

RAJASTHAN PUBLIC SERVICE COMMISSION

v

CHANDAN RAM AND ANR.

FEBRUARY 26, 1998

[S.B. MAJMUDAR AND V.N. KHARE, JJ.]

*Service Law :*

*Rajasthan State Agricultural Marketing Service Rules, 1986: Rule 4.*

*Cadre—Abolition of—Creation of new cadre—Existing entries in Service Rules in respect of “Assistant Director (Senior)” and “Assistant Director (Junior)” substituted by new entries of “Assistant Director” and “Marketing Officer” respectively—Service Rules further amended changing eligibility conditions for the post of Marketing Officer—Public Service Commission invited applications for Assistant Director (Junior) based on old Service Rules—However, recruitment was stopped pending amendment of Service Rules—Fresh advertisement issued for filling up vacancies including old vacancies for the post of Marketing Officer in accordance with amended Service Rules—Held : No appointment could be made for the posts of Assistant Director (Junior) since the cadre stood abolished—Commission’s decision to fill up vacancies of Marketing Officer, including the vacancies of the abolished cadre, on the basis of amended Service Rules, upheld.*

The respondent applied for one of the 23 posts of Assistant Director (Junior) pursuant to the advertisement issued by the appellant-Commission. Before the last date for submission of the applications the State Government directed the Commission not to go ahead with the said recruitment as the relevant service rules were being amended. Subsequently, the State Government issued a notification amending relevant entries in the Schedule to the Rajasthan State Agricultural Marketing Service Rules, 1986 whereby the posts of “Assistant Director (Senior)” and “Assistant Director (Junior)” were respectively substituted by the posts of “Assistant Director” and “Marketing Officer”. By another notification issued in April 1995 the eligibility conditions for appointment as Marketing Officer were also changed which prescribed an additional qualification of M.Sc. (Agriculture) with specialisation in Agriculture Economics/Agriculture, Marketing. Thereafter, the appellant-Commission issued a fresh advertisement for filling up 26 posts of Marketing Officers.

A The respondent applied once again pursuant to the fresh advertisement and was asked to appear before the appellant-Commission for a screening test. Instead of appearing for the screening test the respondent filed a writ petition before the High Court contending that the respondent was entitled to be considered on the basis of the earlier Service Rules and not on the basis of the amended Service Rules of 1995. The Single Judge of the High Court dismissed the said petition. However, the Division Bench allowed the petition on the ground that old vacancies had to be filled up on the basis of earlier Service Rules and not on the basis of the amended Service Rules. Hence this appeal.

C Allowing the appeal, this Court

HELD : 1.1. A conjoint reading of the two appending notifications with the erstwhile Schedule entries of Rule 4 of the Rajasthan State Agricultural Marketing Service Rules, 1986 leaves no room for doubt that after the amendments to the statutory rules erstwhile posts of Assistant Directors (Senior) ceased to exist and in their place became the posts of Assistant Directors simplicitor. The said posts after the amendment had to be filled in by 100% promotion from the incumbents holding newly created posts of Marketing Officers which substituted the earlier existing posts of Assistant directors (Junior). So far as the erstwhile posts of Assistant Directors (Junior) were concerned, serial no. 4 dealing with the said erstwhile posts underwent a metamorphosis and the said posts got substituted by the newly created posts of marketing officers who could be recruited now by 50% promotion and 50% by direct recruitment. For 50% direct recruitment to the newly created posts of Marketing officers, the eligibility qualifications were also changed and an additional qualification, namely, of M.Sc. (Agriculture) with specialisation in Agriculture Economics, Agriculture Marketing was prescribed. It has, therefore, to be held that after April 1995 the erstwhile posts of Assistant Directors (Junior) ceased to exist and a new cadre of Marketing Officers came into existence. [1110-C-G]

G 1.2. It is true that the pay scale remained the same. But the erstwhile posts of Assistant Director (Junior) no longer exist under the Rules after April 1995 and the said erstwhile posts got substituted by creation of new posts of Marketing Officers and these newly created posts of Marketing Officers became the source and feeder posts for 100% promotion therefrom to the newly created posts of Assistant Directors. Thus the erstwhile hierarchy in the cadres comprising of Assistant Director (Junior) and

Assistant Director (Senior) were given a go by and instead a new hierarchy in the cadre was constituted, namely, Marketing Officer and Assistant Director. In other words the posts of Assistant Director (Senior) and Assistant Director (Junior) were totally abolished. [1111-C-D] A

1.3. Even if the earlier advertisement were proceeded with, it would have resulted in a stalemate and exercise in futility. No appointment could have been given to the selected candidates to the posts of Assistant Directors (Junior) after the 1995 amendment of rules as there were no such posts in the hierarchy of State Service. Consequently it must be held that on account of the amendments to the Rajasthan Agricultural Marketing Service Rules the earlier advertisement had become infructuous and otiose. [1111-G] B C

2.1. It is true that old vacancies were carried forward and got merged along with three more vacancies and became 26 vacancies for the newly created posts of Marketing Officers, but that does not mean that still the earlier 23 vacancies remained existing under the Rules for appointing eligible persons to the 23 erstwhile vacant posts of Assistant Directors (Junior). There were no such posts after 1995 in the cadres of Rajasthan Agricultural Marketing Service. Those vacancies were carried forward and got merged with the further vacancies in the newly created posts of Marketing Officers. But all the 26 vacancies, therefore, after April 1995 had to be treated to be vacancies in the newly created posts of Marketing Officers and these vacancies had to be filled in necessarily as per Rule 17 by issuing fresh advertisement for filling up these newly created 26 posts of Marketing Officers and that is precisely what was done by the appellant-Commission by issuing fresh advertisement. [1114-A-C] D E

2.2. It has, therefore, to be held that no fault could be found with the appellant-Commission in issuing fresh advertisement for recruiting eligible candidates from open market for filling up 26 posts in the newly created cadre of Marketing Officers under the Rules as amended in 1995. [1119-D] F

*Jal Singh Dalal v. State of Haryana*, [1993] Supp. 2 SCC 600, followed. G

*State of M. P. v. Raghuvir Singh Yadav*, [1994] 6 SCC 151 and *J & K Public Service Commission v. Dr. Narinder Mohan*, [1994] 2 SCC 630, relied on. H

*State of Haryana v. Subhash Chander Marwaha*, [1974] 3 SCC 220, referred to.

