2019 INSC 588

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3873 OF 2010

THE STATE OF RAJASTHAN ….. APPELLANT(S)

VERSUS

NEMI CHAND MAHELA AND OTHERS ….. RESPONDENT(S)

W I T H

CIVIL APPEAL NO. 4491 OF 2019
(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 4562 OF 2012)

J U D G M E N T

Sanjiv Khanna, J.

Leave granted in Special Leave Petition (Civil) No. 4562 of 2012.

2. Predicament of candidates consequent to conflicting opinions in different decisions of the High Court on true and correct interpretation of principle of prospective overruling as directed in ***Kailash Chand Sharma vs. State of Rajasthan and Ors.***[1] is the cause of this agonising and festering litigation since 1999. This "scarecrow" of a litigation, to use the words of Charles Dickens, "in

[1] (2002) 6 SCC 562

course of time, [has] become so complicated that no man alive knows what it means.”

3. Award of bonus marks to candidates seeking appointment to the post of Primary School Teachers in *Zila Parishad* of various districts in the State of Rajasthan during the year 1998-99 was struck down and declared unconstitutional by a Full Bench of the Rajasthan High Court *vide* judgment dated November 18, 1999 in ***Kailash Chand Sharma*** v. ***State of Rajasthan*** in W.P.(C) No. 3928 of 1998, for the reason that any kind of weightage and advantage in public employment in a State service is not permissible on the ground of place of birth, residence or on the ground of being a resident of urban or rural area. The Full Bench in ***Kailash Chand Sharma’s*** case (supra) had followed an earlier Full Bench judgment in ***Deepak Kumar Suthar and Another*** v. ***State of Rajasthan and Others***[2] wherein similar stipulations for grant of bonus marks in selection of Grade II and Grade III teachers in the state cadre were struck down as unconstitutional. However, in ***Deepak Kumar Suthar’s*** case (supra), no consequential and substantive relief was granted to the writ petitioners therein as first, they did not have a chance of selection on merits even if award of bonus marks to successful candidates

[2] (1999) 2 Rajasthan Law Reporter 692

was disregarded and secondly, the candidates so selected had not been impleaded as parties. Accordingly, the Full Bench in ***Deepak Kumar Suthar's*** case (supra), in the concluding paragraph, had given the following directions:

> "44. Instead of sending the matter to the appropriate bench, we think it proper to dispose of this petition with a direction that no relief can be granted to the petitioners as they could not succeed to get the place in the merit list even by getting 10 bonus marks being residents of urban area, for which they are certainly not entitled. More so, the petitioners have not impleaded any person from the select list, not even the last selected candidate. Thus, no relief can be granted to them in spite of the fact that the appointments made in conformity of the impugned Circular have not been in consonance with law. However, we clarify that any appointment made earlier shall not be affected by this judgment and it would have prospective application."

4. These directions in ***Deepak Kumar Suthar's*** case (supra) were followed by the Full Bench in ***Kailash Chand Sharma's*** case (supra) and the batch of writ petitions were disposed of.

5. After the decision of the Full Bench in ***Kailash Chand Sharma's*** case (supra), a large number of writ petitions including one by ***Naval Kishore*** were filed before the Rajasthan High Court. Some of them, notwithstanding the operative directions given by the Full Bench in ***Kailash Chand Sharma's*** case (supra), were disposed of with a direction to the authorities to prepare and draw up a fresh merit list of candidates appointed on or after October 21, 1999

without the bonus marks. For convenience we would refer to these cases as ***Naval Kishore's*** case. ***Naval Kishore's*** case (supra) was decided on 30th July, 2002.

6. The decision of the Full Bench in ***Kailash Chand Sharma's*** case (supra) and some of the judgments directing preparation of fresh merit list without bonus marks (but not in all cases where such directions were issued) became subject matter of challenge in Special Leave Petitions which were granted and decided *vide* the judgment reported as ***Kailash Chand Sharma's case*** (supra) referred to by us in paragraph 2 above. Affirming the findings of the Full Bench of the Rajasthan High Court, this Court concluded that award of bonus marks to residents of districts and residents of rural area amounts to impermissible discrimination as there was no rational basis for such preferential treatment. Thereafter this Court, in paragraph 36 onwards, in ***Kailash Chand Sharma's*** case (supra) had elaborately and expressly considered the question of relief after noticing operative directions in ***Deepak Kumar Suthar's*** case (supra). In view of the factual matrix and for several reasons recorded, this Court felt that there was a need to balance competing claims and accordingly doctrine of prospective

overruling was partially applied *vide* paragraphs 45 and 46 of this decision, which read as under:

