Tej Prakash Pathak & Ors vs Rajasthan High Court & Ors on 20 March, 2013

Bench: Madan B. Lokur, J. Chelameswar, R.M. Lodha

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 2634 OF 2013
[Arising out of SLP (C) No.12406 of 2011]

Tej Prakash Pathak & Others … Appellants

Versus

Rajasthan High Court & Others … Respondents

WITH

CIVIL APPEAL NO. 2635 OF 2013
[Arising out of SLP (C) No.18102 of 2012]

AND

CIVIL APPEAL NO. 2636 OF 2013
[Arising out of SLP (C) No.20706 of 2011]

O R D E R

Chelameswar, J.

1. Leave granted "....the rules of the game .... the criteria for selection cannot be altered by the authorities concerned in the middle or after the process of selection has commenced"[1] "... changing the rules of the game after the game was played ...is clearly impermissible"[2]

2. The above, and statements to the similar effect have petrified into a rule of law in the context of employment under the State or its instrumentalities. Whether such principle of law is immutable, what are those 'rules of the game' which cannot be changed after the game is either commenced or played, in our opinion requires an authoritative pronouncement by a larger Bench of this Court.

3. Such a question arises in the case in hand in the background of the following facts:-

4. The respondent High Court undertook the recruitment process for filling up of 13 posts of Translators by issuing a notification dated 17th September, 2009. It appears that under the Rajasthan High Court Staff Service Rules, 2002, "eligible candidates" are required to appear for a Written Examination consisting of two papers of translation from English to Hindi and vice versa carrying 100 marks each followed by a Personal Interview for 50 marks.

5. 21 candidates appeared for the above-mentioned examination of whom only three candidates were declared successful by the first respondent. Three unsuccessful candidates challenged the said decision of the High Court by filing a writ petition which came to be dismissed by the judgment under appeal dated 11th March, 2010.

6. From the reply filed by the first respondent in the writ petition as reflected in the judgment under appeal, it appears that after the examination was conducted, the Chief Justice ordered that the examination be treated as a Competitive Examination and only those candidates who secured a minimum of 75% marks be selected to fill up the posts in question. In view of the decision of the Chief Justice, only three candidates were found suitable for appointment and a list of selected candidates was accordingly published by the High Court. This triggered the instant litigation.

7. Admittedly, the requirement of securing the minimum qualifying marks of 75% is not a stipulation of the Service Rules (referred to earlier) of the first respondent High Court as on the date of initiation of the recruitment process in question (i.e. 17th September, 2009). It appears that such a prescription had existed earlier under the Rules, but by an amendment, the said prescription was dropped with effect from 14th July, 2004.

8. Therefore, the appellants challenged the selection process on the ground that the decision of the Chief Justice to select only those candidates who secured a minimum of 75% marks would amount to "changing the rules of the game after the game is played" – a cliché whose true purport is required to be examined notwithstanding the declaration of this Court in Manjusree's case (supra) that it is "clearly impermissible".

9. The question whether the 'rules of the game' could be changed was considered by this Court on a number of occasions in different circumstances. Such question arose in the context of employment under State which under the scheme of our Constitution is required to be regulated by "law" made under Article 309 or employment under the instrumentalities of the State which could be regulated either by statute or subordinate legislation. In either case the 'law' dealing with the recruitment is subject to the discipline of Article 14.

10. Legal relationship between employer and employee is essentially contractual. Though in the context of employment under State the contract of employment is generally regulated by statutory provisions or subordinate legislation which restricts the freedom of the employer i.e. the 'State' in certain respects.

11. In the context of the employment covered by the regime of Article 309, the 'law' – the recruitment rules in theory could be either prospective or retrospective subject of course to the rule of non- arbitrariness. However, in the context of employment under the instrumentalities of the State which is normally regulated by subordinate legislation, such rules cannot be made retrospectively unless specifically authorised by some constitutionally valid statute.

12. Under the Scheme of our Constitution an absolute and non-negotiable prohibition against retrospective law making is made only with reference to the creation of crimes. Any other legal right

or obligation could be created, altered, extinguished retrospectively by the sovereign law making bodies. However such drastic power is required to be exercised in a manner that it does not conflict with any other constitutionally guaranteed rights, such as, Articles 14 and 16 etc. Changing the 'rules of game' either midstream or after the game is played is an aspect of retrospective law making power.

13. Those various cases[3] deal with situations where the State sought to alter 1) the eligibility criteria of the candidates seeking employment or

2) the method and manner of making the selection of the suitable candidates. The latter could be termed as the procedure adopted for the selection, such as, prescribing minimum cut off marks to be secured by the candidates either in the written examination or viva-voce as was done in the case of Manjusree (supra) or the present case or calling upon the candidates to undergo some test relevant to the nature of the employment [such as driving test as was the case in Maharashtra State Road Transport Corporation (supra)].

14. If the principle of Manjusree's case (supra) is applied strictly to the present case, the respondent High Court is bound to recruit 13 of the "best" candidates out of the 21 who applied irrespective of their performance in the examination held.