A *Y. V. Rangaiah v. J. Sreenivasa Rao*, [1983] 3 SCC 284; *A. A. Calton v. Director of Education*, [1983] 3 SCC 33; *P. Ganeshwar Rao v. State of A.P.*, [1988] Supp. SCC 740; *P. Mahendran v. State of Karnataka*, [1990] 1 SCC 411 and *B.L. Gupta v. MCD*, (Civil Appeal No. 6114 of 1997 decided on 5-9-1997), held inapplicable.

B CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1108 of 1998 Etc.

From the Judgment and Order dated 3.3.97 of Rajasthan High Court in DBCSA. No. 508/96.

C P.P. Rao, M.N. Krishnamani and V.N. Gapule, A.P. Dhamija, Umesh Bohare, Sushil Kr. Jain, S.B. Bhowmik, K.S. Bhati, Ms. U. Sharma, M.S. Madhur Dadlani, S.K. Agnihotri and B.D. Sharma for the appearing parties.

The Judgment of the Court was delivered by

D **S.B. MAJMUDAR, J.** Leave granted in all these Special Leave Petitions.

By consent of learned advocates appearing for the contesting parties all these appeals were heard finally and are being disposed of by this common judgment.

E The appellants in these appeals are aggrieved by the judgment and order rendered by the Division Bench of the High Court of Rajasthan in D.B. Civil Special Appeal No, 508 of 1996. By the impugned judgment the Division Bench of the High Court allowed the appeal of the original writ petitioner-common respondent no 1 in these appeals whose writ petition was dismissed  
F by the learned Single Judge at admittance stage. As a result of the decision of the Division Bench the Civil Special Appeal was allowed and the appellant-State of Rajasthan in Civil Appeal arising out of Special Leave Petition (C) No. 18511 of 1997 and the Rajasthan Public Service Commission, Ajmer being  
G appellant in Civil Appeal arising out of Special Leave Petition (C) No 9698 of 1997, were directed to proceed with the recruitment process pursuant to the advertisement-Annexure P-1, for making appointments to the posts of Assistant Directors (Junior), re-designated as Marketing Officers. Appellants in appeal arising out of S.L.P(C) No. 16267 of 1997 are candidates who appeared at the screening test conducted by the Rajasthan Public Service Commission pursuant  
H to a second advertisement which was impugned by respondent no 1 in his writ petition.

In order to appreciate the common grievance of the appellants against the very same judgment of the Division Bench of the High court a few relevant facts will have to be noted at the outset. A

*Introductory Facts*

Common respondent no 1, pursuant to an advertisement dated 05th November 1993 issued by the appellant-Rajasthan Public Service Commission for recruitment of 23 posts of Assistant Directors (Junior), had applied for being considered for one of the advertised posts as a direct recruit. It is not in dispute that respondent no 1, who will hereinafter be referred to as the 'writ petitioner was already working in the same department and as a departmental candidate he had offered his candidature as a direct recruit for one of the advertised posts. It is also not in dispute between the parties that the said posts were governed by the Rajasthan State Agricultural Marketing Service Rules, 1986 (hereinafter referred to as 'the Service Rules'). The said advertisement dated 05th November 1993, which is Annexure P-1 in the case, was issued by the Rajasthan Public Service Commission pursuant to the requisition dated 01st November 1993 sent by the State of Rajasthan for initiating recruitment process by the Rajasthan Public Service Commission for filling up these posts. The last date for inviting applications from eligible candidates, as mentioned in the said advertisement, was 31st December 1993. Three days prior to the said last date the State of Rajasthan by its communication dated 28th December 1993 asked the Rajasthan Public Service Commission not to go ahead with the said recruitment as the relevant rules, pertaining to the recruitment to the posts concerned, were sought to be amended. Result was that after the expiry of the last date for inviting applications from eligible candidates for being considered for appointments to the advertised posts of Assistant Directors (Junior) in the Rajasthan Agricultural Marketing Service, the proceedings remained dormant and the State Public Service Commission did not proceed further in the matter, it is not in dispute between the parties that the writ petitioner at the relevant time being eligible for being considered for such selection had, pursuant to the advertisement Annexure P-1, applied in time. On 19th April 1995 the State of Rajasthan got the Service Rules amended in exercise of powers conferred by the proviso to Article 309 of the Constitution of India whereby the Governor of Rajasthan made requisite amendments to the said Rules. We will refer to these amended rules at an appropriate place in the latter part of this judgment. To resume the narrative of events, as the Service Rules were got amended the State of Rajasthan withdrew its earlier requisition, dated 01st November 1993 as submitted to the B  
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- A Public Service Commission, by communication dated 03rd August 1995. As the earlier requisition for recruitment of suitable candidates to the 23 posts of Assistant Directors (Junior) was withdrawn by the State, the Rajasthan Public Service Commission also by its notification dated 23rd August 1995 cancelled the earlier advertisement, Annexure P-1. Thereafter on the fresh requisition being issued by the State for filling up 26 posts of Marketing Officers under the amended Rules a fresh advertisement was issued on 08th January 1996 by the Rajasthan Public Service Commission inviting applications from eligible candidates for being considered to be appointed to the aforesaid 26 posts. The fresh advertisement is at Annexure P-4. The writ petitioner pursuant to the said fresh advertisement applied once again and put forward
- B his candidature. Pursuant to the said fresh application by respondent no. 1-writ petitioner the Rajasthan Public Service Commission asked him to appear before the Commission on 18th August 1996 for screening test. On receipt of the said intimation, instead of appearing for the screening test respondent no. 1 filed writ petition in the Rajasthan High Court on 08th August 1996. His contention in the writ petition before the learned Single Judge was that despite the issuance of fresh advertisement for filling up 26 posts of Marketing Officers in the Rajasthan State Agricultural Marketing Service, as per the amended Rules, the writ petitioner who had earlier applied pursuant to the first advertisement Annexure P-1 dated 05th November 1993 was entitled to be considered in the light of the said first advertisement, qua the 23 vacancies
- D which were already existing in the State's Agricultural Marketing Service between 1986 and 1992, and for filling up those earlier vacancies the amended rules of 1995 could not be pressed in service and those vacancies had to be filled up as per the earlier unamended Service Rules. Learned Single Judge did not accept the said contention and summarily rejected the writ petition. The Division Bench by the impugned judgment and order in the Civil Special
- E Appeal moved by the writ petitioner, took a contrary view and held, relying upon some of the decisions of this Court, that for old vacancies the amended rules could not be pressed in service and they had to be filled up pursuant to the earlier existing rules during the time when these vacancies occurred in the State Service. As noted earlier the aforesaid judgment of the Division
- F Bench of the High Court is brought on the anvil of scrutiny of this Court in the present appeals on grant of special leave to appeal to the aggrieved respondents in the Civil Special Appeal before the High Court.
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*Rival Contentions*

