

R.C. SOOD

A

v.

HIGH COURT OF RAJASTHAN

NOVEMBER 21, 1994

[J.S. VERMA AND K.S. PARIPOORNAN, JJ.]

B

SERVICE LAW

Rajasthan Civil Services (Classification, Control and Appeal), Rules, 1958—Suspension Order—A member of Higher Judicial Service posted as Registrar of High Court—Charge of issuing incorrect notification for recruitment with ulterior purpose—No material to justify charge—Order of suspension quashed—Constitution of India 1950 Articles 14 and 16.

C

The petitioner, a member of higher judicial service in the State of Rajasthan and a senior District and Session Judge, was posted as Registrar of the Rajasthan High Court.

D

Pursuant to a resolution passed by the High Court, a draft advertisement was finalized for recruitment to the RHJS Cadre. The age limit for the candidates was shown as the minimum of 35 years and maximum of 45 years as on 1st Jan., 1995. However, the date with reference to which the eligibility of the candidates as to age had to be examined was required to be mentioned as 1st Jan., 1994 instead of 1st Jan., 1995 shown in the advertisement. Even after receipt of the applications, this error remained undetected. Ultimately this mistake of mentioning 1st Jan., 1995 instead of 1st Jan., 1994 as the date for reckoning the eligibility as to age was discovered by a Committee of Judges. In the report it was stated that interpolations have been made changing 1994 as 1995 which must have been done with the definite purpose to accommodate some candidate. On examining the record the Committee held the petitioner, the then Registrar responsible for the forgery committed in the record. The petitioner was placed under suspension with immediate effect by the High Court in exercise of the powers conferred by Rule 13 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules 1958. This writ petition has been filed by the petitioner for quashing the suspension order and the entire disciplinary proceedings on which it is based.

E

F

G

H

- A** The petitioner in his rejoinder has expressly denied making any corrections in the draft advertisement. The High Court has taken the view that the said mistake in the date of i.e., 1st Jan., 1995 instead of 1st Jan., 1994 in the advertisement was the result of an interpolation or change in the date, made by the petitioner and that it amounted to gross misconduct in view of the consequence flowing there from which
- B** enabled some undue benefit to some candidates.

Allowing the writ petition, this Court

- C** **HELD: 1.1** There is no material in the entire record, apart from the fact that the petitioner happened to be posted as Registrar of the High Court at the time when the draft advertisement was finalized and sent for publication in the Gazette, to suggest that the change in the year from 1994 in the original draft to 1995 had been made by the petitioner and none else. It is obvious that the opportunity for making the change was available to many others in the registry. This obvious mistake was overlooked by the High Court which proceeded on the
- D** erroneous assumption that this change must have been made only by the petitioner, and that too for ulterior purpose, without any material to justify that assumption. The High Court also ignored the fact that this mistake was not discovered by anyone in the registry including the petitioner's successor from Feb., 1994 till Sept., 1994 when it was noticed by the Judges Committee, even though the last date for receipt
- E** of applications was in March, 1994. (611 E, G, H, 612 A)

- F** **1.2** There was no material to show if there was any candidate so benefited by this mistake, and if so, whether the petitioner was in any manner connected with him. No one in the High Court had considered this aspect. Part of the conclusion that the action of petitioner amounted to 'forgery' is indeed astounding since forgery has a legal connotation amounting to an offense punishable under the Indian Penal Code. (612 C, D, G)

- G** **1.3** On a careful examination of the entire record, this Court has no doubt that the view taken by the High Court and the consequent action against the petitioner is wholly arbitrary, unwarranted and violative of Articles 14 and 16 of the Constitution. It is unsustainable and hence struck down. (612 H)

ORIGINAL JURISDICTION: Writ Petition (Civil) No. 680 of 1994.

- H** (Under Article 32 of the Constitution of India.)

H.N. Salve, Kailash Vasdev and S.K. Jain for the petitioner.

A

Altaf Ahmed, Addl.Solicitor Genl. P.H. Parekh, S.Uday Sagar and Ms. Sunita Sharma for the respondent.