> "45. One more point which needs mention. Some of the learned counsel argued that the unsuccessful applicant should not be allowed to challenge the selection process to the extent it goes against their interest, after having participated in the selection and waited for the result. It is contended that the discretionary relief under Article 226 should not be granted to such persons. Reliance has been placed on the decision of this Court in ***Madan Lal v. State of J&K (1995) 3 SCC 486*** and other cases in support of this argument. On the other hand, it is contended that in a case of challenge to unconstitutional discrimination, the doctrine of acquiescence, estoppel and the like does not apply and the writ petitioners cannot be expected to know the constitutional implications of the impugned circular well before the selections. We are not inclined to go into this question for the reason that such a plea was not raised nor was any argument advanced before the High Court.
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> 46**.** Having due regard to the rival contentions adverted to above and keeping in view the factual scenario and the need to balance the competing claims in the light of acceptance of prospective overruling in principle, we consider it just and proper to confine the relief only to the petitioners who moved the High Court and to make appointments made on or after 18-11-1999 in any of the districts subject to the claims of the petitioners. Accordingly, we direct:
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>> "1. The claims of the writ petitioners should be considered afresh in the light of this judgment vis-à-vis the candidates appointed on or after 18-11-1999 or those in the select list who are yet to be appointed. On such consideration, if those writ petitioners are found to have superior merit in case the bonus marks of 10% and/or 5% are excluded, they should be offered appointments, if necessary, by displacing the candidates appointed on or after 18-11-1999.
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>> 2. The appointments made upto 17-11-1999 need not be reopened and re-considered in the light of the law laid down in this judgment.
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>> 3. Writ Petition No. 542/2000 filed in this Court under Article 32 is hereby dismissed as it was

> filed nearly one year after the judgment of the High Court and no explanation has been tendered for not approaching the High Court under Article 226 at an earlier point of time."

7. Thus, notwithstanding the ratio, appointments made before November 18, 1999 were left untouched and saved. The writ petitioners who had moved the High Court before November 18, 1999 were entitled to be considered afresh vis-à-vis candidates appointed on or after November 18, 1999 or with those in the select list without giving such appointed/selected candidates benefit of the bonus marks which had been declared to be unconstitutional. Only such writ petitioners, if found to be higher in the order of merit than those appointed after November 18, 1999 or on select list, were to be offered appointments, if necessary, by removing such appointed candidates. The date November 18, 1999 selected by the Supreme Court was the date on which the Full Bench of the Rajasthan High Court had pronounced its judgment in ***Kailash Chand Sharma's*** case (supra). As noticed above, after the Full Bench decision in ***Kailash Chand Sharma's*** case (supra), a number of writ petitions had been filed before the High Court in which directions for preparation of a fresh merit list without bonus marks, appointment in terms of the new selection list, etc., had been issued. These directions, being contrary to the

ratio and directions given by this Court in ***Kailash Chand Sharma's*** (supra), were therefore rendered inconsequential. To this extent, decision in ***Naval Kishore*** case (supra) and other similar cases were overruled/impliedly overruled.

8. In spite of the aforesaid enunciation and directions in ***Kailash Chand Sharma's*** case (supra), it is apparent that in several cases, directions similar to ***Naval Kishore's*** case (supra) for re-computation of marks after excluding bonus marks were issued in favour of candidates who had approached and invoked jurisdiction of the High Court after November 17, 1999. Even contempt petitions were filed and directions were issued notwithstanding the fact that the said writ petitioners/petitioners had not filed writ petitions on or before November 17, 1999 i.e. the date on which ***Kailash Chand Sharma's*** case (supra) was decided by the Full Bench. In some decisions, it was held that this Court in ***Kailash Chand Sharma's*** case (supra) had not barred relief to all such candidates who may have filed writ petitions at any time after November 18, 1999.

9. The controversy was set at rest beyond doubt by this Court in its decision in ***Manmohan Sharma*** v. ***State of Rajasthan and***

Others[3] and other connected matters. After extensively dealing with the factual matrix and arguments in ***Manmohan Sharma's*** case (supra), it was held as under:

> "16. A careful reading of the above leaves no manner of doubt that (a) this Court invoked the doctrine of prospective overruling which implies that the law declared by this Court would apply only to future selections and appointments, (b) that although prospective overruling left the appointments made before 18th November, 1999 untouched, the writ-petitioners who had moved the High Court had to be considered afresh vis-à-vis candidates appointed on or after 18th November, 1999 or those in the select list without giving to such appointed/selected candidates the benefit of bonus marks under the circular, and (c) that upon such consideration of the writ-petitioners if they are found to be superior in merit than those appointed after 18th November, 1999 they shall be offered appointments, if necessary, by removing the latter.
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> 17. It was strenuously contended by learned counsel for the appellants that the expression "the appellants who moved the High Court" appearing in para 46 (supra) was wide enough and actually covered not only such of the writ-petitioners as had approached the High Court in the two batch of cases decided by this Court in Kailash Chand Sharma's case (supra) but also all such candidates as may have filed writ petitions at any time after 18th November, 1999 including those who filed such petition after 30th July, 2002 when this Court decided the appeals in Kailash Chand Sharma's case (supra) and connected matters.
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> 18. We find it difficult to accept that contention. There is nothing in the judgment of this Court in Kailash Chand Sharma's case (supra) or the directions that were issued in para 46 thereof to suggest that this Court was either conscious of or informed of pendency of any writ petition filed before the High Court after 18th November, 1999. There is also nothing to suggest that this Court intended the benefit granted in terms of direction (1) under para 46 to extend not only to the writ-petitioners who had moved the High Court in Kailash Chand Sharma's case (supra) and in the writ petition filed by Naval Kishore and others but the same has intended to benefit all those who had or may have moved the High Court at any point of time. On the contrary there is positive indication of the fact that the Court did not intend to extend the benefit to any appellant who

[3] Civil Appeal No. 4294 of 2014, decided on April 01, 2014

> had challenged the award of bonus marks and the selection process on the basis thereof at any stage after 18th November, 1999. This is evident from the fact that Writ Petition No.542 of 2000 filed in this Court under Article 32 of the Constitution of India was dismissed by this Court in terms of direction (3) under para 46 on the ground that the same had been filed nearly one year after the judgment of the High Court. The expression "as it has been filed after the judgment of the High Court" appearing in direction (3) under Para 46 clearly suggest that for the grant of relief this Court had only petitions filed before the judgment in Kailash Chand Sharma's case (supra) in mind and not those filed after 18th November, 1999 when the said judgment was pronounced. The observation of this Court that the writ-petitioners had offered no explanation for not approaching the High Court under Article 226 of the Constitution at an earlier point of time too has two distinct facets, namely, (1) that the writ-petitioners in Writ Petition No.542 of 2000 should have ordinarily approached the High Court and (2) They should have done so at an earlier point of time. The latter of these reasons again emphasized the importance this Court attached to the delay in the filing of the petitions in the matter of grant of relief for those who did not challenge the selection process in good time were not granted any relief."

10. The Bench in ***Manmohan Sharma's*** case (supra) observed that there were two categories of cases; Category 1 comprising of writ petitions which were filed after November 18, 1999 and before July 30, 2002 and Category II comprising of writ petitions which were filed after July 30, 2002. The date July 30, 2002 being the date of decision of the Rajasthan High Court in the case of ***Naval Kishore's*** case (supra). Rejecting the arguments raised on behalf of the two Categories, the Bench observed that in ***Kailash Chand Sharma's*** case (supra) this Court had recognized the need to balance competing claims by invoking doctrine of prospective

overruling, thereby, protecting appointments made on or before November 17, 1999 and confining relief only to the writ petitioners who had moved the High Court before November 18, 1999. Further, the directions given in ***Kailash Chand Sharma's*** case (supra) were a binding precedent under Article 141 of the Constitution. With regard to the argument for grant of benefit on the principle of parity, i.e. similar benefits, as notwithstanding the judgment in ***Kailash Chand Sharma's*** case (supra) some of the candidates were appointed on redrawing the merit list after exclusion of bonus marks, the Bench comprehensively and squarely rejected the submission as being contrary to the dictum and binding directions of this Court in ***Kailash Chand Sharma's*** case (supra). In ***Manmohan Sharma's*** case (supra), the Bench observed that there was no need to enlarge the scope of the directions issued in ***Kailash Chand Sharma's*** case (supra) to others and that the Court was not hearing a review petition nor could the Court modify the order passed by this Court in ***Kailash Chand Sharma's*** case (supra). The contention of some petitioners in Category II who had been appointed on re-computation of the result on merits after November 18, 1999 was rejected as illegal and impermissible in the light of the judgment of this Court in ***Kailash Chand Sharma's*** case (supra). The plea

and contention of parity and similar treatment was also rejected observing that wrong appointments should have been challenged expeditiously and not belatedly, and that such appointments would not confer any right. That apart, it was recorded in ***Manmohan Sharma's*** case (supra) that the State had filed an affidavit satisfactorily refuting the factual submissions made at the Bar.