- H Shri P.P. Rao, learned senior counsel appearing for the appellants in

appeal arising out of Special Leave Petition (C) No. 16267 of 1997 and learned senior counsel, Shri M.N. Krishnamani, appearing for State of Rajasthan in appeal arising out of Special Leave Petition (C) No. 18511 of 1997 submitted in support of their appeals that the Division Bench of the High Court patently erred in relying upon the judgments of this Court which were not applicable at all on the facts of the present case. It was submitted that in spite of the fact that the writ petitioner might have applied pursuant to the first advertisement Annexure P-1 he had no vested right to insist that the recruitment process pursuant to the said advertisement must be continued and must be brought to its logical end. That it was open to the State authorities to direct the Public Service Commission not to proceed further with the said recruitment process especially when the rules of recruitment were sought to be amended in the meantime. Not only that, the rules were got amended as a result of which the erstwhile posts of Assistant Directors (Junior) ceased to exist and re-cadrisation was done in the State Agricultural Marketing Service. Instead of the post of Assistant Director (Junior), a new post of Marketing Officer was created and simultaneously the post of Assistant Director (Senior) was abolished and a new post of Assistant Director was created. Consequently for these newly created posts of Marketing Officers when fresh advertisement was issued by the Public Service Commission pursuant to the requisition furnished by the State of Rajasthan for filling up 26 vacancies in these newly created posts, the earlier advertisement which was already cancelled could not be relied upon by the writ petitioner for insisting that despite this change in the recruitment rules and despite the abolition of the old posts of Assistant Directors (Junior) the old advertisement for filling up the non-existing posts should still be continued and should be taken to its logical end. That this was not a case where earlier existing vacancies in the same posts were sought to be filled in by applying the new recruitment rules changing the qualifications for appointment to the very same earlier advertised posts and hence reliance placed by the High Court on the decisions of this Court was completely misplaced.

On the other hand, it was submitted by learned senior counsel Shri V.N. Ganpule for the writ petitioner that 23 vacancies which were already advertised pursuant to the first advertisement dated 05th November 1993 were carried forward in the second advertisement dated 08th January 1996 Annexure P-4. Therefore, the old vacancies which had arisen between 1986 and 1992 remained to be governed by the then existing rules and such vacancies could not be filled up by applying the amended rules of 1995. It was, therefore, submitted by him that the High Court had rightly followed the decisions of

A this Court which had consistently taken the view that for recruitment on the vacancies which had arisen in the past the then existing old rules of recruitment would apply and not the subsequent new rules of recruitment. That the new rules would apply only for filling up new vacancies which might arise after the new or amended rules were promulgated and, therefore, no error was committed by the Division Bench of the High Court in arriving at the impugned decision. Shri Ganpule further submitted that this is not a case in which the old posts of Assistant Directors (Junior) were abolished, on the contrary, by the amended rules they were re-designated as Marketing Officers. The salary of these posts remained the same, mode of recruitment remained the same save and except the fact that an additional qualification of M.Sc. First Class was also added as one of the eligibility criteria. But the nature of duties substantially remained the same, pay scales remained the same and consequently it could not be said that the posts of Assistant Directors (Junior) were abolished and in their place new posts of Marketing Officers were created for which new advertisement could have been issued in connection with earlier existing old vacancies which were carried forward.

