

**Devendra Singh Vs. State of Rajasthan and ors.**

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**Court :** Rajasthan

**Decided On :** Apr-04-2008

**Reported in :** 2008(3)WLN316

**Judge :** Gopal Krishan Vyas, J.

**Appeal No. :** S.B. Civil Writ Petition No. 5682/2003

**Appellant :** Devendra Singh

**Respondent :** State of Rajasthan and ors.

**Judgement :**

**Gopal Krishan Vyas, J.**

1. This is second round of litigation. The first writ petition preferred by the petitioner was registered as SB Civil Writ Petition No. 3727/1999 for the prayer of providing appointment on the post of Physical Teacher Grade III. The said writ petition was dismissed on 22.02.2002 by this Court on the ground that in reply to that writ petition, it was submitted that no person below the petitioner in merit of general category was offered appointment. After dismissal of the said petition, it has come to the knowledge of the petitioner that the said reply filed by the respondents was totally false. Therefore, the petitioner preferred an application for recalling the order dt. 22.02.2002. However, the learned Single Judge vide order dt. 17.09.2003 disposed of the said application filed in the earlier writ petition and

granted liberty to the petitioner to file fresh writ petition impleading those persons who were below in merit but given appointment, as party respondent. In present writ petition, the petitioner has placed on record the copy of the order dt. 17.09.2003 passed in SB Civil Misc. Application No. 82/2003 as Annexure-2 by which petitioner was granted liberty to file fresh petition.

2. In this writ petition, it is submitted by petitioner that he applied in pursuance of the advertisement issued by the respondents for recruitment on the post of Physical Teacher Grade III as he was possessing graduate degree in Commerce and has passed diploma course examination of physical education in the year 1994 from the Department of Education, Govt. of Rajasthan, Bikaner. Further, it is stated in the writ petition that the petitioner is outstanding Hand Ball player and has represented the State Level Hand Ball Championship, which was organised by the Kota District Hand Ball Association. A certificate of XVII Senior Rajasthan State Handball Championship, 1992 has been placed on record as Annexure-6.

3. It is submitted by the petitioner that he was found eligible for recruitment on the post of Physical Teacher Grade III, thereafter he was called for interview and at the time of interview, he has submitted all relevant documents and certificates including certificate of Kota District Hand Ball Association issued in the year 1992 which is State Level Tournament. After interview, on 14.09.1998 a merit list was prepared by the respondent No. 3 in which name of petitioner was included at Sl. No. 112 and in earlier writ petition a reply was filed in which it is stated that no candidate less meritorious has been given appointments, upon this reply the earlier writ petition was dismissed.

4. After dismissal of the earlier writ petition, on enquiry being made, it has come to the knowledge of the petitioner that there were only two vacancies and in the merit list, one Rajendra Kumar Sharma was placed at Sl. No. 1 with 99.25% marks and another candidate Kamal Kumar Gautam was placed at Sl. No. 2 with 87.25% marks and they were provided appointment, which is evident from Annexure-7 issued by the respondents. The petitioner's name was included in the merit list in which it has been shown that the petitioner has secured 79.20% marks as per criteria. But upon enquiry, it has come to the knowledge of the petitioner that no

bonus marks were given to him for certificate of State Level Tournament issued by District Hand Ball Association filed by him although the petitioner was entitled as per the verdict of this Court in the judgment of Hon'ble Division Bench of this Court in DB Civil Special Appeal No. 261/1997 dt. 04.08.1997 (State of Raj and Ors. v. Umesh Jangid).

5. The petitioner's claim is that if 10 bonus marks which is prescribed for the said certificate was not given while treating that certificate as State Level Tournament. If petitioner will be awarded 10 bonus marks of sports as provided by the Govt., then petitioner's mark comes to 89.20%. It is specifically stated in Ground B of the writ petition that he was entitled for 10 bonus marks for the tournament of State Level but those marks were denied by the respondents without any reason.

