

M. C. Agarwal and Another

Vs

State of Rajasthan and Others

Writ Petition No. 83 of 1968

(CJI M. Hidayatullah, A.N. Grover, A.N. Ray, P. Jagmohan Reddy, I.D. Dua JJ)

25.11.1969

JUDGMENT

HIDAYATULLAH, C. J. -

1. By this petition, the two petitioners who are advocates and were aspirants for recruitment to the Rajasthan Higher Judicial Service, claim a declaration that they were duly selected by the Selection Committee of the High Court in May 1964 and must therefore be deemed to have been appointed on May 26, 1965, the date on which Respondents 3 and 4 (two other candidates) were appointed. They also want that their seniority should be determined in accordance with the ranking made by the Selection Committee and the order of this Court, dated March 15, 1967, in Civil Appeal No. 93 of 1966. For this in the alternative, they seek a declaration that the appointment of Respondents 3 and 4 was illegal and void.

2. On November 20, 1963, the High Court of Rajasthan issued a notice inviting applications for direct recruitment to four posts of Civil and Additional Sessions Judges. The applications received were referred by the High Court to a Selection Committee consisting of the Chief Justice, the Administrative Judge and Judge nominated by the Chief Justice. According to the petitioners the Selection Committee selected four candidates that is to say, the two petitioners and Respondents 3 and 4. The Selection Committee at the same time prepared a second list of promotees. The two lists were submitted to the Governor.

3. The fact of the matter, according to the High Court, however, was that the Selection Committee held interviews for selection of direct recruits between April 27 and May 7, 1964. The applications of these two, who were interviewed on April 27, 1964, were rejected the same day. The interviews continued and three applicants were selected for final consideration. Ultimately the Selection Committee on May 8, 1964, selected Respondents 3 and 4. The Committee recorded a memorandum which read :

"There were 92 candidates in all for the selection to the R.H.J.S. by direct recruitment under Rule 7(1)(ii), read with Rule 2 of the Rajasthan Higher Judicial Service Rules, 1955.

Out of these one was not called for interview, eight were absent and the remaining 83 (eighty-three) candidates have been interviewed by us from April 27 to May 7, 1964.

Although four posts had been advertised, we are of opinion that only two candidates come up to the requisite standard of ability and competence. We have therefore

thought fit to recommend only two candidates for appointment under the Rules in the following order of merit :

(1) Shri Kalyan Dutt Sharma, Advocate, Alwar.

(2) Shri Kishore Singh Lodha, Advocate, Jodhpur.

This may be circulated to all Honourable Judges for approval."

The full Court approved. No recommendation was sent to the Governor till January 13, 1965, for reasons which were stated as follows :

"On May 4, 1964, some Judicial Officers of Rajasthan filed a Civil Writ Petition No. 803 of 1964 (referred to in Paragraph 4 by the petitioners) under Article 226 of the Constitution before the High Court. They also prayed for staying the selection during the pendency of the writ petition but their request was rejected on May 8, 1964. However, the High Court on its administrative side thought it proper to postpone the selection of Rajasthan Judicial Service till the pendency of that writ petition and as the two lists, i.e., one of selected direct recruits and the other of Rajasthan Judicial Service officers to be promoted to Rajasthan Higher Judicial Service were, according to the rules, to be sent to the Governor together, even the latter list was not sent earlier."

Before the decision of the High Court in that writ petition it was considered that there were 18 posts available for appointment, out of which 4 posts were to be filled by direct recruitment and 14 by promotion from amongst officers of the Rajasthan Judicial Service. In that writ petition the High Court, by its judgment, dated November 27, 1964, directed as follows :

"Accordingly, we reject the application in regard to all the reliefs sought by the petitioners in their writ petition. But in view of our finding that the number of vacancies on the date of its determination by the Governor was only 9 and not 18 we direct respondent No. 1 that these vacancies only shall be filled in from the sources in the proportion provided in the rules."

When the judgment of the High Court was delivered, the Selection Committee on December 12, 1964, selected seven for promotion. This list was also circulated and approved by the Full Court. The two lists were then sent to the Governor on January 13, 1965. The High Court through the Registrar's affidavit stated that the High Court had not selected four persons as direct recruits but only two persons, namely, Respondents 3 and 4, and that the petitioners were never selected.

4. The petitioners maintained before us that they were selected and sought to establish this from what they said were inferences from the replies of the High Court to the petition filed by the Rajasthan judicial members in the High Court and certain observations of this Court in the judgment of March 15, 1967, referred to.

5. Since the contention was so directly in contradiction of the position maintained by the High Court before us, we invited the petitioners to swear an affidavit before us that they were selected or to point out to us some record in which the fact that they were selected was noted. The petitioners made no attempt to swear the affidavit and still maintained that they could establish by argument that they were so selected. With the reply affidavit of the Registrar two copies of the petitions of

these two petitioners were filed and they showed an endorsement by the Chief Justice and the two Judges who formed the Selection Committee that the applications of the petitioners were rejected on April 27, 1964. The petitioners cast doubts on the accuracy of this copy and one of them (H. C. Agarwala) even suggested that the endorsement was antedated and the other (R. K. Mehrotra) that the stand of the High Court was an afterthought. At the hearing the Advocate-General, Rajasthan, placed in our hands the entire original file including the applications of the petitioners. The applications clearly bear the endorsement of rejection signed by the Chief Justice and the two Judges with the date 27-4-1964. The applications were submitted in triplicate and the other copies also bear the endorsement over the signature of one of the judges.

6. In spite of the affidavit of Registrar from which we have quoted extracts, and the original file, the petitioners continued to make the same assertions and to cast doubts on the authenticity of the record and the endorsement. They even went to the length of suggesting that the endorsement was contradicted by the marks given at the interview.

7. We have looked carefully into the records maintained by the High Court and have satisfied ourselves that the affidavit of the Registrar is borne out by it and that there is no reason to doubt the record. The only thing is that our brother Shelat in the earlier order said in the narration of facts :

"A number of applications were received by the High Court and after scrutiny thereof and interviews granted to the applicants, the Selection Committee, appointed under the said Rules and consisting of the Chief Justice, the Administrative Judge and another Judge of the High Court nominated by the Chief Justice, selected four candidates. Besides these four posts, there were fourteen posts to be filled up from amongst the members of the Rajasthan Judicial Service by promotion. The said Committee selected eligible candidates from amongst those members and prepared another list. The High Court submitted the two lists prepared by the Committee to the Governor for appointments."

8. The mention of the figure 4 instead of 2 in two places is inaccurate since there is no record of selection of more than two candidates. We are satisfied that this error in narration of facts does not conclude us from stating the true facts which are as we have gathered from the original file.

9. The petition thus has no merit at all. Although this was brought to the notice of the petitioners, we are constrained to record that the petitioners, losing all sense of decorum and propriety, continued to maintain that they were selected and to insinuate that the record was not to be trusted. We asked them to swear an affidavit in support of their allegations but they declined to do so. We consider this conduct to be unscrupulous and unworthy.

10. The petition is dismissed with costs.

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