

Alka Ojha vs Rajasthan Public Ser.Comm. & Anr on 25 August, 2011

Equivalent citations: AIR 2011 SUPREME COURT 3547, 2011 AIR SCW 4947, 2011 LAB. I. C. 4204, 2012 (1) AIR JHAR R 380, (2012) 1 MAD LJ 158, (2011) 1 SCT 102, (2011) 131 FACLR 593, 2011 (9) SCC 438, (2011) 9 SCALE 411, (2012) 1 SERVLJ 230

Bench: H.L. Dattu, G.S. Singhvi

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (C) NO.24020 OF 2011

(Arising out of CC No.13191 of 2011)

Alka Ojha

... Petitioner(s)

Versus

Rajasthan Public Service Commission and another

... Respondents

With

SPECIAL LEAVE PETITION (C) NOS.24021-24023 OF 2011

(Arising out of CC Nos.13504-13506 of 2011)

SPECIAL LEAVE PETITION (C) NO. 21462 OF 2011

SPECIAL LEAVE PETITION (C) NO. 22044 OF 2011

SPECIAL LEAVE PETITION (C) NO. 23039 OF 2011

O R D E R

1. The delay in filing SLP(C) CC Nos.13191 and 13504-13506 of 2011 is condoned.
2. The questions which arise for consideration in these petitions are whether the qualifications prescribed in the Rajasthan Transport Subordinate Service Rules, 1963 (for short, "the Rules") for the post of Motor Vehicle Sub-Inspector are mandatory and whether the petitioners, who were appointed as Motor Vehicle Sub-Inspectors in compliance of the direction given by the learned Single Judge of the High Court are entitled to continue in service despite reversal of the order of the learned Single judge by the Division Bench.
3. In response to advertisement dated 1.10.2001 issued by the Rajasthan Public Service Commission (for short, "the Commission"), the petitioners applied for appointment as Motor Vehicle Sub-Inspectors. The last date fixed for submission of the application was 19.11.2001. Although as on that date, none of the petitioners possessed driving licence authorising them to drive motor cycle, heavy goods vehicles and heavy passenger vehicles, all of them were provisionally allowed to take part in the written examination and the interview and their names were included in the select list prepared by the Commission. However, after final scrutiny of the papers the Commission cancelled the tentative selection of the petitioners on the ground that as on the last date fixed for submission of the application, they did not possess the required driving licence.
4. The writ petitions filed by the petitioners questioning the cancellation of their selection were allowed by the learned Single Judge, who referred to the qualifications specified in paragraph 13 of the advertisement and held that when the requirement of the educational qualifications could be relaxed, there was no justification to deny appointment to the petitioners on the ground that they did not have the required driving licence on the last date fixed for submission of the application.
5. The special appeals filed by the Commission were admitted by the Division Bench of the High Court but its prayer for interim stay was rejected with an observation that if any appointment is made, the same will be subject to the decision of the appeal. For the sake of reference, the relevant portions of order dated 26.10.2004 passed in D.B. Civil Special Appeal (Writ) No.494 of 2004 are extracted below:

"Heard learned counsel for the parties.

Admit.

Heard learned counsel for the parties on the stay application also.

Considering the submissions, no case is made out for stay. Consequently, the stay application stands rejected. However, it is also made clear that if any appointment on the post of Motor Vehicle Sub Inspector is made, that will be subject to the decision

of this appeal.

List the appeal itself for hearing in the month of December, 2004, as prayed for."

6. When the special appeals were taken up for hearing, the Division Bench noticed that in R.P.S.C. v. Shri Manish Thakur another Division Bench had adversely commented upon the order of the learned Single Judge and referred the matter to the larger Bench for deciding the following question:

"Whether as per the educational qualifications mentioned in clause 13 of the advertisement, the driving licence and experience should be possessed by the candidate on the last date of filing the application or on or before the date of interview?"

