

A RAJASTHAN PUBLIC SERVICE COMMISSION AND ANR.

v.

HARISH KUMAR PUROHIT AND ORS.

APRIL 1, 2003

B [SHIVARAJ V. PATIL AND ARIJIT PASAYAT, JJ.]

Service Law:

C *Recruitment—Post of Munsif Magistrate—Vacancies earmarked for general and reserved categories—Non-availability of certain number of candidates in reserved categories—Claim to fill the reserved category seats by general category candidates—High Court's direction to call general category candidates for interview three times the number of posts assuming increase in the number of general category posts due to non-availability of reserved category candidates—However, further direction to fill up only earmarked vacancies in general category and to carry forward the reserved category vacancies—On appeal, held—High Court's direction was self contradictory and it defied logic—Rajasthan Judicial Service Rules, 1955.*

Precedent:

E *Earlier decision of Division Bench holding the field—Subsequent Co-ordinate Bench doubting the decision—In such case the only course open is to refer the matter to larger Bench—Judicial propriety.*

F **An advertisement to recruit 116 munsif Magistrates was issued, out of which 59, 24, 19 and 14 posts were for the General, OBC, SC and ST categories respectively. The candidates numbering three times the number of posts advertised in each category were eligible to be called for interview. Commission issued interview letters to 302 candidates out of which 189 candidates were called for the posts in General category. Respondents filed writ petition before High Court seeking direction to consider more candidates from general category as per the posts available, on the ground that each of the respondents had qualified in the written examination; that in case of non-availability of SC and ST candidates the available seats were to be filled up by candidates belonging to general category and hence the Commission had to call 210 candidates by treating the number of posts**

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available in the general category to be 70 (i.e. 59 as originally fixed and 11 on account of non-availability of candidates in SC and ST categories). High Court allowed the appeal directing the Commission to call not less than 210 candidates from the general category. However, it directed to fill up only 59 vacancies in the general category and carry forward the vacancies of Scheduled Tribes.

In appeal to this Court appellant- Service Commission contended that there was no automatic increase in the vacancies in the general category from 59 to 70; that the directions of the High Court are self-contradictory. It pointed out that results had been published and appointments had been made; that even if the directions of the High Court to call 210 candidates for the interview would have been complied with, the writ petitioners would not have come within the zone of consideration; and that the High Court passing the impugned judgment did not consider previous judgment passed by another Division Bench of High Court wherein similar prayers were rejected.

Interlocutory applications were filed before this Court on the ground that the presence of applicants belonging to the OBC and the women category would facilitate proper adjudication of the appeal.

Allowing the appeal and dismissing the applications, the Court

HELD: 1. High Court was not correct in directing that 210 candidates should be called for the interview. The directions given by the High Court are contradictory in terms. Once it has been accepted by the High Court that it was open to the Government to decide as to whether the posts are to be de-reserved or to be carried forward, there was no basis to proceed on the assumption that they would be de-reserved, thereby making the number of posts available for the general category as 70. At the completion of the written examinations, there were only 59 posts available for the general category. On a hypothetical basis that there is a possibility of increase in the number of posts in general category, candidates numbering three times the number of posts including assumed inclusions had to be called, the High Court gave the direction which defies logic. [212-A; 211-G, H]

2. A Division Bench dismissed an application containing identical prayers. By the impugned judgment, another Division Bench took a diametrically opposite view. It is not that the earlier decision was not

A brought to the notice of the subsequent Division Bench hearing the subsequent applications. Division Bench hearing the subsequent applications did not even refer to the conclusions arrived at by the earlier Division Bench. The earlier decision of the Division Bench is binding on a Bench of coordinate strength. If the Bench hearing matters subsequently entertains any doubt about the correctness of the earlier decision, the only course open to it, is to refer the matter to a larger Bench. [212-B-D]

State of Tripura v. Tripura Bar Association and Ors., [1998] 5 SCC 637, relied on.

C 3. Since the interveners have not approached the High Court and it has not been even so that they would be amongst the 210 candidates who were to be called for interview if the impugned judgment is maintained, there is no merit in the application for intervention. [211-E, F]

D CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 3615-3618 of 2002.

From the Judgment and Order dated 20.12.2001 of the Rajasthan High Court in D.B.C.W. Nos. 4622, 4673, 4674 and 4675 of 2001.

