

GANGARAM

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v.

THE STATE OF RAJASTHAN

(Civil Appeal No.1690 of 2010)

JANUARY 24, 2019

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**[DR. DHANANJAYA Y CHANDRACHUD AND
HEMANT GUPTA, JJ.]**

Rajasthan Cinemas (Regulation) Rules, 1959 – r. 68(2), (2-A) – Advertisement issued inviting applications, inter alia, for one post of Projectionist, stipulating that the candidate must inter alia possess license for operating cinema projector – Appellant and the third respondent were the only candidates – Appellant appointed – Challenged by third respondent mainly on the ground that the appellant did not fulfil the qualifications as he did not possess license for cinema operator – Single Judge dismissed the writ petition – Division Bench quashed the appointment of the appellant – On appeal, held: r.68, sub-r. (2-A) of the 1959 Rules provides that an operator may obtain certificate from the Electrical Inspector, by presenting himself within period of three months from the date of his appointment – Sub-r. (2-A) of r. 68 does not require possession of license on date of appointment – Thus, acquisition within three months of the appointment is permissible – Appellant acquired the license after the date of his appointment – This amounts to a valid compliance with the express provisions of sub-r. (2-A) of r. 68 – After notice in the present proceedings was issued, status quo was directed to be maintained – Pending disposal of the appeal, the interim order was directed to continue – Consequently, the appellant has continued to work in the post of Projectionist since his appointment in Oct.1991 and is in service for the last 28 years – Division Bench in error in setting aside the appointment of the appellant – Judgment of the High Court set aside – Consequently, the writ petition filed by the third respondent stands dismissed.

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An advertisement was issued by the Principal and Controller of Dr. S.N. Medical College and Associated Group of Hospitals at Jodhpur, inviting applications, *inter alia*, for one post

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A of Projectionist. The advertisement stipulated that the candidate must *inter alia* possess license for operating cinema projector. Appellant and the third respondent were the only candidates. The appellant was appointed on the post of Projectionist. Third respondent challenged the appellant's appointment, by filing writ petition before the High Court, mainly on the ground that the
B appellant did not fulfil the qualifications as he did not possess the license for cinema operator. Single Judge dismissed the writ petition. Division Bench reversed the said order and quashed the appointment of the appellant. Hence, the present appeal.

C Allowing the appeal, the Court

HELD: 1.1 Sub-rule (2-A) of Rule 68, Rajasthan Cinemas (Regulation) Rules, 1959 provides that an operator may obtain a certificate from the Electrical Inspector, by presenting himself within a period of three months from the date of his appointment. Sub-rule (2-A) of Rule 68 does not require possession of a license
D on date of appointment. Acquisition within three months of the appointment is permissible under sub-rule (2-A). The appellant acquired the license after the date of his appointment. This amounts to a valid compliance with the express provisions of sub-rule (2-A) of Rule 68. [Para 13][1167-G-H; 1168-A]

E 1.2 Notice was issued in these proceedings on 7 July 2008 and status quo was directed to be maintained. Leave was granted on 8 February 2010 and, pending disposal of the appeal, the interim order was directed to continue. In consequence, the appellant has continued in service since the date of his
F appointment in October 1991 and is in service for the last 28 years. [Paras 9, 14][1168-B]

1.3 The Division Bench of the High Court was in error in setting aside the appointment of the appellant and interfering with the judgment of the Single Judge. The judgment of the High Court is set aside. In consequence, the writ petition filed |by
G the third respondent shall stand dismissed. [Paras 15, 16] [1168-B-D]

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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1690 of 2010 A

From the Judgment and Order dated 02.04.2008 of the High Court of Judicature for Rajasthan at Jodhpur in D.B. Civil Special Appeal No. 956 of 1999

Shekhar Prit Jha, Ms. Susmita Mahala, Ms. Himani Mishra, Advs. for the Appellant. B

G. P. Capt. Karan Singh Bhati, Ms. Vaidruti Mishra, Adarsh Tiwari, Milind Kumar, Ms. Ruchi Kohli, Advs. for the Respondents.

The Judgment of the Court was delivered by C

DR. DHANANJAYA Y. CHANDRACHUD, J.

1 . This appeal arises from a judgment of a Division Bench of the High Court of Judicature for Rajasthan at Jodhpur dated 2 April 2008.

2. In a Special Appeal, the Division Bench set aside the judgment of a learned Single Judge dated 5 August 1998. D

3. An advertisement was issued by the Principal and Controller of Dr. S.N. Medical College and Associated Group of Hospitals at Jodhpur on 26 August 1991 inviting applications, inter alia, for one post of Projectionist. E

4. The advertisement stipulated that the candidate must possess a higher secondary or equivalent qualification and a license for operating a cinema projector. The last date for filing application forms was 25 September 1991. The appellant and the third respondent were the only candidates. The appellant was appointed on the post of Projectionist. F

5. Both the appellant and the third respondent were interviewed on 10 October 1991. The appellant was placed at Sr. No. 1 of the select list. As a result, he was appointed.