7. The Full Bench of the High Court referred to the relevant provisions of the Rules, the judgments of this Court in U.P. Public Service Commission, U.P. v. Alpana (1994) 2 SCC 723, Ashok Kumar Sharma v. Chander Shekhar (1997) 4 SCC 18 and held:

".....In reference to aforesaid legal position, if rules and advertisement are looked into, then it becomes clear that so far as required educational eligibility is concerned, a candidate appearing in last year examination or has already appeared, can apply for selection, subject to possessing educational certificates on or before the date of interview. Thus, in view of the facts and legal position, the eligibility date for educational qualification being provided not only under the rules but also in advertisement, accordingly it has to be taken the date of interview. So far as experience and driving licence are concerned, it is provided under the heading of "Qualification for Direct Recruitment", if schedule appended to the Rules is looked into, however, contrary to statutory rules heading given under Para 13 of advertisement is 'educational qualification'. In view of aforesaid, firstly it is only the statutory rules and not the condition in the advertisement, will govern the subject because anything contrary to statutory rules cannot be accepted or given effect to which ultimately violates the statutory rules. This is only to clarify the confusion kept in mind by candidates from heading of clause 13 of advertisement. Since schedule provides heading "Qualification for Direct Recruitment", which includes driving licence, experience and educational qualification, thus there are 3 different requirements for candidates to become eligible and out of which for educational qualification, a separate cut off date has been given under the rules as well as in the advertisement whereas rules as well as advertisement are silent regarding cut off date to possess experience and driving licence. As per legal proposition referred above, it can be only the last date of submission of application. Thus, in our view, Division Bench of this Court in case of Rajasthan Public Service Commission and another v. Shri Manish Thakur has rightly settled the issue. It is, however, made clear that there can be different cut off dates for eligibility criteria, which exist even if interpretation given by learned counsel for parties are accepted. Under the Rules of 1963, eligibility

in regard to age is the first day of January following the last date fixed for application. As against cut off date of age, a different cut off date has been given for other eligibility, thus it is not necessary that one and same cut off date has to be provided for all eligibility.

In view of aforesaid, our answer to reference is that as per clause 13 of advertisement, driving licence and experience are required to be possessed by the candidates on the last date of submission of the application forms and not on or before the date of interview."

(emphasis supplied)

8. After the judgment of the Full Bench, the special appeals were placed before the Division Bench for final disposal. The Division Bench referred to the definitions of the terms 'driving licence' and 'learner's licence' contained in Section 2(10) and 2(19) of the Motor Vehicles Act, 1988 (for short, "the Act"), order dated 20.5.2004 passed in D.B. Civil Special Appeal No.252 of 2003 and held that the respondents (petitioners herein), who did not possess one of the prescribed qualifications i.e., the driving licence as on the last date fixed for submission of the application, were not eligible to be considered for selection. However, the Division Bench accepted the prayer made on behalf of the petitioners that they be allowed to participate in the process of fresh selection by providing relaxation in age and directed the Commission to complete the process of fresh selection within three months. The Division Bench also directed that for a period of three months status quo shall be maintained with regard to those who are in service.

9. S/Shri P.P. Rao, S.P. Sharma, Colin Gonsalves and Rakesh K. Khanna, learned senior counsel appearing for the petitioners argued that the High Court's interpretation of the qualifications specified in the Schedule appended to the Rules is erroneous and the petitioners were wrongly treated ineligible because on the date of interview they were having all the qualifications including the driving licence. Shri S.P. Sharma further argued that the requirement of having the driving licence cannot be treated as mandatory because the same is not imperative for discharging the duties of Motor Vehicle Sub-Inspector and the candidates who had obtained learner's licence before the last date fixed for submission of the application are entitled to be appointed because such licence authorised them to drive motor cycle etc. Shri Rakesh K. Khanna supported the argument of Shri S.P. Sharma and pointed out as per the definition of 'learner's licence', the licensee is authorised to drive a motor vehicle of the specified class or description. Shri Rakesh K. Khanna also produced xerox of the learner's licence of Sanjay Kumar (petitioner in SLP(C) No. 22044/2011) to show that by virtue of that licence, he was entitled to drive heavy goods vehicles. Shri P.P. Rao and other learned senior counsel then argued that even if this Court is inclined to approve the impugned judgment, the petitioners should be allowed to continue in service because the provisions contained in the Schedule appended to the Rules were vague and only after the judgment of the Full Bench, it became clear that for being treated eligible, the candidate must possess driving licence on the last date fixed for submission of the application. Learned counsel submitted that it will be extremely harsh for the petitioners to be thrown out of service after they have served for five years and have crossed the upper age limit prescribed for other posts. In the end, learned counsel submitted that

the order of status quo passed by the Division Bench may be extended because the Commission has not been able to make fresh selection for the post of Motor Vehicle Sub-Inspector.

