

TEJ PRAKASH PATHAK V. HIGH COURT OF RAJASTHAN

Citation: Civil Appeal No. 2634 of 2013; 2024 INSC 847

5 judge bench: Chief Justice Dr. Dhananjaya Y. Chandrachud, Justice Hrishikesh Roy, Justice Pamidighantam Sri Narasimha, Justice Pankaj Mithal, Justice Manoj Misra (Author)

Order dated: 7th November 2024

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FACTS

Chief justice of the Rajasthan high court framed the Rajasthan high court staff service rules 2002 governing the appointments and under that rules office order dated 5th December 2002 was passed. The office order specified the qualification and method of recruitment of translator (ordinary scale). The criteria were that “the *selection will be done from amongst the graduate Upper Division Clerks or officials in equivalent or above grade but below the grade of Translators (Ordinary Scale), with Hindi or English Literature as one of the optional subjects*

in Graduation or Lower Division Clerks with Hindi or English Literature as subject in post-graduation and having minimum experience of five years.” Additionally, it was mentioned that only the candidate who will secure **more than 75% marks in aggregate and minimum 60% marks in each paper** will be called for interview.

Office order dated 24th July 2004 amended the recruitment rules as: *“Recruitment shall be made from amongst the judicial assistants or junior judicial assistants having experience of 3 years by holding a test in English and Hindi translation. Candidates shall be given passages in English from the judgments and records and shall be asked to translate them into Hindi. Similarly passages in Hindi from the records or from some other books etc. shall be given and the candidates shall be asked to translate them into English. Minimum qualification shall be Graduate. Preference shall be given to a Law Graduate.”* Office order dated 8th September 2009 further amended the recruitment rules. The minimum qualification was substituted to be post graduate in English literature.

The Rajasthan high court invited applications from judicial assistant and junior judicial assistants for the 13 posts of translators vide notification dated 17th September 2009. The requirements were that the applicant must have experience of 3 years in the high court establishment and possesses a degree of MA in English literature. it was also mentioned that preference will be given to law graduates.

The examination was held on 19th December 2009 and the result for same was declared on 20th February 2010. The result showed that only 3 candidates passed the exam as the chief justice of the Rajasthan high court decided that only candidates who scored more than 75% will be considered to be pass. This led to filing of writ petitions by the candidates who did not pass against the last-minute change in criteria by the chef justice.

The writ petition was dismissed by Rajasthan high court by order dated 11th March 2011. The said order was challenged vide special leave petition. While granting leave vide order dated 20th March 2013 the matter was referred to a large bench.

RULE

Precedents	Rule or Principle Cited for
A.P. Public Service Commission v. B. Sarat Chandra (1990) 2 SCC 669	The eligibility criteria, such as minimum age, must be fixed as of a determinate and specific date, not on a fluctuating date.

Rakhi Ray v. High Court of Delhi (2010) 2 SCC 637	The selection process is continuous from the advertisement to the filling of vacancies and placing one's name on the select list does not guarantee a right to appointment.
Sivanandan C.T. & Ors. v. High Court of Kerala & Ors., 2023 INSC 709.	Rule of law: It strengthens the principle that public bodies are bound by their own rules and cannot alter them arbitrarily. Administrative accountability: It holds judicial and administrative bodies to a high standard of fairness and transparency in their recruitment processes. Protection of rights: It ensures that candidates participating in recruitment drives can rely on the publicly announced rules and criteria
K. Manjusree v. State of A.P., (2008) 3 SCC 512	The criteria for a selection process cannot be changed after the process has already begun. The decision established the "rules of the game" principle, preventing authorities from altering selection standards to the disadvantage of candidates after they have participated in the recruitment procedure
State of Haryana v. Subash Chander Marwaha, (1974) 3 SCC 220	The mere inclusion of a candidate's name on a selection list does not grant them an absolute, indefeasible right to be appointed. The government is not obligated to fill every advertised vacancy but must not act arbitrarily or in bad faith.
Santosh Kumar Tripathi v. U.P. Power Corporation, (2009) 14 SCC 210	An apprenticeship does not guarantee permanent employment, and apprentices are not exempt from the standard selection process, including written examinations, stipulated by service regulations.
M.P. Public Service Commission v. Navnit Kumar Potdar, (1994) 6 SCC 293	It is permissible for a recruiting body to screen candidates on a rational and reasonable basis when faced with a large number of applicants for a limited number of positions.

Union of India v. T. Sundararaman, (1997) 4 SCC 664	The right of a recruiting agency to shortlist candidates based on higher criteria than the minimum qualifications advertised, especially when there is a large number of applicants.
Tridip Kumar Dingal v. State of W.B., (2009) 1 SCC 768	Shortlisting is permissible on the basis of administrative instructions provided the action is bona fide and reasonable.
Salam Samarjeet Singh v. The High Court of Manipur at Imphal & Anr, 2024 INSC 647	Statutory rules, which govern recruitment processes, have supremacy over administrative instructions or resolutions. The High Court's resolution to introduce a new criterion effectively amended the statutory rules without legislative authority, which it cannot do.
Shankarsan Dash v. Union of India, (1991) 3 SCC 47	Successful candidates on a merit list do not have an absolute right to appointment even if a vacancy exists. The vacancy notification is an invitation to apply, and the State has discretion to fill vacancies for bona fide reasons. However, if vacancies are filled, the State must adhere to merit and avoid discrimination.

