

**RAJASTHAN PUBLIC SERVICE
COMMISSION**

AIR 2003 SUPREME COURT 3476

CIVIL APPEALS NOS.3615-3618 OF 2992 WITH C.A.NO.3614 OF 2002

D.D. 1.4.2003

[As this case is reported in the above journal full text of the judgment is not given but only the gist of the case and the law laid down by the Supreme court is given as under.]

THE HON'BLE MR. JUSTICE SHIVARAJ V. PATIL

AND

THE HON'BLE MR. JUSTICE ARIJIT PASAYAT

Rajasthan Public Service Commission & Anr. ... Appellants

Vs.

Harish Kumar Purohit & Ors. ... Respondents

(A) Precedents – Dispute regarding appointments to posts of Munsiff Magistrate – Dismissal of writ petition by Division Bench – Subsequent writ petition containing identical prayers filed before another Division Bench of same High Court – Earlier decision of Division Bench brought to notice of subsequent Division Bench – Subsequent Division Bench taking diametrically opposite view without even referring to decision of earlier Bench and not even indicating reasons as to why earlier decision was not followed – Not proper – Earlier decision of Division Bench would be binding on Bench of co-ordinate strength – In case of difference of opinion only course open to it is to refer matter to larger Bench.

C.W.Nos.4622, 4673, 4674, 4675 of 2001, D/- 20-12-2001 (Raj), reversed.

(Para 12)

(B) Constitution of India, Arts. 16, 26 – Appointment – To posts of Munsiff Magistrate – Non-availability of candidates from reserved category – Writ petition seeking directions for filling up those posts from general category - High Court directing to call proportionate number of candidates for interview by treating vacancies in reserved category to be vacancies in general category – On

same breath it permitting Commission to carry forward vacancies in reserved category – Amounting to contradictory directions – What useful purpose would be served by adopting such dual procedure, not clear – Order liable to be set aside (Paras 6, 10, 11)

(C) Constitution of India, Art. 133 – Appeal – Intervention – Permissibility – appeal against order of High Court given in writ petition – Dispute regarding appointment to posts of Munsiff Magistrate – Applicants seeking permission to interfere on ground that they belonged to OBC and woman category neither had approached the High Court nor were amongst candidates called for interview – Application liable to be rejected.

(Para 9)

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

D.B. CIVIL WRIT PETITION NO.5693 OF 2003

D.D. 7.10.2003

HON'BLE MR. JUSTICE RAJESH BALIA

AND

HON'BLE MR. JUSTICE SUNIL KUMAR GARG

Dashrath Singh ... **Petitioner**

Vs.

The Union Public Service Commission & Anr. ... **Respondents**

Re-scheduling of examination dates fixed by UPSC & other PSCs:

The petitioner wants to alter and reschedule the dates either of U.P.S.C. and R.P.S.C. fixed from 12.10.2003 – The High Court has rejected the writ petition.

Held:

That both Public Service Commissions are independent autonomous bodies and are entitled to determine their own calendar of various examinations that are conducted by them – It is further held that to hold that no such two examinations in which candidates on all India basis are entitled to appear be held on same date is to deny the independent functioning of different autonomous bodies.

JUDGMENT

Having heard learned counsel for the petitioner, we see no merit in this public interest litigation. The petitioner wants to alter and reschedule the dates either of U.P.S.C. or R.P.S.C. to make it convenient for candidates to take both the examinations viz. R.A.S. Exam. 2003 to be conducted by RPSC and Central Police Forces (Asst. Commdt.) Examination, 2003 by U.P.S.C. The examinations are to commence from 12.10.2003.

Undoubtedly, the petitioner may be in dilemma to make up his mind. However, it is

important to bear in mind that both the Public Service Commissions are independent autonomous bodies and are entitled to determine their own calendar of various examinations that are conducted by them. In both the examinations, the candidates from all over the country are eligible to participate depending upon the option of the candidates. The dates are already notified in advance for holding examinations. Large number of candidates are involved who too must have made their arrangements to take examinations at one place or another. Such dates cannot be altered to detriment of large number of people who have accordingly chartered out there programmed for taking those examinations. Every candidate has a choice to chose his priority and appear in the examination which may be held at one time.

Public Service Commissions of the different State and Union Public Service, for that matter, like Universities are not required to under any objections to keep calendar of all other such bodies holding examinations for offering employment. Offering of opportunities by each one of them is open to all. It is for the candidates to opt, which he wants to avail. The calendar of dates fixed by different agencies are bound to clash some time.

In our opinion, it is not just and fair demand on different Public Service Commissions to make it imperative for them to fix programmed of various examinations to be held by them in consultation with all other state Public Service Commission and not to hold examinations at one and same time in the infructuate the whole process for selection of candidates which has been set in motion and delay the recruitment to the detriment of all concerned including proper administration.

In this case the competing dates are fixed by UPSC and RPSC. In given case when applications are invited on all India basis by State Public Service Commission, same situation may arise in calendar of examinations fixed by different State Public Service Commissions.

To hold that no such two examinations in which candidates on all India basis are entitled to appear be held on same date is to deny the independent functioning of different autonomous bodies.

The petition is rejected.

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

S.B. CIVIL WRIT PETITION NO.2196/2003

D.D. 30.10.2003

HON'BLE MR. JUSTICE H.R. PANWAR

Braham Dutt Purohit ... **Petitioner**

Vs.

State of Rajasthan & Ors. ... **Respondents**

Age Relaxation:

Rajasthan Educational Service Rules 1970 – Petitioner seeks instruction to the respondents to consider his case for appointment to the post of Lecturer in Political Science for vacancies of the years 1997-1998 and 1998-1999 by relaxing the age limit - The petitioner contended that he should have been given relaxation in age for the period during which no recruitment took place – The High Court dismissed the Writ Petition.

Held:

That when vacancies should be determined and requisition for filling up those vacancies are to be sent to the Commission falls exclusively within the domain of the State Government. Further, it is also within the domain of the State Government to decide in which category of service the relaxation in age should be given. The Courts cannot issue directions in such matters until and unless there is violation of some provision of the Rules.

