Government vide letter dated 9.5.1996, and prepared reserve list of thirty-eight candidates, as required under Rule 20 of the Rules of 1986. On receipt of the select list the Director Education Government of Rajasthan gave appointments to thirty-seven persons vide order dated 1.7.1996. Thereafter on 3.7.1996 four persons from the reserve list were given appointments on account of non joining of four persons who were given appointments from the select list. Ashok Kumar Gupta, who remained unsuccessful in the interview, filed writ petition seeking direction of restraint against the respondents - State of Rajasthan and Rajasthan Public Service Commission - to make further appointments from the reserve list on additional vacancies which were not advertised. The learned Single Judge vide order dated 7.7.1997 allowed the writ petition and the respondents were restrained from making further appointments operating the reserve list. Aggrieved by the said order, present special appeal is filed.

2. The questions for adjudication in this case are as to what shall be the scope and extent of Rule 20 of the Rules of 1986, and whether appointments can be made from the reserve list on unadvertised vacancies and whether Rule 20 can be read in isolation or has to be read with Rule 16 of the Rules of 1986. Before we take up the question of interpreting the rules, we may refer to certain decision of the apex court wherein scope and ambit of reserve/waiting list are laid down.

3. In Gujarat State Dy. Executive Engineers Association v. State of Gujarat and Ors. (1), the Apex Court has explained the scope and extent of reserve list and as to how it is to operate in service jurisprudence and held that a waiting list prepared in service matters by the competent authority is a list of eligible and qualified candidates who in order of merit are placed below the last selected candidate. Usually it is linked with the selection or examination for which it is prepared. For instance, if an examination is held say for selecting 10 candidates for 1990 and the competent authority prepares a waiting list then waiting list is in respect of those 10 seats only, for which selection or competition was held. The waiting list cannot be used as a perennial source of recruitment for filling up the vacancies advertised. The Court did not approve the view of High Court that since vacancies have not been worked out properly, therefore, candidates from waiting list were liable to be appointed. The candidates in reserve list had no vested right to be appointed, except to the limited extent when a candidate selected for the existing vacancies does not join for some reason and the reserve list is still operative.

4. In the case reported in State of Bihar and Anr. v. Madan Mohan Singh and Ors. (2), a question arose whether after appointment of 32 candidates as per advertisement more persons could be appointed from waiting list. The Supreme Court held that when 32 advertised vacancies were filled up, the process of selection of 32 vacancies got existed and came to an end. If the same list has to be kept subsisting for the purpose of filling up of other vacancies, it would amount to deprivation of rights of other candidates who would have become eligible subsequent to the said advertisement and the selection process. To fill up other vacancies a fresh advertisement has to be issued.

In Madan Lal and Ors. v. State of Jammu & Kashmir and Ors. (3), it has been held by the Apex Court that the advertised vacancies only can be filled up from the reserve list and the actual appointments to the post have to be confined to the posts or recruitment to which the requisition is sent by the Government.

5. In Prem Singh v. Haryana State Electricity Board (4), the Apex Court has laid down the law that the selection process by way of requisition and advertisement can be started for clear vacancies and also for anticipated vacancies but not for

further vacancies. If the requisition and advertisement are for a certain number of posts only, the State cannot make more appointments than the number of posts advertised, even though it might have prepared a select list of more candidates. It is further said that the State can deviate from the advertisement and make appointments on post falling vacant thereafter in exceptional circumstances only or in an emergent situation and that too by taking a policy decision in that behalf. Thus, the verdict of the Supreme Court clearly points out that the advertised vacancies only can be filled up from the select list or the reserve list and it is only in the exceptional circumstances the normal rule can be deviated for the reasons given and the appointments can be given on the post which fell vacant after the advertisement was issued.

