HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

D.B. Special Appeal (Writ) No. 690 / 2017

1. State of Rajasthan Through the Secretary, Department of School Education, Government of Rajasthan, Jaipur, Rajasthan.

2. Deputy Secretary, Department of Elementary Education, Government of Rajasthan, Jaipur, Rajasthan.

3. Secretary, Rural & Panchayati Raj Department, Government of Rajasthan, Jaipur, Rajasthan.

4. Director, Elementary Education, Bikaner, Rajasthan.

5. Chief Executive Officer, Zila Parishad Rajsamand, Rajasthan.

----Appellants

Versus

1. Sandeep Kumar Bishnoi S/o Shri Ram Singh Bishnoi, Aged About 38 Years, R/o 13 A.S. (Bhagsar), Tehsil- Srivijaynagar, District- Sriganganagar, Rajasthan Presently Posted At Government Upper Primary School Umriyo Ki Bhagal, Panchayat Samiti Rajsamand, District- Rajsamand, Rajasthan.

2. Ratan Lal S/o Shri Nanag Ram Verma, R/o Village Maharajpura, Post Office Bhadkol, Via Mojpur, District- Alwar, Rajasthan. Presently Posted At Government Upper Primary School Bido Ki Bhagal, Panchayat Samiti Rajsamand, District- Rajsamand, Rajasthan.

3. Sharvan Kumar S/o Shri Ved Ram, R/o Village- Lohagarh, Post Office Noneara, Tehsil- Kama, District Bharatpur, Rajasthan. Presently Posted At Government Upper Primary School Chaper Khedi, Panchayat Samiti, Rajsamand, District- Rajsamand, Rajasthan.

4. Padma Vaishnav D/o Shri Magan Das Vaishnav, R/o Sector 11, Hiran Magri, District- Udaipur, Rajasthan. Presently Posted At Government Upper Primary School Govliya (Mundol), Panchayat Samiti Rajsamand, District- Rajsamand, Rajasthan.

5. Lokendra Kumar S/o Shri Suresh Chand Upadhyay, R/o VPO Khedli, Gadasiya, Tehsil- Bayana, District- Bharatpur, Rajasthan. Presently Posted At Government Upper Primary School Loharo Ki Bhagal, Panchayat Samiti Rajsamand, District- Rajsamand, Rajasthan.

6. Pankaj Kumar Sharma S/o Shri Prem Shankar Sharma, R/o Near Dhobi Ki Gali, Bundi, Ward No. 5, Gurunanak Nagar Colony, District- Bundi, Rajasthan. Presently Posted At Government Upper Primary School Madhra (Vanae)

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Panchayat Samiti Rajsamand, District- Rajsamand, Rajasthan.

7. Smt. Nidhi Saini D/o Shri Rameshwar Prasad Saini, R/o Khanna Colony, Outside Nehru Gate, Bewar, Ajmer, Rajasthan. Presently Posted At Government Upper Primary School Talai, Panchayat Samiti Rajsamand, District- Rajsamand, Rajasthan.

8. Kavita D/o Shri Ram Lal, R/o Keshar Nagr, Kolida, Tehsil & District- Sikar, Rajasthan. Presently Posted At Government Upper Primary School Talai, Panchayat Samiti Rajsamand, District Rajsamand, Rajasthan.

9. Vijay Laxmi D/o Shri Ramji Lal, R/o 17B, Hari Nagar, Khirani Fatak, Otwara, District- Jaipur, Rajasthan. Presently Posted At Government Upper Primary School Dhani (Atma), Panchayat Samiti Rajsamand, District- Rajsamand, Rajasthan.

10. Smt. Urmila D/o Shri Dharam Pal Yadav, R/o Nasibpur, Post Office Barkoda, Tehsil- Naarnavi, District- Mahendragarh (Hariyana). Presently Posted At Government Upper Primary School Dhani (atma), Panchayat Samiti Rajsamand, District- Rajsamand, Rajasthan.

11. Tulcha Ram S/o Shri Dhagla Ram, R/o Kotwala Ka Navoda, Bilara, District- Jodhpur, Rajasthan. Presently Posted At Government Primary School Dharmeta, Panchayat Samiti ajsamand, District Rajsamand, Rajasthan.

