

GIRDHAR KUMAR DADHITCH AND ANR.

v.

STATE OF RAJASTHAN AND ORS.

(Civil Appeal No. 388 of 2009)

JANUARY 23, 2009

[S.B. SINHA AND J.M. PANCHAL, JJ.]

*Service Law – Appointment – Appointment on ten posts of teacher held unconstitutional by Supreme Court with prospective effect – 8 candidates appointed prior to cut-off-date – Claim of unsuccessful candidates for appointment to the vacant posts rejected holding that their case was covered by Supreme Court judgment – Candidates taking plea that the judgment not applicable to the vacancies remaining to be filled after the cut-off-date – Held: The Select List for the post prepared in the year 1998 since expired after one year, no appointment could be made on the basis thereof after its expiry – Candidates not liable to be appointed.*

**The writ petition was filed by the appellants on the ground that the rules whereunder appointment to 10 posts of Physical Education Teacher Grade-III, since held unconstitutional, they should be appointed to the post, because their position in merit list comes at serial Nos. 6 and 9 respectively.**

**During pendency of the writ petition, the order holding the provision unconstitutional, was upheld in *\*Kailash Chand Sharma's vs. State of Rajasthan and Ors. (2002) 6 SCC 562* by Supreme Court, but the same was given prospective effect i.e. w.e.f. 18-11-1999.**

**The writ petitions were dismissed by Single Judge of High Court as barred by limitation. Division Bench of High Court upheld the order stating that the case was**

A covered by decision in *\*Kailash Chand Sharma's case*. Hence the present appeal.

B In appeal to this court appellants contended that the case was not covered by *\*Kailash Chand Sharma's case* as it covered the cases of only the employees appointed on or before 18.11.1999 and not to the vacancies remaining to be filled up thereafter, i.e. in 2003.

Dismissing the appeal, the Court

C HELD: 1. The select list was prepared in the year 1998, keeping in view the rules as they existed. The Rules enumerating grant of bonus marks might have been declared *ultra vires* but this Court in exercise of its jurisdiction under Article 142 of the Constitution of India D though it fit to give a prospective effect thereto. It did so *inter alia* for the purpose of protecting the services of those teachers who had already been appointed and had been in service for a few years. Out of ten posts, eight teachers were appointed on or before 18th November, E 1999 which was the cut off date. [Para 15] [590-F-H; 591-A]

F 2. The select list would ordinarily remain valid for one year. There is no basis for appointments made in 2003 or subsequently. Whether the validity of the said select list was extended or not is not known. Extension of select list must be done in accordance with law. Apart from a bald statement that the validity of the said select list had been extended, no document in support thereof has been placed before the Court. [Para 19] [591-E-F]

G *State of Rajasthan and Ors. vs. Jagdish Chopra* 2007 (8) SCC 161, relied on.

Case Law Reference:

H 2007 (8) SCC 161 Relied on Para 19

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 388 A  
of 2009.

From the Judgment and final Order dated 14.2.2006 of the  
High Court of Judicature for Rajasthan at Jaipur in D.B. Civil  
Special Appeal (W) No. 147 of 2006. B

M.R. Calla, Mukul Kumar, Rishi Matoliya and P.D. Sharma  
for the Appellants.

Navin Singh and Aruneshwar Gupta for the Respondent.

The Judgment of the Court was delivered by C

**S.B. SINHA, J.**1. Leave granted.

2. Interpretation of a decision of this Court in *Kailash  
Chand Sharma v. State of Rajasthan and others*, [(2002) 6 D  
SCC 562 ] is in question in this appeal which arises out of a  
judgment and order dated 14th February, 2006 passed by the  
High Court of Judicature of Rajasthan. Jaipur Bench, Jaipur in  
D.B. Civil Special Appeal (W) No. 147 of 2006.