11. The learned counsel for the petitioners had drawn our attention to paragraph 24 of the decision in ***Manmohan Sharma's*** case (supra) which refers to the case of one Danveer Singh whose writ petition had been allowed and the order had attained finality as it was not challenged before the Division Bench or before the Supreme Court. Termination of services in the case of Danveer Singh, it was accordingly held, was not justified and in accordance with law. The reasoning given in paragraphs 24 and 25 in ***Manmohan Sharma's*** case (supra) relating to the case of Danveer Singh would reflect the difference between the doctrine of *res judicata* and law of precedent. *Res judicata* operates *in personam* i.e. the matter in issue between the same parties in the former litigation, while law of precedent operates *in rem* i.e. the law once settled is binding on all under the jurisdiction of the High Court and the Supreme Court. *Res judicata* binds the parties to the proceedings for the reason that there should be an end to the

litigation and therefore, subsequent proceeding inter-se parties to the litigation is barred. Therefore, law of *res judicata* concerns the same matter, while law of precedent concerns application of law in a similar issue. In *res judicata*, the correctness of the decision is normally immaterial and it does not matter whether the previous decision was right or wrong, unless the erroneous determination relates to the jurisdictional matter of that body. (*See* ***Makhija Construction and Engineering Private Ltd*** v. ***Indore Development Authority and Others***[4]). Learned counsel for the appellants had drawn our attention to several decisions of the Rajasthan High Court in which reliefs have been granted to the writ petitioners who had not filed a writ petition before the cut-off date of November 18, 1999 fixed by this Court in ***Kailash Chand Sharma's*** case (supra). Some of these decisions were made after the decision of ***Manmohan Sharma's case*** (supra) on April 01, 2014. This should have been avoided as authoritative pronouncements of the Supreme Court and High Court must be respected and followed as any departure therefrom would cause uncertainty, unnecessary and speculative litigation as has been held in strong words in ***Dwarikesh Sugar Industries Ltd.*** v. ***Prem Heavy Engineering Works (P) Ltd.***[5] and ***Bihar State***

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[4] (2005) 6 SCC 304

[5] (1997) 6 SCC 450

Government Secondary School Teachers Association and Others v. ***Bihar Education Service Association and Others***[6] Consequently, we find that a number of impleadment applications have been filed by aspirants anxiously waiting and hoping of favourable outcome in the foreclosed and covered litigation. They cannot succeed and these applications are dismissed. We were informed that there are a large number of vacant posts and, therefore, it has been contended that the benefit should be extended. We do not agree and should not accept the said contentions as it would fall foul and would be clearly contrary to the ratio of ***Kailash Chand Sharma's*** *and* ***Manmohan Sharma's*** cases (supra).

12. Our attention was also drawn to the case of Neeraj Saxena in whose case the writ appeal filed by the State Government against the order of the Single Judge was dismissed on the ground of delay and inaction. The Special Leave Petition against the decision of the Division Bench was also dismissed on the ground of delay. This decision of the Division Bench in Neeraj Saxena and the dismissal of the Special Leave Petition on the ground of delay does not lay down any ratio in the form of precedent. At best, the decision of the Single Judge in the case of Neeraj Saxena as in

[6] (2012) 13 SCC 33

the case of Danveer Singh would apply to the specific candidates in whose case the decision would operate as *res judicata*. This, however, would not be a ground to negate and nullify the ratio and direction invoking doctrine of prospective overruling, applied in ***Kailash Chand Sharma's*** case (supra), which was thereafter affirmed and elucidated by this Court in ***Manmohan Singh's*** case (supra).

13. In view of the aforesaid discussion, we hold that the candidates who had not filed writ petitions on or before November 17, 1999 would not be entitled to appointment upon recalculation of marks by exclusion of bonus marks from the marks of the selected candidates. The aforesaid direction would not apply to individual cases where the principle of *res judicata* would apply, i.e. wherein the decision of the Single Judge or the Division Bench has become final since it was not challenged before the Division Bench or before this Court. All other pending writ petitions and appeals, before the High Court, would be disposed of and decided on the basis of decisions in ***Kailash Chandra Sharma's***, ***Manmohan Sharma's*** cases (supra) and the present matter, subject to condonation of delay, when justified and satisfactorily explained.

14. The appeals and all pending applications are disposed of in the aforesaid terms.

......................................J.
(L. NAGESWARA RAO)

......................................J.
(SANJIV KHANNA)

NEW DELHI;
APRIL 30, 2019.