THE STATE OF RAJASTHAN & ORS. A

v.

TRILOK RAM

(Civil Appeal No. 7215 of 2019)

SEPTEMBER 12, 2019 B

[K. M. JOSEPH AND SANJAY KISHAN KAUL, JJ.]

Rajasthan Panchayati Raj Rules, 1996 – Proviso to r.266(3) – Appellant-State issued advertisement in 2013 for recruiting Teachers Grade III (Level I and II) in the various Zila Parishads – Applicants were to fulfil the requisite educational qualifications as on the last date of the submission of the application form – Respondent was undergoing the B.S.T.C. Course, an essential qualification, however appeared on the basis of order passed by the High Court – Thereafter, he completed his B.S.T.C. second year course – Select list was declared– Though the respondent secured more marks than the cut-off, his name was not found in the Select List – Writ petition filed by the respondent relying on the proviso to r.266(3) (which if not available, the respondent would not be eligible on the last date for filing application, as he had admittedly not passed the B.S.T.C. Course on that date) for quashing the list and direction to appoint the respondent to the post of Teacher Grade III (Level I) with all consequential benefits – Dismissed– Division Bench allowed the writ petition holding that the proviso to r.266(3) remained intact despite the substitution of r.266(3) by Notification dtd. 11.5.11 – On appeal, held: Proviso was introduced for the first time on 1.7.04 – By virtue of the amendment dtd. 28.6.06, the qualifications in clause (3) of r.266 came to be changed and new qualifications came to be introduced – Fact that the proviso had ceased to exist as a result of the said substitution is unambiguously demonstrated by the fact that the rule making authority issued notification dtd. 29.11.06, by again inserting the proviso to r.266(3) – Thereafter again on 11.5.11, r.266(3) came to be substituted – Qualifications as stipulated by National Council for Teachers Education (NCTE) were inserted – Thus, r.266 (3) as was brought into life by the amending Act dtd. 28.6.06 continued to hold the field till it suffered C D E F G H

A *substitution by notification dtd. 11.5.11 – Admittedly after 11.5.11, the proviso has not been brought back to life – Notification dtd. 29.11.06 bringing the proviso back to life after the substitution of clause (3) to r.266 in 2006 was not brought to the notice of the High Court– Further, the circular dtd. 29.2.12, replacing the*
B *requirement of the candidate possessing qualifications as on the last date, stipulated in the advertisement with the provisions of the proviso (though the proviso was not actually there), cannot be pressed into service by the respondent as the advertisement concerned in the present case is of the year 2013– Impugned judgment set aside – Right of Children to Free and Compulsory*
C *Education Act, 2009 – s.23 – Rajasthan Panchayati Raj (Fourth Amendment) Rules 2004 – Interpretation of Statutes.*

Interpretation of Statutes– Substitution of the provision – Effect of– Held: An amendment bringing about substitution of a provision essentially does two things, in the first place, the provision
D *which is substituted undergoes a repeal and at the same time, there is a re-enactment through the newly inserted provisions.*

Allowing the appeal, the Court

HELD : 1.1 The proviso was introduced for the first time on 1.7.2004 (though with variation not relevant to the enquiry) in
E **the rules. Rule 266 is a part of Rajasthan Panchayat Raj Rules. The qualifications for teachers for the category concerned with, is undoubtedly, laid down by the National Council for Teachers Education (NCTE). This is done by virtue of the provisions of Section 23 of Right of Children to Free and Compulsory Education**
F **Act, 2009. After the proviso was inserted in 2004 by virtue of the amendment carried out in Rule 266 (3) dated 28.6.2006, the qualifications in clause (3) of Rule 266 came to be changed and new qualifications came to be introduced through the amendment. It purported to be a substitution of clause (3). The proviso had been earlier inserted in clause (3) of Rule 266 by virtue of**
G **Rajasthan Panchayati Raj (Fourth Amendment) Rules 2004. Thereafter again on 11.5.2011, Rule 266(3) came to be substituted. Qualifications as stipulated by NCTE, were inserted. [Paras 11, 12] [384-A-D]**