3. Indisputably an advertisement was issued on 9th August, E  
1998 for filling up 10 posts of Physical Education Teacher  
Grade-III. 10 Bonus marks were to be granted for candidates  
who were resident of a particular district, while 5 bonus marks  
to the candidates belonging to rural areas. F

4. Validity and/or legality of the said provision for grant of  
bonus marks was questioned before the said High Court by  
filing writ petition in the year 1999. The question was referred  
to a Full Bench. A Full Bench of the said Court by a judgment  
and order dated 18th November, 1999 held the said provision G  
to be unconstitutional.

5. Upon declaration of the said law by the Full Bench of  
the High Court, appellants herein filed two writ petitions being  
No. 1818/2001 and 1802/2001 before the said High Court inter H

A alia contending that in view of the said Full Bench decision, their position would be at serial Nos. 6 and 9 in the merit list. The said writ petitions remained pending.

B 6. This Court in *Kailash Chand Sharma* (supra) while upholding the decision of the Full Bench to the effect that grant of such bonus marks was unconstitutional, in exercise of its jurisdiction under Article 142 of the Constitution of India, thought it fit and proper to invoke the doctrine of prospective over-ruling, stating :

C "The appointments made up to 17.11.1999 need not be reopened and reconsidered in the light of the law laid down in this judgment".

D 7. Allegedly the State of Rajasthan appointed Bhanwar Lal Gosar (Mo:hsar) by an order dated 12th June, 2003. Two writ petitions were filed by the appellants. However, in the meanwhile one Duli Chand had filed a writ application being S.B. Civil Writ Petition No.1401 of 2003 before the High Court. A learned Single Judge of the High Court dismissed the said writ petition on 17th February, 2003 opining that the same was barred by delay and latches. Following *Duli Chand* (supra) the appellants' writ applications (Civil Writ Petition Nos. 5510/2003; 1818/2001 and 1802/2002) were also dismissed by the same learned Judge by an order dated 5th December, 2003.

F 8. Aggrieved by and dissatisfied therewith, the appellants filed an intra- court appeal being D.B. Special Appeal (W) No. 103 of 2004 which was disposed of by a Division Bench of the High Court giving liberty to the appellants to make a representation to the concerned authority within ten days with a direction to the authority to dispose of the same within three months thereafter.

H 9. Appellants submitted their representations on 10th July, 2005 which were rejected by the respondents by an order dated 30th September, 2005.

10. Appellants challenged the said order before the High Court by filing yet another writ application being S.B. Civil Writ Petition No.9253 of 2005, which was dismissed by a learned Single Judge of the said Court following the order passed in *Duli Chand* (supra). A

11. Appellants preferred an intra court appeal thereagainst. A Division Bench of the High Court, however, by reason of the impugned judgment and order refused to interfere in the matter on the premise that the issue stands squarely covered by the decision of this Court in *Kailash Chand Sharma* (supra). B

12. Mr. M.R. Calla, learned senior counsel appearing on behalf of the appellants, would submit:- C

(i) The Division Bench of the High Court misread and misinterpreted the decision of this Court in *Kailash Chand Sharma* (supra) in so far as it failed to take into consideration that the same covered the cases of only those employees who were appointed on or before 18th November, 1999. D

(ii) Bhanwar Lal Mothsar having been appointed only in the year 2003 against the vacancy which remained to be filled up, *Kailash Chand Sharma* (supra) cannot be said to have any application whatsoever. E

(iii) The contention of the respondents that two vacancies filled in the year 2003 – one against the OBC quota and another against the general quota by the persons who were placed higher in the select list than the appellants was valid in law, cannot be accepted as the respondents had already appointed four persons against the OBC quota in the year 1999 itself. F  
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(iv) As a vacancy still exists, even without disturbing the existing appointees, the appellant(s) can be H

A accommodated.

13. Mr. Navin Singh, learned counsel appearing on behalf of the respondents, on the other hand, would contend:

B (i) Contention raised by the appellants having not been raised before the High Court, the same should not be allowed to be raised for the first time before this Court.

C (ii) Appellants having not filed any writ petition in the year 1998-1999 the High Court had rightly dismissed the writ petition as being barred by delay and laches.