JUDGMENT

By the instant writ petition, petitioner seeks direction to the respondents to consider his case for appointment on the post of Lecturer (School Education) in Political Science for the vacancies of the year 1997-98 and 1998-99 by relaxing the age limit.

Petitioner is working as teacher Grade III. He holds the requisite qualification for

appointment on the post of School Lecturer in Political Science. In pursuance of the advertisement Annx.1 dated 8-5-2001, he applied for the post of School Lecturer in Political Science but his candidature has been rejected on the ground that by that time he became over aged. Hence this writ petition.

The main thrust of argument advanced by the learned counsel for the petitioner is that, he should have been given relaxation in the age for the period during which no recruitment took place as is being done in the case of R.A.S. and allied examinations.

I have heard learned counsel for the parties and perused the record.

The petitioner is writing as teacher Grade III and his services are governed by the Rajasthan Educational Subordinate Service Rules, 1971 (for short, "the Rules, 1971"). Various post of School Lecturer comes under the Rajasthan Educational Service Rules, 1970 (for short "the Rules 1970").

There is a provision under sub-rule (8) of rule 10 of the Rules, 1970 for relaxing the age for the period during which no recruitment took place but no such provision is under the Rules, 1971. More so, there is no such provision under the Rules, 1970 that year-wise vacancies shall be determined for the post of School Lecturers and advertisement are issued whenever the requisition is made by the State Government after determination of the vacancies.

When vacancies should be determined and requisition for filling-up those vacancies are to be sent to the RPSC falls exclusively within the domain of the State Government. Further, it is also within the domain of the State Government to decide in which category of service the relaxation in age should be given. The Courts cannot issue directions in such matters until and unless there is violation of some provision of the Rules. In this view of the matter, in absence of relevant Rules, the petitioner cannot claim age relaxation at par with other category of posts.

Consequently, I do not find any merit in this writ petition and it is accordingly dismissed. There shall be no order as to costs. Stay petition stands dismissed.

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

S.B.C. WRIT PETITION NO.830/2004

D.D. 16.3.2004

HON'BLE MR. N.P.GUPTA,J

Himanshu Kachhwaha & Anr. ... Petitioners

Vs.

Rajasthan P.S.C. ... Respondent

Reservation for P.H. Category:

Rule 15 of the Rajasthan State and Subordinate Services (Direct Recruitment by Combined Competitive Examination) Rules 1999 – The number of candidates to be admitted to the Main Examination is 15 times the total approximate number of vacancies (categorywise) – Two petitioners belonging to GM/P.H. Category did not figure in the list of candidates eligible to appear for the Main Examination – They contended that 9 posts reserved for P.H. under different categories only 47 P.H. candidates were declared eligible to appear for the Main Examination as against 135 P.H. candidates in the ratio of 1:15 – The High Court dismissed the writ petition.

Held:

Preliminary Examination is only an examination for short listing of candidates and at this stage candidate belonging to P.H. cannot ask for declaration of result in the ratio of 1:15 by treating them as persons belonging to separate category like SC, ST and OBC etc., so as to entitle them to claim declaration of 15 times the number of vacancies as successful candidates eligible to appear for the main examination.

Case referred:

1992 Suppl.(3) SCC 215 – Indra Sawhney v. Union of India

JUDGMENT

In Writ No.384/04 on 4.2.2004, notice to show cause had been issued returnable within one week, thereafter, on 23.2.2004, service of respondent no. 1. being the State, was dispensed with,

as the effected party, being RPSC., the respondent no. 2, was already served, and the matter was ordered to be put up for admission on 3rd of March 2004. That day, writ no. 830/04, was also listed, and that matter was not taken up on that day, as the counsel for the respondent in writ no. 364 wanted to file reply, without any express order being passed in writ no. 830, that file was simply passed over. However, the reply had been filed therein, by the respondent No. 2, on 5.3.04, and thereupon the matter was taken up today. In writ no. 830/04, it was listed on 24.2.2004, on which date, it was ordered to be put up before appropriate bench on 25.2.2004, and the case was listed on 3.3.04, on which date, as noticed above the writ no. 364 was also listed. However, it was understood, that in this case also, Mr. Joshi will appear and file reply. On 9.3.2004, Mr. Joshi appeared in writ no. 830/04 also, and filed reply, as such, both the writ petitions at the request of learned counsel for the effected parties, were heard.

The facts of the case are, that an advertisement dated, 6-4-03, was published by the R P S C., inviting applications is for examinations for selection to various State and Subordinate Services. The total no of vacancies was shown to be 493. In this advertisement being Annexure 3, in both the writs, the break up of vacancies was given as earmarked for General, within that for males and females. Then the other head given was reserved posts, and in this reserved category also, there were 6 categories mentioned, being SC(MF), ST(MF), OBC(MF), Physically handicapped Non Gazetted Officers and Departmental Employees the petitioners, in both the writ petition, claimed to be physically handicapped candidates. According to the petitioners, they applied in response to the advertisement, and appeared in the preliminary examinations held on 12.10.2003. Result of this examination was declared.

It is from this point, that the controversy arises, in as much as, by this results, the roll nos. of those candidates were published. Who are found eligible for appearing in the main examination, and none of the two petitioners have been found to be eligible there in. The grievance of the petitioner is, that according to the rule 15 of the Rajasthan State and Subordinate Service (Direct Recruitment by Combined Competitive Examination), Rules 1999, the number of candidates, to be admitted to the main examination, is required to be 15 times the total approximate number of vacancies (category-wise), to be filled in the year in the various services, and posts Precisely on

this basis, it is contended that since in Annexure 1, the number of vacancies have been advertised category-wise, and therein, 9 vacancies were shown to be reserved for physically handicapped persons, 15 times thereof, being 135 physically handicapped candidates should have been declared eligible to appear in the main examination, rather the submission is, that instead of the results, as declared, the category-wise result should have been declared, and if the results were to be declared accordingly, the petitioners would have found place in the eligibility to appear in the main examination. Not doing so, is violative of the provisions of Rule 15, so also amounts to, their being discriminated against, by making unequal to compete as equals, and thus, the action is violative of the provisions of Article 14 and 16 of the Constitution of India. Inter-alia on this basis, it is prayed, that the respondent may be directed to reconsider the matter, and declare the result of RAS, Preliminary Examination 2003, category wise, separately for physically handicapped candidates in the ratio 1:15, and in case, the petitioners name appear in the list of successful candidates, then to call the petitioners to appear in the main examination, with all consequential directions.

