

# SUPREME COURT OF INDIA

Rajasthan Judicial Service Officers' Assn.

Vs.

State of Rajasthan

Writ Petition [Civil] No.576 of 2003

(R.V.Raveendran and Markandey Katju JJ.)

07.07.2009

## JUDGMENT

### **Markandey Katju, J.**

1. This writ petition under Article 32 of the Constitution of India is filed challenging the Notification No. Estt.(RJS)/118/2003 dated 20.10.2003 wherein 19 posts for direct recruitment to the Rajasthan Higher Judicial Service (in short `RHJS') were advertised. Out of these 19 posts 11 posts were shown as current vacancies and 8 posts shown as backlog vacancies. A true copy of the notification is Annexure P-1 to the writ petition. It was specifically mentioned in the notification that these are subject to orders of the Supreme Court in four SLPs (subsequently numbered as CA No. 5699 to 5702/2000) relating to the decision in the case of Veena Verma.

2. On 19.7.2004 the learned counsel for the respondent-High Court stated that the actual appointments pursuant to the impugned notification dated 20.10.2003 will not be made unless permitted by this Court. Consequently, it is stated that no appointments have been made in pursuance of the impugned notification.

3. As noted above, the impugned notification itself mentioned that it was being made subject to the decision in Veena Verma's case. We have held in Veena Verma's case (in CA Nos. 5699, 5700 and 5702/2000 decided today) that the strength of the service is as mentioned in Schedule-I of the *Rajasthan Higher Judicial Service Rules*, and for varying the strength there has to be a specific order under sub-rule (2) of Rule 6. Mere creation of posts without a specific order under Rule 6(2) in our opinion only creates ex cadre posts, but does not amount to varying the strength of the service. We have held in that decision that the Division Bench of the High Court was in error in its judgment dated 30.4.1999 in holding that whenever new posts are created, the strength of the service automatically increases even though there is no specific order under Rule 6(2) in this connection amending Schedule-I.

4. In Veena Verma's case (supra) we have also held that Rule 9 of the Rules only prescribes an upper limit to the quota for direct recruits in the service, but there is no lower limit, and it

is in the discretion of the authorities to decide what quota should be given to the direct recruits, provided it is not more than the maximum prescribed by Rule 9. Our decision in Veena Verma will apply to this case also.

5. No doubt this Court in *All India Judges' Association & Ors. vs. Union of India & Ors.*<sup>1</sup> (vide para 28) has observed that 25% of the posts in the Higher Judicial should be filled by direct recruitment. This has been explained by a three Judge Bench of this Court in a recent judgment in *Maharashtra State Judges Association & Ors. vs. The Registrar General, High Court, High Court of Judicature at Bombay & Anr.*<sup>2</sup> In paragraph 14 of the said judgment it was observed:

“....."Until the recommendation was accepted and rules were framed, the integration/caderisation was a nebulous concept incapable of being claimed or enforced as a right.".....

The above observation in the decision in Maharashtra State Judges Association (supra) makes it clear that until the State Government amends the rules, the recommendations cannot give any claim for any right.”

6. The petitioner in the present writ petition is an association of judicial officers functioning in the State of Rajasthan, and they are aggrieved by the impugned notification as they allege that their chances of promotion get reduced by the same.

7. It is alleged in para 4 of the writ petition that draft rules have been framed by the High Court which were sent for approval to the State Government, but pending the finalization of these rules, the High Court published the impugned notification for filling in 19 posts of Additional District & Sessions Judges by direct recruitment in the RHJS.

8. According to the petitioner the total cadre strength of RHJS is 150 and there are already 41 direct recruits working in the RHJS. Since the total cadre strength is 150 and since 25% of the posts were directed by the High Court to be filled in by direct recruitment, there were no vacant post available for direct recruits since 25% of 150 is 37, while 41 direct recruits were already working in RHJS. Petitioner also submitted that if 19 vacancies should be treated as 25% of the direct recruitment then there must be at least 57 fresh appointments in RHJS by promotion, but that has not been done.

9. The petitioner made a representation dated 3.7.2003 to the High Court, a true copy of which is Annexure P-2 to the writ petition, and he made another representation dated 29.10.2003 to the Chief Justice of the High Court praying for withdrawal of the impugned notification. A true copy of the representation dated 29.10.2003 is Annexure P-3 to the writ petition. Since the aforesaid representations failed to evoke any response the petitioner filed the present Writ Petition.

10. Counter and rejoinder affidavits have been filed and we have perused the same.

11. It has been stated in the counter affidavit of the High Court that the impugned judgment and directions of the Supreme Court in *All India Judges' Association & Ors. vs. Union of India & Ors.* (supra) was to streamline the cadre of Higher Judicial Service, and accordingly the Chief Justice of the Rajasthan High Court constituted a committee to examine the entire matter. The said committee after considering the various aspects suggested the cadre strength as 240 in the proposed new rules. The recommendation of the committee was considered in the Full Court which approved the said recommendation and the resolution of the Full Court on 4.4.2003 was forwarded to the State Government for formal approval. At present this recommendation is pending before the State Government.

12. In our opinion, as held by us in *Veena Verma's case* (supra), the cadre strength is only 150 and not 240 because the strength of the service is as per Rule 6(2) of the Rajasthan Higher Judicial Service Rules as mentioned in Schedule-I of the Rule. Until and unless the Schedule is amended in accordance with Rule 6(2) the strength of the service cannot be varied, as held by us in *Veena Verma's case* (supra). As yet, we are told, no order has been passed under Rule 6(2).

13. We have also perused the counter affidavit filed by the State of Rajasthan and also the rejoinder affidavit filed in the case. It is stated in paragraph 3 of the rejoinder affidavit that the impugned notification is in violation of the stay order dated 28.9.2000 in Special Leave Petition No.9346 of 1999, staying the operation of the order dated 30.4.1999 in DB (c) Spl. Ap. 410/1998. It is stated in paragraph 6 of the rejoinder affidavit that there are as on date 220 officers functioning in the cadre of District Judges and Additional District Judges and as such there are no existing vacancies.

14. In our opinion, this writ petition has to be allowed. In view of our decision in *Veena Verma's case* (supra) it has to be held that under the existing rule the strength of the service of RHJS is 150 and since there are 41 direct recruits already working there is no substantive vacancy. Hence the impugned notification is illegal and deserves to be quashed.

15. The writ petition is allowed and the impugned notification is quashed. However, we make it clear that it is open to the State Government in consultation with the High Court to amend Schedule-I to the Rules in accordance with Rule 6(2) and thereby vary the strength of the service. Writ Petition (Civil) 275/2007

16. The Petitioner has filed this Writ Petition seeking a direction to the respondents to complete the selection process initiated under notification No. Estt. (RJS)/118/2003 dated 20.10.2003.

17. As we have quashed the said notification in WP(c) No. 576/2003, this Writ Petition (WP(C) No. 275/2007) is dismissed as having become infructuous.

<sup>1</sup>2002(4) SCC 247

<sup>2</sup>(2008 (15) SCALE 320)