D (iii) Appointments having been made on the vacant posts only in relation to the candidates of the reserved category and/or who had obtained higher position in the select list, appellants cannot be directed to be appointed at this stage.

E 14. Before adverting to the rival contentions raised by the parties we may notice that according to the appellants even today there exists two vacancies. The purported chart prepared by the appellants and the records placed before us show some discrepancy. At this stage, thus, it is not possible for us to go into the details thereof particularly when the candidates already appointed are not parties before us.

F 15. The select list was prepared in the year 1998. In our opinion it would be difficult to issue any direction for appointment of the appellants herein at this stage. Select list was prepared keeping in view the rules as they existed. The said Rules might have been declared ultra vires but as indicated hereinbefore this Court in exercise of its jurisdiction under Article 142 of the Constitution of India though it fit to give a prospective effect thereto. It did so inter alia for the purpose of protecting the services of those teachers who had already been appointed and had been in service for a few years. Out  
G of ten posts, eight teachers were appointed on or before 18th  
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November, 1999 which was the cut off date.

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16. Indisputably the merit list was modified in terms of the dicta laid down by this Court in *Kailash Chand Sharma* (supra).

17. The question as to whether the fresh appointees who are, having regard to the said modification, required to be appointed on the premise that they are placed higher in the select list than the appellants or not, in our opinion, cannot be gone into by us for the first time since such a contention had never been raised before the High Court. The entire record of the matter, furthermore, are not before us.

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18. It is stated that two appointments were made in the year 2003 – one against OBC quota and another against General quota. It is not possible for us to go into the question as to whether the entire quota for appointment in the category of OBC was filled up in the year 1998-1999 itself and thus appointment made against the vacant post from the said quota is illegal or not. The concerned respondents are not parties before us. We have not been informed as to whether any other person has been left out from the original merit list

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19. Furthermore the select list would ordinarily remain valid for one year. We fail to understand on what basis appointments were made in 2003 or subsequently. Whether the validity of the said select list was extended or not is not known. Extension of select list must be done in accordance with law. Apart from a bald statement made in the list of dates that the validity of the said select list had been extended, no document in support thereof has been placed before us.

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In *State of Rajasthan and ors. vs. Jagdish Chopra* [(2007) 8 SCC 161], this Court held:

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"9. Recruitment for teachers in the State of Rajasthan is admittedly governed by the statutory rules. All recruitments, therefore, are required to be made in terms thereof. Although Rule 9(3) of the Rules does not specifically

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A provide for the period for which the merit list shall remain  
valid but the intent of the legislature is absolutely clear as  
vacancies have to be determined only once in a year.  
B Vacancies which arose in the subsequent years could be  
filled up from the select list prepared in the previous year  
and not in other manner. Even otherwise, in absence of any  
rule, ordinary period of validity of select list should be one  
year. In *State of Bihar v. Amrendra Kumar Mishra* (2006)  
12 SCC 561, this Court opined: (SCC p.564, para 9)

C "9. In the aforementioned situation, in our opinion,  
he did not have any legal right to be appointed. Life  
of a panel, it is well known, remains valid for a year.  
Once it lapses, unless an appropriate order is  
issued by the State, no appointment can be made  
D out of the said panel."

It was further held: (SCC p.565, para 13)

E "13. The decisions noticed hereinbefore are  
authorities for the proposition that even the wait list  
must be acted upon having regard to the terms of  
the advertisement and in any event cannot remain  
operative beyond the prescribed period."

xxx xxx xxx

F 11. It is well-settled principle of law that even selected  
candidates do not have legal right in this behalf. (See  
*Shankarsan Dash v. Union of India* (1991) 3 SCC 47, and  
*Asha Kaul v. State of J&K* (1993) 2 SCC 573)"

G 20. For the reasons aforementioned, we do not find any  
merit in this appeal, which is dismissed accordingly. However,  
in the facts and circumstances of the case there shall be no  
order as to costs.

K.K.T.

Appeal dismissed.

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