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1.2 The proviso was intended to have a different area of operation from the main provision whose function was only to enunciate the requisite qualifications. An amendment which brings about substitution of a provision essentially does two things. In the first place, the provision which is substituted undergoes a repeal. At the same time, there is a re-enactment through the newly inserted provisions. Therefore, when a substitution was carried out initially on 28.6.2006, all the provisions of clause (3) of Rule 266, as it stood, suffered a repeal and in its place a new avtaar was born. The proviso was inserted on 1.7.2004 in clause (3) of Rule 266. Therefore, when the rule making authority substituted clause (3) of Rule 266 by the amendment dated 28.6.2006, the inevitable result would be the repeal of entire clause (3) of Rule 266 including the proviso. The amendment to Rule 266 (3) by substitution did not expressly save the proviso. It is equally important to be not oblivious to the fact that the proviso was an integral part of clause(3) of Rule 266. Since Rule 266(3) came to be substituted, having regard to the legal consequences of the same, the proviso could not survive. The fact that the proviso had ceased to exist as a result of the substitution dated 28.6.2006 is unambiguously demonstrated, by the fact the rule making authority chose to step in by issuing notification dated 29.11.2006 by inserting again the proviso to Rule 266(3). It is by a subsequent amendment that the words 'District Establishment Committee' was inserted in place of Rajasthan Public Service Commission.[Paras 14, 16, 18 and 19] [386-C, F; 387-H; 388-A-C, E]

1.3 Rule 266 (3) as was brought into life by the amending Act dated 28.6.2006 continued to hold the field till it suffered substitution by notification dated 11.5.2011. Apparently, consequent upon the need to change the qualifications, Rule 266(3) came to be substituted. However, it is not in dispute that after the substitution dated 11.5.2011, the proviso relied upon by the respondent has not been brought back into existence as was done in the year 2006. Whatever ambiguity there may have been as to the actual effect of the substitution, it stands removed by the legislative history of clause (3) of Rule 266 including the proviso therein. The legislative intention is clear that when rule

maker substituted the provisions of clause (3), it intended that the entirety of clause (3) would stand obliterated as indeed is the effect of a repeal and a new set of provisions taking its place. It is on this understanding that the rule making authority, when it intended that the proviso must govern, it expressly did so, and it issued the notification dated 29.11.2006. Admittedly after 11.5.2011, the proviso has not been brought back to life. Apparently, the notification dated 29.11.2006 bringing the proviso back to life after the substitution of clause (3) to Rule 266 in 2006 was not brought to the notice of the High Court. As far as the Circular dated 29.2.2012 relied upon by the respondent is concerned, it related to the advertisement issued in 2012 though legally the proviso to Rule 266(3) was non-existent. For whatever reasons it may have been, the order came to be issued extending the benefit of the proviso but after changing the condition in the advertisement. It cannot advance the case of the respondent who applied pursuant to a later advertisement dated 11.8.2013 wherein the requirement as to possession of qualifications as on the last date is clearly indicated. The advertisement concerned is of the year 2013, the Circular dated 29.2.2012 cannot be pressed into service by the respondent both in law and on facts. The candidates must possess the qualifications on the last date when applying under the advertisement when it is so provided. In view of finding that the proviso had ceased to exist after substitution of Rule 266(3) by notification dated 11.5.2011, there can be no question of the advertisement being opposed to the statutory rule. The impugned judgment of the High Court in Writ Appeal No.DBCSAW NO.667/2015 shall stand set aside. [Paras 20-24] [388-F-H; 389-A-H]

State of Rajasthan v. Mangilal Pindwal **AIR 1996 SC 2181 : [1996] 3 Suppl. SCR 98 – relied on.**

Case Law Reference

[1996] 3 Suppl. SCR 98	**relied on**	**Para 17**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7215 of 2019.

