

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Writ Petition No. 7764/2016

Mukesh Chand Joshi S/o Ghanshyam Sharma, Aged 46 years,
R/o Ayodhya Nagar Post, Tehsil, District Dausa, Rajasthan.

-----Petitioner

Versus

1. State of Rajasthan thorough Secretary to the Government, Department of Education, Government Of Rajasthan, Govt. Secretariat, Jaipur Rajasthan.
2. Director Elementary, Education Rajasthan, Biknaner, Rajasthan.
3. The District Establishment committee, Zila Parishad, Barmer Through Chief Executive Officer, Barmer.

-----Respondent

For Petitioner(s)	:	Mr. Mukesh Chand Joshi, petitioner present in person
For Respondent(s)	:	Mr. Surendra Singh Naruka, AAG with Mr. Jitendra K. Takar

HON'BLE MR. JUSTICE ASHOK KUMAR JAIN

Order

25/02/2026

1. Instant writ petition is preferred by petitioner with following prayer:
 - a) By Writ, order and direction in the nature thereof the action of the respondent of not considering improved marks of Secondary Examination 1997 and not giving appointment to the Petitioner may be quashed and set aside.
 - b) By an appropriate writ, order and direction in the nature there of the action of the respondents may be directed appointment to the petitioner as Teacher Grade-III in reference to the Advertisement

No. 10/1998 with all consequential benefits including seniority at par with the similarly situated persons.

2. The petitioner, who appeared in person, has submitted that the controversy raised in the present petition stands resolved in view of the adjudication by a Coordinate Bench of this Hon'ble Court in the case of **Mohan Singh Verma vs. State of Rajasthan CWP No. 11452/2002, decided on 04.07.2015,** and also in the case of **Brijendra Kumar Jaiman and Ors. v. State of Rajasthan and Ors., 2008 (3) RLR Page 1,** decided by a Division Bench.
3. The petitioner in person has further referred to the order dated **17.10.2014, passed by a Coordinate Bench of this Court in the case of Keshav Narayan Sharma vs. Director, Rural Development and Panchayati Raj Department and Anr., S.B. CWP No. 4802/2001,** on the basis of the judgment of the Full Bench in the case of **Brijendra Kumar Jaiman and Ors. v. State of Rajasthan and Ors. (supra),** and submitted that the present writ petition be disposed of in light of these judgments.
4. He further referred to the facts of the case and submitted that the petitioner passed the Secondary School Examination in the year 1984 with Second Division, but in order to improve his marks, the petitioner reappeared in the Secondary Examination in the year 1997 and passed with First Division. He further submitted that Advertisement No. 10/1998 dated 15.06.1998 came to be issued by the respondents inviting applications for appointment to the post

of Teacher Grade-III. He also submitted that subsequently improved marks of the Secondary Examination were not counted in favour of the petitioner while preparing the merit list, and later the petitioner came to know that the respondents had considered the cases of some other candidates with improved marks and granted appointment to them. He further referred to the counting and submitted that the petitioner is entitled to consideration pursuant to the judgment passed by this Hon'ble Court.

5. Aforesaid contentions were opposed by learned Additional Advocate General on the ground that the petitioner submitted two mark sheets, firstly of the Secondary Examination in the year 1984 and thereafter of the year 1997. He further submitted that as per the condition prescribed in the advertisement, the marks secured by the petitioner in the year 1984 were considered as the original marks for the Secondary Examination, and he is not entitled to consideration of the marks secured after improvement in the Secondary Examination. He also submitted that the recruitment process pursuant to Advertisement No. 10/1998, issued in the year 1998, has already been concluded and there is no vacancy available to consider the appointment of the petitioner.
6. Learned AAG has further referred to the judgment in the case of **State of Rajasthan versus Nemi Chand Mahela and Ors., Civil Appeal No.3873/2010 (decided on 30.04.2019) (SC)** and submitted that the present writ petition has been filed after the decision dated 17.10.2014 in

the case of **Keshav Narayan Sharma (supra)** by a Coordinate Bench of this Court; therefore, the petitioner is not entitled to any relief as the same would be contrary to the judgment of the Hon'ble Supreme Court. He also submitted that the petitioner has secured lesser marks than the cut-off marks and, therefore, he is not entitled to any relief from this Hon'ble Court.

