

**SUPREME COURT OF INDIA**

Ashok Kumar

Vs.

State of Jharkhand

C.A.No.877 of 2018

(J.Chelameswar and Sanjay Kishan Kaul, JJ.,)

11.05.2018

**JUDGMENT**

**Sanjay Kishan Kaul, J.,**

SLP(C)No.15852 of 2016

1. The Jharkhand Judicial Service (Recruitment) Rules, 2004 (hereinafter referred to as the '2004 Rules') dated 31.3.2005 were published in the Gazette of 4.4.2005, having been framed in the exercise of powers conferred by Article 234 read with Article 309 of the Constitution of India. The relevant portion of the preamble is extracted as under:

“Now therefore in exercise of the powers conferred by Article 234 read with Article 309 of the Constitution of India and all provisions of law enabling him in that behalf, and in supersession of all earlier Rules on the subject, the Governor of Jharkhand, after consultation with the High Court of Jharkhand and Jharkhand State Public Service Commission, is pleased to make the following Rules so as to select, recruit and appoint Members of the Jharkhand Judicial Service and regulate terms and conditions of their service:-”

2. Thus, the Rules specifically provided that they were in supersession of all earlier Rules on the subject. The earlier Rules of 2001 were specifically repealed in terms of Rule 27 of the 2004 Rules, which reads as under:

“27. Repeal and Savings: (i) Jharkhand Judicial Service (Recruitment) Rules, 2001 issued vide notification no.185 dated the 20th August, 2001 are hereby repealed.

(ii) Notwithstanding such repeal, anything done or any action taken under the 2001 Rules shall be deemed to have been taken under these Rules and any selection process initiated or appointments made pursuant to 2001 Rules shall be deemed to have been done under these Rules.”

3. The appointment was to be made after due process and in terms of Rule 21 of the 2004 Rules, a mandatory one year training period was envisaged with the Judicial Academy where after the trainees were to appear in an examination to be conducted by the Judicial Academy under the directions and guidance of the High Court. The relevant clause 21(b) of the 2004 Rules is as under:

“21 (b). For a period of one year from the date of appointment, or from such other date as the High Court may prescribe, that the Civil Judge, Junior Division (Munsif)/Civil Judge, Senior Division (Subordinate Judge) shall be admitted in the one year training course at the Judicial Academy of Jharkhand at Ranchi or such other place as the High Court may prescribe. After completion of one year training course, the Civil Judge, Junior Division (Munsif) trainee Civil Judge, Senior division (subordinate Judge) - trainee shall appear in the examination to be conducted by the Judicial Academy under the directions and guidance of the High Court and the successful passing of this Examination shall alone be the condition precedent for confirmation of the trainees as Civil Judges, Junior Division (Munsif)/Civil Judges, Senior Division (subordinate Judges).”

(emphasis supplied)

4. The effect of this is that the passing of this examination 'alone' was a condition precedent for confirmation.

5. The duration of the training period could be extended but not more than two years, and such of the trainees, who did not qualify the examination as required in the clause aforesaid, on representation, the High Court could suitably afford another chance of taking the examination. The total probation period envisaged under Rule 22 of the 2004 Rules is three years starting from the date of appointment. However, this period could be extended by the High Court in individual cases, depending upon the performance and other parameters as may be fixed by the High Court from time to time or depending upon the passing of such examination during the service as may be prescribed for this purpose by the High Court.

6. Insofar as the controversy before this Court is concerned, it is relevant to note that the earlier 2001 Rules were slightly different in the context of what was specified in Rule 22, which reads as under:

“22. Notwithstanding anything to the contrary contained in these rules a Munsif appointed on temporary basis shall be eligible for permanent appointment to the service without there being any upper age limit subject to the condition that:

(i) he has completed two years of service from the date of his first appointment;

(ii) he has passed such tests as may from time to time be prescribed in the Departmental Examination Rules; and

(ii) he is recommended by the High Court for such permanent appointment.”

(Emphasis supplied)

7. A bare reading of the aforesaid clause, thus, makes it clear that while the requirement in this Rule was to pass such test as may be prescribed from time to time in the “Departmental Examination Rules”, there is no such corresponding provision in the 2004 Rules.

8. It is also relevant to note that during the period of probation, it is not as if any additional conditions were prescribed by the High Court for confirmation. Contextual to the issue at hand, there was no condition prescribed to pass any exam in Hindi to be conducted by the Board of Revenue for being confirmed, which is the bone of contention in the present appeal.