The Order of the Court was delivered:

The Petitioner— R.C. Sood is a member of Higher Judicial Service in the State of Rajasthan and is a senior District and Sessions Judge. The petitioner was posted as Registrar of the Rajasthan High Court from 1.7.1989 to 1.2.1994; as the District and Sessions Judge at Jodhpur from 2.2.1994 to 4.6.1994; and as the District and Sessions Judge, Jaipur City, Jaipur from 6.6.1994. By an order dated 22nd October, 1994 (Annexure 'A') the petitioner was placed under suspension with immediate effect by the Rajasthan High Court in exercise of the powers conferred by Rule 13 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 as a consequence of the decision taken by the Full Court in its meeting held on the 20th and 21st October, 1994. This writ petition has been filed by the petitioner for quashing the suspension order and the entire disciplinary proceedings on which it is based.

B

C

D

The material facts emerging from the counter-affidavit filed on behalf of the High Court by Shri R.K. Jain, Additional Registrar (Writs) and the original record produced before us may now be stated.

E

On 29th September, 1993 the High Court in its meeting resolved as under:-

“Having considered the report of the Promotion Committee, resolved that the 7 vacancies are determined for direct recruitment to the RHJS Cadre keeping reservation for Schedule Castes/Schedule Tribes as per rules.”

F

Pursuant to that Resolution, a draft advertisement was finalized in the Registry of the High Court on 7.12.1993, both in Hindi and in English, mentioning therein the conditions of eligibility of the candidates and the same were published by a notification dated 4th January, 1994 in the Gazette dated 18th January, 1994. According to the advertisement as published, the age limit for the candidates was shown as the minimum of 35 years and maximum of 45 years on 1st January, 1995. Rule 14 of the Rajasthan Higher Judicial Service Rules, 1969 in which provision is made regarding the age limit of the candidates, reads as under:-

G

H

A "A candidate for direct recruitment to the service must have attained the age of 35 years and must not have attained the age of 45 years on the first day of January preceding the last date fixed for submission of the application (rest not relevant)."

B The advertisement in Hindi and English mentioned the last date for the receipt of the applications as 18.3.1994 and 29.3.1994 respectively.

C It is therefore clear that the date with reference to which the eligibility of the candidates as to age had to be examined was required to be mentioned as "1st January, 1994" instead of "1st January, 1995" shown in the advertisement. Even after receipt of the applications, this error remained undetected in the Registry till a Committee of two Judges, namely, Mrs. Justice Mohini Kapoor and Mr. Justice R.S. Verma was constituted to examine the same. The above mistake of mentioning '1st January, 1995' instead of '1st January, 1994' as the date for reckoning the eligibility as to age was discovered by that Committee. The Committee in its report D (Annexure R-5) dated 8.9.1994 stated thus:-

E "Thus, the Notification inviting the applications is not in accordance with the Rules. We would suggest that a proper Notification should be issued for inviting applications and at this stage no useful purpose would be served by scrutinizing the applications already received. If further exercise is done on this Notification, there is every chance that the selection would be vitiated. This matter be placed before Hon'ble the Chief Justice for taking suitable action against the officers who are responsible for the issue of incorrect Notification and for taking decision for issue of fresh Notification."

F The learned Chief Justice then directed circulation of this report to all the Judges of the High Court.

G The record placed before us by the learned Additional Solicitor General appearing for the High Court shows that two Judges, namely, Mr. Justice N.K. Jain and Mr. Justice B.R. Arora made a note to the effect that in addition to issue of a fresh notification as suggested by the Committee, action should be also taken against the persons responsible for issuing the incorrect notification. In a Full Court meeting convened on 20th and 21st October, 1994 at Jaipur, the main seat of the High Court being at Jodhpur, H this matter was taken up at 2.00 p.m. on 20th October, 1994. The minutes

of the meeting show that a Resolution was passed by the Full Court on 20th October, 1994 as follows:- A

“Resolved that Justice M.P. Singh and Justice R.S. Kejriwal will examine the record of the notification issued on 14.1.1994 for the direct recruitment in RHJS and will fix the responsibility of the officer/officers for putting wrong age eligibility date and would also suggest the action to be taken.” B

