

PETITIONER:
BABULAL YADAV

Vs.

RESPONDENT:
HIGH COURT OF RAJASTHAN & ORS.

DATE OF JUDGMENT: 13/07/1998

BENCH:
S.P. BHARUCHA, V.N. KHARE

ACT:

HEADNOTE:

JUDGMENT:
THE 13TH DAY OF JULY, 1998

Present

Hon'ble Mr. Justice S.P. Bharucha

Hon'ble Mr. Justice V.N. Khare

Pallav Shishodia and A.P. Medh, Advs. for the appellant

B.D. Sharma and S.K. Jain, Advs. for the Respondents

J U D G M E N T

The following Judgment of the Court was delivered:

V.N. Khare, J.

These three Civil Appeals arise out of the judgment and order dated 4.11.1991 passed by the Division Bench of the High Court of Rajasthan, Jaipur Bench in DB Council S.A. (writ) No.508-10/91, whereby the judgment and order dated 12.8.1991 passed by the learned single Judge allowing the writ petition filed by the appellant, was reversed.

Before, we advert to the facts of the present appeals, it would be appropriate to refer to the two sets of Rules, on governing the recruitment to the cadre of stenographers in the Sub-ordinate Civil Courts of Rajasthan and the other relating to recruitment of stenographers in the sub-ordinate officers of the Government in the State of Rajasthan. Till the year 1985 the recruitment of stenographers in the sub-ordinate civil courts in the State of Rajasthan and their conditions of services were governed by the Rajasthan Sub-ordinate Civil Courts Ministerial Establishment Rules, 1958 (for short "1958 Rules"). Rule 6 of 1958 Rules provided that the direct recruitment to the cadre of Stenographers as Stenographers Grade III (now Grade-II) shall be made on the basis of selection. Rule 10 provided the academic qualification for direct recruitment to the Stenographers' cadre. Subsequently, in the year 1986, 1958 Rules were superseded by the Rajasthan Subordinate Civil Courts Ministerial Establishment Rules 1986 (for short "1986 Rules"), which came into force with effect from February 25, 1986. Under Rule 10 of 1986 Rules, the qualification of the candidate for direct recruitment to the cadre of Stenographers in Sub-ordinate Courts substantially remained the same as it was under the 1958 Rules. Under both sets of Rules, candidates after selection to the post of Stenographer necessarily have to pass qualifying test of

shorthand and typewriting to be conducted by the Rajasthan Public Service Commission and till they pass such tests, they have to be treated as working on extended probationary period. There is another set of Rules known as Rajasthan Subordinate Officers Ministerial Staff Rules, 1957 (for short "1957 Rules"). 1957 Rules regulate the recruitment to the post of Stenographers in the Subordinate Offices of State Government in the State of Rajasthan. Under the aforesaid two sets of Rules, a candidate for recruitment to the cadre of Stenographers is required to pass the test of shorthand and typewriting to be conducted by the Rajasthan Public Service Commission. For the Hindi shorthand test the speed has been prescribed as 80 words per minute and for Hindi typewriting test, the speed prescribed is 30 words per minute. A perusal of 1957 Rules and 1958 Rules which have been superseded by the 1986 Rules, shows that the prescribed speed in shorthand and typewriting in both the cases is the same although Rules relate to different sets of services - one for Sub-ordinate Civil Courts and other for Subordinate Offices of the State Government.

In the year 1982, the appellant after passing the test of Stenographer Grade-II, was appointed as Stenographer Grade-II in Sub-ordinate Civil Court for a period of three months by the District and Sessions Judge, Pali in accordance with the 1958 Rules. Letter of appointment dated January 22, 1982 issued to the appellant indicated that he was to pass the prescribed test of Stenographer Grade-II to be held by the Rajasthan Public Service Commission as required under the 1958 Rules. In the year 1983, the Rajasthan Public Service Commission advertised vacancies for recruitment to the cadre of Stenographers in the Subordinate Offices of the State Government. The appellant in response to the said advertisement appeared in the said examination and was declared successful. Consequently, he was issued a letter of appointment and was directed to join as Stenographer to the Chief Engineer, CAD, Indira Gandhi Nahar Project, Bikaner. However, the appellant did not join there and opted to remain as Stenographer in the Subordinate Civil Court. The appellant, on the strength of passing the examination conducted by the Rajasthan Public Service Commission for recruitment to the cadre of Stenographer in the Subordinate Offices of the State Govt., represented to the concerned District Judge and the High Court for his confirmation in the service. However, no action was taken by respondents 1 and 2 for appellant's confirmation as a Stenographer in the Subordinate Court. Under such circumstances the appellant filed a writ petition before the High Court of Rajasthan praying that the respondents be directed to declare and confirm him as substantive stenographer Grade-II, under the 1986 Rules. It was also prayed therein that the respondents be directed to consider the appellant for promotion to the post of Stenographer Grade-I in accordance with the 1986 Rules. The writ petition was contested by respondents 1 and 2 on various grounds including that the passing of the examination by the appellant under the 1957 Rules is of no use to the appellant for the purposes of his confirmation under the 1986 Rules. However, the learned single Judge by his order dated 12th August, 1991 allowed the writ petition and directed the respondents to confirm the appellant w.e.f. the date the substantive post is available. Aggrieved, respondent Nos.3 and 4 filed separate appeals against the judgment and order of the learned single Judge and the 3rd appeal was filed by respondent Nos. 1 and 2. All the three appeals were consolidated and heard together and were allowed by the

Division Bench of the High Court of Rajasthan. The appellate court was of the view that passing of the qualifying test by the appellant which was meant for different service is of no consequence for the purpose of his confirmation in the cadre of Stenographer in the Subordinate Civil Courts under the 1986 Rules. Consequently, the judgment of the learned single Judge was set aside and that is how the appellant has approached this Court by way of Special Leave Petitions.

