

[2019] 13 S.C.R. 1092

**A RAJASTHAN PUBLIC SERVICE COMMISSION,
AJMER & ANR.**

V.

SHIKUN RAM FIRODA & ANR.

B (Civil Appeal No. 8146 of 2019)

OCTOBER 25, 2019

[L. NAGESWARA RAO AND HEMANT GUPTA, JJ.]

Rajasthan State and Subordinate Services (Direct Recruitment

- C by Combined Competitive Examination) Rules, 1999 – Advertisement published on 18.06.13 inviting applications for various posts in the Rajasthan State and Subordinate Services under the 1999 Rules – Press Note issued on 10.07.14 cancelling the examination on account of certain irregularities – On 12.11.14, another Press Note was issued giving opportunity to the candidates to make corrections in their online application forms and change of category – Last date of submission of application forms was 31.07.13 and the preliminary examination was conducted on 26.10.13 – Respondents were serving in the Army on the last date of submission of form as also on the date of preliminary examination – One of the writ petitioners, retired on 31.07.14 but applied for change of status from General Category to Ex-servicemen Category in pursuance of the Press Note dtd. 12.11.14 – Change not accepted – Writ petitions filed – Dismissed holding that on the last date of submission of form the writ petitioner was not Ex-Servicemen and hence cannot be treated as such – Order set aside by Division Bench – Held: Press Note was issued only to allow the corrections or to change category in the application forms already submitted online – It was not issued for giving an opportunity to the candidates to apply afresh – Therefore, what could be corrected was the mistake or the category i.e. from General to any of the reserved category or vice-versa but not that a candidate who is not eligible in terms of advertisement issued on 18.06.13 becomes eligible under the guise of correction of mistakes – High Court erred in law in shifting the eligible date on the basis of Press Note which was restricted only for correction of mistakes or change of category – Order of the Division Bench

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set aside – Further, all the Army personnel appointed and joined in the category of Ex-servicemen in terms of the orders passed by the Division Bench will continue as such but, no other candidate will be appointed in terms of the order passed by the High Court – Rajasthan Civil Services (Absorption of Ex-servicemen) Rules, 1988 – r.6B – Constitution of India – Art.142 – Service Law. A

Rajasthan Civil Services (Absorption of Ex-servicemen) Rules, 1988 – Amendment, r.6B inserted on 21.05.19 – Operation and applicability of – Discussed. B

Allowing the appeals, the Court

HELD: 1. The Press Note was issued only to allow the corrections or to change category in the application forms already submitted online. Press Note was not issued for giving an opportunity to the candidates to apply afresh. Therefore, what could be corrected was the mistake or the category i.e. from General to any of the reserved category or vice-versa but not that a candidate who is not eligible in terms of advertisement issued on 18th June, 2013 becomes eligible under the guise of correction of mistakes. The High Court erred in law in shifting the eligible date on the basis of Press Note which was restricted only for correction of mistakes or change of category. An Army personnel who is retiring within forthcoming one year was not eligible prior to amendment on 21st May, 2019. It is only on 21st May, 2019, an Army personnel who is retiring within forthcoming one year becomes eligible to apply for the State Services. Such amendment has not been given retrospective effect nor such amendment is clarificatory amendment as it confers a new right to the personnel retiring within next one year for the first time. Thus, the order passed by the Division Bench cannot be sustained and is thus set aside. All those Army personnel who have been appointed and joined in the category of Ex-servicemen in terms of the orders passed by the Division Bench of the High Court will continue as such but no other candidate will be appointed in terms of the order passed by the High Court. [Paras 8-10][1096-H; 1097-A-F] C D E F G

- A CIVIL APPELLATE JURISDICTION: Civil Appeal No. 8146 of 2019.

From the Judgment and Order dated 09.10.2017 of the High Court of Judicature for Rajasthan at Jodhpur in D.B. Special Appeal Writ No. 818 of 2017.

- B With

Civil Appeal Nos. 8148-8149, 8147, 8150 of 2019.

- C Dr. Manish Singhvi, Sr. Adv., Satyendra Kumar, Shailja Nanda Mishra, Harsha Vinoy, Arpit Parkash, D. K. Devesh, Surya Kant, Pranav Vyas, Ms. Priyanka Tyagi, Kaustubh Anshuraj, Pankaj Mehta, Harshit Agarwal, Ms. Shweta Soni, Vikrant Singh Bais, Milind Kumar, Advs. for the appearing parties.

The Judgment of the Court was delivered by

- D **HEMANT GUPTA, J.**

E 1. The challenge in these appeals is to an order passed by the Division Bench of the High Court of Judicature for Rajasthan at Jodhpur on 26th May, 2017, which is the subject matter of Civil Appeal Nos. 8148-8149 of 2019 and the orders passed on different dates following the said order.

F 2. The brief facts leading to the present appeals are that an advertisement was published on 18th June, 2013 inviting applications for various posts in the Rajasthan State and Subordinate Services under the

- G Rajasthan State and Subordinate Services (Direct Recruitment by Combined Competitive Examination) Rules, 1999¹. Number of posts advertised were 233 in the State Services and 490 in the Subordinate Services. A corrigendum was issued on 24th June, 2013 increasing number of posts to 990. It was on 10th July, 2014, a Press Note was issued cancelling the examination on account of certain irregularities which

- H came to the notice of the Commission. On 12th November, 2014, another Press Note was issued, which has led to the present set of appeals. The Press Note gave an opportunity to the candidates to make corrections in their online application forms and change of category after payment of Rs.100/- . The said Press Note reads as under:

H ¹ for short, 'Rules'

“PRESS NOTE” A

That, an opportunity is given to the applicants, who have applied online for recruitment of Rajasthan Subordinate Service 2013 to correct the mistakes category change or make any other amendment in their application forms online.

