

# SUPREME COURT OF INDIA

Girdhar Kumar Dadhich

Vs.

State of Rajasthan

C.A.No.388 of 2009

(S.B. Sinha and J.M. Panchal JJ.)

23.01.2009

## JUDGMENT

**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*<sup>1</sup>, 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, 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.

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 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 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.

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 :

“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.”

7. Allegedly the State of Rajasthan appointed Bhanwar Lal Gosar (Mothsar) 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 laches. 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.

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.

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).

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).

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

“ (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.

(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.

(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.

(iv) As a vacancy still exists, even without disturbing the existing appointees, the appellant(s) can be accommodated.”

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

“(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.

(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.

(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.”

14. Before advertng to the rival contentions raised by the parties we may notice that according to the appellants even today their 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.

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 of ten posts, eights teachers were appointed on or before 18<sup>th</sup> November, 1999 which was the cut off date.

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 records of the matter, furthermore, are not before us.

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

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. In *State of Rajasthan & ors. vs. Jagdish Chopra*<sup>2</sup>, this Court held:

“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 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. 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*<sup>3</sup>, this Court opined: (SCC p.564, para 9)

"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 out of the said panel." It was further held: (SCC p.565, para 13)

"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

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*<sup>4</sup>, and *Asha Kaul v. State of J&K*<sup>5</sup>)”

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.

<sup>1</sup>(2002) 6 SCC 562  
<sup>5</sup>(1993) 2 SCC 573

<sup>2</sup>(2007) 8 SCC 161

<sup>3</sup>(2006) 12 SCC 561

<sup>4</sup>(1991) 3 SCC 47