10. On 19.8.2011, the Court had, while reserving order in SLP(C) Nos.21462, 22044 and 23039 of 2011 permitted the learned counsel for the petitioners to furnish to the Court Master copies of the licence which their clients possessed on the date of application. Taking advantage of the liberty given by the Court, Ms. Jyoti Mendiratta, learned counsel appearing for the petitioner in SLP(C) No. 21462/2011 made available photostat copies of the learner's licences (Annexures A-1 to A-3) issued to her client. Shri Nikilesh Ramachandran, learned counsel representing the petitioner in SLP(C) No. 22044/2011 filed affidavit of his client along with xerox copy of learner's licence issued in his favour.

11. For deciding the questions framed in the opening paragraph of this order, it will be useful to notice Rule 11 and the relevant extracts of the Schedule appended to the Rules. The same are as under:

"11. Academic and Technical qualifications. - A candidate for direct recruitment to the post specified in the Schedule shall possess (1) the qualification given in column 4 of the Schedule, and (2) "Working knowledge of Hindi written in Devnagri script and knowledge of Rajasthani culture."

SCHEDULE Name of Source of Qualification Post from Minimum Post Recruitment for Direct which experience with recruitment appointment and qualifi-

	percentage	by	
			promotion is requ
			to be made p
2. Motor Vehicle Sub-Inspector	25% by promotion 75% by direct recruit-	1. Must have passed Secondary Examination of a recognized Board; and	

ment 3. A Diploma in
Automobile
Engineering (3
years' course) or
a diploma in
Mechanical
Engineering
awarded by the
State Board of
Technical
Examination (3
years' course)

OR

Any qualification
in either of the
above disciplines
declared
equivalent by the
Central
Government of
State Government;
and

3. Working
experience of at
least one year in a

reputed

Automobile

Workshop which

undertakes repairs

of both light

motor vehicle,

heavy goods

vehicles and

heavy passenger

motor vehicles

fitted with petrol

and diesel

engines; and

4. Must hold a

driving licence

authorising him to

drive Motor cycle,

heavy goods

vehicles and

heavy passenger

vehicles. Nothing

contained in this

Notification shall

apply to persons
whose names were
under
consideration for
appointment to the
post of Inspector
of Motor Vehicles
or Assistant
Inspector of Motor
Vehicles (by
whatever names
called by the State
Government prior
to first day of July,
1989 or to an
officer appointed
to such post before
the first day of
July, 1989 or to an
officer appointed
to discharge
functions of a non-
technical nature."

(emphasis supplied)

12. Paragraph 13 of the advertisement issued by the Commission, which is also relevant for deciding the issue raised by the petitioners reads thus:

"13. Educational Qualification:-

(A)(1) Passed Secondary Examination from any recognized Board.

(2) Awarded by the State Technical Education Board -

Diploma in Automobile Engineering (3 years' course) Or Diploma in Mechanical Engineering (3 years' course) Or Any qualification in either of the above disciplines declared equivalent by the Central Government or State Government; and (3) Working experience of at least one year in a reputed Automobile Workshop which undertakes repairs of both light motor vehicles, heavy goods vehicles and heavy passenger motor fitted with petrol and diesel engines; and (4) Must hold a driving licence authorizing him to drive Motor Cycle, heavy goods vehicles and heavy passenger vehicles.

But, such candidate who appeared in the final year of the course for such educational qualification sought for as per the Rules or is going to appear in such examination, will be eligible to submit application but he has to submit the certificate passing the specified qualification before the interview.

(5) Working knowledge of Hindi written in Devnagri script and the knowledge of the culture of Rajasthan."