7. Heard petitioner in person and learned AAG and perused the material placed on record. We have considered the judgments as referred to by the petitioner in person and by the learned AAG.
8. Admittedly, the petitioner had filed an application for appointment to the post of Teacher Grade-III pursuant to Advertisement No. 10/1998. The controversy herein is that the petitioner originally passed the Secondary School Examination in the year 1984; however, to improve his marks, he reappeared in the year 1997 and passed with First Division, thereby securing higher marks in 1997. The respondents have considered the original marks of Secondary, secured by the petitioner in the year 1984 but have not taken into consideration the improved marks secured by him in the year 1997.
9. The petitioner has approached this Court by filing present writ petition on 19.05.2016. The order sheet dated **06.04.2016 in D.B. Special Appeal Writ No. 685/2015, Director, Rural Development and Panchayati Raj Department versus Keshav Narayan Sharma**, indicates that present petitioner had filed an application for

impleadment; however, as the said SAW was rendered infructuous, the application was disposed of and the applicant was granted liberty to avail the remedy available under law for the relief sought by him.

10. The material available on record clearly indicates that a Coordinate Bench of this Court has considered an identical controversy in the case of **Keshav Narayan Sharma versus Director, Rural Development and Panchayati Raj Department and Another** (a writ petition filed in the year 2001), after considering the judgments in the cases of **Brijendra Kumar Jaiman versus State of Rajasthan and Ors. (supra)**, **Surendra Kumar and Others versus State and Another, 2001 (3) RLR 258 (DB)**, and **Mohan Singh Verma versus State (supra)** allowed the writ petition on 17.10.2014 in the following terms:

In the result, the writ petition is allowed. The respondents are directed to take into consideration the improved marks of the Secondary Examination (Annexure-6) of the petitioner to prepare the merit for the purpose of appointment on post of the Teacher pursuant to advertisement 1/98 and if petitioner is found to have secured more marks than any candidate appointed on that post in his category then the respondents to grant him such appointment from the date on which the candidate immediately below him in the merit was so appointed. If eventually, petitioner is found held entitled to secure appointment, he would not be to entitled to any monetary benefits for the intervening period. However, he would be entitled to notional benefits with regard to seniority etc., which may have been grant to such junior person.

Compliance of this order be made within three months from the date copy of this judgement is produced before the respondents.

11. The D.B. Special Appeal Writ was filed by the State; however, the same was rendered infructuous on 06.04.2016 and D.B. Special Appeal Writ No. 685/2015 was dismissed accordingly.
12. In the case of **State of Rajasthan versus Nemi Chand Mahela and Ors (supra)**, the Hon'ble Supreme Court, in the matter relating to recruitment to the post of Primary School Teacher in Zila Parishad of various districts in the State of Rajasthan during the year 1998–1999, held that the candidates who had not filed writ petitions on or before 17.11.1999 would not be entitled to appointment upon recalculation of marks by exclusion of bonus marks from the marks of selected candidates. The said direction, however, would not apply to individuals where the principle of res judicata would apply, as the matter had not been challenged before the Division Bench or the Hon'ble Supreme Court.
13. The contention of the learned AAG is that there is delay and latches on the part of the petitioner in filing the writ petition before this Hon'ble Court. The material available on record clearly indicates that after the decision dated 17.10.2014 in the case of **Keshav Narayan Sharma vs. Director, Rural Development and Panchayati Raj Department and Anr. (supra)**, wherein the writ petition had been filed in the year 2001, the present petitioner filed an impleadment application in D.B. Special Appeal Writ preferred by the State of

Rajasthan against the order dated 17.10.2014 passed in **Keshav Narayan Sharma vs. Director, Rural Development and Panchayati Raj Department and Anr. (supra)**. It is only on the basis of liberty granted by the Division Bench of this Court, the petitioner has filed the present writ petition.