In the reply, it is contended, that the question, as to whether physically handicapped persons constitute a separate category, stands concluded by the judgement of Hon'ble the Supreme Court, in *Indra Sawhney Vs. Union of India*, reported in 1992 Suppl.(3)SCC 215[1992(6)JT 273], wherein it has been held, that the reservation in favour of Scheduled Castes, Scheduled Tribes, and other Backward Classes under Article 16(4) may be called 'vertical reservation' whereas, the reservations in favour of Physically Handicapped, under Article 16(1), can be referred to as 'horizontal reservations'. Horizontal reservations cut across the vertical reservations, what is called inter-locking reservations. To be more precise, suppose 3% of vacancies are reserved in favour of physically handicapped persons, this would be a reservation relatable to Article 16(1), and the person selected in this quota will be placed in the appropriate category, to which he belongs i.e., SC ST or General, by making necessary adjustments. Then it is pleaded, that relying upon this judgment, this court, in *Bhuvaneshwar Singh Chauhan Vs. State of Rajasthan & Ors.* (SB Civil writ Petition No.4080/2000 decided on 16.9.2002), has reiterated the same principle, and it was held, that the law does not permit, that there should be a separate category for physically handicapped persons, for giving reservations to them. Thus, according to the respondents, the

issue sought to be raised in this writ petition, is no more *res integra*, and the writ is required to be dismissed. It was then pleaded, that the petitioner could not secure the cut off marks for the category, to which he belongs (both the petitioners hear claim to be of General Category), they have not been declared successful, in the preliminary examination. According to the respondents, physically handicapped persons do not fall in the separate category, as envisaged under rule 15 of the Rules, and thus, no error has been committed by the Commission, nor can its action be said to be arbitrary or discriminatory. It was also pleaded, that the preliminary examinations are held, for short-listing the candidates in the 4-categories, and the benefit of reservation is given to the physically handicapped persons, after declaration of the result of main examination, and interview. It was also pleaded, that neither the Disabilities (Equal opportunities, protection of rights and full participation) Act, 1995, nor the rules framed there under, being the Rajasthan Handicapped Persons (Physically disabled persons) Rules, 2000, make any provision for fixing separate cut off marks, in the preliminary examination, for the physically handicapped persons. It was also pointed out, that in the preliminary examination, in all, 47 physically handicapped persons have been declared successful in the respective 4 categories, and the benefit of reservation will be given to the physically handicapped persons, only after final merit list is prepared. It was also explained, that like handicapped persons reservation has been made for non Gazetted employees, and departmental employees, but then they do not constitute independent categories, so as to entitle them to claim declaration of eligibility of candidates in the ratio 1:15 in that category. Thus it was prayed that the writ petition be dismissed.

Arguing the writ petition, the same submissions were reiterated. However learned counsel for the petitioner placed reliance on Para 9 of the judgment of Hon'ble Supreme Court in *Govt. of Andhra Pradesh Vs P.B. Vijayakumar and others*, reported in AIR 1995 SC. 1618. Learned Counsel for the respondent, on the other hand relied upon the judgment *Indra Sawhney's case (Supra)*. *Bhuvaneshwar Singh's case (Supra)*, *Chattar Singh & Ors. Vs State of Rajasthan & Ors.* reported in 1996(11)SEC 742, and *Dharamveer Tholia & Ors V/s State of Rajasthan & Anr.*, reported in 2000(3) WIC (Raj.) 399. Learned Counsel for the petitioner in rejoinder, relied upon paras 856,857 and 858 of *Indra Sawhney's case*.

I have considered the submissions and have gone through the judgments.

Before proceeding to examine the controversy, I may gainfully quote the provisions of Rule 15 and 17, which provide for the scheme of examination, and making of the recommendations of the Commission, which reads as under:

“15. Scheme of Examination, personality and viva voce Test.- The Competitive Examination shall be conducted by the Commission in two stages i.e., Preliminary Examination and main Examination as per the scheme specific in Schedule III. The mark obtained in the Preliminary examination by the Candidates, are declared qualified for admission to the Main Examination on will not be counted for determining their final order of merit. The number of candidates to the main examination will be 15 times the total approximate number of vacancies (Category wise) to be filled in the year in the various services and posts but in the said range all those candidates who secure the same percentage of marks as may be fixed by the Commission for lower range will be admitted to the main Examination.

Candidates who obtain such minimum qualifying marks in the Main Examination as may be fixed by the Commission their discretion shall summoned by them for an interview. The Commission shall award marks to each candidate interviewed by them having regard to their character, personality, address, physique and knowledge of Rajasthani Culture. However, for selection to the Rajasthan Police Service Candidates having ‘C’ Certificated of N.C.C. will be given preference. The marks so awarded shall be added to the marks obtained in the Main Examination by each such candidate.

Provided that the Commission, on intimation being received from the Government before declaration being result of the Preliminary Examination may increase or decrease the no of vacancies advertised.

17. Recommendation of the Commission: - (1) The Commission shall prepare for each service, a list of the candidates arranged in order of merit of the candidates as disclosed by the aggregate mark finally awarded to each candidate. If two or more

such candidates obtain equal marks in aggregate the Commission shall arrange their names in the order of merit on the basis of their general suitability for the service:

Provided that the candidate(s) belonging to other Backward Classes/ Scheduled Castes/Scheduled Tribes, who get placement in the merit list as a result of special concessions given to them in terms of “age” and “fees” or such other concession granted by the Government shall be counted against the reserved vacancies determined for the candidates belonging to the other Backward Classes/ Scheduled Castes/ Scheduled Tribes irrespective of the marks obtained by them.