(emphasis supplied)

13. The use of word "shall" in Rule 11 makes it clear that the qualifications specified in the Schedule are mandatory and a candidate aspiring for appointment as Motor Vehicle Sub-Inspector by direct recruitment must possess those qualifications and must have working knowledge of Hindi written in Devnagri script and knowledge of Rajasthani culture. A conjoint reading of Rule 11, the relevant entries of the Schedule and paragraph 13 of the advertisement shows that a person who does not possess the prescribed educational and technical qualifications, working experience and a driving licence authorizing him to drive motor cycle, heavy goods vehicles and heavy passenger vehicles cannot compete for the post of Motor Vehicle Sub-Inspector.

14. The question whether the candidate must have the prescribed educational and other qualifications as on the particular date specified in the Rule or the advertisement is no longer res integra. In *Bhupinderpal Singh v. State of Punjab* (2000) 5 SCC 262, this Court referred to the earlier judgments in *A.P. Public Service Commission v. B. Sarat Chandra* (1990) 2 SCC 669, *District Collector and Chairman, Vizianagaram Social Welfare Residential School Society v. M. Tripura Sundari Devi* (1990) 3 SCC 655, *M.V. Nair (Dr.) v. Union of India* (1993) 2 SCC 429, *Rekha*

Chaturvedi v. University of Rajasthan 1993 Supp. (3) SCC 168, U.P. Public Service Commission, U.P., Allahabad v. Alpana (supra) and Ashok Kumar Sharma v. Chander Shekhar (supra) and approved the following proposition laid down by the Punjab and Haryana High Court:

"..... that the cut off date by reference to which the eligibility requirement must be satisfied by the candidate seeking a public employment is the date appointed by the relevant service rules and if there be no cut off date appointed by the rules then such date as may be appointed for the purpose in the advertisement calling for applications and that if there be no such date appointed then the eligibility criteria shall be applied by reference to the last date appointed by which the applications have to be received by the competent authority."

The same view was reiterated in M.A. Murthy v. State of Karnataka (2003) 7 SCC 517 and Ashok Kumar Sonkar v. Union of India (2007) 4 SCC 54. Therefore, the Full Bench of the High Court rightly held that a candidate who does not possess driving licence on the last date fixed for submission of the application is not eligible to be considered for selection.

15. Unfortunately, the learned Single Judge decided the writ petitions without even advertng to Rule 11, the relevant entries of the Schedule and paragraph 13 of the advertisement and issued direction which amounted to amendment of the Rules framed under Article 309 of the Constitution. This was clearly impermissible. Therefore, the Division Bench of the High Court rightly set aside the direction given by the learned Single Judge, which facilitated appointment of the petitioners despite the fact that they were not eligible to be considered for selection.

16. We may now deal with the argument of Shri S.P. Sharma and Shri Rakesh K. Khanna that the learner's licence possessed by the petitioners was sufficient to make them eligible for appointment as Motor Vehicle Sub- Inspector. The definitions of 'driving licence' and 'learner's licence', as contained in Section 2(10) and 2(19) of the Act, read as under:

"2(10) "driving licence" means the licence issued by a competent authority under Chapter II authorising the person specified therein to drive, otherwise than as a learner, a motor vehicle or a motor vehicle of any specified class or description 2(19) "learner's licence" means the licence issued by a competent authority under Chapter II authorising the person specified therein to drive as a learner, a motor vehicle or a motor vehicle of any specified class or description"

17. Sections 3, 8(1), (5) and (6), 9(1), (4), (5), (6) and (7) and 10 of the Act, which too have bearing on the decision of the question whether learner's licence is at par with driving licence and a person having learner's licence is eligible for appointment as Motor Vehicle Sub-Inspector under the Rules read as under:

"3. Necessity for driving licence. - (1) No person shall drive a motor vehicle in any public place unless he holds an effective driving licence issued to him authorising him to drive the vehicle; and no person shall so drive a transport vehicle other than a

motor cab or motor cycle hired for his own use or rented under any scheme made under sub-section (2) of section 75 unless his driving licence specifically entitles him so to do. (2) The conditions subject to which sub-section (1) shall not apply to a person receiving instructions in driving a motor vehicle shall be such as may be prescribed by the Central Government.

