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2023 SCeJ 0153

Rajendra Kumar Shrivastava v. State of Madhya Pradesh

SUPREME COURT OF INDIA

M.R. SHAH, C.T. RAVIKUMAR

Rajendra Kumar Shrivastava v. State of Madhya Pradesh & Ors.

CIVIL APPEAL NO. 1514 OF 2023

13.03.2023

Appointment in Higher Judiciary/ Writ Petition - On and from 1.1.2011, only 10% seats in Higher Judiciary to be filled up by limited departmental competitive (LDC) examination - Any appointment beyond 10% considered appointment excess in quota.

Constitution of India, Art.226 - Madhya Pradesh Higher Judicial Services (Recruitment and Conditions of Services) Rules (1994), R.5(1)(b) - Writ petition - Seeking cancellation of appointments made in Higher Judiciary, in excess of 10% quota, reserved for departmental competitive examination (LDC) - On and from 1.1.2011, only 10% seats are to be filled up by limited departmental competitive examination - Any appointment beyond 10% seats filled up by limited departmental competitive examination therefore shall have to be considered appointment excess in quota - The High Court of Madhya Pradesh is hereby directed to act as per the directions issued by this Court in the case of All India Judges' Association (supra), more particularly directions contained in paragraphs 8 & 9 of the said decision and is directed to see that 10% seats are filled up by limited departmental competitive examination on and from 1.1.2011 and if it is found that in any recruitment subsequent to 1.1.2011, the 10% quota is breached, all such posts shall be adjusted in the future recruitments. All India Judges' Association, [(2010) 15 SCC 170], (2010) 15 SCC 170 Foll. [Paras 7, 8, 9, 10]

Held, , in the year 2017, there were 740 sanctioned posts. Therefore, 74 seats were to be filled up by limited departmental competitive examination against which 78 posts were filled up by limited departmental examination. Thereafter, further 11 posts were advertised, out of which 5 posts were filled up. The result would be that the posts were filled up by limited departmental competitive examination beyond 10% seats quota for limited

departmental competitive examination. As observed hereinabove and as directed by this Court, 10% seats were required to be filled up by limited departmental competitive examination w.e.f. 1.1.2011 and any recruitment made from 1.1.2011 onwards. Therefore, the High Court has to undertake the exercise from 1.1.2011 adjusting the posts and if any appointments are found to have been made beyond 10% seats in a particular recruitment, the same shall have to be adjusted in future recruitment.

So far as challenge to the appointments made in excess of the quota under limited departmental competitive examination since 2007 and the appointments made in the year 2017/2018, no relief can be granted to the original writ petitioners in absence of those selected/appointed candidates.

Cases Cited :

Paras 2, 3, 5, 6, 9, 10: All India Judges' Association and Others Vs. Union of India and Others, reported in (2010) 15 SCC 170

Petitioner Counsel: ASHUTOSH GARG, Respondent Counsel: MRINAL GOPAL ELKER

JUDGEMENT

M.R. SHAH, J. - . Feeling aggrieved and dissatisfied with the impugned judgment and order dated 23.02.2018 passed by the High Court of Madhya Pradesh, Principal Seat at Jabalpur in Writ Petition No. 3190/2018, by which the High Court has dismissed the said writ petition by holding that the original writ petitioners are not entitled to seek a writ of quo warranto, the original writ petitioner No.1 has preferred the present appeal.

2. Before the High Court, the original writ petitioners prayed for the following reliefs:

A. It is, therefore, prayed that this Hon'ble Court may kindly be pleased to call the entire record of the appointments of the Quota under limited competitive examination since 2007 and pursue it and quash the impugned order dated 19.01.2018 (Annex. P-11) and 25.01.2018.

B. It is therefore, prayed that this Hon'ble Court may kindly be pleased to cancel the appointments Exceeds 10% of Quota of the candidates to appointed through limited competitive examination u/r 5(1)(b) of rules 1994, since 2007 to 2017 exceeds the limit of 10% quota as fixed by Hon'ble Supreme Court and direct to filled up the seats with regular promotion.

C. It is therefore, prayed that this Hon'ble Court may kindly be pleased to direct to the respondents to make the necessary amendment in rule 5(1) (b) of the rules 1994 and reduce the limit from 25% to 10% appointment in limited competitive examination so that Hon'ble Apex Court order dated 20.04.2010 passed in All India Judges Association and others V/s Union of India and others may be compliance.

D. The Hon'ble Court may kindly direct to the initiate departmental enquiry, against the

authority who deliberately disobeyed the order of the Hon'ble Supreme Court and with regard to not following the quota limit of 10% u/r 5(1)(b) of rules of 1994 with regard to limited competitive examination, and punish to them an accordance with law.