D In the light of the aforesaid rival contentions the following points arise for our consideration :

- E 1. Whether the posts of Assistant Directors (Junior) in the Rajasthan State Agricultural Marketing Service got abolished and substituted by the newly created posts of Marketing Officers as per the amendment to the Service Rules of 1986 pursuant to notifications dated 19th April 1995 and 26th April 1995.
- F 2. If the answer to the first point is in the affirmative, whether the old advertisement, Annexure P-1 dated 05th November 1993 for recruitment from open market by way of direct recruitment of eligible candidates for the said 23 advertised posts could survive any further after the amendment to the rule in 1995.
- G 3. If the answer to the second point is in the negative whether any fault can be found with the fresh process of recruitment initialed by the Rajasthan Public Service Commission pursuant to the advertisement dated 08th January 1996, Annexure P-4.
4. What final order ? We shall consider the aforesaid points seriatim

*Point No. 1*

H In order to resolve the controversy centering round this point it is

necessary to note the relevant Service Rules. Rajasthan State Agricultural Marketing Service Rules, 1986 were got promulgated by the State of Rajasthan through the Governor in exercise of the powers under the proviso to Article 309 of the Constitution of India. The notification promulgating these rules was dated 21st January 1986. Pursuant to these rules Rajasthan State Agricultural Marketing Service was constituted. 'Service' was defined by Rule 2 sub-rule (i) to mean, 'the Rajasthan State Agricultural Marketing Service'. Rule 4 of the said Rules found in Part II pertaining to caption 'Cadre' lays down the composition and strength of the service. Sub-rule (1) thereof provides that, the nature of posts included in each category of the service, shall be as specified in column 2 of the Schedule'. Sub-rule (2) of Rule 4 provides that, 'the strength of posts in each category shall be such as may be determined by the Governments from time to time, provided that the Government, may - (a) create any post permanent or temporary from time to time as may be found necessary and may abolish any such posts in the like manner without thereby entitling any person to any compensation.' Rule 4 sub-rule (2) (b) enables the State to leave unfilled or hold in abeyance or abolish or allow to lapse any post, permanent or temporary from time to time, without thereby entitling any person to any compensation. As per Rule 5 sub-rule (1) (d), all persons recruited to the service in accordance with the provisions of these rules except those appointed on an urgent temporary basis under rule 26 would, amongst others, get included in the said service governed by the Rules.

So far as the recruitment to the said posts in different cadres in the said service is concerned Part III deals with the said topic of 'recruitment'. Rule 6 of the Rules provides for 'Methods of recruitment'. Sub-rule (1) thereof lays down that, 'recruitment to the posts in the service after the commencement of these rules shall be made by the following methods in the proportion indicated in column 3 of schedule'. One of the modes of recruitment is by direct recruitment in accordance with part IV of the Rules. As we are concerned with direct recruitment Part IV becomes relevant. It deals with 'Procedure for direct recruitment'. Rule 17 lays down that, 'application for direct recruitment to the *post or posts in the service* shall be invited by the Commission by advertising the vacancies to be filled in the Newspapers or in such other manner as they may deem fit'. We may at this stage also refer to rules which are found in Part III regarding recruitment to the service and on which strong reliance was placed by learned senior counsel for the respondent-writ petitioner.. Rule 7 deals with 'Reservation of vacancies for the scheduled caste and the Scheduled tribes. Sub-rule (1) thereof lays down that, reservation

- A of vacancies for the Scheduled castes and the Scheduled tribes shall be in accordance with the orders of the Government for such reservation in force at the time of recruitment i.e. by direct recruitment and or by promotion. Rule 8 deals with 'Determination of vacancies'. Sub-rule (1)(a) thereof provides that, 'subject to the provisions of these rules the appointing authority shall
- B determine as soon as possible after 1st April every year, the actual number of vacancies occurring (sic) as on 1st April and also vacancies anticipated during the financial year'. Rule 11 deals with 'Age' of recruitment and eligibility of a candidate for direct recruitment and lays down that, 'a candidate for direct recruitment to the service must have attained the age of 21 years and must not have attained the age as prescribed in column 9 of the schedule as
- C the case may be on the first day of January next following the last date fixed for receipt of applications, provided (i)... .. (ii)... .. (iii)... .. and (iv) in the case of persons serving in connection with the affairs of the state in substantive capacity, the upper age limit shall be 40 years for direct recruitment to posts filled in by competitive examination or in the case of posts
- D filled in through the Commission by interview. This relaxation shall not apply to urgent temporary appointment.

- It is the case of the writ petitioner that pursuant to the first advertisement dated 05th November 1993 Annexure P-1 when 23 posts of Assistant Directors (Junior) were advertised for being filled in, the writ petitioner as a departmental candidate was within the upper age limit of 40 years for direct recruitment as per Rule 11 (IV). But the difficulty for him arose in the light of the second advertisement dated 08th January 1996 Annexure P-4 as by that date he had crossed the permissible upper age limit and that is the reason why this litigation was triggered off by him by insisting that the authorities must
- E proceed with the recruitment pursuant to the first advertisement of 05th November 1993 only.
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- Rule 4 about composition and strength of service and providing for various posts in the cadre has a direct reference to column 2 of the schedule. When we turn to the Schedule annexed to the rules we find at serial no.4 the
- G post of Assistant Director (Junior)/Secretary Market Committee. This was the original serial no. 4 in the Schedule. At serial no.3 in the said Schedule was the post of Assistant Director (Senior) which was to be filled in by 100% promotion from the incumbents of the posts of Assistant Directors (Junior). It is this Schedule which underwent amendment by the amending notifications
- H issued by the Governor of Rajasthan under the proviso to Article 309 to the

Constitution of India. The said notifications amending the statutory rules read as under :

**“GOVERNMENT OF RAJASTHAN DEPARTMENT  
OF PERSONNEL (A-Gr-II)**

No.F.1 (2)DOP/A-II/83

Jaipur, Dated 19-4-95

**NOTIFICATION**

In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of Rajasthan hereby makes the following amendment in the Rajasthan State Agricultural Marketing Service Rules, 1986, namely :-

**AMENDMENT**

In this schedule appended to the said rules :-

1. The existing expression “Assistant Director (Senior)” occurring in Col. 4 against the entry at Sl. No.2 and in Col.2 against the entry at Sl. No.3 shall be substituted by the expression “Assistant Director”.
2. The existing expression “Assistant Director (Junior)” occurring in Col.4 against the entry at Sl. No.3 and in col.2 against the entry of Sl.No.4, shall be substituted by the expression “Marketing Officer”.

