HARSHENDRA CHOUBISA AND ORS. A

v.

STATE OF RAJASTHAN AND ORS.

JULY 30, 2002

[D.P. MOHAPATRA AND P. VENKATARAMA REDDI, JJ.] B

Rajasthan Panchayati Raj Rules, 1996—Rule 273 and its proviso—Notification providing bonus marks on the basis of residence in district and in rural areas of district for selection to public employment—Validity of— C *Held, discriminatory as the classification is artificial and not advancing the avowed objective sought to be achieved—High Court judgment to have prospective effect—However, relief confined to parties challenging the notification—Entire selection not disturbed—Constitution of India, 1950—Articles 14 and 16.*

D

Before High Court writ petitions were filed challenging the validity of the Notification which provided for bonus marks of 10% + 5% on the basis of residence in district and rural areas of district for selection to the post of Gram Sewaks and Paden Sachive.

High Court disposed of the writ petitions relying on *Deepak Kumar's* E **case wherein it was held that giving of weightage on the ground of residence in the district and rural areas by adding bonus marks is unconstitutional. High Court directed the State for preparation of fresh merit list of candidates without adding bonus marks on account of residence of any candidate. Accordingly, State Government directed Zila Parishad to prepare fresh merit list.** F

In appeal to this Court, the State contended that preferential treatment to the residents of district and rural areas of the district was justified as persons selected from the urban areas and relatively forward districts are reluctant to work in far flung areas and areas inhabitated by tribals; and that the candidates hailing from the local areas know the G **local language and dialect well and, therefore, are in a better position to mingle and communicate with local populace which in turn leads to good governance at the grass root level.**

Disposing of the appeal, the Court, H

A HELD: 1.1 Addition of bonus marks to the applicants belonging to the same district and the rural areas of that district would amount to discrimination which falls foul of Articles 14 and 16 of the Constitution of India. [315-E, F]

1.2. The first ground pleaded by the State is liable to be rejected. B The place of posting does not depend on the choice of the public servant. The posting and transfers could be suitably regulated in administrative interest by the competent authority if there is a will to do so. The alleged reluctance of the persons hailing from relatively forward districts to work in rural areas or remote places and the so-called tendency to 'migrate' to C urban areas and forward districts is only a ruse to find some justification for the impugned action. It is not the case of the appellants that the posts of Gram Sewaks belong to state-wide cadre and they can be transferred from one district to another and even posted in urban areas. It is not even the case of the State that the candidates belonging to other districts have a tendency to resign and vacate the office after working for some time in D a backward district. No details are furnished in this regard. [314-E, F, G, H]

1.3. The ground that the candidates hailing from the 'local area' know the local language and dialect well and therefore are in a better position to mingle and communicate with the local populace which in turn E leads to good governance at grass root level, is equally irrelevant and untenable. No factual details or material has been placed before the Court to substantiate that the spoken language and dialect varies from district to district. It will not be reasonable to assume that an educated person belonging to a contiguous district or districts will not be able to effectively communicate with the people of the district in which he is appointed or F that he would be unfamiliar with the living conditions and culture of that district. He cannot be regarded as an alien in a district other than his native district. If any classification has to be done in this regard, it should be based on a scientific study but not on some broad generalization. There is no factual or rational basis to treat each district as a separate unit for G the purpose of offering public employment. The criterion of merit cannot be allowed to be diluted by taking resort to such artificial differentiation and irrelevant assumptions. [314-B; 315-B, C, D, E]

2.1. However, the judgment of the High Court has to be given prospective effect so that its impact may not fall on the appointments H already made prior to the date of earlier judgment of High Court on the

same subject. [315-F] A

Kailash Chand Sharma etc. etc. **v.** *State of Rajasthan and Ors.,* **(2002) 5 JT 591, relied on.**

Deepak Kumar Suthar **v.** *State of Rajasthan,* **(1992) 2 RLR 692, referred to.** B

2.2. At the instance of three persons who applied for the posts, it is not proper to set aside the entire selection, especially when none of the appointed candidates were made parties before the High Court. Therefore, the relief is confined only to the parties who moved the High Court for relief under Article 226. C

[The Court directed that the claims of the three writ petitioners before the High Court should be considered afresh in the light of the judgment vis a vis the candidates appointed on or after 27.07.2000 or those in the select list who were yet to be appointed, and that the appointments of Gram Sewaks made upto 26.07.2000 need not be re-opened and re-considered] [316-A, C, D] D

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4424 of 2002.