From the Judgment and Order dated 18.08.2017 of the High Court of Judicature for Rajasthan at Jodhpur in D.B. Special Appeal (Writ) No. 667 of 2015.

Dr. Manish Singhvi, Sr. Adv., Satyendra Kumar, Shailja Nanda Mishra, Harsha Vinoy, Arpit Prakash, Milind Kumar, Advs. for the Appellants.

Ms. Aishwarya Bhati, Sr. Adv., Ajay Vikram Singh, Ms. Priyanka Singh, Kamlesh Anand, Ms. Archana Pathak Dave, Gp. Capt. Karan Singh Bhati, Advs. for the Respondent.

The Judgment of the Court was delivered by

K. M. JOSEPH, J. 1. Leave granted.

2. The appellant issued an advertisement on 11.8.2013 for recruiting Teachers Grade III (Level I and II) in the various Zila Parishads in the State of Rajasthan. The advertisement stipulated the last date for submission of the application form as 4.9.2013. The applicants were to fulfil the requisite educational qualifications as on the last date of the submission of the application form. The writ petitioner who is the respondent (hereinafter referred to as "the respondent") was undergoing the B.S.T.C. Course (B.S.T.C. is an essential qualification stipulated). He, however, applied pursuant to the advertisement. The appellant discovered during the process of verification that the respondent was not holding the requisite qualification of B.S.T.C. as on the last date for submission of application form. The respondent appeared on the basis of an order passed by the High Court permitting him and others to submit their application however, it was subject to the decision in SBCWP No.10845/2013. Thereafter, he completed his B.S.T.C. second year course and the results were also declared. The result of the recruitment examination was declared on 17.5.2014. Finding that the result of the examination in regard to the respondent and another was not uploaded on the official website, they filed writ petition No.244/2015. An interim order was passed in the said writ petition to bring the result of the petitioner in a sealed cover before the Court. The High Court further directed that the results to be declared. The respondent secured 158.41 marks. The respondent was called for verification of documents. Though the respondent secured marks which was more than the cut-off, his name was not found in the Select List dated 16.3.2015. After representing and not eliciting the required response, the writ petition which led to the present appeal (W.P.No.2801/2015) came to be filed seeking to quash final select list dated 16.3.2015 and to direct the appellants to declare the selection list of the respondent as marks secured were higher than the

A cut-off in the respective category. Finally, direction to appoint the respondent to the post of Teacher Grade III (Level I) with all consequential benefits was sought. The appellant filed counter affidavit. The learned Single Judge dismissed the writ petition.

In appeal filed by the respondent, by the impugned order, however, B the division Bench allowed the writ petition.

3. The controversy which falls to be resolved by us is whether the High Court was right in holding that the proviso to Rule 266(3) of the Rajasthan Panchayati Raj Rules, 1996 (hereinafter referred to as "the Rules") which was relied upon by the respondent remained intact despite the C substitution of Rule 266(3) by Notification dated 11.5.2011. The proviso read as follows:

> "Provided further that the person who has appeared in the B.Ed./ B.S.T.C. examination shall be eligible to apply for the post of primary and upper primary school teacher but he shall have to D submit proof of having acquired the said educational qualification to the District Establishment Committee before the declaration of result of the said examination."

4. In short, if the proviso held the field, the respondent would become eligible and qualified for selection and appointment based on E merit. If the proviso on the other hand was not available, the respondent would not be eligible for the reason that as contended by the appellants, as on the last date for filing application the respondent had admittedly not passed the B.S.T.C. examination. The respondent had actually appeared for the examination and taking shelter under the proviso, the respondent claimed to be qualified on the terms thereof. The High Court F after referring to the amendment dated 11.5.2011 to clause (3) of Rule 266, dwelt upon the purpose of a proviso. The Court adverted to case law on the point. It was found that there is no rule that the proviso must always be restricted to the ambit of the main provision. Occasionally in a statute, it was reasoned a proviso may be unrelated to the subject G matter of the preceding section or contains matter extraneous to that section. Under such circumstances, it was reasoned by the High Court that it would have to be interpreted as a substantive provision dealing independently with the matter comprised therein and not as qualifying the main and preceding section. The academic qualifications in clause (3) of Rule 266, it was found, were neither expanded nor qualified by the

