(2013) 12 RAJ CK 0010

Rajasthan High Court (Jaipur Bench)

Case No: Civil Writ Petition Nos. 15788 & 15777, 15781, 15791 etc. etc. of 2013

Hemendra Kumar Jangid		APPELLANT
	Vs	
State of Rajasthan		RESPONDENT

Date of Decision: Dec. 19, 2013

Citation: (2014) 3 CDR 1387 : (2014) LabIC 1904 : (2014) 3 RLW 1926 : (2014) 3 SCT 515

Hon'ble Judges: M.N. Bhandari, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

M.N. Bhandari, J.

The bunch of writ petitions involves common question of law thus were heard and decided by this common judgment. The respondents issued an advertisement for appointment to the post of Teacher Gr III (Levels-I and II). The advertisement was issued at the district level by respective Zila Parishad. The petitioners applied for the above posts and after remaining successful, were given appointment. The respondents have now issued an order dated 30.8.2013 at annexure-6 in CW 15788/2013 which provides for an action of termination of services of those candidates who do not find place in the merit list after revision of result. The revision of the merit list is due to correction in the answer key wherein certain questions were deleted or answers were modified. It was in view of the fact that after declaration of result, a controversy was raised for correctness of the questions and answers. This court issued directions on the respondents to send the matter to the expert committee. The respondents, in compliance of the order, sought opinion of the expert committee and found certain questions and answers to be incorrect. They accordingly revised the merit list. On account of revision of the merit list, it seems, petitioners are not finding place therein thus apprehending termination or have been terminated.

2. Initially, writ petitions were filed when only order dated 30.8.2013 was passed. Few writ petitions were filed after passing of the orders of termination. This court passed interim orders in favour of the petitioners in reference to the judgment of the Hon''ble Supreme Court in the case of Rajesh Kumar and Others etc. Vs. State of Bihar and Others etc., .

3. Learned counsel for petitioners submit that selection for the post of Teacher Gr III (Levels-I and II) were conducted by the respondents. The merit list was prepared based on the criteria laid down by them which include weightage of marks for Rajasthan Teacher Eligibility Test (for short ''RTET'') to the extent of 20%. The RTET was conducted in pursuance of the amendment in the Regulations by the National Council for Teacher Education (for short ''the NCTE''). As per Regulations, one is required to pass TET for appointment to the post of Teacher Gr III. The minimum qualifying marks therein are 60% for general category candidates and, for reserve category candidates, concession was provided though the matter in that regard is pending consideration before the Hon''ble Apex Court. It is in view of the judgment of the Division Bench holding candidate to be ineligible for appointment unless he possesses 60% marks in RTET. Thus, while making appointment, it was made subject to final outcome of pending litigation.

4. After appointment, petitioners are serving in respective Zila Parishad, however, due to litigation and order of this court, result has been revised holding either certain questions or their answers to be incorrect. It was after getting report from expert committee. The revised cut off marks ousted the petitioners from merit as they are now having less marks than cut off.

5. It is further stated that revision of marks exist in the RTET also. It is in view of the fact that a dispute regarding certain questions and their answers was raised in respect of RTET also. Therein, again, the matter was sent to the expert committee and, on getting the report, result of the RTET was revised, wherein, few candidates, who earlier remained successful have been declared unsuccessful and, at the same time, other candidates who earlier remained unsuccessful are now declared successful. The termination of the petitioners has been effected due to revision of marks of RTET also.

6. Learned counsel submit that revision of answer key and marks was without affording an opportunity of hearing to the petitioners, more so when it was going to result in their termination.

7. At this stage, learned counsel submit that they are not questioning the expert committee report and correction of the answer key though issue aforesaid has been raised in the writ petitions but they are not pressing the same. The only issue is that revision of the merit should not result in termination of petitioners'' services. It is stated that termination at this stage is going to cause ill consequences inasmuch as many petitioners were earlier working elsewhere. They resigned from their posts to

join the services. If the termination is now given effect, then it will cause irreparable loss to them. It is apart from the fact that for the post of Teacher Gr III advertised by the respondents in the year 2013, petitioners could not apply being in service thus they are deprived even to apply for fresh selection. On that count also, equity lies in their favour. The respondents can accordingly reduce the number of vacancies so advertised now so as to accommodate the petitioners herein. The termination should not be otherwise given effect to in violation of principles of natural justice.

8. To support the arguments, learned counsel for petitioners have relied on the judgment of the Hon''ble Supreme Court in the case of Rajesh Kumar and Others etc. Vs. State of Bihar and Others etc., . It is submitted that the controversy therein was similar to that involved in these cases. The petitioners are innocent persons. They are not instrumental either to set incorrect answer key or even questions therein. They did not obtain appointment by fraud or malpractice thus looking to all these facts, respondents should be restrained to effect termination of services of the petitioners.

9. The other judgment relied upon is in the case of Sabita Prasad and others Vs. State of Bihar and others . Therein, a prayer was made to oust those who were earlier appointed as Teachers but after the judgment of the High Court, could not find place in the merit list so as to continue in service. The High Court, though saved their appointment as they were not party to the litigation but then facts remained that even after change of result, the candidates continued in service.

10. The next judgment is in the bunch of writ petitions led by "Suresh Kumar & Ors. v. RPSC & Ors.", SB Civil Writ Petition No. 15638/2012, decided on 15.12.2012 by this court. Therein, while deciding the bunch of writ petitions, the appointment of the Teachers were saved even though change of the marks in the subject of General knowledge was allowed. Same is the position herein.