**GOVERNMENT OF RAJASTHAN DEPARTMENT  
OF PERSONNEL (A-Gr.II)**

No.f.1(2) DOP/A-II/83

Jaipur dated 26-4-95

**NOTIFICATION**

In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of Rajasthan hereby makes the following amendment in the Rajasthan State Agricultural Marketing Service Rules, 1986, namely :-

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## AMENDMENT

The existing entry occurring in column NO.7, against S.No.4 of the Schedule appended to the said Rules, shall be substituted by the following, namely :-7

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“M.Sc. (Agriculture) with specialisation in Agriculture Economics/ Agriculture Marketing of a University established by law in India.

## OR

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1. At least second class degree either in Arts with Economics or in Commerce or in Agriculture of a University established by law in India.
2. Specialised training in Agriculture Marketing from a recognised institution.”

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A conjoint reading of these two amending notifications with the erstwhile Schedule entries and Rule 4 of the Rules leaves no room for doubt that after these amendments to the statutory rules erstwhile posts of Assistant Directors (Senior) as earlier found at serial no.3 ceased to exist and in their place became the posts of Assistant Directors simpliciter. The said posts after the amendment had to be filled in by 100% promotion from the incumbents holding newly

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created posts of Marketing Officers which substituted the earlier existing posts of Assistant Directors (Junior). So far as the erstwhile posts of Assistant Directors (Junior)/Secretary Market Committee were concerned, serial no.4 dealing with the said erstwhile posts underwent a metamorphosis and the said posts got substituted by the newly created posts of Marketing Officers who could be recruited now by 50% promotion and 50% by direct recruitment. For 50% direct recruitment to the newly created posts of Marketing Officers, the eligibility qualifications were also changed and while retaining the earlier qualifications one additional qualification was also brought within the sweep of the Rules, namely, M.Sc. (Agriculture) with specialisation in Agriculture Economics/Agriculture Marketing of a University established by law in India.

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In the light of the aforesaid amendments to the Service Rules, therefore, the following result ensued :

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1. After April 1995 the erstwhile posts of Assistant Directors (Junior) ceased to exist and a new cadre of Marketing Officers came into existence.

2. In directly recruiting incumbents for the newly created posts of

Marketing Officers under the Service Rules the educational qualification also underwent a sea-change and M. Sc. Agriculture with specialisation in Agriculture Economics became the prime qualification for being eligible to be considered for the said posts. Thus under the erstwhile rules for being considered for direct recruitment to the posts of Assistant Directors (Junior) second class Bachelor's Degree was sufficient for the candidate. Now a Master's Degree in Agriculture with specialisation in Agriculture Economics was introduced as a prime educational qualification for the concerned candidate and only second class degree at Graduation level was retained as an alternative eligibility criterion. It is true that the pay scales remained the same. But the erstwhile posts of Assistant Directors (Junior) no longer existed under the Rules after April 1995 and the said erstwhile posts got substituted by creation of new posts of Marketing Officers and these newly created posts of Marketing Officers became the source and feeder posts for cent percent promotion therefrom to the newly created posts of Assistant Directors. Thus the erstwhile hierarchy in the cadres comprising of Assistant Director (Junior) and Assistant Director (Senior) were given a go-by and instead a new hierarchy in the cadres was constituted, namely, Marketing Officer and Assistant Director. In other words the posts of Assistant Director (Senior) and Assistant Director (Junior) were totally abolished.

Under these circumstances therefore, it is difficult to appreciate how the Division Bench of the High Court could persuade itself in agreeing with the submission of the learned counsel for the respondent-writ petitioner that despite this change of cadres and the provision for recruitment on new posts the old advertisement of 05th November 1993 Annexure P-1 seeking to consider the candidature of applicants for erstwhile 23 advertised vacancies in the posts of Assistant Director (Junior) in the Agricultural Marketing Service of the State of Rajasthan would still be pursued further and recruitment should be effected for these 23 erstwhile vacancies as per the old advertisement. It is easy to visualise that even if such an earlier advertisement of 05th November 1993 was proceeded with further it would have resulted into a stalemate and an exercise in futility. No appointment could have been given to the selected candidates to the posts of Assistant Directors (Junior) after 1995 amendment of rules as there were no such posts in the hierarchy of State Service. Consequently it must be held that on account of the amendments to the Rajasthan Agricultural Marketing Service Rules the earlier advertisement dated 05th November 1993 had become infructuous and otiose. Only on this short ground the writ petition of the respondent-writ petitioner should have been dismissed by confirming the order of dismissal of the writ petition earlier

