

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Writ Petition No. 12177/2023

1. Binita Devi Balai D/o. Shri Ramlal Balai, Aged About 27 Years, R/o. Village Jaikmabad, Post Ganti, Tehsil Todaraisingh, District Tonk.
2. Bhawani Shankar Saini S/o. Shri Kaluram Saini, Aged About 24 Years, R/o Village And Post Liwali, Tehsil Bamanwas, District Sawai Madhopur.
3. Budhi Prakash Kumawat S/o. Shri Ratanlal Kumawat, Aged About 25 Years, R/o. Village Ghodelo Ki Dhani, Gudhabearasi, Tehsil Maujamabad, District Jaipur.
4. Bhag Chand Yadav S/o. Shri Jitendra Kumar Yadav, Aged About 28 Years, R/o. Village And Post Tigria, Via Itawa Bhopji, Tehsil Chomu, District Jaipur.

-----Petitioners

Versus

1. State Of Rajasthan, Through The Principal Secretary, Agriculture Department, Government Of Rajasthan, Secretariat, Jaipur.
2. The Commissioner, Department Of Agriculture, Pant Krishi Bhanwan, Jaipur.
3. The Additional Director Agriculture (Administration), Agriculture Commissionerate Office, Pant Krishi Bhawan, Jaipur.
4. The Rajasthan Staff Selection Board, Dugapura, Jaipur Through Its Chairman.
5. The Secretary, Rajasthan Staff Selection Board, Durgapura, Jaipur.

-----Respondents

For Petitioner(s)	:	Mr. Jeetendra Kumar Sharma
For Respondent(s)	:	Mr. Hansraj Kuldeep, AGC

HON'BLE MR. JUSTICE ASHOK KUMAR JAIN

Order

25/02/2026

1. Instant writ petition filed with following prayer:-

It is, therefore, humbly prayed that Your Lordships may be pleased to take on record this rejoinder and direct the respondents to give appointment to the petitioners on the post of Agriculture Supervisor in pursuance of advertisement (Annx.1) and in view of the fact that their names have been duly recommended by the Rajasthan Staff Selection Board, Jaipur vide order dated 21.10.2022 (Annx.11), with all consequential benefits.

2. The brief facts of the case are that respondent No.4 has issued an advertisement dated 05.02.2021 for inviting application for recruitment on the post of Agriculture Supervisor. After the corrigendum, the advertisement was amended on 05.07.2021 and on 26.08.2021. The petitioner No.1 has applied under SC/Female Category, whereas petitioner Nos. 2 to 4 applied in OBC(NC) Category. After the declaration of result on 23.11.2021 and document verification, final list was sent to the Agriculture Department and appointment order of 2066 candidates in non-TSP area was issued on 11.03.2022. Again, a fresh select list of 43 candidates was sent on 27.05.2022 and out of which, 38 persons were appointed vide order dated 19.09.2022. The Board has again sent a list on 07.07.2022 and the Department has appointed 23 candidates in non-TSP area vide appointment order dated 03.01.2023. Some of the candidates have not joined and the respondent No.4 has recommended names of 12 candidates vide order dated 21.10.2022, which includes name of petitioners. The Department has not taken any action on the list as recommended by the Commission. The petitioners have submitted a

representation to the Department, but no action has been taken by them. The petitioners have preferred current petition.

3. Learned counsel appearing on behalf of petitioners has submitted that vide order dated 19.10.2022, the Commissioner (Agriculture) has requested Staff Selection Board to recommend names against 10 candidates, whose candidature was rejected by the Department vide order dated 19.10.2022. He further submitted that acting upon the recommendation, the SSB has sent a list of 12 candidates on 21.10.2022, but the Department is avoiding to appoint the petitioners primarily on the ground that a new circular dated 27.12.2021 was issued by the DOP, which prohibits subsequent recommendation six months after declaration and use of waiting list, beyond six months.

4. Learned counsel has placed reliance upon judgment in case of **K. Manjusree Vs. State of Andhra Pradesh AIR 2008 SC 1470** and further considered by a Constitution Bench of Hon'ble Supreme Court in case of **Tej Prakash Pathak & Ors. Vs. Rajasthan High Court & Ors. Reported as 2024 INSC 847** and submitted that changing the criteria before completion of selection process and introducing a new requirement is declared as illegal. He also placed reliance upon a Division Bench judgment dated 13.03.2023 in **D.B. SAW No.06/2023; State of Rajasthan Vs. Krishna Kumar** and submitted that for the vacancy of year 2021, the circular issued by DOP on 27.12.2021 was not made applicable. He also submitted that the rule cannot be changed to place the petitioners in disadvantage position as a right has already been accrued in the favour of the petitioners.