The amendments can be done by paying Rs.100/- through e-mitra/ online Banking. The correction/ amendment can be done online on the website of the commission i.e. rpconline.rajasthan.gov.in from 13.11.2014 to 28.11.2014 (till midnight 12:00). Any written application for correction will not be accepted. Application for correction will not be accepted by the Commission after due date.

(N.K. Thakral)
Secretary”

3. The last date of submission of application forms was 31st July, 2013 and the preliminary examination was conducted on 26th October, 2013. The respondents, who shall hereinafter be called as writ petitioners, were serving in the Army on the last date of submission of application form as also on the date on which preliminary examination was held on 26th October, 2013. Laxman Singh, one of the writ petitioners, retired on 31st July, 2014 but applied for change of status from General Category to Ex-servicemen Category in pursuance of the Press Note dated 12th November, 2014. Since, such change was not accepted, writ petitions were filed. Writ petition filed by Laxman Singh was dismissed by the learned Single Bench on 9th November, 2016 holding as under:

“It is admitted fact that on 31.07.2013 which was last date of submission of application form petitioner was not Ex-servicemen and could only be treated in the category of OBC. Therefore, on 31.07.2013, petitioner was not Ex-servicemen, he cannot be considered as such. Therefore, action of the respondent to reject the candidature of the petitioner under the Ex-servicemen category cannot be faulted with. However, the petitioner be considered as per the merit list under the category of OBC.”

4. Such order was set aside in appeal on 26th May, 2017, *inter alia*, on the ground that the Press Note has the effect of shifting the date of eligibility. It was held as under:

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- A "The view taken by the learned Single Judge in the impugned decision that the two had yet to acquire the status of Ex-servicemen by the last date for filling the applications pursuant to the advertisement dated June 18, 2013, has overlooked the fact that on November 12, 2014 another advertisement was issued which would have the effect of shifting the date of eligibility norms acquiring to November 28, 2014."
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5. It is the said order or the orders following the said order are the subject matter of challenge in the present set of appeals.

- C 6. Learned counsel appearing on behalf of the Commission argued that the Press Note was issued giving an opportunity to the candidates to correct the mistakes consequent to cancellation of online examination process. The permissible corrections which can be made were category change i.e. from General to Scheduled Castes, Scheduled Tribes, Other Backward Classes, Ex-servicemen or vice-versa but a candidate who was not eligible on the last date of submission of application forms cannot be treated to be eligible only because the candidates were permitted to correct the mistakes and update their categories. It is argued that the Division Bench of the High Court was not justified in holding that the date of eligibility stand shifted in terms of the Press Note. It is further argued that the Press Note was not to invite fresh applications but only to make corrections in the application forms already submitted. Therefore, a candidate who is not eligible on the last date of submission of application cannot be treated to be eligible in the category of Ex-servicemen when the writ petitioners were in active service on the last date of submission of application forms.
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- F 7. Learned counsel for the respondents have referred to an amendment in the Rajasthan Civil Services (Absorption of Ex-servicemen) Rules, 1988, wherein Rule 6B has been inserted on 21st May, 2019. The amendment makes a candidate eligible to apply in the category of Ex-servicemen who is retiring within forthcoming one year.
- G Thus, it is contended that the intention of the Public Service Commission and the State when Press Note was issued was to provide an opportunity to the members of the Army who were retiring in the near future to compete for State Civil Services.
- H 8. We find merit in the argument raised by the learned counsel for the appellants. The Press Note was issued only to allow the corrections

or to change category in the application forms already submitted online. Press Note was not issued for giving an opportunity to the candidates to apply afresh. Therefore, what could be corrected was the mistake or the category i.e. from General to any of the reserved category or vice-versa but not that a candidate who is not eligible in terms of advertisement issued on 18th June, 2013 becomes eligible under the guise of correction of mistakes. We find that the High Court has erred in law in shifting the eligible date on the basis of Press Note which was restricted only for correction of mistakes or change of category.

9. We do not find any merit in the argument raised by the learned counsel for the respondents. In fact, such argument supports the argument raised by the appellants that an Army personnel who is retiring within forthcoming one year was not eligible prior to amendment on 21st May, 2019. It is only on 21st May, 2019, an Army personnel who is retiring within forthcoming one year becomes eligible to apply for the State Services. Such amendment has not been given retrospective effect nor such amendment is clarificatory amendment as it confers a new right to the personnel retiring within next one year for the first time. Thus, the order passed by the Division Bench cannot be sustained and is thus set aside.

10. We have been informed that in terms of order passed by the Division Bench of the High Court, certain candidates have been appointed and have joined the State services, though subject to the decision of the present proceedings. Therefore, in exercise of powers conferred under Article 142 of the Constitution of India, we order that all those Army personnel who have been appointed and joined in the category of Ex-servicemen in terms of the orders passed by the Division Bench of the High Court will continue as such but no other candidate will be appointed in terms of the order passed by the High Court.

11. The appeals are thus allowed.

Divya Pandey

Appeals allowed.