On the next day, i.e. on 21st October, 1994, the Committee comprising of Mr. Justice M.P. Singh and Mr. Justice R.S. Kejriwal submitted its report on the basis of the record available to them, in which it was stated as under:- C

“.....Interpolations have been made changing ‘1994’ as ‘1995’, which must have been done with a definite purpose to accommodate some candidate, who probably was not fulfilling the requirements or to frustrate the appointment of direct recruits in the Rajasthan Higher Judicial Service. D

xxx

xxx

xxx

Hon’ble Mr. N.K. Jain and B.R. Arora, JJ, took a serious view of the matter and suggested for a thorough enquiry to be made in the matter and serious action may be taken against the person/persons found responsible for making changes in the record of the court which is a serious matter.’ E

The Committee then stated its conclusion and recommendations, as under:- F

“This Committee has examined the record in detail and is of the tentative view that Shri R.C. Sood, the then Registrar, is responsible for the forgery committed in the record. A regular enquiry should be made in the matter in accordance with the rules. G

The Committee is further of the view that Shri R.C. Sood may be placed under suspension in contemplation of enquiry.” H

This report was considered in Full Court meeting on 21st October, 1994 at 2.00 p.m. and a Resolution was passed as under:-

A "The Full Court has considered the report submitted by the committee of Justice M.P. Singh and Justice R.S. Kejriwai.

B Resolved that departmental enquiry under Rule 16 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 be initiated against Shri R.C. Sood, RHJS (District Judge, Jaipur City), the then Registrar and pending enquiry he be placed under suspension.

The Full Court in the meeting held on 21.10.1994 has resolved as under :-

C Resolved that department enquiry under Rule 16 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 be initiated against Shri R.C Sood, RHJS (District Judge, Jaipur City), the then Registrar and pending enquiry he be placed under suspension."

D Acting on the said Resolution of the Full Court, the learned Chief Justice directed on 22.10.1994 that the petitioner be placed under suspension. It may be mentioned that at no stage was the petitioner even asked about this matter, even though he was available in Jaipur itself, being posted there as District Judge. This is how the impugned action has been taken.

E The petitioner in his rejoinder affidavit has expressly denied making any corrections in the draft advertisement placed before him and has stated as under:-

F "After examining the draft notification which was to be issued in Hindi, I made certain corrections in the opening paragraph thereof. No corrections were made by me in the dates of eligibility in the said notifications and/or in the English version of the said notifications. The notifications duly corrected by me were forwarded to the office for further action i.e. for being finally typed and issued.

G xxx xxx xxx

H I say that the records as available to this Hon'ble Court manifest that the changes in the dates have not been initialed by any person. I say that the corrections in the dates in the notifications have not been carried out by me. I

crave leave of this Hon'ble Court to make further A
submissions on the said corrections after inspecting the
original documents as only Xerox copies are available to
me. I say that the colour of the ink used in the said draft
notification (Annexure R1) for carrying out corrections is
different. I respectfully say that the allegations presently B
made in the counter affidavit are a deliberate attempt to cast
serious aspersions on my character at a crucial stage of my
career a judicial officer."

The learned Additional Solicitor General appearing for the High Court
of Rajasthan has placed before us the entire relevant record which was also C
the only material available to the Committees of the High Court as well as
to the Full Court itself, to act on, while taking the decision in the Full Court
meeting. It is, therefore, undisputed that the validity and the legality of the
impugned action taken by the High Court has to be judged on this basis
alone.

Obviously, the High Court has taken the view that the said mistake in D
the date of mentioning '1st January, 1995' instead of '1st January, 1994' in
the advertisement was the result of an interpolation or change in the date
made by the petitioner - R.C. Sood; and that it amounted to gross
misconduct in view of the consequence flowing therefrom which enabled
some undue benefit to some candidates. In the first place, there is no E
material in the entire record apart from the fact that the petitioner happened
to be posted as Registrar of the High Court at the time when the draft
advertisement was finalized and sent for publication in the Gazette, to
suggest that the change in the year from '1994' in the original draft to
'1995' had been made by the petitioner and none else. Learned Addl.
Solicitor General showed to us the original draft, and, in all fairness, also F
pointed out that the ink in which the year '1995' was written in place of
'1994' was different from the ink which had been used by the petitioner
elsewhere in the same draft. There was no initial at the place of the change
of the year to indicate who had made that change, much less to suggest that
the change had been made by the petitioner. It is obvious that the
opportunity for making the change, assuming it was of the kind visualized G
by the High Court, was available to many others in the Registry including
the persons who had typed the draft and handled the same after it had been
finalized by the petitioner as the Registrar on 7.12.1993. This obvious fact
was overlooked by the High Court which proceeded on the erroneous
assumption that this change must have been made only by the petitioner,
and that too for an ulterior purpose, without any material to justify that H