6. The petitioner filed representation for grant of 10 bonus marks but 10 bonus marks which is prescribed for the State Level Tournament was not given to the petitioner and appointment was given to respondent No. 4 while showing his percentage of marks as 89.12 marks. The petitioner's marks were shown as 79.20% in the merit list without adding 10 bonus marks. Meaning thereby, after adding of 10 bonus marks, the petitioner percentage of marks comes to 89.20%, which is higher than the person who was provided appointment. Therefore, petitioner is claiming his right of appointment on the ground that he was illegally denied benefit of 10 bonus marks for which he was legally entitled as per the judgment rendered by Hon'ble Division Bench in case of State of Raj. v. Umesh Jangid (supra). In the earlier writ petition, the only submission was made by the respondent that no persons below the petitioner in merit in his category has been offered the appointment, therefore, the earlier writ petition was dismissed but after coming to know of the fact that at the time of preparing merit the petitioner was not granted bonus marks of State Level Tournament though he was legally entitled then again the petitioner moved an application in the earlier writ petition in which a liberty was granted to the petitioner to file fresh writ petition.

7. In this case, it is submitted by the learned Counsel for the petitioner that the respondents may be directed to add 10 bonus marks, which is prescribed for State Level Tournament for the certificate filed by him and after providing 10 bonus

marks his case may be considered for appointment and if any persons having lesser percentage of marks has been provided appointment then the petitioner may also be provided appointment on the post of Physical Teacher Grade III.

8. In reply, the Education Department has contended that no bonus marks are awarded for the certificate of open tournament and thus, the petitioner is not entitled to get any bonus marks for the certificate issued by District Hand Ball Association Kota which is prescribed for State Level Tournament. It is further submitted that no bonus marks can be given to the petitioner for the certificate issued by the District Hand Ball Association, Kota. In the merit list, the petitioner stood at Sl. No. 112, so also no bonus marks are awarded for open Hand Ball Tournament to the petitioner because he is not entitled to get the said marks, therefore, he was rightly denied appointment because last appointment was given to Kamal Kumar Gautam, who secured 89.12% marks.

9. In whole of the reply, it is no where stated why the petitioner is not entitled for the bonus marks in respect of certificate of Hand Ball Tournament issued by Kota District Hand Ball Association. Learned Counsel for the respondents while showing Annexure-A/1 dt. 30.12.2006 stated that the Assistant Director (F) Secondary Education, Bikaner sent a communication to the District Education Officer, Secretary, Baran in which it is directed by him that the appointment in the education department is required to be given in accordance with the existing rules, so also, direction was issued by the department for the purpose of preparing merit. It is also directed that the department shall follow the directions issued by the Government while issuing notification for the purpose of granting bonus marks. It is nowhere stated by the respondent how the judgment rendered by Hon'ble Division Bench in case of State of Raj. v. Umesh Jangid (supra) is not applicable in the case of the petitioner.

10. In this case, the controversy is very limited with regard to granting of 10 bonus marks for the certificate of XVII Senior Rajasthan State Handball Championship, organized by Kota District Hand Ball Association, which is under control of Rajasthan Hand Ball Association. Obviously, this is open tournament and for the purpose of open tournament, the Hon'ble Division Bench of this Court in case of

State of Raj. v. Umesh Jangid (supra) has held as follows:

(18) The appellants, therefore, cannot be allowed to lay down two different criteria and restrict the bonus marks to the participants in the tournaments organised by the Education Department alone and the other participants are, also, entitled for the same benefit.

(19) In this view of the matter, we are of the opinion that the learned Single Judge has not committed any illegality in extending this benefit to the participants of other tournaments.

11. In the aforesaid judgment rendered by Hon'ble Division Bench of this Court, it has been held that the State Government cannot be allowed to lay down two different criteria and restrict the bonus marks to the participants in the tournaments organised by the Education Department alone and the other participants are, also, entitled for the same benefit.

12. In this view of the matter, I am of the opinion that the petitioner is entitled for 10 bonus marks, which is prescribed for State Level Tournament in view of the aforesaid judgment rendered by Hon'ble Division Bench.

13. Accordingly, the writ petition is allowed. The respondents are directed to re-calculate the merit of the petitioner while adding 10 bonus marks as provided for State Level Tournament and after adding the said marks, if any candidate is having lesser percentage of marks than the petitioner, has been provided appointment, then, the petitioner shall be provided appointment on the post of Physical Teacher Grade III with all consequential benefits from the date when less meritorious candidates was provided appointment within one month of receipt of certified copy of this order. No order as to cost.