

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR.

O R D E R

Ganesh Lal Mali v. State of Raj. & Ors.

S.B.CIVIL WRIT PETITION NO.1768/1998
under Article 226 of the
Constitution of India.

Date of Order : 26th May, 2005

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. P.P.Choudhary, for the petitioner.
Mr. Shyam Ladrecha, Addl.Govt.Advocate.
Mr. M.Mridul Sr.Advocate assisted by Shri
R.N.Upadhyay, for the respondents No.3 & 4.

BY THE COURT :

By this petition for writ a challenge is given by the petitioner to the appointment of respondent No.3 Shri Ranjeet Singh and respondent No.4 Shri Mithu Singh as Instructor Gr.III in Physical Education.

The facts in brief are that in the month of April, 1997 the District Education Officer (Boys Institutions), Rajsamand invited applications from

eligible candidates for the purpose of appointment as Physical Instructor Gr.III. The petitioner being eligible submitted an application in pursuance to the advertisement referred above for appointment on the post concerned.

The contention of the petitioner is that the respondents, while giving appointment in pursuance of the selection proceedings taken place under advertisement referred, erroneously granted the bonus marks pertaining to the bonafide resident (with regard to respondent No.3) and participation in sports activity (with regard to respondent No.4). The counsel for the petitioner at the outset withdrew his challenge in the present writ petition with regard to appointment of respondent No.3 Shri Ranjeet Singh as the same is under challenge in an another writ petition.

The contention of the counsel for the petitioner is that respondent No.4 Shri Mithu Singh submitted a forged certificate with regard to participation in District Level Sports Tournament on basis of which five marks were awarded to him and as a consequence of which appointment was given to him. It is contended by the petitioner that he secured 68.76% marks whereas if five marks awarded to Shri Mithu Singh on basis of forged certificate are withdrawn or deducted he will be possessing only 65.70% marks i.e.

quite less than the petitioner. The petitioner on basis of contention above claimed for quashing appointment of respondent No.4 and to appoint him as Instructor Gr.III in Physical Education in place of respondent No.4.

Shri Marudhar Mridul, Sr.Advocate, assisted by Shri R.N.Upadhyay, counsel for the respondents No.3 and 4 accepts the position that the certificate produced by the respondent No.4 was found forged on an inquiry, as such he was not entitled for the bonus marks as awarded to him.

The counsel for the state does not dispute this position but states that on an inquiry the certificate produced by the respondent No.3 with regard to participation in sport activity was not found a genuine one. The only contention of the counsel for the state is that the select list as a consequence of which the appointments were given to the respondents No.3 and 4 stood expired by a flux of time. No appointment now can be given to the petitioner as the select list is not in currency.

I have heard counsel for the parties.

In view of admitted position that five bonus marks were awarded to respondent No.4 Shri Mithu Singh on basis of a forged certificate, the appointment of

respondent No.4 deserves to be quashed. The respondent No.4 was not entitled for bonus marks and as such the bonus marks awarded to him are required to be withdrawn. The contention of the counsel for the State to the effect that now appointment cannot be given to the petitioner or anybody else as the select list impugned is no more in currency is having no merit as the petitioner preferred the present writ petition challenging the appointment of respondent No.4 during currency of select list. Accordingly I do not find any hindrance in operating the select list concerned.

In view of factual position stated above, the appointment of respondent No.4 Shri Mithu Singh as Physical Instructor Gr.III in District Rajsamand is hereby quashed. The respondents are directed to consider the candidature of the petitioner for the purpose of appointment as Instructor Gr.III against the vacancy accrued as a consequence of quashing the appointment of the respondent No.4. The respondents while considering the candidature of the petitioner also consider the candidature of other persons if having merit marks more than the petitioner and stood at higher pedestal in the select list concerned than the petitioner. The appointment to the selected incumbent shall be given by the respondents as Instructor Gr.III in Physical Education as a consequence of the order above within a period of six months from today.

with these observations the writ petition stands disposed of.

(GOVIND MATHUR), J.

kkm/ps.