12. Urmila D/o Shri Mali Ram, R/o VPO Bhobia, Via Kajara, Tehsil Surajgarh, District- Jhunjhunu, Rajasthan. Presently Posted At Government Upper Primary School Mandawala, Panchayat Samiti Rajsamand, District- Rajsamand, Rajasthan.

13. Gopi Lal Nagar S/o Shri Badri Lal Nagar, R/o Village Chandli, Tehsil- Deoli, District- Tonk, Rajasthan. Presently Posted At Government Upper Primary School Seerohi Ki Bhagal, Panchayat Samiti Khamnor, District- Rajsamand, Rajasthan.

14. Pradhan Mal Nagar S/o Shri Lal Nagar, R/o Near Charbhuja Temple, Sangrampura, District- Tonk, Rajasthan. Presently Posted At Government Upper Primary School Seerohi Ki Bhagal, Panchayat Samiti Khamnor, District- Rajsamand, Rajasthan.

15. Krishan Kumar S/o Shri Ram Kumar, R/o Fhevda Mohalla, Ward No. 5, Shimla, District- Jhunjhunu, Rajasthan. Presently Posted At Government Upper Primary School Seerohi Ki Bhagal, Panchayat Samiti Khamnor, District- Rajsamand, Rajasthan.

16. Samir Khan S/o Shri Sarwar Ali Khan, R/o Madansar, Post Office Bhimsar, District- Jhunjhunu, Rajasthan. Presently

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Posted At Government Upper Primary School Kama, Panchayat Samiti Khamnor, District- Rajsamand, Rajasthan.

17. Dinesh Kumar Sharma S/o Shri Radheshyam, R/o 104, Near Temple, Datiya (Bakani), Tehsil- Jhalara Patan, District- Jhalawar, Rajasthan. Presently Posted At Government Upper Primary School Kama, Panchayat Samiti Khamnor, District- Rajsamand, Rajasthan.

----Respondents

Connected With

D.B. Spl. Appl. Writ No. 692 / 2017

State Of Rajasthan & Ors.

----Appellants

Versus

Pramod Kumar & Anr.

----Respondents

D.B. Spl. Appl. Writ No. 694 / 2017

State & Ors.

----Appellants

Versus

Neha Pareek & Ors

----Respondents

D.B. Spl. Appl. Writ No. 704 / 2017

State Of Rajasthan & Ors.

----Appellants

Versus

Surabhi Setiya & Ors.

----Respondents

D.B. Spl. Appl. Writ No. 709 / 2017

State Of Rajasthan & Ors.

----Appellants

Versus

Ashok Kumar Sharma & Ors.

----Respondents

D.B. Spl. Appl. Writ No. 710 / 2017

State Of Rajasthan & Ors.

----Appellants

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Versus

Subhash Chander & Ors.

----Respondents

D.B. Spl. Appl. Writ No. 727 / 2017

State Of Rajasthan & Ors.

----Appellants

Versus

Dhanna Ram & Ors.

----Respondents

D.B. Spl. Appl. Writ No. 729 / 2017

State Of Rajasthan & Ors.

----Appellants

Versus

Balu Ram Soni & Ors.

----Respondents

D.B. Spl. Appl. Writ No. 733 / 2017

State Of Rajasthan & Ors.

----Appellants

Versus

Mamta Chobdar

----Respondent

D.B. Spl. Appl. Writ No. 742 / 2017

State Of Rajasthan & Ors.

----Appellants

Versus

Gopi Ram Makar & Ors.

----Respondents

D.B. Spl. Appl. Writ No. 749 / 2017

State Of Rajasthan & Ors.

----Appellants

Versus

Sita Kumari Katara & Ors.

----Respondents

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D.B. Spl. Appl. Writ No. 750 / 2017
State Of Rajasthan & Ors.

----Appellants

Versus

Bansidhar Choudhary & Ors.

----Respondents

D.B. Spl. Appl. Writ No. 751 / 2017
State Of Rajasthan & Ors.

----Appellants

Versus

Sunil Kumar Panchal

----Respondents

D.B. Spl. Appl. Writ No. 752 / 2017
State Of Rajasthan & Ors.

----Appellants

Versus

Nagar Mal Yadav & Ors.

----Respondents

D.B. Spl. Appl. Writ No. 753 / 2017
State of Rajasthan & Ors

----Appellants

Versus

Rais Khan Hela & Ors.