(2) The Commission, while giving weight age to the preferences for the posts in the different services expressed by a candidate in her application, may recommend him her for appointment to any post in any such service or which it considers him suitable.

(3) The list compiled under this rule shall be immediately sent to the Government and also be published for general information.”

A look at these two provisions make it clear, that in the process of selection, actually the process of elimination take place, the first step of elimination is of short listing, by holding a preliminary examination as mentioned in rule 15, and thereafter, the successful candidates, up to the specified limit, are eligible to appear in the main examination, and out of the candidates, who pass in the examination i.e., obtain minimum qualifying marks, are to be summoned for interview, wherein also marks, are to be awarded, having regard to their character, personality, address, physique and knowledge of Rajasthani Culture and the total of the marks obtained in interview, and the main examination, makes the basis for preparation of merit list for the purpose of Rule 17.

Now taking up the various judgments of Hon’ble the Supreme Court, and of this court. P.B. Vijayakumar’s case, was a case, dealing with the question of validity of Rule 22-A (2) of the Andhra Pradesh State and Subordinate Service-Rules, where-under it was pointed that in the

matter of direct recruitment to the posts for which men and women are equally suited, other things being equal, preference shall be given to women, and they will be selected to an extent of at least 30% of the post in each category of O.C., B.C., S.C, and S.T. quota. Hon'ble the Supreme Court considered by validity of the provision and upheld the same, and in that process, in Para 9 it was observed as under: -

“Reservation normally implies a separate quota, which is reserved for a special category of persons. Within the category appointments to the reserved posts may be made in the order of the merit. Nevertheless, the category for whose benefit a reservation is provided. Is not required to compete on equal terms with the open category. Their selection and appointment to reserved posts in independently on their inter se merit and not as compared with the merit of candidates in the open category. The very purpose of reservation is to protect this weak category against competition from the open category candidates.”

Then Hon'ble the Supreme Court quoted the Para 836 of Indra Sawhney's case.

In Indra Sawhney's case, in Para's 856, 857 and 858, as relied upon by the learned counsel for the petitioner, what has been held by Hon'ble the Supreme Court is, that the reservation necessarily means appointment of less meritorious persons, and that the small difference that may be allowed at the stage of initial recruitment is bound to disappear in course of time, these members too will compete with and improve their efficiency along with others. Thus, neither the judgment in P.B. Vijayakumar, nor these three Para of Indra Sawhney's case lay down the requirement, of declaring the result of Preliminary Examination by treating the physically handicapped persons to be a separate category, like SC, ST, OBC, etc., so, as to entitle the petitioners to claim declaration of 15 times the number of vacancies, as successful candidates eligible to appear in the main examination.

On the other hand, a look at Para 832 of the judgement in Indra Sawhney's case clearly holds it otherwise, by holding this reservation to be horizontal, and to be inter-locking reservation, and also by giving special example. I may gainfully quote Para 832 of Indra Sawhney's case, which is as under: -

“We are also of the opinion that this rule of 50% applies only to reservations in favour of backward classes made under Article 16 (4). A little clarification is in order at this juncture all reservations are not of the same nature. There are two types of reservations. Which may for the sake of convenience be referred to as ‘vertical reservations’ and ‘horizontal reservations’. The reservations in favour of Schedule Caste, Scheduled Tribes and other backward classes (under Article 16 (4)) may be called vertical reservation whereas reservations in favour of physically handicapped (under clause (1) of Article 16) can be referred to as horizontal reservation. Horizontal reservations cut across the vertical reservations- what is called inter-locking reservations. To be more precise suppose 3% of the vacancies are reserved in favour of physically handicapped persons this would be a reservation relating to clause (1) of Article 16. The persons selected against this quota will be placed in the appropriate category; if he belongs to S.C category he will be placed in that quota by making necessary adjustments, similarly, if he belongs to open competition (O.C) category, he will be placed in that category by making necessary adjustments. Even after providing for these horizontal reservations, the percentage of reservations in favour of backward class of citizens remains and should remain the same. This is how these reservations are worked out in several States and there is no reason not to continue that procedure”.

Dharamveer Tholia’s case need not detain me much because it appears from Para 53 of the judgement, that during pendency of the matter before this Court. Hon’ble the Supreme Court passed the interim Order staying declaration of the result of the main examination. Likewise as appears from Para 48 of the judgement, that the Hon’ble Division Bench also held, that the public interest litigation filed only on 24-07-2000, to challenge the validity of the rule after declaring the result, and after the timetable for the examination had been issued is not entertainable as at this belated stage. Then in *Chattar Singh’s* case it was held, that separate lists are required to be published by the Commission in respect of the candidates in the respective categories, so as to make up number of candidates 15 times the notified or anticipated posts/vacancies. But then the question considered was on the anvil of requirement of providing lesser cut off marks

for OBC category, and the categories being considered in that judgement, were General SC, ST and OBC. Therefore, that judgement is also no authority for the proposition under consideration before me either ways.

However, Bhuvaneshwar Singh's case is a direct judgement on the issue, where it was clearly held as under: -

“That law does not permit that there should be separate category for physically handicapped persons for purpose of reservation.”

This judgement took into account the aforesaid Rajasthan Handicapped Persons (Physically disabled persons) Rules of 2000 as well. Significantly, Bhuvaneshwar Singh's case was a case relating to final examination as the candidates therein had qualified in the preliminary examination, and was called to appear in the main examination the result whereof was declared on 24-10-2000 and not a single candidate, under the category of blind, was interviewed, through the petitioner was the only person of that category who qualified the preliminary examination, and appeared in the main examination, under the category of Blind, and according to the mark sheet, there was an endorsement made to the effect “not qualified for interview”. Which precisely was under challenge. On the other hand, the present case is still on a stronger footing, in as much as, here the matter relates only to short listing.