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proviso. The proviso dealt with a clearly different area, namely, the time in which the eligibility prescribed under the Rules had to be attained. The amendment to sub-Rule (3) regarding academic qualifications was necessitated on account of subsequent legislation. Even after sub-rule (3) was substituted by amendment dated 11.5.2011, the proviso continued to hold the field. It is found that in such circumstances the condition in the advertisement being contrary to the proviso it would be illegal for the reason that an executive instruction cannot supplant the rule. The writ appeals were allowed. Petitioners were found entitled to benefits of employment in the light of their merit position except for back wages.

5. We heard Dr. Manish Singhvi, learned senior counsel appearing on behalf of the appellants and Ms. Aishwarya Bhati, learned senior counsel on behalf of the respondent.

6. It is contended by learned counsel for the appellants that the advertisement dated 11.8.2013 clearly stipulated that applicants should have the requisite educational qualifications on the last date of the submission of the application form. The respondent did not possess the said qualification admittedly but become qualified only if the proviso is made applicable. The respondent had not challenged the advertisement. He had participated in the selection, fully aware that under the advertisement the cut-off point was the last date for determining the issue relating to qualifications. He would also further submit that the amendment dated 5.10.2011 brought about by substitution in clause (3) of Rule 266, swept away the proviso. When clause (3) of Rule 266 was substituted by the said amendment, the rule making authority did not think it fit to continue the proviso relied upon by the respondent. The advertisement dated 11.8.2013 was issued after the substitution was carried out in clause (3) of Rule 266 on 11.5.2011. Therefore, the High Court erred in holding that the proviso survived the substitution on the basis that it was an independent provision having nothing to do with the change in the qualifications which was brought about through the substituted provision of clause (3) of Rule 266 of the Rules. He further submitted that thousands of candidates had applied and were appointed who were qualified in terms of the advertisement, namely, those who were possessing qualification on the last date mentioned for making the application. He would also highlight that if the view of the High Court is upheld, it would also reach injustice to those candidates who relied upon the advertisement and were positioned like the respondent who appeared

A for the examination but did not apply on the basis that they were not having the qualifications.

7. Per contra, the learned senior counsel for the respondent supported the High Court judgment. She pointed out that sub-rule (3) of Rule 266 dealt with the qualification to be possessed for appointment as
B teachers. The qualifications became amenable to changes based on the qualifications which were stipulated by the competent authority. All that happened when the amendment dated 11.5.2011 was carried out was a new set of qualifications as stipulated by the competent authority came to be inserted in sub—rule (3) of Rule 266. The proviso as found by the
C High Court did not deal with the qualifications as such but only contemplated allowing persons who were not qualified when an advertisement is issued but had appeared for the examination could also apply subject to the conditions therein. The proviso thus only facilitated greater participation in the competitive process by throwing open the doors of recruitment to candidates who would otherwise be ousted. She
D also further drew our attention to the fact that the proviso in question came to be inserted for the first time on 1.7.2004. In 2006, Rule 266(3), it is pointed out came to be amended and a new set of qualifications were introduced through the said amendment. However, the proviso continued in Rule 266(3). In fact, she drew our attention to the following circular dated 29.2.2012:

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"GOVERNMENT OF RAJASTHAN
RURAL DEVELOPMENT AND PANCHAYATI RAJ
DEPARTMENT
PANCHAYATI RAJ PRIMARY EDUCATION

F NO. EK 914/(10) Paravi/Prashi/2010/116

Dated 29.02.12

To

G All District Magistrate
Controller of Examination.