6. Similar view was taken by the Apex Court in the Matter of Surendra Singh and Ors. v. State of Punjab and Ors. (5), wherein it has been said that the waiting list cannot be used as a perennial source of recruitment for filling up the vacancies not advertised. The candidates in waiting list have no vested right to be appointed except to a limited extent that a candidate selected against the advertised vacancy did not join for some reason and the reserve list is still operative. The candidate included in the waiting list cannot claim appointment on the ground that the vacancies were not worked out properly. It is improper exercise of power to make appointment over and above the advertised posts. It is only in a rare and exceptional circumstance and in emergent situation that this rule can be deviated from.

7. From the aforesaid decision, the principle set out by the Supreme Court is very clear in regard to operation of reserve/waiting list inasmuch as it would be improper exercise of power to make appointments over and above the advertised vacancies. It is only in rare and exceptional circumstances and in emergent situation that this rule can be deviated from. It should be clearly spelled out as to under what policy such a decision is taken. Exercise of such a power has to be tested on the touchstone of reasonableness. Before an advertisement is issued, it would, therefore, be incumbent upon the authorities to take into account the existing vacancies and anticipated vacancies. It is not a matter of course that the authorities can fill up vacancies other than advertised.

8. The question really is whether Rule 20 permits separate source of recruitment above and beyond what has been permitted under Rule 16, as submitted by the counsel for appellant, placing strong reliance for the said proposition on Virender S. Hooda and Ors. v. State of Haryana and Anr. (6), and a Division Bench judgment of this Court in Shiv Prakash Maheshwari v. State of Rajasthan and Ors. (7), wherein analogous rule namely the Rajasthan Agriculture Subordinate Service Rules 1978 - to the Rules of 1986 was taken into consideration.

9. Rule. 16 and 20 of the Rules of 1986 are relevant for our purpose. Rule 16 and 20 read as under:-

'16. Inviting of Application:-

Applications for direct recruitment to posts in the service shall be invited by the Commission by advertising the vacancies to be filled in the official Gazette or in such other manner as may be deemed fit.

Provided that while selecting candidates for the vacancies so advertised, the Commission may if intimation of additional requirement not exceeding 50% of the advertised vacancies is received by them before selection, also select suitable persons to meet such additional requirement'

'20. Recommendation of the Commission:- The Commission shall prepare a list of candidate, whom they consider suitable for appointment to the posts concerned, arranged in order of merit and then the Commission shall forward the list to the Government.

Provided that the commission may also to the extent 100% of the vacancies finally intimated before the selection keep names of suitable candidates on the reserve list. The commission may on requisition, recommend the name of such candidates in order of merit to the Government within twelve months from the date of which the original list is forward by the Commission to the Government.'

Rule 16 says that the Commission by advertising vacancies in the official Gazette shall invite applications for direct recruitment or in such other manner as may be deemed fit i.e. to say in newspapers, according to the proviso to Rule 16, the

Commission may if intimation of the additional requirement, not exceeding 50% of the advertised vacancies, is received before selection, it may select suitable candidates to meet such additional requirement. Thus, under the proviso before selection, if intimation is received by the Commission, it can fill up additional vacancies not exceeding 50% of the advertised vacancies. Proviso to Rule 16 permits the Commission to extend the advertised vacancies to the extent of 50%. Operational effect of the proviso would be that the advertised vacancies are increased to 50% if the Commission receive intimation to that effect before selection. Plain reading of Rule 20 makes it clear that the Commission had been given authority to prepare a list of candidates whom they consider suitable for appointment to the vacancies advertised and arrange them in the order of merit, the commission is enjoined upon to send names of candidates in the order of merit to the Government. Proviso to Rule 20 permits the Commission to prepare a reserve/waiting list to the extent 100% of the vacancies under Rule 16. The Commission may on requisition recommend names of such candidates in the order of merit to the Government within twelve months from the date on which the original list of selected candidates was sent to the Government, under the proviso.

Placing reliance on the aforementioned judgments, the submission made by the counsel for appellant is that the proviso to Rule 20 gives additional powers to the Commission to operate the reserve list irrespective of the filing of the advertised vacancies or the vacancies which arose on account of non-joining of the selected candidates.