ANALYSIS

The Hon'ble court divide the discussion into various questions and analysed them individually.

1. When does the recruitment process commences and comes to an end?

The Hon'ble court referred to the landmark judgments, ***B. Sarat Chandra case*** and ***Rakhi ray case*** that establish key principles regarding the recruitment process for public service, particularly that the selection process is a continuous one, beginning with the advertisement and ending with the filling of vacancies. The apex court mentioned that the whole process has a lot of steps such as inviting applications, scrutinising them, rejection or elimination of applications, exam and viva and then creating list of selected candidates for interview.

2. Basis of the doctrine that 'rules of the game' must not be changed during the course of the game, or after the-game is played

To analyse the question on basis of doctrine, the Hon'ble court referred to and agreed with the decision laid down in the ***Sivanandan CT*** case. In the said case, the constitutional bench affirmed the "*doctrine of legitimate expectation*," which holds that public authorities must

adhere to their stated procedures and not change the "rules of the game" after it has been played. The candidates have a right to expect the selection to be based on the criteria advertised in the initial notification. The court found the change to be arbitrary and a violation of Article 14 of the Constitution, which guarantees equality and prohibits arbitrary state actions. The decision to fix a minimum score was inconsistent with the established rules and lacked a proper legal basis.

3. Whether the decision in *K. Manjusree* (supra) is at variance with earlier precedents on the subject?

The Court clarified that *K. Manjusree* and *Subash Chander Marwaha* addressed distinct issues. The Court reasoned that while Marwaha dealt with the right to appointment from an existing select list, Manjusree addressed the right to be placed in the select list itself. The Court emphasised that Manjusree prohibited changing selection criteria after interviews were conducted, as this would unfairly affect both candidates' preparation and evaluators' assessment approach. This distinction was crucial for establishing that the decisions complement rather than contradict each other.

4. Whether the above doctrine applies with equal strictness qua method or procedure for selection as it does qua eligibility criteria?

To decide on the question on if the rule does not apply with equal strictness to steps for selection, the Hon'ble court referred to landmark judgements i.e., the case of *Santosh Kumar Tripathi*, *Navnit Kumar Potdar*, *T. Sundararaman*, and *Tridip Kumar Dingal*. The Court recognised recruiting bodies' authority to devise appropriate selection procedures, subject to existing rules. The Court reasoned that this flexibility was necessary for efficient recruitment but must be exercised within bounds of transparency and non-discrimination. The Court cited examples where procedures like shortlisting based on higher qualifications or conducting elimination tests were upheld when rationally connected to the selection objectives.

5. Whether procedure for selection stipulated by Act or Rules framed either under the proviso to Article 309 of the Constitution or a Statute could be given a go-bye?

In discussing the question on whether Procedure prescribed in the extant rule not to be violated, the Hon'ble court referred to the *Sivanandan C.T. Case* where the constitution bench took a negative view on changing the minimum marks after the extant rules and/or

advertisement. Similarly, *Salam Samarjeet Singh case* was referred, which holds that changes are only allowed in the case the rules are silent on that subject. And changing rules is violation of article 14. Therefore, the Hon'ble court came to the conclusion that governing body has to abide by the rules already prescribed.

6. Whether appointment could be denied by change in the eligibility criteria after the game is played?

While analysing this question about denying appointment even after placement in select list, the Hon'ble court referred to the *Shankarsan Das case* as well as the *Subash Chander Marwaha case*. Both the cases prove that unless the recruitment rules specify, state or its instrumentality has no obligation to appoint even if the vacancies are available or if the candidate is in the select list but after denying the burden is on the state to justify its decision.

CONCLUSION

The Hon'ble court directed that the appeals to be placed before appropriate bench for answers in terms of the following conclusions →

1. Recruitment process commences from the issuance of advertisement calling for applications and ends with filling up of vacancies.
2. Eligibility criteria for being placed in the select list, notified at the commencement of the recruitment process, cannot be changed midway through the recruitment process unless the extant rules so permit, or the advertisement, which is not contrary to the extant rules, so permit. Even if such change is permissible under the extant rules or the advertisement, the change would have to meet the requirement of article 14 of the constitution & satisfy the test of non-arbitrariness.
3. The decision in K. Manjusree by down good law and is not in conflict with the decision in Subash Chander Marwaha. Subash Chander Marwaha deals with the right to be appointed from the select list whereas, K. Manjusree deals with the right to be placed in the select list. The two cases therefore deal with altogether different issues.
4. Recruiting bodies, subject to the extant rules, may devise appropriate procedure for bringing the recruitment process to its logical end provided the procedure so adopted is transparent, non-discriminatory/ non-arbitrary & has a rational nexus to the object sought to be achieved.

5. Extant rules having statutory force are binding on the recruiting body both in terms of procedure and eligibility. However, where the rules are non-existent or silent, administrative instructions may fill in the gaps.
6. Placement in the select list gives no indefensible right to appointment. The state or its instrumentality for bona fide reasons may choose not to fill up the vacancies. However, if vacancies exist, the state or its instrumentality cannot arbitrarily deny appointment to a person within the zone of consideration in the select list.

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