5. Aforesaid contentions were opposed by learned counsel on behalf of respondents and submitted that on 27.12.2021, the DOP has issued a circular after supersession of all previous notifications and directed that a waiting list is operative only upto 6 months, from date of main recommendation and not thereafter. He further submitted that the Agriculture Department acting upon the binding circular issued by the DOP has denied the appointment to petitioners.

6. Heard learned counsel for the parties and perused the material placed on record. Also considered the judgments as referred herein above.

7. The short controversy involved in this writ petition is that whether a recommendation made by Rajasthan Staff Selection Board (RSSB) is sufficient to invoke jurisdiction under Article 226 of the Constitution of India for Writ of Mandamus against the respondent Nos. 1 to 3 to accord appointment to the petitioners.

8. There is no doubt about a fact that petitioners have applied in the recruitment process and further participation in examination and document verification, they stood in waiting list. The facts as mentioned on record indicate that the final result was declared by RSSB on 07.03.2022 (Annexure 5). Pursuant to the recommendation, 2066 persons were appointed vide order dated 11.03.2022 (Annexure 6). Again, name of 43 candidates were sent by RSSB vide order dated 27.05.2022 (Annexure-7) and out of which, 38 candidates were appointed by the Agriculture Department on 19.09.2022 (Annexure-8).

9. The Agriculture Department has informed that candidature of 4 persons were rejected in non-TSP area and 2 in TSP area. The

Department has further recommended name of 25 candidates in non-TSP area for vacant post of non-TSP area, and against non-joiners (Annexure-9) dated 07.07.2022, the Department has issued appointment order of 23 persons on 03.01.2023 (Annexure-10). Again, the RSSB has recommended candidature of 12 persons vide letter dated 21.10.2022 (Annexure-11), which includes petitioners.

10. The material on record indicate that on 19.10.2022, the Agriculture Department has noticed that despite extension in joining time to 10 persons, who were appointed vide order dated 11.03.2022, have failed to join, therefore, their appointment orders were withdrawn and cancelled. While forwarding a copy of the order dated 19.10.2022, it was mentioned that the names other successful candidates be forwarded in placed of these persons.

11. The material on record clearly indicate that the recruitment advertisement was issued on 05.02.2021, which was further amended on 26.08.2021 and the examination was conducted on 18.09.2021. The result was declared on 23.11.2021. The main list was sent on 07.03.2021, by respondent No.4.

12. Admittedly, the petitioners are in waiting list and their names were recommended on 21.10.2022 after cancellation of appointment of 10 persons vide order dated 19.10.2022. On 13.01.2016, the Department of Personal (DOP) has issued a notification, wherein a clarification is made about operation of waiting list. Earlier provision under a circular dated 19.07.2001 was reproduced in said circular and same is as under:-

"Provided that the commission may to the extent of 50% of the advertised vacancies, keep names of suitable candidates on the reserve list. The names of such candidates may on requisition, be recommended in the order of merit to Govt. within six months from the date on which the original list is forwarded by the commission to Govt."

13. Thereafter, vide order dated 13.01.2016, the effective direction was as under:-

इस क्रम में आयोग से प्राप्त प्रस्ताव एवं राज्य एवं देश की उच्च अदालतों से प्राप्त निर्णयों का अनुशीलन कर, राज्य सरकार द्वारा यह निर्णय लिया गया है कि परिपत्र दिनांक 19.07.2001 में मूल अभिस्तावना तिथि से 6 माह की गणना का जो प्रावधान है, उस अवधि की गणना आयोग अथवा अन्य एजेंसी द्वारा प्रेषित की जाने वाली (मूल) अभिस्तावना सूची के अंतिम भाग को प्रेषित करने की दिनांक से की जावेगी।

यह स्थिति उन प्रकरणों पर भी लागू होगी, जहां किन्हीं कारणों से आयोग अथवा अन्य एजेंसी द्वारा संशोधित परिणाम/पुनः परिणाम जारी किया जाता है, बशर्ते ऐसे संशोधित परिणाम/पुनः परिणाम से पूर्व भर्ती की संपूर्ण प्रक्रिया पूर्ण न हुई हो, तथा नियुक्त अभ्यर्थियों के उपस्थिति न देने से प्राप्त रिक्तियों को आगामी भर्ती की अर्थना में सम्मिलित न कर लिया गया हो। अभिस्तावना भेजते समय भर्तीकर्त्ता आयोग अथवा अन्य एजेंसी को यह भी सुनिश्चित करना होगा कि उसके द्वारा भेजी जाने वाली अंतिम (मूल) अभिस्तावना में इस आशय की सूचना भी अंकित की जावे।