8. Grant of learner's licence - (1) Any person who is not disqualified under section 4 for driving a motor vehicle and who is not for the time being disqualified for holding or obtaining a driving licence may, subject to the provisions of section 7, apply to the licensing authority having jurisdiction in the area-

(i) in which he ordinarily resides or carries on business, or

(ii) in which the school or establishment referred to in section 12 from where he intends to receive instruction in driving a motor vehicle is situate, for the issue to him of a learner's licence.

(5) No learner's licence shall be issued to any applicant unless he passes to the satisfaction of the licensing authority such test as may be prescribed by the Central Government. (6) When an application has been duly made to the appropriate licensing authority and the applicant has satisfied such authority of his physical fitness under sub-section (3) and has passed to the satisfaction of the licensing authority the test referred to in sub-section (5), the licensing authority shall, subject to the provisions of section 7, issue the applicant a learner's licence unless the applicant is disqualified under section 4 for driving a motor vehicle or is for the time being disqualified for holding or obtaining a licence to drive a motor vehicle:

Provided that a licensing authority may issue a learner's licence to drive a motor cycle or a light motor vehicle notwithstanding that it is not the appropriate licensing authority, if such authority is satisfied that there is good reason for the applicant's inability to apply to the appropriate licensing authority.

9. Grant of driving licence. - (1) Any person who is not for the time being disqualified for holding or obtaining a driving licence may apply to the licensing authority having jurisdiction in the area -

(i) in which he ordinarily resides or carries on business, or

(ii) in which the school or establishment referred to in section 12 from where he is receiving or has received instruction in driving a motor vehicle is situated. for the issue to him of a driving licence.

(4) Where the application is for a licence to drive a transport vehicle, no such authorisation shall be granted to any applicant unless he possesses such minimum educational qualification as may be prescribed by the Central Government and a driving certificate issued by a school or establishment referred to in section 12.

(5) Where the applicant does not pass the test, he may be permitted to reappear for the test after a period of seven days:

Provided that where the applicant does not pass the test even after three appearances, he shall not be qualified to re-appear for such test before the expiry of a period of sixty days from the date of last such test.

(6) The test of competence to drive shall be carried out in a vehicle of the type to which the application refers:

Provided that a person who passed a test in driving a motor cycle with gear shall be deemed also to have passed a test in driving a motor cycle without gear.

(7) When any application has been duly made to the appropriate licensing authority and the applicant has satisfied such authority of his competence to drive, the licensing authority shall issue the applicant a driving licence unless the applicant is for the time being disqualified for holding or obtaining a driving licence:

Provided that a licensing authority may issue a driving licence to drive a motor cycle or a light motor vehicle notwithstanding that it is not the appropriate licensing authority, if the licensing authority is satisfied that there is good and sufficient reason for the applicant's inability to apply to the appropriate licensing authority:

Provided further that the licensing authority shall not issue a new driving licence to the applicant, if he had previously held a driving licence, unless it is satisfied that there is good and sufficient reason for his inability to obtain a duplicate copy of his former licence.

10. Form and contents of licences to drive. - (1) Every learner's licence and driving licence, except a driving licence issued under section 18, shall be in such form and shall contain such information as may be prescribed by the Central Government.

(2) A learner's licence or, as the case may be, driving licence shall also be expressed as entitling the holder to drive a motor vehicle of one or more of the following classes, namely:-

(a) motor cycle without gear;

(b) motor cycle with gear;

(c) invalid carriage;

(d) light motor vehicle;

(e) transport vehicle;

(i) road-roller;

(j) motor vehicle of a specified description."

18. A reading of the two definitions brings out stark difference between the two types of licences. 'Driving licence' issued by the competent authority under Chapter II authorises a person to drive a motor vehicle or a motor vehicle of any specified class or description otherwise than as a learner and 'learner's licence' authorises a person specified therein to drive as a learner a motor vehicle or a motor vehicle of any specified class or description. It is thus evident that a person who is granted 'learner's licence' is entitled to drive a motor vehicle or a motor vehicle of any specified class or description only as a learner and he cannot be treated as a person to whom 'driving licence' defined under Section 2(10) has been issued. Though, there is some similarity in the language of Section 8 which regulates the grant of 'learner's licence' and Section 9 which regulates the grant of 'driving licence', the very fact that the legislature has thought it proper to make separate provisions for grant of two types of licences leads to an irresistible conclusion that a person holding 'learner's licence' cannot be treated at par with a person having 'driving licence' authorised to drive motor cycle, heavy goods vehicles and heavy passengers vehicles. Section 3 of the Act, which is mandatory in character also lays down that a person shall not drive a motor vehicle in any public place unless he holds an effective driving licence. Surely, learner's licence cannot entitle a person to claim that he holds an effective driving licence. Therefore, the mere fact that the petitioners possessed learner's licence on the date of application was not sufficient to make them eligible to compete for selection.

