

PETITIONER:
STATE OF RAJASTHAN

Vs.

RESPONDENT:
R. DAYAL & ORS.

DATE OF JUDGMENT: 17/02/1997

BENCH:
K. RAMASWAMY, G.T. NANAVATI

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

Leave granted.

This appeal by special leave arises from the judgement of the Division Bench of the Rajasthan High Court, Jaipur Bench, made on August 30, 1996 in Writ Petition No. 3759/95.

The admitted position is that for nine vacancies existing and anticipated as on April 1, 1995, the Departmental Promotion Committee (for short, the "DPC") was convened including respondent Nos. 12 and 13, viz., B.S. Bhatnagar and H.L. Meena (ST) respectively. The other respondents filed the writ petition in the High Court impugning their appointments based on Rule 24-A of the Rajasthan Service of Engineers (Building and the Roads Branch) Rules, 1954 (as amended) (for short, the 'Rules'). The only question is : whether the appointment of the said respondents, viz., B.S. Bhatnagar and H.L. Meena, is made in accordance with the Rules.

Shri Aruneshwar Gupta, learned counsel appearing for the State, contends that under Rules 9 of the Rules, subject to the provision therein, the appointing authority shall determine as on the first day of the financial year, i.e., commencing from 1st April of ensuing year and ending with 31st March of successive year, the number of vacancies, actual or anticipated, occurring during the financial year. They are required to be considered by the DPC constituted in that behalf as per the criteria prescribed in Rule 23 of the Rules. In accordance therewith, for the nine existing and anticipated vacancies, the DPC considered the claims of all the eligible candidates, as per the Rules then existing and selected them. A list of selected candidates is contained in the minutes of the DPC held on April 13, 1995. As per the criteria then existing, B.S. Bhatnagar (General) and H.L. Meena (Reserved), were selected on merit. As a consequence, they were appointed by promotion in accordance with the Rules, though Rule 23-A and Rule 24-A came to be introduced by statutory amendment w.e.f. July 24, 1995. Shri Jayant Das, learned senior counsel appearing for respondent No.13, promotee-respondent, contends that under Rule 23 of the Rules, the criteria prescribed as on the date of the selection by the DPC is required to be applied. Since the

existing criteria had been applied, their selection was correct in law. Consequently, the vacancies which arise during that financial year were required to be filled up from amongst the respondents.

Shri P.P. Rao, learned senior counsel appearing for the contesting respondents, who had filed the writ petition, contends that in view of the fact that amendment of Rules has been made effective by clause 1 (ii) with immediate effect, the amended Rules having come into force from July 24, 1995, public policy demands and the Government is required to apply the criteria prescribed in the amended law. It should be applied as indicated in column in Rule 2(iii) thus:

"2.(iii) in column numbers 2 and 4 against serial No.2 after the words "Addl.Chief Engineer" and "Superintending Engineers" the expression "(Civil)" shall be added and in column No.5 the following new entry shall be inserted:-

"Must hold a degree in Engineering (Civil) of a University established by law in India or qualification declared equivalent thereto by Government with 5 years service as Superintending Engineer (Civil)"

(iv) After serial number 2, the following new serial number and entries thereto shall be inserted, namely :-

1	2.	3.	4.	5	6	7.
"2-A	Addl. Chief (Mechanical)	100% by promotion	Superintending Engineer (Mechanical)		Must hold a degree in Engineering (Mechanical) of a University established by law in India or qualification declared equivalent thereto by Government with 5 years service as Superintending Engineer (Mechanical)".	

As a consequence, any appointment made as on that should be consistent with the above Rule. In support thereof, he placed reliance on the decision of this Court in V.V. Rangaiah vs. J. Sreenivasa Rao [(1983) 3 SCC 284].