WITH

E C.A. No. 3614 of 2002.

Sunil Kr. Jain, Manish Kumar, Ansar Ahmad Chaudhary, Ms. Sandhya Goswami (NP) and Ms. Shobha for the appearing parties.

F The Judgment of the Court was delivered by

ARIJIT PASAYAT, J.

CIVIL APPEAL NOS.3615-3618/2002

G In these appeals by Rajasthan Public Service Commission (in short 'the Commission') and its Chairman, challenge is to the legality of common judgment by a Division Bench of Rajasthan High Court disposing of four writ petitions.

H Synoptical resumption of the factual position, almost undisputed is as follows:-

On 1.6.2001 an advertisement to recruit 116 Munsif Magistrates was issued by the Commission; out of which 59, 24, 19 and 14 were earmarked for the General, OBC, SC and ST categories respectively. In terms of the scheme of the examination, only those candidates who obtained a minimum of 35 marks in each law paper and 40% in aggregate were eligible to be called for interview. For the posts in question, stipulation was that candidates numbering three times the number of posts advertised in each category were eligible to be called for interview. Commission issued interview letters to 302 candidates in respect of 116 vacancies. The shortfall was on account of non-availability of candidates in SC and ST categories. Though the number of posts were 59 in the General category, 189 candidates were called for interview as several candidates who had obtained marks similar to the last candidate had to be called for interview.

Four writ petitions were filed at Jodhpur Bench of the Rajasthan High Court. They were disposed of on 20th December, 2001 by the impugned common judgment. In the writ petitions the petitioners had sought for the following directions:

“(a) by an appropriate writ, order or direction, the Respondents may kindly be directed to consider more candidates from general category as per the posts available and as per the condition-2 of the advertisement;

(b) by an appropriate writ, order or direction, the Respondents may kindly be directed to implement the condition-2 of the advertisement for filling up the reserved vacancies adopting the general procedure;

(c) any other appropriate writ, order or direction which this Hon’ble Court may deem just and proper in the facts and circumstances of the case may kindly be passed in favour of the Petitioner;

(d) writ petition filed by the Petitioner may kindly be allowed with costs.”

Stand of the petitioners was that each one of them had obtained 35 marks in each of the law papers and 40% marks in aggregate. In case of non-availability of SC & ST candidates, the available seats were to be filled up by candidates belonging to general category. Therefore, the Commission had to call 210 candidates by treating the number of posts available in the general category to be 70 (i.e. 59 as originally fixed and 11 on account of non-

A availability of candidates in SC & ST categories). The Division Bench accepted the stand, though the Commission pointed out that there is no provision in the Rajasthan Judicial Service Rules, 1955 (in short 'the Rules') unlike Rajasthan Higher Judicial Service Rules, 1969 (in short the 'Higher Judicial Rules') which provides for a decision to be taken to fill up the posts from the general category or to de-reserve or carry forward in case of non-availability of candidates from the reserved categories. The directions given by the Division Bench in the impugned judgment are to the following effect:

C "In view of the aforesaid, we allow all the four writ petitions. The Respondent Commission is directed to call not less than 210 candidates from the General Category for interview instead of 189. We make it clear that judgment proceeds on the basis that R.P.S.C. is interviewing candidates for R.J.S. against 70 posts in General Category. However, this will not prevent the appropriate Authorities to take a decision in accordance with the relevant rules, particularly Clause 3 of Schedule II of R.J.S. Rules, to fill up only 59 vacancies in the General Category and carry forward the vacancies of Scheduled Tribe, but such a decision should be taken before the result is declared. However, this should not delay the process of recruitment. If such a decision is not taken before 4.1.2002, the liberty given shall stand vacated. Any such decision will not affect the merit of selection from the expanded zone under this order."

E The challenge, as noted above, in these appeals is to the aforesaid direction.