As noticed above, the preliminary examination is only an examination for short listing the candidates, and at this stage it will be too much for the petitioner to ask for declaration of the results, so category- wise, as is sought to be argued. In that view of the matter, I do not find any substance in the contention of the learned counsel for he petitioner that the category wise result for physically handicapped candidates, in the ratio of 1:15, is required to be declared for the preliminary examination.

The writ petitions thus being devoid of force and are, therefore dismissed summarily.

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR**D.B.CIVIL SPECIAL APPEAL (WRITS) NO.525/2003****IN****S.B.CIVIL WRIT PETITION NO.4742/2002****D.D.20.5.2004****HON'BLE MR.N.N.MATHUR, J.****AND****HON'BLE MR.K.K.ACHARYA,J.****Rajasthan Public service Commission & Anr. ... Appellants**

Vs.

Shri Manish Thankur ... Respondents**Qualification:**

RAJASTHAN TRANSPORT SUBORDINATE SERVICE RULES 1963 – Recruitment to the post of Motor Vehicles Sub Inspector – Recruitment Notification dated 31.10.2001 provided additional qualification of possessing driving licence – The last date for filing application was 19.11.2001 – The respondent a candidate for the said recruitment acquired the requisite licence only in April 2002 – His application was rejected as he did not have the driving licence as on the last date for receipt of application – In the Writ Petition filed by the respondent though the learned single Judge upheld the contention of the Commission that the qualifications prescribed are to be seen on the date of the advertisement and not on the date of interview, on the ground of equity set aside the order of the Commission rejecting the application of the respondent – This Writ Appeal by the Commission was allowed by the Division Bench by holding that the learned Single Judge committed error in invoking the equitable jurisdiction in favour of the candidate who was not qualified on the last date of the submission of the application.

Held:

That the eligibility of the candidate shall be considered on the basis of qualification possessed by

him on the last date of the submission of the application.

Case referred:

1997(4) SCC 18 – Ashok Kumar Sharma v. Chander Shekar & Anr.

JUDGMENT

The special appeal is directed against the judgment of the learned Single Judge dated 31st July 2003, whereby the appellant Rajasthan Public Service Commission (hereinafter referred to as the Commission) was directed to call the respondent for interview for the post of Motor Vehicle Sub Inspector and give appointment on the said post, if he is otherwise found suitable in all other respects.

The brief facts giving rise to the instant appeal are that the appellant issued an advertisement on 31.10.2001 for appointment on 101 posts of Motor Vehicle Sub Inspectors. The last date of submitting the application form was 19.11.2001. The appointment of Motor Vehicle Sub Inspector is governed by the Rajasthan Transport Subordinate Service Rules, 1963 (hereinafter referred to as the Rules of 1963). The qualification for the appointment on the post of Motor Vehicle Sub Inspector under the Rules of 1963 is that a candidate must be matriculate with I.T.I. Certificate in Automobile Engineering. The advertisement further provided an additional qualification of possessing driving licence. It is not in dispute that the respondent acquired the requisite licence only in April, 2002 i.e. well after the last date of submission of the application form. On the last date of filing the application form i.e. 19.11.2001, he was not holding the driving licence. The appellant Commission permitted the respondent to appear in the examination subject to fulfillment of the requisite conditions. However, after he qualified the written test, his application form was scrutinised and it was found that he did not fulfill the eligibility condition with regard to the driving licence and therefore, his candidature was rejected. The learned Single Judge following the decision of the Apex Court in Ashok Kumar Sharma vs. Chander Shekhar & Anr. Reported in 1997 (4) SCC 18 held that the qualifications are to be seen on the date of advertisement and not on the date of interview. Thus, in the opinion of the learned Single Judge there was no illegality committed by the appellant Commission in rejecting the

respondent's candidature. However, the learned Judge found the equity in favour of the respondent. Considering the peculiar facts and circumstances of the case, the learned Single Judge set aside the order of the appellant Commission rejecting the application form of the respondent.

It is submitted by Mr.J.P.Joshi learned counsel for the Commission that the learned single Judge having found that the respondent was not eligible as he was not holding driving licence on the last date of submission of the application form has committed an error in disturbing the decision of the Commission rejecting the application of the respondent. On the other hand, it is submitted by the learned counsel for the respondent that the equitable view taken by the learned Single Judge does not call for interference more particularly when on the date of interview the respondent had acquired the requisite driving licence.

We have considered the rival contentions. The Apex Court in Ashok Kumar Sharma's case (supra) has firmly laid down that the eligibility of the candidate shall be considered on the basis of qualifications possessed by him on the last date of submission of the application. The learned Single Judge has committed error in invoking equitable jurisdiction in favour of the candidate who was not qualified on the last date of submission of the application. With all respect the view taken by the learned Single Judge runs counter to the law laid down by the Apex Court in Ashok Kumar Sharma's case (supra). Thus, in our view the judgment of the learned Single Judge is not sustainable and deserves to be set aside.

Consequently, the special appeal is allowed. The judgment of the learned Single Judge dated 31st July 2003 is quashed and set aside.

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN JODHPUR

D.R. CIVIL SPECIAL APPEAL (WRIT) NO.350/2004

D.D. 2.6.2004

HON'BLE MR. JUSTICE N.N.MATHUR

AND

HON'BLE MR.JUSTICE K.K.ACHARYA

Ashok Kumar ... **Appellant**

Vs.

The State of Rajasthan & Anr. ... **Respondents**

Ratio of candidates to be called for interview:

Rule 21(6) of the Rajasthan Police Subordinate Service Rule, 1989 provides that the number of candidates to be called for interview in General Merit and OBC category is three times the number of vacancies on the basis of merit prepared on the aggregate marks – Proviso enables the Commission to call candidates belonging to SC & ST categories in excess of the prescribed limit if they have qualified in the written examination and physical efficiency test – As the appellant was not able to get aggregate marks to secure merit upto six times the number of vacancies he was not called for interview- Hence Writ Appeal dismissed.

