

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 44-45 OF 2020
[@ SPECIAL LEAVE PETITION (C) NO. 31154-31155 OF 2017]

THE STATE OF RAJASTHAN & ORS. Appellant (s)

VERSUS

YADAVENDRA SHANDILYA & ORS. Respondent(s)

with

CIVIL APPEAL NO. 48-49 OF 2020
[@ SPECIAL LEAVE PETITION (C) NO. 6600-6601 OF 2018]

CIVIL APPEAL NO. 46-47 OF 2020
[@ SPECIAL LEAVE PETITION (C) NO. 6014-6015 OF 2018]

CIVIL APPEAL NO. 51 OF 2020
[@ SPECIAL LEAVE PETITION (C) NO. 23499 OF 2019]

CIVIL APPEAL NO. 50 OF 2020
[@ SPECIAL LEAVE PETITION (C) NO. 11139 OF 2019]

CIVIL APPEAL NO. 52-53 OF 2020
[@ SPECIAL LEAVE PETITION (C) NO. 433-434 OF 2020]
[DIARY NO. 20519 OF 2019]

O R D E R

Delay condoned.

Leave granted.

Heard the learned counsel for the parties at length.

In *State of Rajasthan & Ors. Vs. Yadvendra Shandilya & Ors.*, the impugned Judgments and Orders dated 21.08.2017 and 26.02.2016 were passed by the High Court of Judicature of Rajasthan, Jaipur Bench, which have been questioned. Whereas in *Gaurav Kumar Sen & Ors. Vs. State of Rajasthan & Ors.*, the

impugned Judgments and Orders dated 29.10.2018 and 06.03.2019 passed by the High Court have been questioned.

The matters pertain to selection of Nurse Compounder (Junior Grade) under the Rajasthan Ayurvedic Yunani, Homeopathic & Naturopathy Subordinate Service Rules, 1966 (in short, "Rules 1966"). The question arose with respect to vires of Rule 19 of the Rules 1966.

Rule 19 of the Rules 1966 reads as under :-

"19. Scrutiny of Applications. The appointing authority shall scrutinize the applications received by it and require as many candidate qualified for appointment under these Rules as seems to it desirable for interview.

Provided that in case of appointment to the post of Nurse Compounder Junior Grade, the Merit shall be prepared by the Appointing Authority on the basis of marks obtained in such qualifying examination specified in the Schedule appended to the Rules and bonus marks as may be specified by the State Government having regard to the length of experience on similar work under the Government, Chief Minister BPL Jeevan Raksha Kosh, National Rural Health Mission as the case may be"

Rule 19 of the Rules, 1966, for the purpose of grant of bonus marks, provides the experience under the Government, Chief Minister BPL Jeevan Raksha Kosh, National Rural Health Mission as the case may be.

Rule 2(g) of the Rules, 1966 defines the "Government" and the meaning of the "State" as under :-

"2(g) "Government" and "State" means respectively, the Government of Rajasthan and the State of Rajasthan."

During the course of hearing of DB CWP No. 10246 of 2013 in the High Court, a communication issued by the State Government, pursuant to the query made by the Additional Advocate General, was produced. The letter was issued by Deputy Secretary to the Government, the relevant portion of which is extracted hereunder :-

"Shri G.S.Gill

Additional Advocate General

Rajasthan High Court, Jaipur

Sub. : D.B.Civil Writ Petition No. 10246/2013 Yaduvendra Shandilya & Ors. Versus State of Rajasthan & Others.

D.B.Civil Writ Petition No. 11009/2013 Rakesh Kumar Meena & Others versus State of Rajasthan & Others.

Ref. : Your letter No. 5600-01 dated 18.12.2015 & 62-63 dated 06.01.2016.

With reference to referred letter on the above-said subject, as directed it is stated that with regard to awarding bonus marks to candidates/employees working in Central institutions, other State Government institutions and National Ayurved Institute on contract basis, the opinion of State Government is as under :-

In Rajasthan General Clauses Act, 1955 "Government" means Central & State Government both. Subsequently, under Article 12 of the Constitution, local bodies too fall under the definition of the State.

Hence, proceedings be initiated accordingly.

Sd/-

(Sewa Ram Swami)

Deputy Secretary to Government"

As a matter of fact, it was an internal communication issued by the Deputy Secretary to the Government to the Additional Advocate General pursuant to his letters dated 18.12.2015 and 06.01.2016. Relying upon the said communication made to the counsel, the Division Bench of the High Court, vide its Judgment and Order dated 26.02.2016 quoted

the same and granted the relief against which, State of Rajasthan has come up in the appeal.