F Learned counsel for the appellant-Commission submitted that the directions as noted above are indefensible. There was no automatic increase in the vacancies in the general category from 59 to 70. The directions given are contradictory in themselves. While for the purpose of calling candidates to the interview the High Court has directed to call 210 candidates by treating the number of available vacancies to be 70, on the same breath it has permitted the Commission to fill up only 59 vacancies in the general category and to carry forward the vacancies of Scheduled Tribes. It is not clear as to what useful purpose would be served by adopting dual procedure. It was pointed out by order dated 27.12.2001, this Court has permitted the Commission to complete the interview as scheduled and prepare and finalise the select list for 59 posts for the general category, 24 posts for OBC, 19 posts for Scheduled Castes and 3 posts for Scheduled Tribes, subject however, to the candidate H that no select list shall be prepared and published for the remaining 11 posts

of Scheduled Tribes which may be transferred to the general category, if the Government takes a decision to fill up these posts from amongst the general category. It is pointed out that pursuant to the said directions, results have been published and appointments have been made. It is further pointed out that even if the directions of the High Court to call 210 candidates for the interview would have been complied with, the writ petitioners would not have come within the zone of consideration. It was pointed out that another Division Bench considering similar prayers had by judgment dated 13.12.2001 dismissed the writ application. Similar contentions were rejected. Though the decision was brought to the notice of the Bench hearing the subsequent petitions which had noted this aspect in the judgment, did not make any reference to its observations and conclusions.

There is no appearance by the private respondents in spite of the service of notice except by one Devilal Mothsra who is respondent no.1 in CA No. 3618 of 2002.

An application for intervention has been filed by certain candidates (in IA No. 1/2002 in CA Nos. 3615-3618/2002) seeking permission to intervene.

We shall first deal with this prayer first. It is fairly accepted by the learned counsel for the applicants that they have not approached the High Court. But it is submitted that the applicants belonging to the OBC and the woman category and their presence would facilitate proper adjudication of these appeals. The prayer is clearly untenable. Since they have not approached the High Court and it has not been even so that they would be amongst the 210 candidates who were to be called for interview if the impugned judgment is maintained, we see no merit in the application for intervention. The same is rejected.

As rightly submitted by learned counsel for the appellants, the directions given by the High Court are contradictory in terms. Once it has been accepted by the High Court that it was open to the Government to decide as to whether the posts are to be de-reserved or carry forwarded, there was no basis to proceed on the assumption that they would be de-reserved, thereby making the number of posts available for the general category as 70. At the completion of the written examinations, there were only 59 posts available for the general category. On a hypothetical basis that there is a possibility to increase the number of posts in general category, candidates numbering three times the number of posts including assumed inclusions had to be called, the High Court gave the direction which defies logic.

A That being the position the High Court was not correct in directing that 210 candidates to be called for the interview. The judgment deserves to be nullified, which we direct.

B Before parting with the case we would like to point out one disturbing feature which has been brought to our notice. On 13.12.2001 a Division Bench dismissed an application containing identical prayers. Even before the ink was dry on the judgment, by the impugned judgment, another Division Bench took a diametrically opposite view. It is not that the earlier decision was not brought to the notice of the subsequent Division Bench hearing the subsequent applications. In fact, a reference has been made by the submissions made by the Commission where this decision was highlighted. Unfortunately, the Division Bench hearing the subsequent applications did not even refer to the conclusions arrived at by the earlier Division Bench. The earlier decision of the Division Bench is binding on a Bench of coordinate strength. If the Bench hearing matters subsequently entertains any doubt about the correctness of the earlier decision, the only course open to it is to refer the matter to a larger Bench.

D The position was highlighted by this Court in a three-judge Bench decision in *State of Tripura v. Tripura Bar Association and Ors.*, [1998] 5 SCC 637 in the following words:

E “We are of the view that the Division Bench of the High Court which has delivered the impugned judgment being a coordinate Bench could not have taken a view different from that taken by the earlier Bench of the High Court in the case of *Durgadas Purkayastha v. Hon'ble Gauhati High Court*, (1988) 1 Gau LR 6. If the latter Bench wanted to take a view different than that taken by the earlier Bench, the proper course for them would have been to refer the matter to a larger Bench. We have perused the reasons given by the learned Judges for not referring the matter to a larger Bench. We are not satisfied that the said reasons justified their deciding the matter and not referring it to the larger Bench. In the circumstances, we are unable to uphold the impugned judgment of the High Court insofar as it relates to the matter of *inter se* seniority of the Judicial Officers implicated as respondents in the writ petition. The impugned judgment of the High Court insofar as it relates to the matter of seniority of the respondent- Judicial Officers is set aside. The appeals are disposed of accordingly. No costs.”

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