Chief Executive Officer
District Council
Additional Controller of Examination.

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Sub.: Regarding Direct Recruitment for Third grade Teachers Exam 2012. A

Ref : Departmental letter No. 94 dated 21.2.12.

With reference to above cited subject it is stated that a video conferencing was convened regarding Third Grade Teachers Direct Recruitment through competitive examination, 2012 on 28.2.2012 wherein Chief Executive Officers raised following points:- B

1. Whether the candidates who have qualified the Teachers Eligibility Test 2011 but took part in training examination and consequently results were not declared can appear in the Direct Recruitment competitive examination for Third Grade Teachers? C

In this connection, it is clarified that a departmental letter No.94 dated 21.2.2012 was uploaded on the website and in the advertisement at Point No.7 (7) "the eligibilities mentioned therein about have been acquired till the last date of filing application" has been replaced by the words "Such person who has appeared in B.Ed./BSTC/DSE/B.ED. (General/special education) examination or appearing shall be eligible for filing application for the primary or higher primary school Teachers (Common Education/Special Education) post but he has to furnish the proof of having acquired the educational qualification prior to the declaration of result of competitive examination." The same be read accordingly. D E F

2. For the Third Grade Teachers Direct Recruitment Competition Examination, 2012, no mention is made about the posts advertised about the language of the special teachers (Mentally retarted, Visually impaired, Hearing Impaired) in the post advertised? G

On this point, it is clarified with the concurrence of Chief Secretary, School Education Department that for Third Grade Teachers, Second level Class 6 to 8 (higher primary H

A school), language for special teachers (Mentally retarted, visually impaired, hearing impaired) shall be Hindi – English. Hence, the candidates having certificates for Teachers Eligibility Test Second level for class 6 to 8 in language Hindi, English shall be eligible.

B Hence please ensure that the above modifications be placed on the website today for conducting further proceedings regarding Third Degree Teachers Direct Recruitment Competitive Examination, 2012.

C Sd/- ADDITIONAL CHIEF SECRETARY
RURAL DEVELOPMENT AND
PANCHAYATI RAJ DEPARTMENT"

8. She would therefore, submit that despite the fact that sub-Rule (3) of Rule 266 came to be substituted in 2006, as already noticed, the
D proviso remained intact and there is no basis for the appellant to contend otherwise. She emphasised that it was the understanding of the authorities themselves that the proviso did not die in the process of substitution carried out in clause (3) of Rule 266. She also commended the reasoning of the High Court for our acceptance, namely, the area of the operation of the proviso was independent and different from the province covered
E by clause (3) of Rule 266. It was pointed out that several persons are affected by the proviso. It was further pointed out that in view of the fact that the proviso held the field, the participation of the respondent under the advertisement was not fatal. The provisions in an advertisement ch did not square with the requirement of the statutory rules must naturally
F perish and be ignored.

9. In reply to the same the learned counsel for the appellant agreed with the contention of the respondent that the proviso was first inserted on 1.7.2004. He also agreed that Rule 266 underwent an amendment dated 28.6.2006. The substitution of clause (3) of Rule 266 makes no
G mention about the omission of the proviso. However, most pertinent it is argued by him, that on 29.11.2006 a further amendment was carried out in Rule 266(3) and under the said amendment the proviso was resurrected. There was a further amendment in the proviso to Rule 266, wherein in place of Rajasthan Public Service Commission, the expression, District Establishment Committee came to be substituted. However, he would

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point out on 11.5.2011 again clause (3) of Rule 266 came to be substituted. In fact, there is no controversy that such an amendment was carried out. His argument however is unlike what happened in 2006 when consequent upon the changes brought about in Rule 266(3), the proviso which existed earlier prior to the substitution came to be brought back to life, after the substitution which took place on 11.5.2011, the proviso suffered a burial from which it has not been brought back to life. In other words, after the admitted substitution of clause (3) to Rule 266 in 2011, the proviso has not been inserted again as was done in the year 2006. This meant that after the substitution of 11.5.2011, the proviso had ceased to exist. Thereafter, it has never been brought back in rules in question.