E

From the Judgment and Order dated 27.2.2001 of the Rajasthan High Court in S.B. (C.) W.P. No. 6256 of 1999.

WITH

C.A. Nos. 4425, 4430, 4426, 4448 and 4433 of 2002. F

M.N. Krishnamani, Dr. Rajeev Dhawan, U.N. Bachawat, Dr. A.M. Singhvi, P.P. Rao, Ashwani Kumar, S.B. Sanyal, P.K. Jain, P.K. Goswami, Ms. Pratibha Jain, A. Mishra, Ms. Ruchi Kohli, Sushil Kumar Jain, Manish Singhvi for Ranji Thomas, Javed M. Rao, Ranbir Yadav, Ajay Kumar, Kanhiya Priyadarshi, Pallav Shishodia, Hemant Sharma, Ms. Shalini Shishodia, Ms. Shobha, Manu Mridul, Devendra Nagar, Surya Kant, Bhava Dutt Sharma, Mahabir Singh, Manoj Prasad, Atul Kumar, Prashant Kumar, Prashenjit Kewani, Joseph Pookkatt, Rakesh Garg, K.S. Rana, C.N. Sree Kumar, Dr. Surat Singh, Ashok K. Mahajan, Jagdev Singh, Surya Kant and Parveen Bhati for the appearing parties. G H

A The Judgment of the Court was delivered by

P. VENKATARAMA REDDI, J. Leave granted.

Appeals are taken on file and are being disposed of by this common judgment.

B

The first five appeals are filed against the judgment of the learned Single Judge of Rajasthan High Court in Writ Petition (C) No. 6256 of 1999. That writ petition was filed by one Chandan Singh Beniwal who is one of the respondents herein. He was an applicant for the post of Gram Sewak cum Paden Sachive in Barmer District. The applications for the said posts were C invited by various Zila Parishads pursuant to the circular issued by the State of Rajasthan (Rural Development and Panchayati Raj Department) on 22.02.1999. The circular lays down, *inter alia*, the selection procedure including the modalities of holding written test and preparation of merit list. The said circular was issued in exercise of the power conferred on the D Government under the proviso to Rule 273 of Rajasthan Panchayati Raj Rules, 1996. Para 7 of the Circular provides for addition of certain marks to the marks scored in the written examination. 10% additional marks are to be given to the residents of State of Rajasthan, 10% for the residents of the concerned district and 5% for the residents of rural areas in that district. It appears that the result of the written examination was declared on October E 30, 1999. As the said Chandan Singh could not get selected he filed a writ petition questioning the circular dated 22.02.1999 insofar as it provides for bonus marks to the applicants belonging to the districts and the rural area of the concerned district. By the time the writ petition came up for hearing before the learned Single Judge, a Full Bench of the High Court decided on F 21.10.1999 in *Deepak Kumar Suthar's* case that giving of weightage on the ground of residence in the district and rural areas by adding bonus marks is unconstitutional. The Full Bench struck down a similar circular issued in the context of appointment of teachers in the Education Department. However, the Full Bench gave prospective effect to the judgment and also declined to grant relief to the writ petitioners for the reason that even if bonus marks G were excluded, they will not stand to gain. This judgment was followed by another Full Bench which examined the validity of a similar circular in relation to the selections to the posts of teachers by Zila Parishads. It may be stated that the correctness of the later Full Bench judgment rendered on 18.11.1999 has been questioned in this Court either by the State or by the H aggrieved parties. The appeals against the judgment dated 18.11.1999 have