Held:

It is well settled that the Commission has a right to call candidates upto a reasonable number.

Cases referred:

- 1) 1985 (4) SCC Page 417 – Ashok Kumar Yadav & Ors. v. State of Haryana & Ors.
- 2) 2003(11) SCC Page 559 - State of Punjab & Ors. v. Manjit Singh & Ors.

JUDGMENT

We have heard learned counsel for the appellant and perused the order of the learned Single Judge. The brief order of the learned Single Judge is reproduced as follows:-

“Heard learned counsel for the petitioner. It is contended that according to Rule 2’ (6) of the Rajasthan Police Subordinate Service Rule, 1989 the petitioner being a member of the Scheduled Caste was required to called for interview irrespective of

the merit as he has qualified written examination and Physical efficiency test.

Suffice it to say that even on a close reading of the entire writ petition it does not appear that it has ever been the case of the petitioner that he belonged to Scheduled Caste. The petitioner has not mentioned his caste, nor there is any averment that he belongs to Scheduled Caste much less he applied as Scheduled Caste Candidate rather the controversy has been sought to be raised regarding some error in giving of marks of two questions, and in that view of the matter the contention has no force.

Thus, the writ petition has no force, and is hereby dismissed summarily.”

The learned counsel for the respondent submits that though he is not in a position to support the judgment on the ground on which the learned Single Judge has dismissed the writ petition, but on the merit of the case the appeal deserves to be dismissed. It is submitted that a bare reading of the proviso to Sub-rule 6 of Rule 21 clearly shows that while the number of candidates to be called for interview in General category and OBC category is three times the vacancies on the basis of merit prepared on the aggregate marks obtained both in written and physical efficiency test, the proviso enables the Commission to call candidates belonging to the Scheduled Castes and Scheduled Tribes category candidates in excess of the prescribed limit, if they have qualified in written examination belonging to the Scheduled Caste and Scheduled Tribe category and it was not practicable for the Commission to call all the candidates for interview. In these circumstances the Commission took a decision that the candidates to be called for interview in the Scheduled Caste & Scheduled Tribe category should not exceed six times the number of vacancies and since, the appellant was not able to get aggregate marks in the written examination and physical efficiency test so as to secure merit upto six times the number of vacancies, he was not called for interview. It is now well established that the Commission has a right to call candidates upto a reasonable number, Reference be made to case of Ashok Kumar Yadav & Ors. Vs State of Haryana & Ors. reported in 1985(4) SCC page 417 and State of Punjab & Ors vs. Manjit Singh & Ors. reported in 2003 (11) SCC page 559.

In view of aforesaid, we find no merit in this special appeal though on different ground, the same stands dismissed.

**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
JAIPUR BENCH AT JAIPUR**

D.B. CIVIL SPECIAL APPEAL (WRIT) NO.1052/2003

IN

S.B. CIVIL WRIT PETITION NO.7077/2002

D.D. 22.7.2004

HON'BLE THE CHIEF JUSTICE MR. ANIL DEV SINGH

HON'BLE MR. JUSTICE K.S.RATHORE

Rajasthan Public Service Commission ... Appellant

Vs.

Bhaskar Dagar ... Respondent

Examination Malpractice:

Respondent a candidate for Rajasthan Judicial Service Examination 2001 – The result of the respondent was withheld as it was found that certain pages of the answer books of Law Paper-I and Paper-II were torn – After writing letter to furnish explanation and after the respondent submitted his explanation and after giving an opportunity of personal hearing PSC cancelled the examination of the respondent debarred from appearing in all the examinations for two years – Respondent challenged the said order by filing Writ Petition – Writ Petition was allowed and PSC order was quashed – In this Writ Appeal the Division Bench upheld the order of PSC after setting aside the order in Writ Petition.

Held:

As soon as the examination gets over the Invigilators are required to collect the answer books from the examinees with promptitude and as such have no time to go through the answer books to find out whether any examinee has indulged in malpractice. Therefore, normally it is not possible to detect the malpractices at the time of collection of the answer books. Therefore, the defence of the respondent that as the malpractice was not detected in the examination hall itself, he could not have been held responsible for the same is not tenable.

Further held that PSC cannot be expected to hold enquiries in the manner in which the Court tries a cause. Suffice it to say that the inquiry conducted by PSC to locate the malpractice or misconduct of the respondent was a fair one and no fault could be found with it. There was no infraction of principles of substantial requirement of justice by PSC.

Further held that the malpractice need not always result in some form of injury, loss or damage or wrongful gain to a person. Many a times malpractice of persons do not achieve the intended goals. They miss the aims and desired consequences. More often than not, the reason for indulging in malpractices lies embedded in the minds of the persons practicing malpractices and it is difficult to dig the same. Just because the examinee did not benefit by his acts of indiscretion committed by him in the examination or the reason for indulging in the same was not discovered he cannot escape the consequences.

Cases referred:

1. (1885) 10 AC 229 – Arthur John Spackman v. Plumstead Board of Works
2. (1915) AC 120 – Local Government Board v. Arlidge
3. 1918 SC 557 – Lord Parmoor in De Verteuil v. Knaggs
4. AIR 1991 Calcutta 310 – West Bengal Council of Higher Secondary Education and others v. Roupshanara Momtaz & Anr.
5. AIR 2003 Supreme Court 2928 – Bihar Public Service Commission & Anr. v. Vinoy Kumar Singh & Anr.

JUDGMENT

This appeal is directed against the judgment dated 25.9.2003 rendered by the learned Single Judge in S.B. Civil Writ Petition No. 7077/2002.

Brief facts giving rise to this special appeal are that the appellant, Rajasthan Public Service Commission (for short RPSC) issued an advertisement dated 17.5.2001 for conducting the Rajasthan Judicial Service Examination, 2001.

Pursuant to the advertisement dated 17.5.2001, the respondent submitted his application form in SC category.