E. Any other relief as deemed fit and proper in the circumstances of this case, along with the cost of this writ petition be also awarded.

3. Before the High Court, it was the case on behalf of the original writ petitioners that despite the directions issued by this Court in the case of All India Judges' Association and Others v. Union of India and Others, reported in (2010) 15 SCC 170, directing all the High Courts to fill up the posts in the higher judiciary by reserving 10% seats to be filled up by limited departmental competitive examination, the High Court of Madhya Pradesh has exceeded the quota and has filled up the posts in the higher judiciary beyond 10% quota. It is/was the case on behalf of the original writ petitioners that despite the specific direction issued by this Court directing all the High Courts to see that the existing Service Rules be amended positively with effect from 1.1.2011, the High Court of Madhya Pradesh did not amend the rules providing 10% seats to be filled up by limited departmental competitive examination.

4. By the impugned judgment and order and despite the fact that the aforesaid reliefs were prayed by the original writ petitioners, the High Court has considered that the original writ petitioners have prayed for a writ of quo warranto. The aforesaid reliefs cannot be said to be the reliefs of a writ of quo warranto. However, instead of remanding the matter to the High Court, we ourselves have considered the matter and the issues on merits.

5. Learned counsel appearing on behalf of the High Court has submitted that initially in the year 2005, the High Court did amend the Recruitment Rules, however, the same came to be set aside by the High Court and the matter reached to this Court and thereafter after conclusion of the proceedings before this Court in the year 2018, the High Court amended the Recruitment Rules in line with the directions issued by this Court in the case of All India Judges' Association (supra).

5.1 Learned counsel appearing on behalf of the High Court has also further submitted that in absence of the selected/appointed candidates, no relief can be granted by quashing and setting aside the appointments made in excess of the quota beyond 10%.

6. Heard learned counsel for the respective parties at length.

This Court in the case of All India Judges' Association (supra) specifically directed that from the date of the said judgment, there shall be 25% of seats for direct recruitment from the Bar, 65% of seats are to be filled up by regular promotion of Civil Judge (Senior Division) and 10% seats are to be filled up by limited departmental competitive examination. This Court also further directed that if the candidates are not available for 10% seats, or are not able to qualify in the examination then vacant posts are to be filled up by regular promotion in accordance with the Service Rules applicable. This Court also further directed that all the High Courts to take steps to see that existing Service Rules be amended positively with effect from 1.1.2011. This Court also further directed that if the Rules are not suitably

amended, the said order shall prevail and further recruitment from 1.1.2011 shall be continued accordingly as directed.

7. Therefore, as per the directions issued by this Court in the aforesaid decision, on and from 1.1.2011, only 10% seats are to be filled up by limited departmental competitive examination. Any appointment beyond 10% seats filled up by limited departmental competitive examination therefore shall have to be considered appointment excess in quota.

8. In the present case, in the year 2017, there were 740 sanctioned posts. Therefore, 74 seats were to be filled up by limited departmental competitive examination against which 78 posts were filled up by limited departmental examination. Thereafter, further 11 posts were advertised, out of which 5 posts were filled up. The result would be that the posts were filled up by limited departmental competitive examination beyond 10% seats quota for limited departmental competitive examination. As observed hereinabove and as directed by this Court, 10% seats were required to be filled up by limited departmental competitive examination w.e.f. 1.1.2011 and any recruitment made from 1.1.2011 onwards. Therefore, the High Court has to undertake the exercise from 1.1.2011 adjusting the posts and if any appointments are found to have been made beyond 10% seats in a particular recruitment, the same shall have to be adjusted in future recruitment.

9. So far as challenge to the appointments made in excess of the quota under limited departmental competitive examination since 2007 and the appointments made in the year 2017/2018, no relief can be granted to the original writ petitioners in absence of those selected/appointed candidates.

At this stage, learned counsel appearing on behalf of the High Court has strongly opposed the locus of original writ petitioners by submitted that original writ petitioner No.1 – appellant herein was a suspended judicial officer who subsequently came to be compulsorily retired. However, without further opining on the locus of the original writ petitioners, we have considered the matter on merits in light of the decision of this Court in the case of All India Judges’ Association (supra).

10. In view of the above and for the reasons stated above, the present appeal stands disposed of by directing as under:

The High Court of Madhya Pradesh is hereby directed to act as per the directions issued by this Court in the case of All India Judges’ Association (supra), more particularly directions contained in paragraphs 8 & 9 of the said decision and is directed to see that 10% seats are filled up by limited departmental competitive examination on and from 1.1.2011 and if it is found that in any recruitment subsequent to 1.1.2011, the 10% quota is breached, all such posts shall be adjusted in the future recruitments.

11. The instant Civil Appeal stands disposed of in the aforesaid terms. No costs.