A assumption. The High Court also ignored the fact that this mistake was not discovered by anyone in the Registry including the petitioner's successor from February, 1994 till September, 1994 when it was notice by the Judges Committee, even though the last date for receipt of applications was in March 1994. It is this fallacy which led the High Court from one error to another, till the end.

B It is obvious that this mistake could not benefit any one who had already attained the age of 45 years on 1.1.1994 which was the upper age limit, since that person would undoubtedly grow older in age on 1.1.1995. The only benefit could be any one who did not satisfy the requirement of lower age limit of 35 years on 1.1.1994 and would attain that age on 1.1.1995. The logical exercise to perform was, therefore to see if there was any candidate so benefited, and, if so, whether the petitioner was in any manner connected with him. It is obvious that no one in the High Court had even considered this aspect, in as much as when we put this question, the learned Addl. Solicitor General on instructions told us that the record did not contain even a list of all the candidates with reference to their age to reveal this aspect. The learned Addl. Solicitor General asked the officer of the High Court present to assist him to prepare such a list from the record which shows that there may be some candidates who attained the age of 35 years between 1.1.1994 and 1.1.1995. But then there is absolutely nothing to indicate that any of them in any manner connected with the petitioner, much less that the petitioner has any interest in them. It is difficult to appreciate how the Committee comprising of Mr. Justice M.P. Singh and Mr. Justice R.S. Kejriwal could reach the conclusion quoted earlier, more particularly as under :-

F "This Committee has examined the record in detail and is of the tentative view that Shri R.C. Sood, the then Registrar, is responsible for the forgery committed in the record."

G This part of the conclusion that the action amounted to "forgery" is indeed astounding since forgery has a legal connotation amounting to an offence punishable under the Indian Penal Code.

H On a careful examination of the entire record placed before us by the learned Addl. Solicitor General, we have no doubt that the view taken by the High Court and the consequent action against the petitioner, to say the least, is wholly arbitrary, unwarranted and violative of Articles 14 and 16 of the Constitution. It is unsustainable and must be struck down.

This case leaves us very sad. Entrustment of the 'control' of the subordinate judiciary to the High Courts by enactment of the relevant provisions in the Constitution of India, particularly Article 235 therein is for the purpose of ensuring their independence and protection from executive interference. At a time when fairness and non-arbitrariness are the essential requirement of every administrative State action, it is more so for any Administrative Act of the Judges. It is necessary that members of the subordinate judiciary get no occasion to think otherwise. We are afraid, this incident appears to shake this faith. We do hope it is an inadvertent exception.

At the request of the learned Additional Solicitor General, after the matter was heard yesterday, we gave him time till today to explore the possibility of the High Court appreciating the correct position and revoking its decision. However, the learned Addl. Solicitor General has informed us today that the High Court on a reconsideration of the matter has only reiterated its earlier stand. We are, therefore, left with no option, except to decide this matter on merits and to say herein what we consider our painful duty in these circumstances.

Consequently, this writ petition is allowed. The impugned entire disciplinary proceedings initiated by the High Court against the petitioner, together with the Full Court Resolutions dated 20th and 21st October, 1994 as well as the order dated 22nd October, 1994 placing the petitioner under suspension are quashed. We also make it clear that all the consequential actions, if any, taken by the High Court pursuant to their decision, which we have quashed, shall also stand annulled and be totally ineffective. The High Court is directed to take all the necessary consequential steps pursuant to, and in accordance with this decision, forthwith. In the circumstances of the case, we also direct the respondent - High Court of Rajasthan to pay Rs. 10,000 as costs to the petitioner.

A.G.

Petition allowed.