The RPSC conducted the aforesaid examination on 16/17 September, 2001 and the result thereof was declared on 20.11.2001. But the result of the respondent was withheld as at the time

of evaluation of the answer books of the respondent it was discovered that Page No.23 of the answer book of Law Paper-I and pages 11 to 14 of Law Paper-II were torn. The appellant RPSC wrote a letter dated 23.11.2001 to the respondent requiring him to furnish his explanation. In response to the letter of the RPSC, the respondent on 26.11.2001 submitted his explanation, whereby the respondent denied having torn the pages of his answer books and submitted that the answer books were handed over to the Invigilator in completely intact position.

The respondent was also given an opportunity of personal hearing by the appellant. Availing that opportunity the respondent appeared before the RPSC on 19.12.2001. After hearing the respondent, the RPSC did not find his explanation to be satisfactory and accordingly, the RPSC cancelled the examination of the respondent and also debarred him from appearing in all the examinations of the RPSC for a period of two years vide order dated 30.9.2002. Aggrieved by the order dated 30.9.2002, the respondent challenged the same by way of a writ petition.

During the pendency of the writ petition an advertisement was issued by the appellant inviting applications for appointment to the post of Assistant Public Prosecutor Grade-II on 19.2.2002. The respondent also applied for the said post. Pursuant to an interim order dated 4.10.2002, the respondent was allowed to appear in the screening test held for selecting a candidate for the post of Assistant Public Prosecutor Gr.II.

On 25.9.2003, the learned Single Judge allowed the aforesaid writ petition of the respondent and quashed and set aside the order of the appellant dated 30.9.2002. While allowing the writ petition, the learned Single Judge also directed the appellant to declare the result of the respondent pertaining to the examination of Assistant Public Prosecutor Grade-II. It seems that the learned Single Judge felt that in order to establish the fact that the pages of the answer sheets were torn by the respondent it was incumbent upon the RPSC to have examined the invigilator as to how and in what manner the pages of the answer books could be torn in his presence. The learned Single Judge was also of the view that since the malpractice was not detected in the examination hall itself, the respondent could not have been held responsible for the act of tearing the pages from the answer books without initiating any enquiry into the matter and without recording the statement of the invigilator. In the opinion of the learned Single Judge the examination of the respondent was not rightly cancelled and he could not be debarred from appearing in the examinations conducted by the RPSC.

Aggrieved by the order of the learned Single Judge, the appellant has filed the instant appeal. By order dated 10.11.2003 the appellant was directed to produce the relevant answer books. Pursuant thereto the answer books were presented before us by the appellant. The appellant was also directed to produce in a sealed cover the respondent's result in the written examination held for the selection to the post of Assistant Public Prosecutor Grade-II. As per the direction, the result was also produced in a sealed cover by the appellant for our perusal.

We have perused the respondent's result of the Assistant Public Prosecutor Grade-II examination. The respondent has secured 50 marks only. The last candidate who was selected for the post of Assistant Public Prosecutor Grade-II secured 52 marks.

We have also gone through the answer books of the respondent. The answer book of the respondent reveal that the respondent has not attempted to answer question Nos.30 and 31 in Law Paper-I and question Nos. 31 and 32 in Law Paper II. Besides in answer books of Law Paper-I and Law Paper-II page No.23 and page Nos. 31 and 32 respectively have been torn.

It is not the case of the respondent that the invigilator was having any enmity with him and because of vendetta he may have torn the pages. The respondent has also not alleged that any employee of the RPSC was entertaining a grudge against him and he may have been responsible for tearing the pages of his answer books. It is well known that as soon as the examination time gets over, the invigilators are required to collect the answer books of the examinees with promptitude. When the invigilators are collecting the answer books they hardly have any time to go through the answer books to find out as to whether or not any examinee has indulged in malpractices. Therefore, normally it is not possible to detect the malpractices at the time of collection of the answer books.

A reference to the following observations of Earl of Selborne, L.C.in *Arthur John Spackman v. Plumstead Board of Works*, (1885) 10 AC 229 at page 240 were made by the learned Single Judge in the impugned judgment:

“No doubt, in the absence of special provisions as to how persons who is to decide is to proceed, the law will imply no more than that the substantial requirements of justice shall not be violated. He is not a judge in the proper sense of the word, but he must give the parties an opportunity of being heard before him and stating their

case and their view. He must give notice when he will proceed with the matter, and he must act honestly and impartially and not under the dictation of some other person or persons to whom the authority is not given by law.”

Therefore, the person who is to take a decision must not breach the substantial requirement of justice. Principles of substantial requirement of justice would be satisfied, provided the decision is made by observing the following conditions by the person who decides:

1. He must issue notice of hearing of the matter to the parties;
2. He must provide proper opportunity of hearing to the parties by allowing them to state their case and their views;
3. He must act honestly;
4. He must act impartially; and
5. He must act independently without being dictated by some other person

The decision of the RPSC cannot be faulted on the ground that any of the aforesaid conditions laid down by the Privy Council have been violated in rendering the same. In the instant case the respondent was asked to submit his explanation with regard to the discovery of the missing pages of the answer books and after he gave his written explanation, he was given proper opportunity of hearing to state his case. It is not the case of the respondent that the RPSC acted dishonestly or its decision was dictated by some other person. Thus it appears to us that there was no infraction of the principles of ‘Substantial Requirement Of Justice’ by the RPSC.

Reliance was also placed by the learned Single Judge on the following observations of Lord Parmoor in *De verteuil v. Knaggs*, 1918 AC 557 at page 560:

“The particular form of inquiry must depend on the conditions under which the discretion is exercised in any particular case, and no general rule applicable to all conditions can be formulated.”