10. In Virender S. Hooda's case (supra) the facts as noticed by the Supreme Court were that the Haryana Public Service Commission advertised for recruitment to the Haryana Civil Service (Executive Branch) and other allied services which included 12 posts of Haryana Civil Service (Executive Branch), 7 in general and 5 in reserved category. The Haryana Public Service Commission held the written examination for the year 1991 and interviewed the candidates who passed the written examination in May, 1992 and the final result was published in June, 1992. Thereafter the candidates whose names were recommended by the Public Service Commission for filling of the advertised vacancies were given appointments. Further 9 vacancies became available within six months of the receipt of

recommendation. The appellants who were in reserve list, claimed consideration of their names for appointment to those posts. Thus, the vacancies which became available subsequently were claimed to be filled in from the reserve list. The Apex Court upheld the claim of the appellants on the basis of Circular issued on 22.3.1957 read with circular dated 26.5.1972 by the Government, wherein it was said that when such vacancies arise within six months from the receipt of recommendation made by the Commission they have to be filled up out of the waiting list maintained by the Commission. The Circulars authorise the government to fill up the vacancies from the reserve/waiting list when those vacancies arise within the period of six months from the date of previous selection. The decision of the Court is based on the Circular issued by the Government.

11. In Shiv Prakash Maheshwari's case (supra) the facts were that the Commission invited applications for filling up ten posts of Assistant Agriculture Research Officers (Botany). After interview and examination select list was prepared and ten persons were appointed. All of them joined the service. Beside the list of ten persons, the Commission prepared reserved list of six persons. Representations were made to the Government that certain vacancies were still lying vacant and the Government addressed to the Commission intimating that two vacancies were still lying vacant which were to be filled up and, therefore, requisition was made for sending two names as per merit from the reserve list. As per merit two persons were given appointment. However, one person declined to join. Thereafter remaining four persons in the reserve list were also appointed as Assistant Agriculture Research Officer (Botany). Later on vide order dated 30.6.2000 their appointments were cancelled, which was challenged in this Court. The Division Bench of this court quashed the order of cancellation of appointments of the persons whose names were in the reserve list. While interpreting Rule 17 and 21 of the Rules of 1978, which are analogous to the Rules in question in the present case, the Court held-

'The concept of reserve list as contemplated under Rule 21 of the Rules of 1978 is entirely different and it has of the Rules of 1978. Rule 21 of the Rules of 1978 essentially makes it list and we find that Rules 17 and 21 of the Rules of 1978 have to be applied in the context in which these Rules have been enacted and

under proviso to Rule 21 it is permissible for the Commission to prepare a reserve list of the selected candidates upto 50% of the advertised vacancies.'

It was further said in para 10 -

'.....The fact is that, in such cases with the lapse of time, the number of available posts may increase and, therefore, until the next selections are held, the reserve list may be acted upon and the same can certainly be used so long as it is alive under proviso to Rule 21 of Rules of 1978....'

Thus the Division Bench of this Court has taken a view that the proviso to Rule 21 whereunder reserve list is required to be prepared by the Commission can be operated irrespective of the advertised vacancies are filled by appointment of persons and irrespective of the fact that the vacancies are not available on account of non-joining of the candidates selected or otherwise. So long the reserve list is operative it shall be used as a perennial source for giving appointment, if vacancies accrue during the period of six months from the date select list was sent by the Commission. In other words, operation of the rule for preparation of the reserve list is not dependent upon the Rule under which the advertised vacancies are filled in and it can be used as separate source of recruitment.