9. The appellants before this Court have been recruited through two sets of Notifications - the first one dated 5.1.2011; and the second one dated 28.3.2011, being the successful candidates in the recruitment process. In the Notifications so issued, an identical para 2 reads as under:

“2. The appointment shall be subject to qualifying the test and the extension of test period and confirmation shall be subject to Jharkhand Judicial Service (Recruitment) Regulation 2005 Rule 21 and 22 and as per recommendation of Jharkhand High Court.”

10. Despite the aforesaid position, the appellants before this Court were not confirmed after three years’ continuous service. The appellants had passed the examination conducted by the Judicial Academy, Jharkhand at the end of the Induction Programme. The ostensible reason for the same was that they are not clearing a departmental Hindi examination held by the Board of Revenue. The appellants, thus, made a representation dated 29.4.2014, in which inter alia it was stated that during their tenure they were repeatedly informed and advised that they were exempted from taking part in the Hindi examination as per the Rules of 2004 and, thus, they had not appeared for the departmental Hindi examination. This representation was, however, rejected by the High Court in the following terms:

“After consideration of the representation of some of the Civil Judges (Junior Division) regarding their confirmation in service and to get increments by this Court, I am directed to inform that passing of the Hindi Examination as well as the Departmental Examination by Civil Judge (Junior Division) is a condition precedent for their increment as well as confirmation in terms of Rule 21(b) of Jharkhand Judicial Service Recruitment Rules 2004, Rule 7 of Bihar Government servant (Hindi Examination) Regulation, 1968 and Rule 27(a) of the Bihar Civil Service (Judicial Branch) Training and Departmental examination Rules, 1963.”

11. The respondents, thus, relied upon the same very Rule 21(b) of the 2004 Rules read with Rule 7 of the Bihar Government Servant (Hindi Examination) Regulation, 1968 and Rule 27(a) of the Bihar Civil Service (Judicial Branch) Training and Departmental Examination Rules, 1963 (hereinafter referred to as the '1963 Bihar Rules'). The latter reads as under:

“Liability of Probationers to Examinations

27. (a) Every probationer is required to pass an examination in the following subjects:-

(i) the High Court’s General Rules and Circular Orders (both criminal and civil), as laid down in sub-rule (b) to this rule. The examination in the High Court’s General Rules and Circular Orders will test in particular the extent to which the examinee has acquired practical facility in applying the rules.

(ii) Procedural Law and Law of Evidence as laid down in sub-rule (c) to this Rule.

(iii) Hindi by the lower and higher standards as described in Appendix-I of this Rule.”

(emphasis supplied)

12. The accepted factual position is that the Jharkhand State was carved out of the State of Bihar in terms of the Bihar Reorganisation Act, 2000 on 15.11.2000. Rule 22 of the 2001 Rules refers to the requirement of passing examinations from time to time prescribed by the Departmental Examination Rules, which in turn is Rule 27(a) of the 1963 Bihar Rules.

13. In view of the aforesaid position this rejection was challenged by filing writ petitions, which have been dismissed by the common impugned order dated 3.3.2016.

14. On behalf of the appellants, it was contended that in view of Sections 84 & 85 of the Bihar Reorganization Act, 2000, the 1963 Bihar Rules were deemed to have been operating in the newly created State of Jharkhand. However, this position was prevalent under the 2001 Rules but when the 2001 Rules were repealed after the framing of the 2004 Rules, it is the 2004 Rules, which would prevail.

15. The High Court took note of the judicial pronouncement of this court in *Rattan Lal & Co. and Anr. v. Assessing Authority, Patiala & Anr.*<sup>1</sup> where it was opined that on the creation of a new State after reorganization, the original Act cannot be amended from a date anterior to the appointed date and the original Act would apply as an independent Act to each of the States and the new State is within its legislative competence to amend the original Act in relation to the area of the new State. Thus, the pre-existing laws in the unified State of Bihar, it was opined as per the High Court, would continue to apply to the new State created under the Bihar Reorganization Act, 2000 only until otherwise provided by the competent legislature or other competent authority. The 2001 Rules, it is observed, thus, specifically provide in Rule 22 for a test to be taken from time to time as may be prescribed by the Departmental Examination Rules, i.e., 1963 Bihar Rules.

16. Insofar as Rule 27 of the 2004 Rules is concerned, the same repealed the 2001 Rules. It was acknowledged in the impugned judgment that there was no reference of the 1963 Bihar

Rules in the 2004 Rules nor is there a similar reference as in Rule 22(ii) of the 2001 Rules. It was thus opined that the 1963 Bihar Rules, which were applicable to the 2001 Rules, cannot be considered as inoperative or superseded or repealed by the 2004 Rules. The expression used- 'alone', in Rule 21(b) of 2004 Rules was, thus, held not to imply that the Hindi examination could not be prescribed as a condition precedent for confirmation. The control by the High Court under Article 235 of the Constitution of India, it was held, empowered and allowed the High Court to prescribe the passing of Hindi examination and departmental examination for the members of the Subordinate Judiciary. Thus, the passing of the Hindi examination was held to be mandatory. It was also observed that this is so, even though it may cause hardship to the appellants, who would be disentitled to grant of increments till they pass the examination.