19. The judgment in National Insurance Co. Ltd. v. Swaran Singh (2004) 3 SCC 297 (paras 93 and 94) on which reliance was placed by Shri Rakesh K. Khanna has no bearing on the interpretation of Rule 11 read with the entries contained in the Schedule and it is not possible for this Court to rewrite the rule so as to enable the persons holding learner's licence to compete for appointment as Motor Vehicle Sub-Inspector.

20. We shall now consider the question whether despite reversal of the order passed by the learned Single Judge by the Division Bench of the High Court, the petitioners can continue in service. The submission of the learned counsel that this Court should invoke Article 142 of the Constitution and direct the competent authority to allow the petitioners to continue in service because they have already completed more than 5 years' service sounds attractive but lacks merit. In our view, the power under Article 142 cannot be exercised for conferring legitimacy to the appointment of the petitioners, who, as held hereinabove, were not eligible to be considered for selection. The Commission had provisionally allowed the petitioners to take part in the written test and the interview, but their tentative selection was cancelled because at the stage of final scrutiny, it was found that they did not possess one of the prescribed qualifications i.e. driving licence authorising them to drive motor cycle, heavy goods vehicles and heavy passenger vehicles. Notwithstanding this, the competent authority was compelled to appoint the petitioners because while entertaining the special appeals, the Division Bench of the High Court declined to stay the direction given by the learned Single Judge. If the course suggested by the learned counsel for the petitioners is adopted, then every illegal appointment will get regularized by judicial fiat and those who are eligible and more meritorious will be deprived of their constitutional right to be fairly considered for selection

and appointment against the advertised posts. The judgments of this Court in *Dr. M.S. Mudhol v. S.D. Halegkar* (1993) 3 SCC 591, *Rekha Chaturvedi v. University of Rajasthan* (supra), *Bhupinderpal Singh v. State of Punjab* (supra) and other similar judgments cannot be pressed into service for issuing a direction for the petitioners' continuance in service because in those cases, the selection and/or appointments were made otherwise than by judicial intervention and this Court held that the candidate should not suffer due to the fault of the public authorities.

21. A half-hearted attempt was made by Shri Rakesh K. Khanna, learned counsel appearing for the petitioner in SLP(C) No.22044 of 2011 to draw solace from the last line contained in order dated 29.6.2011 passed by the Division Bench of the High Court in D.B. Civil Special Appeal (Writ) No.494 of 2004 wherein it was observed that the question of regularisation has to be considered by the RPSC/State Government. In this context, it is sufficient to observe that there is no provision in the Rules under which the Commission or the State Government can regularise the appointment of a person, who was not eligible to compete for selection.

22. In the result, the special leave petitions are dismissed. However, keeping in view the statement of the learned senior counsel appearing for the petitioners that the Commission has not completed the process of selection for fresh recruitment of Motor Vehicle Sub-Inspectors, we direct the Commission to do the needful within a period of next 4 months. Till then, the petitioners shall be allowed to continue in service. The Secretary of the Commission shall send a report to the High Court about compliance of the directions given by the Division Bench and this Court for completing the process of selection.

23. It is needless to say that the order of status quo passed by the High Court and the direction given by this Court for the petitioners' continuance in service will not enure to their advantage and the Commission shall make selection without being influenced by those orders.

24. Copies of this order be sent to the Secretary, Rajasthan Public Service Commission, Ajmer and Transport Commissioner, Rajasthan, Jaipur by fax.

.....J (G.S. Singhvi)J (H.L. Dattu) New Delhi August 25, 2011.