- A passed by the learned Single Judge. A conjoint reading of Rules 4, 6 and 17 to which we have made a reference earlier leaves no room for doubt that direct recruitment can be resorted to by the Public Service Commission only for existing posts in the Service and for which effective exercise of recruitment could be resorted to at a given point of time. It is true that when the earlier advertisement dated 05th November 1993 Annexure P-1 was issued by the
- B Public Service Commission there were 23 vacancies in the cadre of Assistant Directors (Junior) but by passage of time due to the metamorphosis in the said cadre as a result of amendments to the relevant Service Rules, by the time fresh advertisement was issued on 08th January 1996 there were no posts of Assistant Directors (Junior) in the hierarchy of posts in the cadres governed
- C by the Rules and, therefore, the fresh advertisement dated 08th January 1996 as per Rule 17 had necessarily to refer to the process of direct recruitment to the newly created posts of Marketing Officers and no fault could be found with the said fresh advertisement. This aspect of the matter was highlighted by the Public Service Commission itself by filing counter in the writ petition in the appellate proceedings before the Division Bench of the High Court. A
- D copy of his said counter is found at page 66 of the Paper Book in appeal arising out of S.L.P(C) No 9698 of 1997, moved by the Rajasthan Public Service Commission, before us. Paragraphs 7 and 8 of the said counter require to be noted in this connection :
- E “7. That in reply to para no.7 of the writ petition, it is submitted that after the withdrawal of requisition, the cadre structure given in the Rules was revised and the post of Assistant Director (Junior) was redesignated and the post of Marketing Officer was included in the cadre structure for which new qualifications were prescribed . After
- F revision in the cadre structure and amendment in the Rules, a fresh requisition was received by the Commission from the State Government , on the basis of which, an advertisement was issued by the respondent Commission on 8th January, 1996 and the last date for submission of the application form in response to the said advertisement was 7th March, 1996.
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- H 8. That the averments made in para 8 of the writ petition are wholly misconceived. The post of Marketing Officer came into existence after the revision in the cadre structure. No post of Marketing Officer was available under the earlier unamended rules. In these circumstances, the contention of the petitioner that the post of Marketing Officer was

available from the year 1986-87 to 1992-93 is wholly incorrect. The further contention of the petitioner that the posts are governed by the unamended Rules of 1986 and, therefore, the State Government has no power to fill up the vacancies in terms of the amended Rules is wholly untenable. It is well settled law that amended Rules have to be taken into consideration before the posts have been advertised. If on the date of advertisement the Rules have been amended, the posts are to be filled up according to the Rules prevailing on the date of advertisement and the same did not to be filled up according to the unamended Rules.”

Despite this clear case made out by the Rajasthan Public Service Commission before the Division Bench of the High Court and despite the fact that the said case was clearly borne out from the statutory rules as amended in April 1995 the High Court in the impugned judgment has taken the view that the posts of Assistant Directors (Junior) appear to have been re-designated as Marketing Officers meaning thereby there was only change of nomenclature. It is difficult to appreciate this line of reasoning. Not only the posts of Assistant Director (Junior) got abolished and substituted by new posts of Marketing Officers but it is the new post of Marketing Officer which became the feeder post for 100% promotion from the said newly created post to the Post of Assistant Director which also was a newly created post in the place of the erstwhile post of Assistant Director (Senior). It must, therefore, be held that the earlier advertisement of 05th November 1993 Annexure P-1 became infructuous and could not be relied upon for sustaining any further process of recruitment pursuant to the said infructuous advertisement seeking to recruit persons to posts which no longer existed in Rajasthan State Marketing Service after April 1995. The first point, therefore, will have to be answered in the affirmative in favour of the appellants and against the respondent-writ petitioner.

*Point No. 2*

Once the first point is answered against the respondent-writ petitioner nothing further would survive in his writ petition. The reason is obvious. The decisions of this Court relied upon by the Division Bench of the High Court in taking the view that old vacancies in the posts had to be filled in pursuant to the old recruitment rules would become ex facie inapplicable. Once it is held that the old vacancies were in posts which no longer existed after April 1995, there remained no occasion to consider whether these old vacancies could

- A be filled in by applying earlier rules of recruitment to the very same posts. It is true that old vacancies were carried forward and got merged along with three more vacancies and became 26 vacancies for the newly created posts of Marketing Officers, but that does not mean that still the earlier 23 vacancies remained existing under the Rules for appointing eligible persons to the 23 erstwhile vacant posts of Assistant Directors (Junior). There were no such posts after 1995 in the cadres of Rajasthan Agriculture Marketing Service, as seen earlier. Those vacancies were carried forward and got merged with the further vacancies in the newly created posts of Marketing Officer. But all the 26 vacancies, therefore, after April 1995 had to be treated to be vacancies in the newly created posts of Marketing Officers and these vacancies had to be filled in necessarily as per Rule 17 by issuing fresh advertisement for filling up these newly created 26 posts of Marketing Officers and that is precisely what was done by the Rajasthan Public Service Commission by issuing fresh advertisement dated 08th January 1996.

- D However as strong reliance was placed by the High Court on the judgments of this Court and which were again pressed in service by learned senior counsel for respondent no.1-writ petitioner we may briefly refer to these judgments. In the case of *Y.V. Rangaiah and others etc. v. J. Sreenivasa Rao and others*, [1983] 3 SCC 284 a Bench of two learned Judges of this Court had to consider the question about applicability of Rule 4 (a)(1)(i) of the Andhra Pradesh Registration and Subordinate Service Rules which laid down the procedure for appointment by promotion to the posts in that service. Considering the said rules it was observed that when the said rules enjoined the appointing authority to prepare panels for selecting promotees yearwise in old vacancies to be filled in by promotion if panels were not prepared at appropriate time the authorities could be directed to prepare such panels and while preparing those panels for the earlier years the then existing statutory rules of recruitment had to be applied. The said decision obviously cannot apply on the facts of the present case for two reasons. Firstly, this is not a case of promotion but direct recruitment to the advertised posts and secondly the scheme of the A.P. Rules considered by the Court in that case cast a statutory duty and obligation on the part of the appointing authority to prepare panels of eligible candidates yearwise in connection with the vacancies then existing and if they had failed in that statutory duty and obligation they could legitimately be called upon to carry out that obligation and while doing so for preparing the panels for the earlier years the relevant rules then existing had to be kept in view. But even apart from these two distinguishing features
- H one additional salient aspect of the matter is that these panels were to be

