



Bhanwar Lal S/o Shri Chhoga Ram, Aged About 29 Years, Ro Village Lalpura Post Malnoo Tehsil Bali District Pali Rajasthan Pincode 306514

-----Respondent

For Appellant(s) : Mr. Tapendra Singh for Mr. B.L. Bhati, AAG.
For Respondent(s) : Mr. Shreyansh Mardia.
Mr. Ripudaman Singh.
Mr. Shambhoo Singh
Mr. Digvijay Singh Chouhan

HON'BLE CHIEF JUSTICE MR. MANINDRA MOHAN SHRIVASTAVA
HON'BLE MR. JUSTICE MUNNURI LAXMAN

Order

23/02/2024

Delay in filing the appeals is condoned. The applications stand allowed.

2. Heard on merits.

3. These appeals arise out of the common order dated 14.12.2021 passed by the learned Single Judge in the matter of challenge to the action of the appellant-State, whereby the respondents petitioners, who, on the date of commencement of the process of selection, were eligible, were rendered ineligible on account of amendment in the Rules during the pendency of the selection process.

4. The learned Single Judge relying upon settled legal position that the rules of game could not be altered to the prejudice of the candidates after the process of selection has commenced, held that the amendment in the Rules could not adversely affect those,



who had already participated in the selection process. Aggrieved by the aforesaid decision, these appeals have been preferred by the State.

5. Learned counsel appearing for the appellant State would submit that in the advertisement dated 4th December, 2019, under which the process of selection was initiated, it was clearly stated that it is open for the State to amend any rules, orders, circulars and the same will become effective immediately. It was also stated that in the matter of reservation also, the process of selection would be governed by latest instructions and rules. The advertisement further clearly stated that the physical standards would be as per Rule 14 of the Rajasthan Police Subordinate Service Rules, 1989 (for short, 'the Rules'). What was under the Rules then existed was provided in the advertisement. As the Rules had undergone amendment, as a result of deletion of proviso to sub-rule (2) of Rule 14 of the Rules, the criteria of physical fitness also underwent change, and therefore, if for that reason the respondents have been rendered ineligible, no illegality has been committed. He would submit that these are specific conditions in the advertisement that the State reserves its rights to amend the rules, circulars, instructions at any time during the process of selection and the same were never challenged. It is only when the petitioners failed to fulfil the minimum standards of physical fitness as per the amended provision, they came to the Court, therefore, the writ petitions are barred by rule of estoppel. Last submission of learned counsel for the appellant State is that the issue as to whether the rules of game could be changed after



the process of selection has begun is pending consideration before the larger Bench of the Hon'ble Supreme Court. Therefore, the decisions, which have been relied upon by the learned Single Judge could not be cited as a binding precedent.

6. On the other hand, learned counsel for the respondents supported the order of the learned Single Judge by submitting that the order of the learned Single Judge proceeds on application of settled legal principles that once the process of selection has been initiated, the rules of game cannot be allowed to be changed, much less any amendment which rendered ineligible those candidates, who, on the date of the initiation of process of selection were eligible. Relying upon the judgment of the Hon'ble Supreme Court in the case of **Union Territory of Ladakh & Ors. Vs. Jammu and Kashmir National Conference and Anr. [2023 SCC OnLine SC 1140]**, it has been submitted that the fact that an issue of law is pending consideration before the Larger Bench would not mean that the said decision of the Hon'ble Supreme Court loses value as a precedent. He would submit that there is no order passed by the Hon'ble Supreme Court in any of the pending cases to hold otherwise, therefore, no illegality has been committed by the learned Single Judge.

7. Having heard learned counsel for the parties and after perusing the order of the learned Single Judge, we are of the considered view that there is no illegality committed by the learned Single Judge in holding the action of the appellant illegal.

8. It is an admitted position that at the time when the advertisement was issued, the provisions contained in Rule 14 of



the Rules particularly the proviso and the prescription given under the advertisement made the respondents/writ petitioners eligible candidates. This aspect is also not disputed by the learned State counsel. It is quite apparent that subsequently, during the process of selection, all of a sudden, amendment was made in the Rules. The effect of the amendment was that all those candidates like the respondents writ petitioners, who had a particular standard of fitness at the time of initiation of selection process, were rendered ineligible. This aspect was examined by the learned Single Judge with reference to the settled legal position as adumbrated by the Hon'ble Supreme Court in several decisions including the decision in the case **K. Manjusree Vs. State of A.P. & Ors [AIR 2008 SC 1470]** wherein this legal position has been reiterated by the Hon'ble Supreme Court that once the rules of game has begun the rules cannot be altered. Proceeding on this settled legal position, the writ petitions have been allowed by the learned Single Judge.

9. The argument of the learned counsel for the appellant that the respondents having not challenged the terms and conditions of the advertisement nor the rules, could not have maintained the writ petitions, are liable to be rejected. The terms and conditions of the advertisement did not state that a candidate, who is eligible on the date of application could be held ineligible at a subsequent stage of selection by change of rules. Since the right reserved to amend the rules was exercised by the appellant in the manner so as to hold the candidates ineligible long after the initiation of process of selection, the same was challenged by the petitioners.





The occasion arose to challenge the action of the appellant only when the appellant sought to apply the amendment in the rules mid-way the process of selection, which adversely affected the respondents. Therefore, the objection to the maintainability of the petitions on the ground of estoppel is unsustainable in law. The argument of the learned counsel for the appellant is that as the legal issue has been referred for consideration by Larger Bench, the decision of the Hon'ble Supreme Court on the settled legal position that once the game has begun, the rules cannot be changed could not be pressed into service.

10. The aforesaid argument is liable to be rejected at the threshold in view of the observations made by the Hon'ble Supreme Court in the case of Union Territory of Ladakh (supra), wherein Their Lordships of the Hon'ble Supreme Court have held as under:

"35. We are seeing before us judgments and orders by High Courts not deciding cases on the ground that the leading judgment of this Court on this subject is either referred to a larger Bench or a review petition relating thereto is pending. We have also come across examples of High Courts refusing deference to judgments of this Court on the score that a later Coordinate Bench has doubted its correctness. In this regard, we lay down the position in law. We make it absolutely clear that the High Courts will proceed to decide matters on the basis of the law as it stands. It is not open, unless specifically directed by this Court, to await an outcome of a reference or a review petition, as the case may be. It is also not open to a High Court to refuse to follow a judgment by stating that it has been doubted by a later Coordinate Bench. In any case, when faced with conflicting judgments by Benches of equal strength of this Court, it is the earlier one which is to be followed by the High Courts, as held by a 5-Judge Bench in National Insurance Company Limited v Pranay Sethi, (2017) 16 SCC 6805. The High Courts, of course, will



do so with careful regard to the facts and circumstances of the case before it."

11. In view of the above, we do not find any good ground to interfere with the order of the learned Single Judge.

12. All the appeals are accordingly dismissed.

(MUNNURI LAXMAN),J

(MANINDRA MOHAN SHRIVASTAVA),CJ

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