----Respondents

D.B. Spl. Appl. Writ No. 754 / 2017
State Of Rajasthan & Ors.

----Appellants

Versus

Ram Gopal & Ors.

----Respondents

D.B. Spl. Appl. Writ No. 755 / 2017
State Of Rajasthan & Ors.

----Appellants

Versus

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Narnaram Choudhary & Ors.

----Respondents

D.B. Spl. Appl. Writ No. 756 / 2017

State Of Rajasthan & Ors.

----Appellants

Versus

Garima Dixit

----Respondent

D.B. Spl. Appl. Writ No. 757 / 2017

State Of Rajasthan & Ors.

----Appellants

Versus

Narayan Lal Sharma & Anr.

----Respondents

D.B. Spl. Appl. Writ No. 758 / 2017

State Of Rajasthan & Ors.

----Appellants

Versus

Dharmendra Singh & Ors.

----Respondents

D.B. Spl. Appl. Writ No. 759 / 2017

State Of Rajasthan & Ors.

----Appellants

Versus

Sanjay Kumar Tiwari & Ors.

---Respondents

D.B. Spl. Appl. Writ No. 760 / 2017

State Of Rajasthan & Ors.

----Appellants

Versus

Surajmal Jat & Ors.

----Respondents

D.B. Spl. Appl. Writ No. 761 / 2017

State Of Rajasthan & Ors.

----Appellants

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Versus

Priyanka Dosi & Ors.

----Respondents

D.B. Spl. Appl. Writ No. 762 / 2017

State Of Rajasthan & Ors.

----Appellants

Versus

Rakesh Kumar Sharma & Anr.

----Respondents

D.B. Spl. Appl. Writ No. 763 / 2017

State Of Rajasthan & Ors.

----Appellants

Versus

Suresh Kumar & Ors.

----Respondents

D.B. Spl. Appl. Writ No. 764 / 2017

State Of Rajasthan & Ors.

----Appellants

Versus

Khiv Raj Singh & Ors.

----Respondents

D.B. Spl. Appl. Writ No. 765 / 2017

State Of Rajasthan & Ors.

----Appellants

Versus

Girdhari Ram & Ors.

----Respondents

D.B. Spl. Appl. Writ No. 766 / 2017

State of Rajasthan & Ors.

----Appellants

Versus

Munna Lal Meena & Ors.

----Respondents

D.B. Spl. Appl. Writ No. 767 / 2017

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State of Rajasthan & Ors.

----Appellants

Versus

Aarti Sharma & Ors.

----Respondents

D.B. Spl. Appl. Writ No. 768 / 2017

State of Rajasthan & Ors.

----Appellants

Versus

Vidya Tak & Ors.

----Respondents

D.B. Spl. Appl. Writ No. 769 / 2017

State of Rajasthan & Ors.

----Appellants

Versus

Sanjay Kumar Choudhary & Ors.

----Respondents

D.B. Spl. Appl. Writ No. 770 / 2017

State of Rajasthan & Ors.

----Appellants

Versus

Sundaram & Ors.

----Respondents

D.B. Spl. Appl. Writ No. 771 / 2017

State of Rajasthan & Ors.

----Appellants

Versus

Meena Kanwar Ratnoo & Ors.

----Respondents

D.B. Spl. Appl. Writ No. 772 / 2017

State of Rajasthan & Ors.

----Appellants

Versus

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Virendra Dan Charan & Ors.

----Respondents

D.B. Spl. Appl. Writ No. 773 / 2017

State of Rajasthan & Ors.

----Appellants

Versus

Mukesh Kumar & Ors.

----Respondents

D.B. Spl. Appl. Writ No. 774 / 2017

State of Rajasthan & Ors.

----Appellants

Versus

Hemant Kumar & Ors.

----Respondents

D.B. Spl. Appl. Writ No. 776 / 2017

State of Rajasthan & Ors.

----Appellants

Versus

Amit Kumar Kharra & Ors.

----Respondents

D.B. Spl. Appl. Writ No. 777 / 2017

State of Rajasthan & Ors.

----Appellants

Versus

Meghraj Saini & Ors.

----Respondents

For Appellant(s) : Mr. S.S. Ladrecha, AAG assisted by Mr. Vikash Choudhary.