The question, therefore, is: whether the view taken by the High Court in the impugned judgment is correct in law? It is true, as contended by Shri Aruneshwar Gupta, that the determination of vacancies is required to be done under Rule 9 of the Rules and the selection has to be made in accordance with the criteria prescribed under Rule 23 of the Rules. Even Rule 23-A of the Rules prescribes the same procedure and the criteria thereunder was also followed. The revised criteria of eligibility and procedure for promotion of the officers has been prescribed under Rule 24-A of the

Rules. Sub-rule (2) of Rules 12 envisages as under:

"The persons enumerated in Column 5 or the relevant Column regarding 'posts from which promotion is to be made.' as the case may be of the relevant Schedule shall be eligible for promotion to posts specified against them in Column 2 thereof to the extent indicated in Column 3 subject to their possessing minimum qualifications and experience on the first day of the month of April of the year of selection as specified in Column 6 or in the relevant Column regarding 'minimum qualification and experience for promotion', as the case may be."

Therefore, it is not in dispute and cannot be disputed that while selecting officers, minimum requisite qualifications and experience for promotion specified in the relevant column, should be taken into consideration against vacancies existing as on 1st April of the year of selection. But since the Rules came to be amended and the amendment became effective with immediate effect and clause (11-B) of Rule 24-A indicates that options have been given to the Government or the appointing Authority, as the case may be, to revise the select list as existing as per the law as on the date of the appointment or as may be directed by a competent court, selection is required to be made by the concerned DPC. An appointment made, after selection as per the procedure, to the vacancies existing prior to the amendment, is valid. But the question is: whether selection would be made, in the case of appointment to the vacancies which admittedly arose after the amendment of the Rules came into force, according to the amended Rules or in terms of Rule 9 read with Rules 23 and 24-A, as mentioned hereinbefore? This Court has considered the similar question in paragraph 9 of the judgment above cited. This Court has specifically laid that the vacancies which occurred prior to the amendment of the Rules would be governed by the original Rules and not by the amended Rules. Accordingly, this Court had held that the posts which fell vacant prior to the amendment of the Rules would be governed by the original Rules and not the amended Rules. As a necessary corollary, the vacancies that arose subsequent to the amendment of the Rules are required to be filled in accordance with the law existing as on the date when the vacancies arose. Undoubtedly, the selection came to be made prior to the amendment of the Rules in accordance with law then existing since the anticipated vacancies also must have been taken into consideration in the light of Rules 9 of the Rules. But after the amended Rules came into force, necessarily the amended Rules came into force, necessarily the amended Rules would be required to be applied for and given effect to. But, unfortunately, that has not been done in the present case. The two courses are open to the Government or the appointing authority, viz., either to make temporary promotions for the ensuing financial year until the DPC meets or in exercise of the power under Rule 24-A (11-B), they can revise the panel already prepared in accordance with the Rule and make appointments in accordance therewith.

It is contended by Shri Das that one of the persons, namely, H.L. Meena was appointed against a carried forward post as per the existing Rules and, therefore, his

appointment cannot be challenged. We find it difficult to give acceptance to the contention. Even a carried forward vacancy is required to be considered in accordance with the law existing unless suitable relaxation is made by the Government. As on that date, when the appointment came to be made, the selection was required to be made on the basis of the Rules as existing on the date the vacancy arose. Since, admittedly, that has not been done, the appointment of Shri Bhatnagar and H.L. Meena must be treated to be only temporary appointments pending consideration of the claims of all the eligible persons belonging to General and Reserved quota separately as per Rules.

Equally, one B.L. Kankas (Scheduled Tribe) was appointed by promotion on July 28, 1995, after the amended Rules came into force, and retired from service on July 31, 1995. Since he has already retired, his appointment has not been challenged, though direction to the contra was given by the Division Bench. To that extent, the judgment of the High Court stands set aside and his promotion is ordered to remain undisturbed. As regards others, the Government is required to constitute the DPC which would consider the claims of eligible candidates as per Rules. It would make fresh selection and appointments in accordance with law. Whatever benefits have been given under the impugned order cannot be taken away although the orders are being hereby quashed. But seniority and other criteria would be subject to the decision that would be taken by the Government. The Government is directed to constitute the DPC within a period of eight weeks from the date of the receipts of the order and take speedy action accordingly.

The appeal is accordingly disposed of. No costs.