17. It is in the aforesaid context that the High Court confirmed only such of the officers who had passed the Hindi Examination in the “higher grade”.

18. It may be noticed that some of the persons cleared the Hindi Examination with “lower grade”, which was not taken into account.

19. The factual development subsequently is that all the appellants have cleared the examination in the “higher grade” and thus, to that extent the lis does not survive. However, the lis does survive to the extent that the appellants are sought to be denied the benefit of increment, which is due to them for continuity of service till such time as they cleared the examination in “higher grade” Hindi.

20. We have given opportunities to the State of Jharkhand to look into this issue from the correct perspective on various dates. However, that has not borne fruit and we were called upon to adjudicate the issue in question.

21. On having heard learned counsel for the parties and examining the records, we are of the view that the reasoning of the impugned order cannot be sustained nor can it be read into the 2004 Rules a mandatory requirement of clearing the “higher grade” Hindi examination.

22. There is no quibble with the position till the 2001 Rules prevailed. This is so in view of the 1963 Bihar Rules applying on the creation of the Jharkhand State vide Act of 2000. The 2001 Rules also envisaged the clearance of the Hindi Departmental Examination, which was a reference to the 1963 Bihar Rules. However, when the 2004 Rules were enacted, they were in supersession of all earlier Rules and the 2001 Rules were specifically repealed vide Rule 27 of the 2004 Rules. Thus, the earlier position stood obliterated from the commencement of the 2004 Rules. The 2004 Rules also make it clear that the said Rules shall prevail for the purposes of selecting, recruiting and appointing Members of the Jharkhand Judicial Service and regulating the terms and conditions of their service. Rule 21(b) of the 2004 Rules also makes it abundantly clear that the successful passing of the examination “shall alone” be the condition precedent for confirmation of the trainees. This leaves no manner of doubt qua the 2004 Rules, i.e., that they alone prevail and they in turn had not provided for the requirement of clearing the “higher grade” Hindi examination by the Board of Revenue.

23. We make it clear that this does not imply that such a prescription cannot be made. The fact remains that such a prescription has not been made. It was always open to include such a prescription in the Rules itself. The appointment Notifications also, as per para 2, referred to the requirement of qualifying the test as prescribed in Rules 21 & 22 in the Jharkhand Service (Recruitment) Regulations, 2005, which should actually read the 2004 Rules, which were, however, published on 31.3.2005. These Rules in turn prescribed that the successful passing of the examination “shall alone” be the condition precedent for confirmation of the trainees. No doubt there is a further condition that the High Court may prescribe any examination to be passed but then there is no such examination required to be passed by the High Court but rather then High Court sought to interpret the Rules as if the provision contained qua the passing of the Hindi examination under the 1963 Bihar Rules as per the provision of the 2001 Rules should also be read into the 2004 Rules. Such a course of action is unsustainable.

24. We are, thus, of the view that the legal position prevalent as per the 2004 Rules does not require passing of the Hindi examination held by the Revenue Department as the 1963 Bihar Rules cannot be read into the 2004 Rules. We also clarify that it is always open to the respondents to amend the 2004 Rules, if they want to incorporate such a stipulation or the High Court may itself conduct a Hindi examination towards that objective by prescribing so. This is so as proficiency in the Hindi language is possibly a necessity arising out of the judicial work conducted in the State of Jharkhand. In any case, as noticed above, all the appellants have passed the examination and, thus, the only question of giving them the benefit of the increments and other mandatory benefits even for the period when they had not cleared the “higher grade” in the Hindi examination.

25. Learned counsel for the appellants has also pointed out another ramification of the stand of the respondents, i.e., that though the appellants joined in the year 2011 and, thus, came under the old pension scheme if what the respondents say is accepted then their subsequent confirmation would result in their not being covered under the old pension scheme but under the new contributory pension scheme, which came into force in terms of Notification dated 22.12.2013.

26. We, thus, also hold that the appellants would be entitled to be covered under the old pension scheme relatable to their entry into the service in the year 2011.

27. The respondents will ensure that the differential mandatory benefits are remitted to the appellants within a period of three months from the date of the order.

28. The appeal is accordingly allowed leaving the parties to bear their own costs.

Judgment Referred.

<sup>1</sup>(1969) 2 SCR 0544