For Respondent(s) : Mr. Kuldeep Mathur, Mr. C.S. Kotwani, Mr. D.S. Sodha, Mr. Kailash Jangid, Mr. S.R. Godara, Mr. Sajjan Singh Rathore, Mr. Tanwar Singh Rathore, Mr. B.R. Chahar, Mr. Vinod Choudhary.

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HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAMCHANDRA SINGH JHALA

Judgment

05/09/2017

Applications for condonation of delay:

1. For the reasons stated in the applications delay in filing the appeals is condoned.

Special Appeals (Writ):

1. On 24th February, 2012 an advertisement was issued inviting applications from eligible candidates to fill up notified posts of Teacher Grade-III (Level-I and Level-II) in different Zila Parishads. As per the applicable rules merit list was prepared giving 20% weightage to the marks obtained by the applicants in the Rajasthan Teacher Eligibility Test (for short, 'RTET') and 80% weightage at the written examination conducted by the department. As per the applicable rules minimum marks for eligibility was 60% at RTET examination.

2. After the results were declared writ petitions were filed questioning the correctness of options indicated to some questions at the examination conducted by the department as also the examination conducted for RTET. Not only were the marks at RTET revised but even the marks obtained at the departmental examination were revised due to corrections made qua some questions. This affected large number of persons, who on the basis of the marks obtained at the RTET and the department initially, were ousted from the select list upon revision in the

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marks.

3. These persons filed writ petitions. The writ petitions were decided by a learned Single Judge vide order dated 19th December, 2013, lead matter being S.B. Civil Writ Petition No.15788/2013, *Hemendra Kumar Jangid & Ors. vs. State of Rajasthan & Ors.*

4. Noting that the eligibility condition was 60% marks obtained at RTET, the learned Single Judge held that those who had obtained less than 60% marks at RTET, post revision, would be disqualifying for being appointed as a Teacher. Those who retained more than 60% marks in the RTET, with reference to their revised marks after RTET corrected the result as also the new marks assigned by the department and would be not included in the revised merit list were directed to be considered for retention in service if they were earlier serving in the State Government and had resigned to join the post of Teacher Grade-III.

5. To put it simply, the learned Single Judge directed that the appointments would be in order of merit as per the revised marks obtained, but qua those who were in service and had resigned, they would be considered for retention in service.

6. The decision of the learned Single Judge was not interdicted by the Division Bench evidenced vide order dated 2nd December, 2014 in D.B. Special Appeal (Writ) No.1484/2013.

7. When the department proceeded to enforce the revised result another round of litigation ensued. Large number of writ petitions were filed. They were decided by the learned Single

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Judge on 18th November, 2014, lead matter being S.B. Civil Writ Petition No.10622/2014, *Ramdhan Kumawat vs. State of Rajasthan & Ors.*

8. In view of the fact that by the time the learned Single Judge decided the matter, Teachers were appointed in the year 2013 and had continued, but ouster from service stared them in their face on account of their merit position being lowered, the learned Single Judge issued direction No.viii as under:

> *"(viii) Such of the candidates who are already appointed but who do not figure in the revised merit list, may not be ousted from the service, if there is noting adverse against them on record and if there are sufficient vacant posts in the respective Zila Parishads for the concerned subject, and as far as possible they shall be accommodated against such vacancies by placing them at the bottom of the revised merit list of the selected candidates."*

9. Suffice it to highlight that as per direction No.viii the learned Single Judge directed that candidates already appointed but who do not figure in the revised merit list, may not be ousted from service if there is nothing adverse against them on record and if there are sufficient vacant posts in the respective Zila Parishads. Meaning thereby, the right of the appointed candidates who were under threat of ouster from service on account of revised merit list was not conferred as an absolute right. It was subject to availability of sufficient posts, and this could only be if the candidates in the merit list being offered appointments did not join.

10. Simply following the decision dated 18th November, 2014, another learned Single Judges decided a few other writ petitions,

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which decision dated 3rd January, 2014 came up for consideration before a Division Bench in D.B. Special Appeal (Writ) No.35/2014 and connected appeals. Needless to state the Division Bench had to consider the legality of the decision dated 18th November, 2014 in *Ramdhan Kumawat's* case (supra).