prepared for filling up vacancies by promotion to the posts of Sub-Registrars Grade II. The said posts continued to exist in the cadre and the only question was how the vacancies in the said existing posts had to be filled in by promotion by preparing panels for the relevant years. As we have seen earlier in the present case the old posts of Assistant Directors (Junior) had ceased to exist. Therefore, there remained no occasion for proceeding with recruitment to such non-existing posts pursuant to the earlier stale and infructuous advertisement of 05th November 1993 Annexure P-1. In the same volume at page 33 is found another decision in the case of *A.A. Calton v. Director of Education and another*, [1983] 3 SCC 33. It is true that in that case another Division Bench of this Court consisting of E.S. Venkataramiah (as he then was) and A.N.Sen, JJ., held that the process of selection under Section 16-F of the U.P. Intermediate Education Act, 1921 by way of direct recruitment commenced from the stage of calling for applications for a post up to the date on which the Director became entitled to make a selection under the said provision and the entire process was an integrated one. But even in that case there was no question of the said posts to be filled in by direct recruitment ceasing to exist under the Act and the Rules. Not only that there was an earlier order of the High Court in the proceedings between the contesting parties whereby the High Court had remanded direct recruitment proceedings for being re-considered by the Director and in view of the said order of the High Court which had become final between the parties it could not be said subsequently that the Director could not undertake the exercise of appointment by way of direct recruitment as the Act had got amended in the meantime. In the case of *P.Ganeshwar Rao and others v. State of Andhra Pradesh and others*, [1988] Supp SCC 740 another Division Bench of two learned Judges of this Court consisting of E.S. Venkataramiah and N.D. Ojha, JJ., had to consider the question whether the process of filling up of 51 vacancies which had been notified by the Public Service Commission for direct recruitment under the then existing recruitment rules which permitted clubbing of temporary vacancies also for the purpose of recruitment, could be continued further if pending such recruitment process the rules of recruitment got amended and only 37-1/2% of substantive vacancies could be filled up by direct recruitment. Answering this question Venkataramiah, J. (as he then was) speaking for the Court held that the amendment to the recruitment rules referred to future vacancies only as the Explanation which was introduced by way of amendment to Special Rules 28th April 1980 contained the crucial words '37-1/2 per cent of substantive vacancies arising in the category of Assistant Engineers shall be filled by direct recruitment.....'. The words 'vacancies arising in the category' were emphasised to mean future vacancies and which could not cover earlier

A erstwhile vacancies and, therefore, it was held that for filling up the earlier vacancies which had arisen prior to the amendment, the old rules would apply. In paragraph 7 of the Report, however, the following pertinent observations were also made :

B “... .. If the above clause had read ‘37 1/2 per cent of the substantive vacancies in the category of Assistant Engineers shall be filled by the direct recruitment’ perhaps there would not have been much room for discussion. The said clause then would have applied even to the vacancies which had arisen prior to the date of the amendment but which had not been filled up before that date.....”

C It is, therefore, obvious that this Court in *P. Ganeshwar's*, case (supra) itself held that if the recruitment rules underwent amendment prior to actual filling up of the advertised posts the amended rules would apply and it is only because of the word ‘arising’ as found to have been employed in the amended provision that the aforesaid decision was rendered. But even that apart, this decision also referred to existing posts and had nothing to do with posts which had got abolished in the meantime as in the present case. We may now refer to a three Judge Bench decision of this Court in the case of *P. Mahendran and others etc v. State of Karnataka and others*, [1990] 1 SCC 411. In that case a Bench of three learned Judges of this Court consisting of *E.S. Venkataramiah. CJ., K.N. Singh and N.M Kasliwal JJ.*, speaking through Singh J., had to consider the question whether the Karnataka General Service (Motor Vehicles Branch) (Recruitment) Rules, 1962 which had earlier prescribed a diploma in Automobile Engineering or Mechanical Engineering as a minimum qualification for appointment of a Motor Vehicle Inspector, once amended in 1987, could affect the earlier process of selection undertaken in the light of prior unamended rules by the Karnataka Public Service Commission and could make the earlier diploma-holder applicants ineligible only because after amendment of the rules diploma- holders could not apply for such posts. It was found as a matter of fact that the earlier selection process when the unamended rules were holding the field had got completed. The selected candidates were already recommended for appointment and their appointments would have got fructified but for the fact that the High Court of Karnataka in the writ petition intervened and issued stay orders against such appointments. The question was whether after vacating such stay by the High Court when the writ petition was disposed of the selected candidates could be given appointments pursuant to the earlier rules or they could be told off the gates only because as per the new amended rules they being the

