

SUPREME COURT OF INDIA

Ashok Kumar Jain

Vs.

Rajasthan Pub.Ser.Comm.

C.A.No.8399 of 2011

(R.V. Raveendran, H.L.Gokhale,JJ.,)

30.09.2011

JUDGMENT

R.V.Raveendran, J.,

SLP (Civil)No.27941/2008

1. Leave granted.

2. The Rajasthan Public Service Commission, first respondent holds examinations for direct recruitment to State and subordinate service posts under the Rajasthan State and Subordinate Services (Direct Recruitment by Combined Competitive Examinations) Rules 1962 ('Rules' for short). Appellant appeared as an 'open market candidate' in the 1983 examination and was selected to Rajasthan Tehsildar Services (Subordinate service) and was appointed as a Naib Tehsildar, a non-gazetted post on 15.10.1985. The appellant also appeared in the combined competitive examination held in 1987 and 1989 as an open market candidate. The examination for the year 1990 was held in two stages on 25.11.1990 and 22.2.1992. The appellant appeared in the said examination as an open market candidate and was unsuccessful.

3. The appellant again applied for the combined competitive examination for the year 1991, advertised on 19.10.1991. The appellant was provisionally allowed to appear in the said examination. On scrutiny of his application it was found that appellant had already availed four chances as an open market candidate in the examinations relating to the years 1983, 1987, 1989 and 1990 and he was not therefore entitled to appear for the fifth time, as the maximum number of chances for a candidate under the Rules was four. He could not also be considered as a candidate in the examination for the year 1991 under the Non-Gazetted Employees quota (for short 'NGE quota'), as appellant was working as a Tehsildar, a Gazetted post, from December 1990. Therefore a notice dated 25.6.1993 was issued calling upon him to show cause why his application should not be rejected on the ground that he was not entitled to participate in the combined competitive examination for the fifth time.

4. The appellant had by then appeared in the written examination in pursuance of the provisional permission and had succeeded in the written examination. Being aggrieved by the action proposed to deny him the right to participate in the examination process, the appellant filed a writ petition for quashing the show cause notice dated 25.6.1993 and sought a direction to respondents to permit him to appear in the interview. During the pendency of the said writ petition, he was promoted as a Tahsildar on a substantive basis, vide order dated 24.8.1996, with effect from 26.11.1993. The writ petition was heard nearly thirteen years later and a learned Single Judge of the High Court dismissed the writ petition by order dated 31.5.2006 holding as under :

"In the present case, when the last date of receipt of the application forms was extended by RPSC in keeping with the principles of fair play and with a view to providing opportunities to all eligible candidates the contention of the petitioner that the amended rule 11(1) was applied retrospectively cannot be accepted. Even otherwise eligible criteria is required to be applied with reference to the last date appointed by the competent authority for receipt of application forms. The amendment in Rule 11(1) having been made much before the last date of submission of the application forms, all eligible candidates stood duly notified by the RPSC by issuing a corrigendum. For these reasons it can also be accepted that the amended rules were applied retrospectively so as to defeat the claim of any eligible candidate. As per scheme envisaged in Rule 4 of 1962 Rules, candidate can be held eligible against the quota of NGE only if he has exhausted all the chance to appear in the examination as an open market candidate. In my view, the action of RPSC in not permitting the petitioner to appear against the NGE quota in the year 1990 did not suffer from any legal infirmity and therefore, the petitioner could not be allowed one more chance as a general candidate in the combined competitive examination of the year 1992 as a general candidate and had ceased to be a non-gazetted employee having been promoted to the post of Tehsildar which is a gazetted post."

5. The appellant challenged the said order in a civil special appeal and the division bench dismissed the appeal in limine, by the impugned order dated 5.4.2007, on the following reasoning:

"As to whether the petitioner was working as Tehsildar on ad hoc basis, temporary basis or substantively is not material for the purpose of consideration of the eligibility of the petitioner for combined competitive examination to find out as to whether he could apply in the category on non-gazetted employees. On the date of the application dated 18.1.1990, the petitioner was working as Tehsildar and that he has been working as Tehsildar since 15.10.1985 surely, therefore, his candidature in the category of non-gazetted employees could not have been considered. Thus, when Rule 4 of the Combined Competitive Examination was amended on 20.3.1990 and the employees were allowed to avail of more than three chances, the application made by

the petitioner on 18.1.1990 could only have been considered in the open category and not in the category of non-gazetted employees".

6. The said order is challenged in this appeal by special leave. The appellant contends that he was appointed as a non-gazetted Naib Tehsildar and worked as Naib Tehsildar upto 1990, that thereafter he was temporarily promoted as Tehsildar, and that only on 24.8.1996, he was promoted on substantive basis with retrospective effect, and therefore he could not be considered as working as a Gazetted Officer till 1996. He contends that his attempts in 1983, 1987 and 1989 were as an open market candidate, but his application in regard to the examination for the year 1990, should be treated as being in the NGE category and not as an open market candidate. He therefore contended that he still had one more chance (fourth chance) as a general category candidate under the Rules when he appeared for the fifth time in the examination for the year 1991 and therefore his participation was valid.

7. The question therefore is whether the appellant's participation in the examination for the year 1991 should be considered as the fourth attempt as an open market candidate (in which event, he was entitled to participate) or as the fifth attempt as an open market candidate (in which event, he was not entitled to participate). This in turn requires consideration as to whether he appeared as an open market candidate or as an NGE candidate, when he appeared in the examinations for the year 1990.

8. Sub-rule 1 of Rule 11 of Rules provided that the number of chances which a candidate appearing at the examinations can avail of, shall be restricted to three, for direct recruitment to posts specified in Schedules I and II of the Rules. The said rule was amended by notification dated 30.3.1990 whereby the ceiling in regard to the number of chances to appear in the examination was relaxed by increasing it from 3 to 4 examinations. Rule 4 (1) of the Rules provides that 7% of the available vacancies in the state services to be filled by direct recruitment shall, subject to the provisions of sub-rule (2), be reserved for candidates who are non-gazetted employees of the government, Panchayat Samitis and Zila Parishads. Sub-rule (2) of Rule 4 prescribed the eligibility conditions for the non-gazetted employees to participate in the combined competitive examination. One of the five conditions of eligibility for a non-gazetted employee to appear in the combined competitive examination is that he must not be eligible to appear in the examination as an open market candidate (vide clause (v) of Rule 4(2) of the Rules). This would mean that unless a NGE candidate has exhausted all four chances as an open market candidate, he cannot appear as an NGE candidate.

9. It is not in dispute that the appellant appeared as an open market candidate in the years 1983, 1987 and 1989. He also appeared in the examination for the year 1990. While the appellant contends that his appearance in the examination for 1990 was as an NGE candidate, the respondents contend that his said appearance was as an open market candidate for the fourth time. Having regard to the bar contained in Rule 4(2)(v), the appellant could not have appeared for the examination for the year 1990, as an NGE candidate, as by then he had appeared only thrice as an open market candidate and had not exhausted all the four chances as an open market candidate. Therefore, the appearance of appellant in the

examination for the year 1990 was as an open market candidate. If that is so, having exhausted all four chances as an open market, he could not appear in the examination for 1991 as an open market candidate. The appellant could not also be considered as an NGE candidate in regard to the examination for the year 1991, as by then he was working as a Tehsildar and was no longer a non-gazetted employee. Therefore, the appellant was not entitled to participate in the examination for the year 1991.

10. In view of the above there is no merit in the appeal and it is accordingly dismissed.