In other words, it seems to us that the nature of inquiry in a particular case is contingent on or conditioned by the circumstances under which the decision is to be rendered. Therefore, the format of inquiry cannot be put in a straight jacket and no rigid formula can be laid down for testing the validity of an inquiry. Since the RPSC is required to continuously hold examinations for recruitment to various services, thousands and lacs of employment seekers appear in the examinations conducted by the RPSC. In the circumstances, where lacs of persons appear in the

examinations, the RPSC cannot be expected to hold enquiries in the manner in which the court tries a cause. Suffice it to say that the inquiry conducted by the RPSC to locate the malpractice or misconduct of the respondent was a fair one and no fault can be found with it.

The learned Single Judge also relied upon the decision of the Calcutta High Court in *West Bengal Council of Higher Secondary Education and others v. Roupshanara Momtaz & another* (AIR 1991 Calcutta 310) to explain the meaning of the word “malpractice”. The Calcutta High Court has taken a view that malpractice for which action can be taken should result in some sort of injury, loss or damage or wrongful gain. It was also of the view that malpractice means professional misconduct or unreasonable lack of skill and the term is applied to the professionals. The learned Single Judge applying the ratio of the aforesaid decision of the Calcutta High Court to the instant case was of opinion that since the respondent had not gained from the missing pages of the answer books, he cannot be held to have indulged in dishonest or a fraudulent act and since the alleged malpractice on the part of the respondent was not detected in the examination hall, he could not have been held responsible for the act of tearing the pages from the answer books.

We have not been able to persuade ourselves to subscribe to the view that malpractice should always result in some form of injury, loss, damage or wrongful gain to a person. Many a times malpractices of persons do not achieve the intended goals. They miss the aims and desired consequences. More often than not, the reason for indulging in malpractices lies embedded in the minds of the persons practicing malpractices and it is difficult to dig the same. An examinee can also be said to have misconducted himself in the examination if he adopts unfair means in the examination or tears the pages of his answer sheet. Misconduct does not always mean a professional misconduct. Some times the desired outcome of the actions do not materialize and the reasons for indulging in malpractices and misconduct cannot be discovered. But we cannot bail out an examinee just because he did not benefit by his acts of indiscretion committed by him in the examination or the reason for indulging in the same was not discovered.

The observations of the learned Single Judge that how and in what manner the pages from the answer books could be torn in the presence of the invigilator and could any one dare to mishandle the answer book in the examination hall escaping the attention of the invigilators,

which were in the form of a query, may have been relevant in times when the examinees were disciplined and there was fear of authority. In recent times the things have changed. Malpractices in the examinations are committed in the presence of invigilators. It is well nigh impossible for invigilators to keep all the examinees under their gaze all the time. Many a times, unfair means adopted by an examinee escapes the attention of the invigilator. Just because the invigilator at the time of collection of the answer sheets was not able to detect that the aforesaid answer books of the respondent were not completely intact, cannot be a ground to absolve the respondent.

Admittedly, the pages of the aforesaid answer sheets of the respondent were torn. In this regard as already pointed out, the respondent was asked by the RPSC to submit his explanation. After the receipt of the explanation, an opportunity of personal hearing was also accorded to him by the RPSC. It was only after hearing the respondent, that the RPSC cancelled the candidature of the respondent for the Rajasthan Judicial Service Examination, 2001 and debarred him from appearing in any of the examinations conducted by the RPSC for a period of two years. Thus the principles of natural justice were complied with by the RPSC before passing the order cancelling the candidature of the respondent for the Rajasthan Judicial Service Examination and debarring him for appearing in the examinations conducted by the RPSC for two years. The Court while dealing with the decision of an administrative authority is required to see whether or not a fair procedure in accordance with the principles of natural justice has been followed by the concerned authority. It is not concerned with the merits of the decision. In other words, the Court is concerned with the method and manner in which the decision has been reached. In case the decision does not suffer from any procedural impropriety and has been arrived at in consonance with the principles of natural justice, the Court will not interfere with the same, unless the decision is arbitrary, illegal or no reasonable person could have arrived at it.

In *Bihar Public Service Commission and Another v. Vinoy Kumar Singh and Another*, AIR 2003 Supreme Court 2928, the Supreme Court refused to interfere with the decision of the Bihar State Public Service Commission cancelling the answer sheet of a candidate and debarring him from appearing in the examination being conducted by it, on account of the malpractices resorted to by the candidate in the examination as the decision did not suffer from any procedural impropriety.

The learned Counsel for the respondent questioned the propriety of the procedure followed

by the RPSC for cancelling the examination of the respondent and debaring him from appearing in the future examinations of the RPSC for a period of two years. He submitted that since the invigilator was not examined, the decision reached by the RPSC stood vitiated. We have given our anxious consideration to the submission of the learned counsel for the respondent. It is not the case of either of the parties that the invigilator had seen the respondent tearing the pages of the answer sheets. This being so, no useful purpose would have been served in recording the statements of the invigilator. In the matter of this nature the strict rules of evidence do not apply. In *Local Government Board v. Arlidge*, (1915) AC 120, the House of Lords held that where the question of propriety of procedure is adopted by Tribunal other than a court of law, there is no obligation to adopt the regular form of judicial procedure. In this regard it was observed as follows:

“Where, however, the question of the propriety of procedure is raised in a hearing before some tribunal other than a court of law there is no obligation to adopt the regular forms of judicial procedure. It is sufficient that the case has been heard in a judicial spirit and in accordance with the principles of substantial justice. In determining whether the principles of substantial justice have been complied with in matters of procedure regard must necessarily be had to the nature of the issue to be determined and the constitution of the tribunal.”

We are satisfied that in the instant case principles of natural and substantial justice have been complied with by the RPSC in reaching the aforesaid decision on totality of circumstances.

In the circumstances, we are of the view that the learned Single Judge was not right in quashing the decision of the RPSC, debaring the respondent from appearing in any of the examinations of the RPSC for a period of two years and directing the RPSC to declare the result of the respondent in respect of the APP Grade II Examination, 2002.

In view of the aforesaid discussion, we allow the appeal and set aside the order of the learned Single Judge dated 25.9.2003.

However, it is made clear that the period of debarment in the examinations of the RPSC shall be counted from the date of examination of RJS i.e. 16/17th September, 2001.
