

## Ashutosh Gupta vs State Of Rajasthan & Ors on 20 March, 2002

**Equivalent citations: AIR 2002 SUPREME COURT 1533, 2002 (4) SCC 34, 2002 AIR SCW 1419, 2002 LAB. I. C. 1457, 2002 (2) SERVLJ 497 SC, 2002 (3) SCALE 203, 2002 (3) LRI 123, 2002 (2) ALL CJ 1104, (2002) 3 JT 219 (SC), (2002) 2 SERVLJ 497, 2002 (1) UJ (SC) 556, 2002 (2) UPLBEC 1567, 2002 ALL CJ 2 1104, 2002 (2) SLT 638, 2002 (4) SRJ 447, (2002) 3 SCALE 203, (2002) 93 FACLR 1134, (2002) 2 LAB LN 824, (2002) 3 MAHLR 635, (2002) 2 SCT 547, (2002) 2 SCJ 555, (2002) 3 SERVLR 18, (2002) 2 UPLBEC 1567, (2002) 2 SUPREME 561, (2002) 2 ESC 83, 2002 SCC (L&S) 465**

**Bench: S.N. Phukan, Brijesh Kumar**

CASE NO.:

Appeal (civil) 7777 of 1997

PETITIONER:

ASHUTOSH GUPTA

Vs.

RESPONDENT:

STATE OF RAJASTHAN & ORS.

DATE OF JUDGMENT:

20/03/2002

BENCH:

G.B. Pattanaik,, S.N. Phukan & Brijesh Kumar

JUDGMENT:

PATTANAIAK,J.

The appellant is a direct recruit to the Rajasthan Administrative Service, having been selected through the competitive examination held by the Rajasthan Public Service Commission. The recruitment of the appellant had been made on 5.6.1975 under the Rajasthan Administrative Service Rules 1954. The Government of Rajasthan finding necessity for making emergency recruitment to the State Administrative Service framed a set of Rules in the year 1956, called 'The Rajasthan Administrative Service (Emergency Recruitment) Rules 1956' and then another similar set of Rules have been framed in the year 1959, called 'The Rajasthan Administrative Service (Emergency Recruitment) Rules, 1959'. Emergency recruitment had taken place under the aforesaid two

Emergency Recruitment Rules, once in the year 1956 and another in the year 1959. While the appellant has joined the Rajasthan Administrative Service on being recruited under the provisions of Rajasthan Administrative Service Rules of 1954 on 5.6.1975, and is continuing, a set of Rules were framed by the Governor in exercise of power under the proviso to Article 309 of the Constitution on 29.9.1976, called 'The Rajasthan Administrative Service (Emergency Recruitment) Rules, 1976. The said Rules were amended on 15.12.1976 (hereinafter referred to as 'The Emergency Recruitment Rules, 1976'). Persons on being selected under the provisions of the aforesaid Emergency Recruitment Rules of 1976 were appointed on 6.11.1978. The validity of the Rules relating to seniority under the Emergency Recruitment Rules of 1956 as well as of 1959 were challenged in a Writ Petition and the learned Single Judge of Rajasthan High Court quashed the provision dealing with seniority in the aforesaid Emergency Recruitment Rules by judgment dated 4.4.1980. Special appeals being filed by the State Government and the same were dismissed by the Division Bench on 14.8.1980. A seniority list was published by the State Government on 2.6.1980 and in the aforesaid list persons recruited under the Recruitment Rules of 1976 were shown as senior to the directly recruited officers to the Rajasthan Administrative Service in the year 1974 and 1976. A batch of Writ Petitions were filed by the direct recruits challenging the validity of Rule 25 of the Emergency Recruitment Rules 1976. On 12.6.1981 Rule 23 of the Emergency Recruitment Rules of 1956 and 1959 were amended and under the amended provision the emergency recruits would rank junior to the special recruits and senior to the direct recruits appointed during the same year. The batch of Writ Petitions including the Writ Petition filed by the appellant were dismissed by the learned Single Judge by judgment dated 7.1.1983. Special appeals were filed against the same to the Division Bench and the Division Bench by the impugned judgment dated 16.5.1997, having upheld the validity of Rule 25 of the Emergency Recruitment Rules of 1976 and having affirmed the judgment of the learned Single Judge the present appeal by grant of Special Leave has been filed. While upholding the validity of Rule 25 of the Emergency Recruitment Rules 1976, the learned Single Judge as well as the Division Bench of Rajasthan High Court strongly relied upon the judgment of this Court in *Anand .Parkash Saksena vs. Union of India and ors.* (1968) 2 Supreme Court Reports 611 and *K.P. Singhal vs. State of Rajasthan and anr.* (1995) Suppl. 3 Supreme Court Cases 549. When this appeal has been placed before a Bench of this Court on 4.12.2001, a Bench of this Court examined the two decisions on which reliance has been placed and the fact that in Singhal's case (*supra*) this Court examined Rule 25 of the Emergency Recruitment Rules 1976 and held that the notional service could be taken into account as a part of service. It was further observed that it is no doubt true that the constitutional validity of Rule 25 (3)(1) and Rule 25(3)(2) of the Emergency Recruitment Rules of 1976 was not the subject matter of challenge, but having regard to the conclusions arrived at, by the earlier Bench decision of this Court of two learned judges it will be more appropriate that the appeal should be heard by a Bench of three learned Judges and that is how the matter has come before us.