15. In such cases, theoretically it is possible that candidates securing very low marks but higher than some other competing candidates may have to be appointed. In our opinion, application of the principle as laid down in Manjusree case (supra) without any further scrutiny would not be in the larger public interest or the goal of establishing an efficient administrative machinery.

16. This Court in the case of the State of Haryana v. Subash Chander Marwaha and Others [(1974) 3 SCC 220] while dealing with the recruitment of subordinate judges of the Punjab Civil Services (Judicial Branch) had to deal with the situation where the relevant Rule prescribed a minimum qualifying marks. The recruitment was for filling up of 15 vacancies. 40 candidates secured the minimum qualifying marks (45%). Only 7 candidates who secured 55% and above marks were appointed and the remaining vacancies were kept unfilled. The decision of the State Government not to fill up the remaining vacancies in spite of the availability of candidates who secured the minimum qualifying marks was challenged. The State Government defended its decision not to fill up posts on the ground that the decision was taken to maintain the high standards of competence in judicial service. The High Court upheld the challenge and issued a mandamus. In appeal, this Court reversed and opined that the candidates securing minimum qualifying marks at an examination held for the purpose of recruitment into the service of the State have no legal right to be appointed. In the context, it was held:-

> 12. .....In a case where appointments are made by selection from a number of eligible candidates it is open to the Government with a view to maintain high-standards of competence to fix a score which is much higher than the one required for more (sic mere) eligibility.....

17. Unfortunately, the decision in Subash Chander Marwaha (supra) does not appear to have been brought to the notice of their Lordships in the case of Manjusree (supra).

18. This Court in the case of Manjusree (supra) relied upon P.K. Ramachandra Iyer and Others v. Union of India and Others [(1984) 2 SCC 141], Umesh Chandra Shukla v. Union of India and Others [(1985) 3 SCC 721] and Durgacharan Misra v. State of Orissa and Others [(1987) 4 SCC 646]. In none of the cases, the decision in Subash Chander Marwaha (supra) was considered.

19. No doubt it is a salutary principle not to permit the State or its instrumentalities to tinker with the 'rules of the game' insofar as the prescription of eligibility criteria is concerned as was done in the case of C. Channabasavaiah v. State of Mysore [AIR 1965 SC 1293] etc. in order to avoid manipulation of the recruitment process and its results. Whether such a principle should be applied in the context of the 'rules of the game' stipulating the procedure for selection more particularly when the change sought is to impose a more rigorous scrutiny for selection requires an authoritative pronouncement of a larger Bench of this Court. We, therefore, order that the matter be placed before the Hon'ble Chief Justice of India for appropriate orders in this regard.

……..……J. (R.M. Lodha) ……..……J. (J. Chelameswar) .....J. (Madan B. Lokur) March 20, 2013 New Delhi.

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[1] Maharashtra State Road Transport Corporation and Others v. Rajendra Bhimrao Mandve and Others [(2001) 10 SCC 51, Para 5 [2] K. Manjusree v. State of Andhra Pradesh and Another, (2008) 3 SCC 512, Para 27 [3] a). C. Channabasavaih v. State of Mysore [AIR 1965 SC 1293], State of Haryana v. Subash Chander Marwaha and Others [(1974) 3 SCC 220], P.K. Ramachandra Iyer v. Union of India [(1984) 2 SCC 141] and Umesh Chandra Shukla v. Union of India [(1985) 3 SCC 721], Durgacharan Misra v. State of Orissa [(1987) 4 SCC 646], State of U.P. v. Rafiquddin and Ors. [1987 Supp. SCC 401], Maharashtra State Road Transport Corporation v. Rajendra Bhimrao Mandve [(2001) 10 SCC 51], Pitta Naveen Kumar and Others v. Raja Narasaiah Zangiti and Others [(2006) 10 SCC 261], K. Manjushree v. State of Andhra Pradesh [(2008) 3 SCC 512], Hemani Malhotra v. High Court of Delhi [(2008) 7 SCC 11], K.H. Siraj v. High Court of Kerala [(2006) 6 SCC 395], Ramesh Kumar v. High Court of Delhi [(2010) 3 SCC 104], Rakhi Ray v. High Court of Delhi [(2010) 2 SCC 637], Hardev Singh v. Union of India [2011) 10 SCC 121] – Where procedural rules were altered.

b) P. Mahendran and Others v. State of Karnataka and Others [(1990) 1 SCC 411], Madhya Pradesh Public Service Commission v. Navnit Kumar Potdar [(1994) 6 SCC 293], Gopal Krishna Rath v. M.A. A. Baig (Dead) By LRs [(1999) 1 SCC 544], Umrao Singh v. Punjabi University, Patiala and Others [(2005) 13 SCC 365], Mohd. Sohrab Khan v. Aligarh Muslim University and Others [(2009) 4 SCC 555] – Where the eligibility criteria altered.