been disposed of today by us by a common judgment. A

The judgment in Deepak Kumar Suthar's case has been applied to the selection of Gram Sewaks by the impugned judgment dated 27.02.2001. The High Court directed preparation of a fresh merit list of candidates without adding bonus marks on account of residence of any candidate. With this direction, the writ petition was disposed of on 27.02.2001. Apprehending that B this judgment would affect them, many of the candidates appointed in various Zila Parishads pursuant to the impugned selection have sought permission of this Court to file SLPs. Accordingly, the permission has been granted and that is how the first five SLPs/appeals are before us.

C

SLP (C) No. 17740/2001 has been filed by Zila Parishad, Bikaner against the order of the Division Bench of the High Court dated 19.12.2000 in Civil Special Appeal No. 1593 of 2000. That was an appeal filed by the Zila Parishad against the judgment of learned Single Judge in Writ Petition No. 5 of 2000 which was disposed of on 27.07.2000. The learned Single Judge followed the judgment of the Full Bench *in Deepak Kumar's* case and D disposed of the writ petition with a direction that "whenever respondents proceed with the selection process, they must ensure compliance of the law laid down by the Full Bench in *Deepak Kumar's* case".

In the wake of the two judgments referred to above, the State Government (Panchayati Raj Department) by an order dated 12.6.2001 issued E instructions to the Chief Executive Officers of Zila Parishads directing them to recast the merit list of the Gram Sewaks appointed after 21.10.1999 (i.e. the date of judgment in *Deepak Kumar's* case) by excluding the bonus marks and regulate the appointments accordingly. The question, therefore, turns on the validity of the impugned notification insofar as it provides for bonus F marks of 10% + 5% on the basis of residence in the district and the rural areas of the district. It may be stated that the bonus marks provided for the residence in the State has not been challenged by any of the parties.

In the counter affidavit filed by the Additional Chief Executive Officer, Zila Parishad, Chittorgarh on behalf of the State of Rajasthan, the preferential G treatment in favour of residents of the district and rural areas of the district concerned is sought to be justified on two grounds which are substantially the same as those urged in the Teachers' cases disposed of today.

Firstly, it is contended that the persons selected from the urban areas and relatively forward districts are reluctant to work in far flung areas and H

areas inhabitated by tribals. It is stated in the counter :

> "Even if the posts are filled from the best available talent, tendency is to migrate to the urban areas whenever any vacancy arises in urban and forward districts. The rural areas and areas inhabitated by tribals remain perpetually without effective Gram Sewaks".

Secondly, it is submitted that the candidates hailing from the 'local area' know the local language and dialect well and therefore in a better position to mingle and communicate with the local populace which in turn leads to good governance at the grass root level.

The two considerations pleaded by the State do not at all appeal to us as they are based on wrong factual assumptions or sweeping generalizations which have a tendency to introduce artificial classification without in any way advancing the avowed objective. We have already rejected such contentions in the judgment just now delivered in relation to the appointment of primary school teachers. As it is contended that Gram Sewaks-cum-Secretaries of Panchayats are concerned with local self governance and therefore different considerations would apply visa--vis their appointments, we have thought it fit to refer to and deal with this contention separately in these appeals, though, we are relieved of the need for detailed discussion in view of our judgment in the Teachers' batch of appeals.