Learned counsel appearing for the appellant reiterated the arguments advanced before the High Court, namely, that the qualifying test prescribed under clause (b) of Rule 10 of 1986 Rules being exactly the same as provided under the 1957 Rules and the appellant having passed the qualifying test held by the Rajasthan Public Service Commission under the 1957 Rules, he ought to have been confirmed in the cadre of Stenographers in the Subordinate Courts under the 1986 Rules, and the view taken by the Division Bench is erroneous. It was also argued that the appellant having put in about 17 years as a Stenographer, he deserved to be confirmed in the service and he should not be allowed to suffer on account of the inaction on the part of the High Court in not arranging for about 9 years at the relevant time the qualifying test to be conducted by the Rajasthan Public Service Commission.

On the first argument of learned counsel for the appellant the question that arises for consideration is, whether the appellant's passing the qualifying test conducted by the Commission for recruitment to the cadre of Stenographers in the Subordinate Offices of the State Govt, under 1957 Rules entitles him to be confirmed as a Stenographer in the Subordinate Courts under the 1986 Rules. The Rajasthan Subordinate Offices Ministerial Staff Rules, 1957 are meant for recruitment to the cadre of Stenographers in the Subordinate Offices of the State Government and are inapplicable to the service of Stenographers in the Subordinate Courts which is clear from Rule 4(b) of 1957 Rules, which reads as under:

"4(b) 'Subordinate Office' means any office under the control of Government other than the Secretariat or Office of the State Legislature or High Court and the Courts subordinate thereto or Public Service Commission."

Under the aforesaid Rules the High Court, the subordinate courts along with Secretariat, Offices of the State Legislature and Public Service Commission have been specifically excluded.

Admittedly, the appellant being an employee of Subordinate Civil Courts is governed by the 1986 Rules which relate to recruitment to the cadre of Stenographers in Subordinate Offices of the State Government. The 1986 Rules provide that all persons appointed to the cadre of stenographers by direct recruitment shall be placed on probation for one year held by the Commission his probationary period shall stand extended. Relevant Rule in respect of confirmation of stenographers in the service of Subordinate Courts reads as under:

"28. Probation (1) All persons appointed to any cadre by direct recruitment or promotion against permanent vacancies shall be placed on probation for one year. provided that a person who has been regularly recruited against temporary post and has put in two

years service after such regular recruitment shall not be placed on probation on conversion of such post into a permanent one or on a permanent vacancy being available but he shall be confirmed only after he has fulfilled the conditions of confirmation as laid down in Rule 31:

Provided further that in the case of recruitment to the cadre of Stenographers the probationary period shall stand extended till the stenographers pass the qualifying test held by the Commission, unless he is reverted or removed from service in accordance with the provisions of Rule 30."

The aforesaid Rule makes it clear that unless a stenographer working in Sub-ordinate Civil Court passes the qualifying test to be conducted by the Commission he cannot be confirmed in the service. The passing of the examination by the appellant for recruitment to the cadre of stenographers in the Subordinate offices under the 1957 Rules would not confer any benefit to him for the purposes of his confirmation as stenographer in Subordinate Civil Court as 1957 Rules are not applicable to the stenographers working in Subordinate Civil Courts. The stenographers of subordinate offices of the State Govt, belong to different class, different service and appointed under the different set of Rules and mere passing of the qualifying test by the appellant for recruitment to the cadre of stenographer to the Subordinate Offices of the State Government is of no consequence for his confirmation under the 1986 Rules. Unless the appellant passes the qualifying test to be held by the Commission under the 1986 Rules, he has to be treated as working on extended probationary period. We are, therefore, of the opinion that the view taken by the High Court in allowing the appeals is not wrong in law but we think it should have passed an order rectifying its administrative laches.

Although nearly 17 years have now elapsed, neither the High Court nor the Commission has taken any steps for holding qualifying test for confirmation of Stenographers in the service. The appellant and similarly situated persons cannot be allowed to suffer on account of the inaction on the part of the High Court and the Commission in not holding the qualifying test for purposes of confirmation of the stenographers in the Subordinate Civil Courts. under such circumstances, we feel that the interest of justice will be met if we direct the High Court of Rajasthan to request the Rajasthan Public Service Commission to hold the qualifying test under the 1986 Rules without any delay. We accordingly direct the High Court of Rajasthan to write to the Rajasthan Public Service Commission for holding the qualifying test for Stenographers working in the Civil Subordinate Court, immediately on receipt of certified copy of this order. The Rajasthan Public Service Commission on such request being made by the High Court shall, without any further delay, hold the qualifying test for the Stenographers working in the Civil Subordinate Courts. Since there is inordinate delay in holding the qualifying test, we direct that the services of the appellant shall not be dispensed with, except for disciplinary reasons and in accordance with law,

until he has had an opportunity to appear for the qualifying test. So far as the seniority and the promotion of the stenographers in the service are concerned, they would be determined in accordance with the Rules after the result of the qualifying test is announced by the Rajasthan Public Service Commission. With these observations and directions, the appeals are dismissed. However, there shall be no order as to costs.

JUDIS