सभी नियुक्ति प्राधिकारियों से अपेक्षा की जाती है वे वर्तमान में विचाराधीन प्रकरणों सहित भविष्य में इन निर्देशों के अनुसार कार्यवाही सुनिश्चित करेंगे। किन्तु, जिन मामलों में प्रक्रिया पूर्ण हो चुकी है, उन्हें पुनः नहीं खोला जाएगा।

14. The State Government has issued a circular on 27.12.2021 about operation of the waiting list and further clarified that by circular dated 18.10.2021, it was directed that the Recruiting

Agency will send one main list and names will not be send in piecemeal. The period of 6 months will be counted from the date when main list was sent. Admittedly in the instant case main list was sent on 07.03.2022.

15. In case of **K. Manjusree Vs. State of Andhra Pradesh (supra)**, the issue was with regard to recruitment, wherein the rules did not prescribes any procedure for selection, but during selection process, the rules of selection were changed and provision of minimum marks were introduced. Hon'ble Court has quashed a change in criteria after completion of selection process and introduction of new requirement. This issue was further considered by a Constitution Bench of Hon'ble Supreme Court in case of **Tej Prakash Pathak & Ors. Vs. Rajasthan High Court & Ors. (supra)**, wherein it was held that eligibility criteria for being placed in select list cannot be changed midway through the recruitment process unless the extant rules so permit. Reference was answered in following manner:-

41. *Thus, in light of the decision in **Shankarsan Das (supra)**, a candidates placed in the select list gets no indefeasible right to be appointed even if vacancies are available. Similar was the view taken by this Court in **Subash Chander Marwaha (supra)** where against 15 vacancies only top 7 from the select list were appointed. But there is a caveat. The State or its instrumentality cannot arbitrarily deny appointment to a selected candidate. Therefore, when a challenge is laid to State's action in respect of denying appointment to a selected candidates, the burden is on the State to*

justify its decision for not making appointment from the Select List.

42. We, therefore, answer the reference in the following terms:

(1) Recruitment process commence from the issuance of the advertisement calling for applications and ends with filling up of vacancies;

(2) Eligibility criteria for being placed in the Select List, notified at the commencement of the recruitment process, cannot be changed midway through the recruitment process unless the extant Rules so permit, or the advertisement, which is not contrary to the extant Rules, so permit. Even if such change is permissible under the extant Rules or the advertisement, the change would have to meet the requirement of Article 14 of the Constitution and satisfy the test of non-arbitrariness;

(3) The decision in **K. Manjusree (supra)** lays down good law and is not in conflict with the decision in **Subash Chander Marwaha (supra)**. **Subash Chander Marwaha (supra)** deals with the right to be appointed from the Select List whereas **K. Manjusree (supra)** deals with the right to be placed in the Select List. The two cases therefore deal with altogether different issues;

(4) Recruiting bodies, subject to the extant Rules, may devise appropriate procedure for bringing the recruitment process to its logical end provided the procedure so adopted is transparent, non-discriminatory/ non-arbitrary and has a rational nexus to the object sought to be achieved.

(5) Extant Rules having statutory force are binding on the recruiting body both in terms of procedure and eligibility. However, where the Rules are non-existent, or silent, administrative instructions may fill in the gaps;

(6) Placement in the select list gives no indefeasible right to appointment. The State or its instrumentality for bona fide reasons may choose not to fill up the vacancies. However, if vacancies exist, the State or its instrumentality cannot arbitrarily deny appointment to a person within the zone of consideration in the select list.

16. In case of **State of Rajasthan Vs. Krishna Kumar (supra)**, Division Bench considering a fact that the vacancy was advertised in 2014 and circular is of 2020, therefore, same would not apply.

17. Herein this case, there is no issue as regard to selection process is concerned but it relates to the clarification about operation of waiting list. The material on record clearly indicate that the outer limit prescribed is 6 months for operation of waiting list and same is evident even from previous notifications issued by the DOP. The clarification as issued by the DOP is based on the sound principles, therefore, the petitioners cannot claim that their names are recommended within 6 months.

18. The names of the petitioners were recommended after expiry of 6 months from date of recommendation of main list. The Government has already deprecated the practice of recommendation in piecemeal. Thus, the petitioners have no case against the notification. The petitioners have not challenged the

virus of the circular (notification), therefore, the petitioners have no ground to invoke extraordinary jurisdiction of this Court, as the petitioners are in waiting list and their names have been recommended after 6 months from recommendation of main list. Thus, the writ petition is liable to be dismissed.

19. As a result, instant writ petition is hereby dismissed with pending application, if any.

(ASHOK KUMAR JAIN),J