Mr. Sushil Kumar Jain, appearing for the appellant contended that the persons recruited to the Rajasthan Administrative Service under the Emergency Recruitment Rules of 1976 and persons appointed to the cadre under the Recruitment Rules of 1954, all form only one class and, therefore, providing a special rule for seniority of those who were recruited under the Emergency Recruitment Rules of 1976 by having a notional year of allotment is discriminatory on the face of it and violates Articles 14 and 16 of the Constitution of India and must be struck down. Alternatively, Mr. Jain

argued that even if they form two different classes for the classification between them made under Rule 25, there has been no intelligible differentia and there is no nexus between providing a notional year of allotment for those who were recruited under the Emergency Recruitment Rules of 1976 with any specific object sought to be achieved and, therefore, Rule 25 of the Emergency Recruitment Rules, more particularly, the formula for giving a year of allotment must be struck down. According to Mr. Jain, Rule 25 of the Emergency Recruitment Rules, which provided that the year of allotment should be 1976 minus N1 plus half of N2 and both N1 and N2 being dependent upon the factor whether monthly emolument is Rs.625/- or less than Rs.625/-, there must be some rationale with the aforesaid fixation of emolument. But the Rules being totally silent and the Rule Making Authority having not indicated, the entire basis is imaginary and arbitrary and, therefore, the same must be struck down. Mr. Jain also urged that in the matter of determining the seniority, the period of practice or profession is given certain premium, depending upon the emoluments therefrom whether Rs.625/- or less than that. It is un-imaginable that such practice or profession has any relevance in the matter of administrative experience and consequently, the very basis is illogical and has to be struck down. According to Mr. Jain, when legislation is attacked, as being discriminatory, two conditions must be fulfilled to uphold the legislation namely (i) that the classification must be founded on an intelligible differentia which distinguishes persons that are grouped together from other left out of the group and (ii) that the differentia must have a rational relation to the object sought to be achieved by the legislation in question. According to Mr. Jain, the impugned provision contained in Rule 25 of the Emergency Recruitment Rules, does not satisfy either of the conditions. Referring to the preamble of the Emergency Recruitment Rules, Mr. Jain submitted that as more persons were immediately needed in Rajasthan Administrative Service, a Special Recruitment Rules had been framed and people from different walks of life were permitted to compete in the examination and get recruited. The standard of examination that had been fixed and the methodology of selection was undoubtedly different and, therefore, people with less merit could be taken in the service. Such people with inferior qualifications and their suitability having been tested with inferior standard, could not have been granted any premium for their past period during which period they did not have any administrative experience and adjudged from this stand point, the provisions of Rule 25 must be held to be grossly discriminatory and the High Court committed error in upholding the validity of the Rules.