6. A writ petition under Article 226 of the Constitution was filed by the third respondent before the High Court for challenging the appointment of the appellant. The main ground of challenge was that the appellant did not fulfill the qualifications because he did not possess a license for a cinema operator. G

7. The learned Single Judge dismissed the writ petition on the ground that the license for a cinema operator is not preceded by any H

A course of certification and is only a recognition of skill. According to the learned Single Judge, once the employer has made a due assessment of the skill of a candidate, the appointment is not vitiated. The writ petition was dismissed.

8. While reversing the judgment of the learned Single Judge, the Division Bench held that under the terms of the advertisement, applications were required to be received by 25 September 1991. The application in the opinion of the Division Bench should have been accompanied by necessary certificates establishing academic and technical qualifications. The Division Bench held that the appellant did not, together with his application, furnish any document showing that he held a license for operating cinema projectors. On this ground, the Division Bench came to the conclusion that the appellant was not qualified on the last date for the submission of applications. The appointment of the appellant was quashed and a direction was issued to consider the candidature of the third respondent on the basis of his eligibility on the relevant date and to give him an appointment if he is otherwise found suitable.

9. Notice was issued in these proceedings on 7 July 2008 and status quo was directed to be maintained. Leave was granted on 8 February 2010 and, pending disposal of the appeal, the interim order was directed to continue. In consequence, the appellant has continued to work in the post of Projectionist since his appointment on 22 October 1991.

10. The basic issue which falls for consideration is whether the appellant did or did not fulfill the requirement of holding a license for a cinema operator. The post for which the application was made was that of a projectionist.

11. The third respondent, who appears in person, has submitted before this Court that under Rule 68(2) of the Rajasthan Cinemas (Regulation) Rules, 1959, it is necessary to possess such a license.

12. In view of this submission, it is necessary to advert to the provisions of Rule 68. Rule 68 provides as follows:-

“68. Certification of operators- (1) During an exhibition the enclosure shall be in charge of a qualified operator of not less than 18 years of age, who holds a certificate granted by the Electric

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Inspector to the effect that he is competent to handle and operate a cinematograph. A

(2) An operator shall not be granted a certificate unless he –

(a) possesses a working knowledge of cinematograph machine and a particular technical knowledge of the type of machine which he is at the time employed in operating ; B

(b) is already conversant with the rules relating to cinematograph exhibitions and precautions against fire ;

(c) is acquainted with the most speedy and effective methods of dealing with fire ; C

(d) possesses a fine knowledge of the elements of electric power direct and alternating current, voltage and the like ; and

(e) is proficient in the handling winding, repairing and efficient cleaning of films ;

(2-A) An operator may obtain a certificate from the Electric Inspector having jurisdiction by presenting himself within a period of 3 months from the date of his appointment, before the said Inspector at his Headquarters or at any other place the Inspector can examine the operator. If for valid reasons the Inspector is not in a position to examine the applicant, he may extend the time limit not exceeding 2 months in writing to the applicant under intimation to the licensing authority. D E

(3) The Electric Inspector may, after issuing a notice to the operator and after considering his reply if any, withdraw a certificate granted by him, for the reasons to be recorded in writing. F

(4) In regard to the grant and withdrawal of certificate, the Electric Inspector shall act under the general supervision of the licensing authority.

(5) The fee for grant of a certificate shall be ten rupees and a duplicate copy thereof may be granted on payment of a fee of two rupees.” G

13. Sub-rule (2-A) of Rule 68 provides that an operator may obtain a certificate from the Electrical Inspector, by presenting himself within a period of three months from the date of his appointment. Sub-rule (2-A)

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A of Rule 68 does not require possession of a license on date of appointment. Acquisition within three months of the appointment is permissible under sub-rule (2-A). The appellant acquired the license after the date of his appointment. This amounts to a valid compliance with the express provisions of sub-rule (2-A) of Rule 68.

B 14. The appellant, as we have already noted, has continued in service since the date of his appointment in October 1991 and is in service for the last 28 years.

C 15. For the above reasons, we are of the view that the Division Bench of the High Court was in error in setting aside the appointment of the appellant and interfering with the judgment of the learned Single Judge.

D 16. For the reasons which we have indicated in the present judgment, we allow the appeal and set aside the judgment of the High Court dated 2 April 2008. In consequence, the writ petition filed by the third respondent shall stand dismissed.

17. However, there shall be no order as to costs.