10. As regards the circular dated 29.2.2012 relied upon, learned counsel pointed out that it related to the advertisement in the year 2012. At that time though the proviso was actually not there and the advertisement was issued on the said basis namely the candidates were expected to be in possession of the qualifications as on the last dated fixed under the advertisement, a decision was taken to replace the said clause in the advertisement itself for introducing the provisions of the proviso. In other words, though originally the advertisement contemplated the last date for determining the possession of qualifications, a conscious decision was taken to amend the advertisement itself on the basis that the proviso would govern the situation. He would further point out that we are concerned not with the advertisement of 2012 but with the advertisement dated 11.8.2013. As far as the current advertisement in question is concerned, the Circular dated 29.2.2012 would have no application. As far as the advertisement in question, the authorities have also not changed the requirement that the candidate should possess the qualifications as on the last date. The requirement of the candidate possessing qualifications as on the last date stipulated in the advertisement is in consonance with Rule 266(3) sans the proviso. The advertisement, thus is in harmony with the statutory rules holding the field. He would no doubt submit that few persons may have been appointed on the basis that proviso would operate. It is appellants case that proceedings have been initiated in this regard. He would emphasize however that the correct legal position must govern, illegality should not be perpetuated and the proviso indeed cannot hold the field after 2011.

11. We have already noticed the proviso. The proviso was introduced for the first time on 1.7.2004 (though with variation not relevant to the enquiry) in the rules. Rule 266 is a part of Rajasthan Panchayat Raj Rules. The qualifications for teachers for the category we are concerned with, is undoubtedly, laid down by the National Council for Teachers Education (NCTE). This is done by virtue of the provisions of Section 23 of Right of Children to Free and Compulsory Education Act, 2009. After the proviso was inserted in 2004 by virtue of the amendment carried out in Rule 266 (3) dated 28.6.2006, the qualifications in clause (3) of Rule 266 came to be changed and new qualifications came to be introduced through the amendment. It purported to be a substitution of clause (3). It must be remembered that the proviso had been earlier inserted in clause (3) of Rule 266 by virtue of Rajasthan Panchayati Raj (Fourth Amendment) Rules 2004.

12. Thereafter again on 11.5.2011, Rule 266(3) came to be substituted. Qualifications as stipulated by NCTE, were inserted. It reads as follows:

"In exercise of the powers conferred by Section 102 of the Rajasthan Panchayati Raj Act, 1994 (Act No.13 of 1994) and all other powers enabling it in this behalf, the State Government hereby makes the following rules further to amend the Rajasthan Panchayati Raj Rules, 1996, namely:-

1. Short title and commencement.- (1) These rules may be called the Rajasthan Panchayati Raj (Second Amendment) rules, 2011.

2. Amendment of rule 266.-<u>The existing clause (3) of rule 266</u> of the Rajasthan Panchayati Raj Rules, 1996, hereinafter referred to as the said rules, <u>shall be substituted by the following, namely</u>:-

(3)Primary and Upper Primary School Teacher (100% by direct Recruitment)

(a)General Education

Level-(i) Classes I to V	Qualification as laid down by National Council for Teacher Education (NCTE) under the provisions of sub-section (1) of

	Section 23 of the Right of Children to Free and compulsory Education Act, 2009 (Central Act No.35 of 2009) from time to time.
Level-(ii) Classes VI to VIII	Qualifications as laid down by National Council for Teacher Education (NCTE) under the provisions of sub-section (1) OF Section 23 of the Right of Children to Free and Compulsory Education Act, 2009 (Central Act No.35 of 2009) from time to time.
(b) Special Education	
Level-(i) Classes I to V	Qualifications as laid down by National Council for Teacher Education (NCTE) under the provisions of sub-section (1) OF Section 23 of the Right of Children to Free and Compulsory Education Act, 2009 (Central Act No.35 of 2009) from time to time.
Level-(ii) Classes VI to VIII	Qualifications as laid down by National Council for Teacher Education (NCTE) under the provisions of sub-section (1) OF Section 23 of the Right of Children to Free and Compulsory Education Act, 2009 (Central Act No.35 of 2009) from time to time."