12. Proviso to Rule 20 of the Rules of 1986 permits the Commission for preparation of reserve list to the extent 100% of the vacancies available under Rule 16 which consists of the advertised vacancies and additional requirement intimated to the Commission, before selection, to the extent 50% of the advertised vacancies. Origin of the reserve list is vacancies indicated under Rule 16. The reserve list originates with the preparation of the select list under first part of Rule 20 by the Commission. The requisition by the Government referred in Proviso to Rule 20 has to be construed and restricted to the vacancies caused from the select list during the existence of reserve list. The selection process commences from inviting applications for appointment on the posts advertised and requisition by the Government under Rule 16 and ends, for the Commission, with preparation of select list and reserve list under Rule 20 of the Rules of 1986 and for the Government when select list stands exhausted by appointment of all the

candidates.

13. It is apparent from first part of Rule 20 that select list for required number of candidates for appointment under Rule 16, is prepared by the Commission. Proviso to this Rule permits the Commission to prepare reserve list to be operated, if requisition is made by the Govt., from the reserve list during its existence. The language of proviso even if general, is normally to be construed in relation to the subject matter covered by the Rule to which the proviso so appended. A proviso does not travel beyond the provision to which it is a proviso as held in *Dwarka Prasad v. Dwarka Das Safar* (8) and *Mackinnon Mackenzie & Co. Ltd. v. Audrey D'Costa* (9).

14. In *Ram Narain Sons Ltd. v. Assistant Commissioner of Sales Tax* (10), at page 769 it was observed that it is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other. In *State of Punjab v. Kailash Nath* (11), the Apex Court dealt with Rule 2.2 of the Punjab Civil Service Rules which reserves to the Government the right to withhold or withdraw a pension or part of it or to order recovery from it if the pensioner is subsequently found guilty of grave mis-conduct or negligence during the period of his service in a departmental or judicial proceeding. There is a proviso to the rule which says 'No such judicial proceeding if not instituted while the officer was in service - shall be instituted in respect of a cause of action which arose or an event which took place more than four years before such institution'. The Apex Court held that the proviso had to be read as an exception to the main provision meaning that if the judicial proceeding is not instituted within the period mentioned in the proviso, the Government will not have the right to withhold or withdraw the pension and that the proviso does not provide a general embargo on the prosecution of the officer after the expiry of that period.

15. The aforesaid decisions lay down the scope of proviso which according to the Apex court is that the proviso is to be construed in relation to the subject matter covered by the section to the subject matter covered by the selection to which the

proviso is appended. Here in the present case Rule 20 of the Rules of 1986 provides for preparation of the select list by the Commission in accordance of merit of the candidates and to forward it to the Government. Proviso to this rule says that the Commission shall prepare a reserve list to the extent 100% of the select list and that shall be operated if requisition is made by Government within the existence of reserve list. The proviso must be read to cover the select list which has been prepared under first part of the rule. Thus the requisition by Government from the reserve list shall be in relation to the select list prepared by the Commission and not beyond that or not in relation to posts which were not the subject of selection under Rule 16.

16. As soon as the selection of candidates of the advertised vacancies culminates into giving of appointments on the vacancies advertised, the reserve list comes to an end. It revives only in the eventuality of the select list becoming re-operative on account of non-joining of the selected candidates or their leaving the post soon after joining during the existence of reserve list, which has life of its own under the Rule. On the face of proposition of law propounded by Apex Court, that a reserve list prepared in an examination conducted by the commission does not constitute a source of recruitment, it is operative only in contingency that if any of the selected candidate does not join then the person from reserve list may be pushed up and appointed in the vacancies so caused or if there is some extreme exigency the government may as a matter of policy decision pick up the persons in order of merit from the reserve/waiting list and that the selection process comes to an end after the candidates from advertised vacancies are appointed. We find ourselves in difficulty adhering to the view taken by the Division Bench in Shiv Prakash Maheshwari's case (supra) that the reserve list prepared can be used as a separate and independent source for appointment. For the aforesaid reasons, we do not find that the judgment of the learned Single Judge whereby the Government is restrained from making appointments beyond the select list requires any interference. Special appeals are dismissed. No order as to costs.