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diploma-holders could not be held eligible to be appointed to such posts. In the light of these peculiar facts of this case it was observed by this Court that the amended rules did not contain any provision enforcing the amended rules with retrospective effect and that the appointments which would have been made available to the selected candidates but for the interim relief granted by the High Court of Karnataka could not be denied to them. We fail to appreciate how the said decision can advance the case of the respondent-writ petitioner when no such occasion arose in the history of this litigation wherein the respondent -writ petitioner never got selected for the said post under the old rules, nor was his appointment intercepted by any stay order of the Court. Save and except inviting applications as per the earlier advertisement no further step in connection with his recruitment was ever undertaken by the Public Service Commission. Hence, no right accrued to him, save and except, for being considered for such selection if earlier advertisement had survived. In fact Shri Ganpule, learned senior counsel for the respondent-writ petitioner fairly stated that it is not his case that the respondent had any right to be appointed to the said post. His claim was only to be considered for being selected for the said post. As we have seen earlier, once the earlier, advertised posts ceased to exist under the Service Rules there remained no occasion for considering writ petitioner's claim for being considered for appointment to such a non-existing post. Our attention was also invited to a decision of this Court in the case of B.L. Gupta and Anr V. M.C.D [Civil Appeal NO. 6114 of 1997 etc.] decided on 5th September 1997. In the said decision the question of promotion to the post of Assistant Accountant from the feeder post of Senior Clerk with three years' experience and the other feeder post of Junior Clerk with eight years' experience was on the anvil of scrutiny. For the earlier vacancies of the Assistant Accountants the earlier rules of recruitment were held applicable and for new vacancies the amended rules of 1995 had to be applied. For coming to the said conclusion this Court relied upon some of the earlier decisions of this Court to which we have made a reference earlier. We fail to appreciate how this decision also can advance the case of the respondent -writ petitioner. The post of Assistant Accountant was a promotional post which did not cease to exist in the hierarchy of the service echelon with which this Court was concerned. Hence the ratio of the decision of this Court in Civil Appeal No. 6114 of 1997 also cannot be of any assistance to respondent -writ petitioner. On the contrary a three- Judge Bench judgment of this Court in the case of *Jai Singh Dalal and others v. State of Haryana and another*, [1993] Supp 2 SCC 600 would squarely get attracted on the facts of the present case. *A.M. Ahmadi, J.*, speaking for the three-judge Bench in paragraph 7 of the Report relying on an earlier judgment

- A of this Court in case of *State of Haryana v. Subash Chander Marwaha*, [1974] 3 SCC 220 laid down that when the special process of recruitment had not been finalised and culminated into select list the candidate did not have any right to appointment. In this connection it was observed that the recruitment process could be stopped by the Government at any time before a candidate has been appointed. A candidate has no vested right to get the process completed and at the most the Government could be required to justify its action on the touchstone of Article 14 of the Constitution.
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- C In the facts of the present case it cannot even be suggested that the action of the State of Rajasthan was in any way arbitrary in intercepting the earlier recruitment process pursuant to the first advertisement dated 5th November 1993 Annexure P-1 as the Rules themselves had got amended and the posts earlier advertised had ceased to exist.

- D In the case of *State of M.P. and others v. Raghuveer Singh Yadav and others*, [1994] 6 SCC 151 a Bench of two learned Judges of this Court consisting of K. Ramaswamy and N. Venkatachala, JJ., had to consider the question whether the State could change a qualification for the recruitment during the process of recruitment which had not resulted into any final decision in favour of any candidate. In paragraph 5 of the Report in this connection it was observed that it is settled law that the State had got power to prescribe qualification for recruitment. In the case before the Court pursuant to the amended Rules, the Government had withdrawn the earlier notification and wanted to proceed with the recruitment afresh. It was held that this was not the case of any accrued right. The candidates who had appeared for the examination and passed the written examination had only legitimate expectation to be considered according to the rules then in vogue. The amended rules had only prospective operation. The Government was entitled to conduct selection in accordance with the changed rules and make final recruitment. Obviously no candidate acquired any vested right against the State. Therefore, the State was entitled to withdraw the notification by which it had previously notified recruitment and to issue fresh notification in that regard on the basis of the amended Rules. In the case of *J & K Public Service Commission and others v. Dr. Narinder Mohan and others*, [1994] 2 SCC 630 another Division Bench of two learned Judges of this Court consisting of K. Ramaswamy and N.P. Singh, JJ., considered the question of interception of recruitment process earlier undertaken by the recruiting agency. In this connection it was observed that the process of selection against existing and anticipated vacancies does not create any right to be appointed to the post which can be enforced by
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a mandamus. It has to be recalled that in fairness learned senior counsel Shri Ganpule for the respondent-writ petitioner stated that it is not his case that the writ petitioner should be appointed to the advertised post. All that he claimed was his right to be considered for recruitment to the advertised post as per the earlier advertisement dated 05th November 1993 Annexure P-1 and nothing more. In our view, the aforesaid limited contention also, on the facts of the present case, cannot be of any assistance to the writ petitioner as the earlier selection process itself had become infructuous and otios on the abolition of the advertised posts, as we have seen earlier. The second point, therefore, will have to be answered in the negative in favour of the appellants and against the respondent-writ petitioner.

*Point No. 3*

As a result of our finding on Point No. 2 as a logical corollary and also in the light of our discussion on Point No. 1 it has to be held that no fault could be found with the Rajasthan opposite that Public Service Commission in issuing fresh advertisement dated 08th January 1996 for recruiting eligible candidates from open market for filling up 26 posts in the newly created cadre of Marketing Officers under the Rules as amended in 1995. Point No. 3 is, therefore, answered in the negative against the respondent-writ petitioner and in favour of the appellants.

*Point No. 4*

As a result of our aforesaid findings on the first three points it must be held that the writ petition filed by the respondent-writ petitioner was rightly rejected by the learned Single Judge and was erroneously allowed by the Division Bench of the High Court by the impugned judgment.

In the result these appeals are allowed. The judgment and order of the Division Bench are set aside and instead the decision rendered by the learned Single Judge dismissing the writ petition of respondent-writ petitioner is confirmed. In the facts and circumstances of the case there will be no order as to costs.

V.S.S.

Appeals allowed.