(emphasis supplied)

13. The High Court has taken the view that when the substitution was effected on 11.5.2011, all that happened was one set of qualifications were replaced by another set of qualifications. The domain of clause (3) of Rule 266 was the declaration as to the qualifications to be possessed

A by the candidates for appointment as teachers at different levels. The proviso which was inserted on 1.7.2004 did not add to or take away from the qualifications which were declared in the main provision. All that the proviso purported to achieve was to give an opportunity to those candidates who had not acquired the qualifications as on the last date for making application but who had appeared for the concerned B examination, to apply for the post. Thus, the proviso was indeed a beneficial provision as it provided a window of opportunity to those while not being qualified as such, were in the process of acquiring qualification by having appeared in the examination. This is no doubt subject to the conditions in the proviso.

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14. We do agree with the High Court and with the learned counsel for the respondent that the proviso was intended to have a different area of operation from the main provision whose function was only to enunciate the requisite qualifications.

15. The argument also is that in the year 2006 also when the new D set of qualifications was ushered in, it was facilitated by the substitution of clause (3) of Rule 266 of the Rules. Therefore, the contention is, when qualifications changed as a result of NCTE stipulating new qualifications, by substituting the existing qualifications contained in Rule 266(3), the rule making authority complied with the requirement of law. E This has nothing to do with the continued availability of the beneficial provisions of the proviso.

16. We are in this case concerned with the effect of amending Act which brought about the substitution of a provision. An amendment which brings about substitution of a provision essentially does two things. F In the first place, the provision which is substituted undergoes a repeal. At the same time, there is a re-enactment through the newly inserted provisions.

17. We may only refer to a decision of this Court in <u>*State of Rajasthan vs. Mangilal Pindwal*</u> reported in AIR 1996 SC 2181, therein G this Court *inter alia* held as follows:

> "9. As pointed out by this Court, the process of a substitution of statutory provision consists of two steps; first, the old rule is made to cease to exist and, next, the new rule is brought into existence in its place. (See: *Koteswar Vittal Kamath* v. *K. Rangappa Baliga & Co.* [(1969) 1 SCC 255 : (1969) 3 SCR 40], SCR at p. H

48.) In other words, the substitution of a provision results in repeal of the earlier provision and its replacement by the new provision. As regards repeal of a statute the law is thus stated in *Sutherland on Statutory Construction*:

> "The effect of the repeal of a statute where neither a saving clause nor a general saving statute exists to prescribe the governing rule for the effect of the repeal, is to destroy the effectiveness of the repealed act in futuro and to divest the right to proceed under the statute, which, except as to proceedings past and closed, is considered as if it had never existed." (Vol. I, para 2042, pp. 522-523)

10. Similarly in *Crawford's Interpretation of Laws* it has been said:

> "*Effect of Repeal, Generally*.— In the first place, an outright repeal will destroy the effectiveness of the repealed act in futuro and operate to destroy inchoate rights dependent on it, as a general rule. In many cases, however, where statutes are repealed, they continue to be the law of the period during which they were in force with reference to numerous matters." (pp. 640-641)

11. The observations of Lord Tenterden and Tindal, C.J. referred in the above-mentioned passages in *Craies on Statute Law* also indicate that the principle that on repeal a statute is obliterated is subject to the exception that it exists in respect of transactions past and closed. To the same effect is the law laid down by this Court. (See: *Qudrat Ullah* v. *Municipal Board* [(1974) 1 SCC 202 : (1974) 2 SCR 530] , SCR at p. 539)