At the outset, it may be stated that recruitment to Rajasthan Administrative Service through a special emergency recruitment and to have a statutory rule for such recruitment is not new to the State and in fact in almost every State, there has been such recruitment once or twice. The very purpose for having such an emergency recruitment is the urgent need to man the cadre of the administrative service and the insufficient number existing at a point of time. But it cannot be said that the process of selection, even for such emergency recruitment is either less competitive or the persons recruited are inefficient. It may be borne in mind that even in the Indian Administrative Service also, there has been an emergency recruitment.

In the Constitution itself, even while providing in Article 46 that the State shall promote the special care for the educational and economic interest of the weaker section of the people and in particular of the Scheduled Castes and Scheduled Tribes and Article 16(4) of the Constitution having further provided that the mandate of Article 16(1) (a) requiring equality of opportunity for all citizens in

matters relating to employment or appointment to any office in the State does not prevent the State from making any provision for the reservation of appointments to posts in favour of any backward class of citizens which in the opinion of the State is not adequately represented in the services of the State. Article 335 stipulates that the claims of the members of Scheduled Castes and Scheduled Tribes shall be taken into consideration, consistent with the maintenance of efficiency of administration, in the making of appointment to services and posts in connection with the affairs of the union or of State. It is, thus, apparent that even in the matter of reservation in favour of Scheduled Castes and Scheduled Tribes the founding fathers of the Constitution did make a provision relating to the maintenance of efficiency of administration. In this view of the matter, if any statutory provision provides for a recruitment of a candidate without bearing in mind the maintenance of efficiency of administration such a provision cannot be sustained being against the constitutional mandate. But we are unable to accede to the contention of Mr. Jain that those persons who got recruited to the Rajasthan Administrative Service under the Emergency Recruitment Rules are either in-efficient or their suitability has been adjudged on an inferior standard. It may be reiterated that those persons also had undertaken a written test on specified subjects as indicated in the Rules and after qualifying in the written test they were also subjected to interview conducted by the Public Service Commission, in the same manner, as those who had been recruited to Rajasthan Administrative Service under the Recruitment Rules of 1954 though there may have been a variance on the subjects of which they had taken the test. But that by itself would not be sufficient to hold that the candidates recruited under the Emergency Recruitment Rules are less efficient or their suitability had been adjudged at a lesser standard. We would, therefore, reject the submissions made by Mr. Jain on the ground of discrimination, on the score.

Article 14 of the Constitution secures equal protection to government servants and Article 16 is a particular application of general guarantee provided in Article 14. The doctrine of equality before law is a necessary corollary to concept of rule of law accepted by the Constitution. It is well settled principle that if a person complains of unequal treatment, the burden squarely lies on that person to place before the court sufficient materials from which it can be inferred that there is unequal treatment. Where, however, the necessary materials have not been placed to show how there has been an unequal treatment, the plea of provisions being violative of Article 14 cannot be entertained. We record this conclusion of ours, as in course of hearing of this matter. Mr. Jain, learned counsel appearing for the appellant, had often repeated that the provision of the Emergency Recruitment Rules has permitted even a beetle shop owner with the minimum income as indicated therein to appear and compete at the test and on being selected, the period for which he had been earning the aforesaid amount could be taken into account for the purpose of seniority in the cadre even though there has been no nexus between that period and the service to which he has been recruited. Apart from making such submission on a hypothetical basis, no material has been produced to indicate if anyone of the persons recruited under the Emergency Recruitment Rules has reaped any undue advantage in respect of his past experience by adoption of the formula in the Emergency Recruitment Rules for the purpose of allotting year of allotment as 1976 (N 1