Coming to the first ground pleaded by the State, we have no hesitation in rejecting the same. The place of posting does not depend on the choice of the public servant. The posting and transfers could be suitably regulated in administrative interest by the competent authority if there is a will to do so. The alleged reluctance of the persons hailing from the relatively forward districts to work in rural areas or remote places and the so-called tendency to 'migrate' to urban areas and forward districts is only a ruse to find some justification for the impugned action. We fail to understand how the candidates could avoid working in the district in which they are selected and appointed and manage to get postings in urban areas and forward districts. It is not the case of the appellants that the posts of Gram Sewaks belong to state-wide cadre and they can be transferred from one district to another and even posted in urban areas. Obviously, the appointees have no option but to work in Gram Panchayat areas within the district in which they were appointed and deployed. It is not even the case of the State that the candidates belonging to other districts have a tendency to resign and vacate the office after working for some time in a backward district. No details are furnished in this regard.

Obviously, therefore, the first reason given by the appellants for giving weightage to the applicants from the same district is wholly irrelevant and does not stand a moment's scrutiny. A

The second ground urged by the State is equally irrelevant and untenable. Most of the reasons given by us in the judgment just delivered in Teachers' cases will hold good to reject this plea. No factual details nor material has been placed before us to substantiate that the spoken language and dialect varies from district to district. It will not be reasonable to assume that an educated person belonging to a contiguous district or districts will not be able to effectively communicate with the people of the district in which he is appointed or that he would be unfamiliar with the living conditions and culture of that district. He cannot be regarded as an alien in a district other than his native district. If any classification has to be done in this regard, it should be based on a scientific study but not on some broad generalization. If any particular region or area has some peculiar socio-cultural or linguistic features warranting a differential treatment for the purpose of deploying personnel therein, that could only be done after conducting a survey and identifying such regions or districts. That is the minimum which needs to be done. There is no factual nor rational basis to treat each District as a separate unit for the purpose of offering public employment. Above all, it is wrong to assume that the candidates belonging to rural areas will be better suited to serve those areas than the candidates living in nearby towns. The criterion of merit cannot be allowed to be diluted by taking resort to such artificial differentiation and irrelevant assumptions. On the material placed before us, we have no hesitation in holding that the addition of bonus marks to the applicants belonging to the same district and the rural areas of that district would amount to discrimination which falls foul of Articles 14 and 16. We now come to the question of relief. We are of the view that for the reasons set out in the judgment delivered by us today in Kailash Chand Sharma's case, the judgment of the High Court has to be given prospective effect so that its impact may not fall on the appointments already made prior to the date of judgment. That is also the view taken in Deepak Kumar Suthar's case which has been followed in the impugned orders of the High Court. However, in Writ Petition (C) No. 6256 of 1999, the High Court did not make it clear that the judgment will operate prospectively, though in the other impugned order the High Court gave effect to the judgment without touching the appointments made before 21/10/1999. We are of the view that the date of application of the judgment should be from 27/7/2000 which was the date on which Writ Petition 5 of 2000 was allowed by the learned Single Judge B C D E F G H

A holding that the notification in regard to bonus marks for the purpose of selection of Gram Sewaks was invalid. The other important fact which should be taken into account in moulding the relief is that at the instance of three persons who applied for the posts advertised by the Zila Parishads of Barmer and Bikaner, it is not proper to set aside the entire selection, especially when none of the appointed candidates were made parties before the High Court. B We are, therefore, inclined to confine the relief only to the parties who moved the High Court for relief under Article 226, subject, however, to the application of the judgment prospectively from 27/7/2000. Accordingly, we direct as follows :

C

1. The claims of the three writ petitioners who are respondents herein should be considered afresh in the light of this judgment vis a vis the candidates appointed on or after 27.07.2000 or those in the select list who are yet to be appointed. On such consideration, if those writ petitioners are found to have superior merit in case the bonus marks of 10% and/or 5% are excluded, D they should be offered appointments, if necessary, by displacing the candidates appointed on or after 27.07.2000.

2. The appointments of Gram Sewaks made upto 26.07.2000 need not be reopened and re-considered in the light of the law laid down in the judgment.

E

The appeals arising out of the SLPs are disposed of accordingly. The impugned judgments of the High Court stand modified to that extent. There shall be no order as to costs.

K.K.T. Appeals disposed of.