11. Noting direction No.viii issued by the learned Single Judge, in respect whereof the candidates who were offered appointments and were working and faced a threat of ouster from service, the Division Bench passed directions in para 16 of its decision dated 8th December, 2014 as under:

> *"16. We do not find any error of law and agree with the reasoning given by learned Single Judge in Ramdhan Kumawat V/s The State of Rajasthan & anr. (supra), pursuant to which the results have to be revised after fresh evaluation of answers. The revision of select list is thus not complete and the process is still open. In the circumstances, in order to allay any apprehension and to protect the interest of the appellants-petitioners, who were appointed, and are under constant threat on the revision of lists under directions of the Court, without any fault attributed to them, we find it appropriate to quash the order dated 30.8.2013 passed by the Secretary and Commissioner, Gramin Vikas and Panchayati Raj Department (Panchayati Raj Primary Education), Government of Rajasthan, Jaipur, to the extent that it directs termination of services of those persons, who were ousted from selections on the declaration of the first revised results. We direct that at this stage, they will not be ousted from service. The termination orders passed, if any, consequent to the orders dated 30.8.2013, are set aside. The directions given by learned Single Judge in Ramdhan Kumawat V/s The State of Rajasthan & anr. (supra), namely, that the Expert Committee will issue model answer keys afresh and that the results will be revised in accordance with such keys, will be given effect to, leaving the question of its correctness open. The State Government will be at liberty to pass fresh orders, after revising the results and adjusting equities protecting the interest of the appellants-petitioners, to the extent that they will*

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not be ousted from the select list and will be placed as far as possible at the bottom of the revised select list."

12. The Division Bench directed that *at this stage* Teachers who were already appointed would not be ousted from service. The termination orders dated 30th August, 2013 were set aside. Adjusting equities the Division Bench held that these candidates i.e. the ones who were given appointment but as a result of the revision in the marks would be liable to be ousted from service would be retained in service and would be placed at the bottom of the revised merit list.

13. The decision of the Division Bench has attained finality.

14. The next round of litigation commenced when orders terminating the service of some Teachers who were already appointed and sum who faced the threat of termination approached this Court. Vide impugned order dated 19th May, 2017 the learned Single Judge has disposed of the writ petitions by putting a cat amongst the pigeons by highlighting that the expression: *"at this stage"* in para 16 of the decision of the Division Bench would mean till the process of filling up of the vacancies is over. It has been held: *'Mr. Ladrecha invited attention of this court towards para No.14 of the judgment of Division Bench and conteded that the Division bench while protecting petitioners' right had consciously used the expression 'at this stage'. According to him, such expression should be read to mean, 'till the process of filling up the vacancies pursuant to Ramdhan Kumawat's case is over'.*

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15. The expression: '*at this stage*' in para 16 of the D.B. decision forms part of a sentence which reads: '*We direct that at this stage they will not be ousted from service'.* The expression: '*at this stage*' would mean the time when the Division Bench passed the order. It simply means that those who had been appointed would not be ousted from service. This is evident by the last sentence of para 16 which reads: '*The State Government will be at liberty to pass fresh orders, after revising the results and adjusting equities protecting the interest of the appellants-petitioners, to the extent that they will not be ousted from the select list and will be placed as far as possible at the bottom of the revised select list'.* Further, in the preceding part of the same paragraph, the Division Bench has held: '*In the circumstances, in order to allay any apprehension and to protect the interest of the appellants-petitioners, who were appointed, and are under constant threat on the revision of lists under directions of the Court, without any fault attributed to them, we find it appropriate to quash the order dated 30.8.2013 passed by the Secretary and Commissioner, Gramin Vikas and Panchayati Raj Department (Panchayati Raj Primary Education), Government of Rajasthan, Jaipur, to the extent that it directs termination of services of those persons, who were ousted from selections on the declaration of the first revised results.'*

16. This view appears to be influenced by the decision of the Supreme Court reported as 2013(4) SCC 690, *Rajesh Kumar & Ors. vs. State of Bihar & Ors.* in which candidates as per the

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original merit position being offered appointments had joined. Upon re-evaluation of the marks they became liable to be removed since their merit position was lowered. The Supreme Court directed retention of said persons in service.

17. Under the circumstances, correcting the view taken by the learned Single Judge we dispose of the appeals directing that those who were offered appointment pursuant to the advertisement in question as Teachers and are continuing to work as Teachers would not be ousted from service.

(RAMCHANDRA SINGH JHALA)J. (PRADEEP NANDRAJOG)CJ.

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