14. No doubt, the petitioner has approached this Court after substantial delay; however, the case of the petitioner is squarely covered by the ratio laid down by the Full Bench of this Court in **Brijendra Kumar Jaiman (supra)** and further by the Division Bench in **Surendra Kumar (supra)**. The ratio in the aforementioned cases was fully followed in **Keshav Narayan Sharma vs. Director, Rural Development and Panchayati Raj Department and Anr. (supra)**, wherein a Coordinate Bench permitted counting of revised/improved marks obtained by the candidate in the Secondary Examination for the purpose of appointment to the post of Teacher Grade-III.
15. The **judgment dated 11.02.2014 in the case of Suresh Kumar Bharadwaj versus State of Rajasthan, S.B. Civil Writ Petition No. 98/2009**, was also passed by a Coordinate Bench of this Court at the Principal Seat, Jodhpur, on the basis of the judgment dated 04.07.2014 in **Mohan Singh Verma (supra)**.
16. The issue before the Hon'ble Supreme Court in **Nemi Chand Mahela (supra)** pertains to the recruitment process in Zila Parishads of various districts in the State of Rajasthan for the post of Primary School Teachers, wherein the

controversy related to counting of bonus marks and certain provisions were declared unconstitutional by a Full Bench of this Court in its judgment dated 18.11.1999.

17. In the present case, there is no such controversy; rather, it is a case of an individual who has approached this Court after the decision in **Keshav Narayan Sharma vs. Director, Rural Development and Panchayati Raj Department and Anr. (supra)**.
18. It is the duty of the State to apply the principle equally to all, which is the essence of the rule of law; thus, the law has to be applied uniformly to every person. In the present case, when there was a Full Bench judgment in **Brijendra Kumar Jaiman (supra)** and prior thereto a Division Bench judgment in **Surendra Kumar Bharadwaj (supra)**, it was incumbent upon the respondents to consider all candidates having identical issues. This Court in **Mohan Singh Verma (supra)**, **Suresh Kumar Bharadwaj (supra)** and **Keshav Narayan Sharma (supra)** has resolved the identical controversy and ruled in favour of the candidates, directing the respondents to consider the improved marks obtained in the Secondary Examination.
19. In the present case, except for the delay, there is no other reason to reject the claim of the petitioner. Otherwise, it is an identical case covered by the ratio laid down in the aforementioned judgments as referred to and relied upon by the petitioner himself.
20. The material on record further indicate that the petitioner has also placed reliance upon the **judgment dated**

14.08.2018 passed in S.B. Civil Writ Petition No. 16256/2017, Ramgopal Jaga v. State of Rajasthan and Ors., at the Principal Seat, Jodhpur, wherein after referring to the judgment of the Hon'ble Supreme Court in case of **Purushottam Vs. Chairman MSEB (1999(6) SCC 49)** , it was held that the right of a candidate to be appointed against the post for which he has been selected cannot be taken away on the pretext that the panel has, in the meantime, expired or that the post has already been filled by someone else.

21. The case of the petitioner is squarely covered by the judgment in case of **Keshav Narayan Sharma (supra)**, therefore, it is appropriate to partly allow the writ petition and direct the respondents to consider the candidature of the petitioner after counting the improved marks secured in the Secondary Examination, 1997.
22. In view of the discussion made hereinabove, the writ petition is partly allowed, and the respondents are directed to consider the candidature of the petitioner on the basis of the improved marks obtained in the Secondary Examination, 1997. If the petitioner falls in the merit of the category for which he applied, and junior to him were appointed then his candidature shall be considered for appointment to the post of Teacher Grade-III.
23. The petitioner shall be entitled to consideration of seniority from the date of filing of the writ petition and not prior thereto. The petitioner shall be entitled only to notional benefits till the date of actual appointment.

24. Accordingly, the writ petition, along with the miscellaneous application(s), if any, stands disposed of.

(ASHOK KUMAR JAIN),J