The said communication came to be withdrawn by the State Government on 10.02.2017 and yet another Division Bench in the case of Gaurav Kumar Sen (supra) has opined that the letter dated 08.02.2016 cannot be considered to be a Government Order as it is mere a communication sent by the Deputy Secretary to the Government, Department of Ayurveda to the Additional Advocate General of the State. Thereafter, the Government has canceled it though subject to certain riders. Be that as it may, the communication was at the most an interpretation of Rule 19 made by the Deputy Secretary of the Department and could not be said to be binding on the Court. It was not a Government Order nor had the effect of modifying Rule 19 of the Rules, 1966.

It is apparent that the High Court has not gone into the vires of Rule 19 of the Rules, 1966. We approve the decision rendered in DB CWP 24245 of 2018 dated 29.10.2018 to the extent that the above mentioned letter dated 08.02.2016 of Deputy Secretary cannot be said to be binding on the Government as it was simply an interpretation made by the Deputy Secretary and an internal communication. However, as the validity of Rule 19 has not been examined in the Judgments, as such, we set aside the Judgments and

orders passed by the High Court and request the High Court to examine the validity of Rule 19 of the Rules, 1966.

Accordingly, we set aside the Judgments and Orders passed by the High Court, affirming the aforesaid finding. We make it clear that we have not commented on the merits of the case. The High Court shall examine the case afresh. Let status quo with respect to employment be maintained, which may be existing as on today.

In view of the above, the appeals are disposed of.

Pending interlocutory application(s), if any, is/are disposed of.

.....J.
[ARUN MISHRA]

.....J.
[INDIRA BANERJEE]

New Delhi;
January 07, 2020.

ITEM NO.36

COURT NO.3

SECTION XV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 31154-31155/2017

(Arising out of impugned final judgment and order dated 26-02-2016 in CWP No. 10246/2013 21-08-2017 in CRP No. 275/2016 passed by the High Court Of Judicature For Rajasthan At Jaipur)

THE STATE OF RAJASTHAN & ORS.

Petitioner(s)

VERSUS

YADAVENDRA SHANDILYA & ORS.

Respondent(s)

WITH

SLP(C) No. 6014-6015/2018 (XV)

(IA No. 24791/2018 - EXEMPTION FROM FILING O.T.)

SLP(C) No. 6600-6601/2018 (XV)

(IA No. 27239/2018 - EXEMPTION FROM FILING O.T.)

SLP(C) No. 23499/2019 (XV)

SLP(C) No. 11139/2019 (XV)

Diary No(s). 20519/2019 (XV)

(FOR CONDONATION OF DELAY IN FILING ON IA 150225/2019

FOR CONDONATION OF DELAY IN REFILEING ON IA 150226/2019

FOR CONDONATION OF DELAY IN FILING/REFILING SLP ON IA 150226/2019

FOR CONDONATION OF DELAY IN RE-FILING APPEAL ON IA 150226/2019

FOR EXEMPTION FROM FILING O.T. ON IA 150227/2019

IA No. 150225/2019 - CONDONATION OF DELAY IN FILING

IA No. 150226/2019 - CONDONATION OF DELAY IN REFILEING / CURING THE DEFECTS

IA No. 150227/2019 - EXEMPTION FROM FILING O.T.)

Date : 07-01-2020 These petitions were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE ARUN MISHRA
HON'BLE MS. JUSTICE INDIRA BANERJEE

Counsel for the
parties

Dr. Manish Singhvi, Sr. Adv.
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Ms. Shraddha Deshmukh, Adv.
Mr. Manpreet Kaur, Adv.
Mr. Rahul Jajoo, Adv.
Mr. Abhishek Gupta, Adv.

Mr. Nikhil Singhvi, Adv.
Mr. Abhishek Gupta, Adv.

Mr. Rohit K. Singh, AOR

Mr. Shariq Ahmed, Adv.
Mr. Tariq Ahmed, Adv.
Mr. Aakarsh Kamra, AOR

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeals are disposed of in terms of the signed order.

Pending interlocutory application(s), if any, is/are disposed
of.

(JAYANT KUMAR ARORA)
COURT MASTER

(JAGDISH CHANDER)
BRANCH OFFICER

(Signed order is placed on the file)