12. This means that as a result of repeal of a statute the statute as repealed ceases to exist with effect from the date of such repeal but the repeal does not affect the previous operation of the law which has been repealed during the period it was operative prior to the date of such repeal. "

(emphasis supplied)

18. Therefore, when a substitution was carried out initially on 28.6.2006, all the provisions of clause (3) of Rule 266, as it stood, suffered a repeal and in its place a new avtaar was born. It must be at once

A remembered that the proviso was inserted on 1.7.2004 in clause (3) of Rule 266. Therefore, when the rule making authority substituted clause (3) of Rule 266 by the amendment dated 28.6.2006, the inevitable result would be the repeal of entire clause (3) of Rule 266 including the proviso. It is crucial to bear in mind that the amendment to Rule 266 (3) by substitution did not expressly save the proviso. It is equally important to be not oblivious to the fact that the proviso was an integral part of clause(3) of Rule 266. Since Rule 266(3) came to be substituted, having regard to the legal consequences of the same, the proviso could not survive.

C 19. The fact that the proviso had ceased to exist as a result of the substitution dated 28.6.2006 is unambiguously demonstrated, by the fact the rule making authority chose to step in by issuing notification dated 29.11.2006 by inserting again the proviso to Rule 266(3). It read as follows:

D "Provided that the person who has appeared or is appearing in the B.Ed./ B.S.T.C./DSE/B.Ed.(Special Education) Examination shall be eligible to apply for the post of primary and upper primary school teachers (General Education/ Special Education) but he shall have to submit proof of having acquired the said educational qualification to the Rajasthan Public Service Commission before E the declaration of result of the competitive examination."

It is by a subsequent amendment that the words 'District Establishment Committee' was inserted in place of Rajasthan Public Service Commission.

20. Rule 266 (3) as was brought into life by the amending Act F dated 28.6.2006 continued to hold the field till it suffered substitution by notification dated 11.5.2011. Apparently, consequent upon the need to change the qualifications, Rule 266(3) came to be substituted. However, it is not in dispute that after the substitution dated 11.5.2011, the proviso relied upon by the respondent has not been brought back into existence G as was done in the year 2006.

21. We would think whatever ambiguity there may have been as to the actual effect of the substitution, it stands removed by the legislative history of clause (3) of Rule 266 including the proviso therein. The legislative intention is clear that when rule maker substituted the provisions of clause (3), it intended that the entirety of clause (3) would stand H

obliterated as indeed is the effect of a repeal and a new set of provisions taking its place. It is on this understanding that the rule making authority, when it intended that the proviso must govern, it expressly did so, and it issued the notification dated 29.11.2006. Admittedly after 11.5.2011, the proviso has not been brought back to life. Apparently, the notification dated 29.11.2006 bringing the proviso back to life after the substitution of clause (3) to Rule 266 in 2006 was not brought to the notice of the High Court.

22. As far as the Circular dated 29.2.2012 relied upon by the respondent is concerned, it related to the advertisement issued in 2012 though legally the proviso to Rule 266(3) was non-existent. For whatever reasons it may have been, the order came to be issued extending the benefit of the proviso but after changing the condition in the advertisement. It cannot advance the case of the respondent who applied pursuant to a later advertisement dated 11.8.2013 wherein the requirement as to possession of qualifications as on the last date is clearly indicated. As far as the advertisement with which we are concerned which is of the year 2013, the Circular dated 29.2.2012 cannot be pressed into service by the respondent both in law and on facts.

23. The candidates must possess the qualifications on the last date when applying under the advertisement when it is so provided. In view of our finding that the proviso had ceased to exist after substitution of Rule 266(3) by notification dated 11.5.2011, there can be no question of the advertisement being opposed to the statutory rule.

24. The upshot of the above discussion is that the appeal is only to be allowed. We allow the appeal and the impugned judgment of the High Court in Writ Appeal No.DBCSAW NO.667/2015 shall stand set aside.

Divya Pandey Appeal allowed.