11. In the case of "Ramesh Chand v. RSRTC & Ors.", SB Civil Writ Petition No. 3600/2012, decided on 30.7.2012, this court took the same view where again there was expert committee report which found certain questions/answers to be incorrect.

12. In the case of P. Shiva Vs. The Union of India (UOI) and Others, , Karnataka High Court restrained the respondents to demote the candidate earlier promoted even though they could not secure required marks for passing written test for viva-voce.

13. Learned counsel for petitioners lastly referred recent judgment of the Hon''ble Supreme Court in the case of Vikas Pratap Singh and Others Vs. State of Chhattisgarh and Others, . Therein also, while permitting revision of the result, termination thereupon was not held to be proper and justified. A direction was given for fresh appointment without claim of seniority and other benefits.

14. Mr. S.N. Kumawat, learned Additional Advocate General, on the other hand, contested the writ petitions and stated that the petitioners'' selection was only on provisional basis. It was subject to decision and final outcome of various writ petitions thus petitioners have wrongly taken it to be an appointment on regular basis. The respondents'' action is otherwise justified inasmuch as after declaration of the result and appointments, this court passed an order to send certain questions for expert opinion where the dispute was raised about their correctness. The expert opinion was sought and finding certain questions and answers to be incorrect, result was revised. The expert opinion has been questioned by few petitioners but without proper explanation and is not otherwise pressed thus the issue aforesaid is not required to be dealt with. The revision of the result is not only due to expert opinion on certain questions and answers to the question paper for the post of Teacher Gr III but in view of the revision of answer key of the RTET thus there are two sets of candidates. The change of result is going to effect nearly 287 candidates for Teacher Gr III (Level-I) and nearly 2455 candidates for Teacher Gr III (Level-II) thus number of candidates affected by the outcome of the revised result is not 10 or 20 but running in hundred, rather, in thousand.

15. Mr. Kumawat submits that as per the NCTE Regulations, a candidate is required to obtain minimum qualifying marks in RTET to become eligible for appointment on the post of Teacher Gr III. After revision of result of the RTET, few candidates earlier declared successful became unsuccessful. They are not possessing required minimum qualifying marks of the respective category now, though as per decision of the Division Bench of this court in the case of State of Rajasthan & Ors. v. Vikas Kumar, everybody is required to possess 60% marks in RTET. The issue aforesaid is pending consideration before the Hon''ble Apex Court. The open category candidate having secured less than 60% marks in RTET is not eligible for appointment. For other categories, it should not be less than required for that category. They cannot be continued if become ineligible. Therefore, interference in the termination of such candidates would mean to continue services of the candidates though not eligible for appointment.

16. The second set of candidates are those who were earlier placed in the merit but due to revision of the result for the post of Teacher Gr III, they are not finding place in the merit, thus to give room to meritorious candidates, a decision was taken to terminate services of those who are having less marks. The continuance of the petitioners would deprive candidates having more marks and eligible to get appointment. It is due to definite number of posts. The effort of the respondents is to give room to those now placed in the merit list. The petitioners have hardly worked for 11 months or so and their appointment is otherwise on provisional basis thus termination thereupon cannot be said to be illegal.

17. In the case of Rajesh Kumar and Others etc. Vs. State of Bihar and Others etc., , the facts were quite different. If less meritorious candidates are continued then how

meritorious candidates would be adjusted was not a question before the court. In the said case, appellants continued for a long period of 7 years thus decision aforesaid was rendered on its own facts.

18. The position of facts is similar in the case of Vikas Pratap Singh and Others Vs. State of Chhattisgarh and Others, . Therein, the action of the respondents to re-evaluate the question and preparation of the merit afresh was held to be just and proper. Ousting of 26 appellants was however interfered on the ground of undue hardship and equities. A direction for fresh appointment was given. It is settled law that a direction to enlarge number of posts cannot be given by the court. In view of the above, if continuance of the petitioners is permitted, then number of such candidates being in thousands, it would deprive meritorious candidates to get appointment. The number of posts now advertised cannot be reduced only with a view to adjust the petitioners who are less meritorious affecting the right of those who have applied for the post in pursuance to new advertisement.

19. The judgment in the case of Sabita Prasad (supra) was also on different facts. Therein, as an outcome of the judgment of the High Court, a prayer was made to oust ineligible candidates. Therein, ousting of candidates was saved by the High Court itself as they were not party to the litigation thus the case was decided on its own facts.

20. Similar directions were given by the Hon''ble Supreme Court in the case of V.N. Sunanda Reddy and others Vs. State of Andhra Pradesh and others, . The position of fact is similar in the case of Suresh Kumar v. RPSC and in the case of Ramesh Chand v. RSRTC (supra).

21. In the case of Naresh Kumar Sharma and Others Vs. State of Rajasthan and Another, the appointments were saved by the High Court on its own facts and more specifically in absence of affected persons before the High Court.

22. It is further stated that there is nothing on record to show that petitioners were earlier working elsewhere and joined the services after resignation. The plea raised by the petitioners for their inability to apply for the posts in pursuance to the new recruitment is also incorrect inasmuch as the last date to apply was 4th September, 2013, whereas, impugned order was passed on 30.8.2013. The petitioners were having an opportunity to apply for the post of Teacher Gr III again, thus petitioners deserve no relief or sympathy in the facts and circumstances of the present case, rather, writ petitions may be dismissed.

23. I have considered rival submissions of learned counsel for the parties and perused the record.

24. Undisputed facts of these writ petitions are that in pursuance to the selection and declaration of the result, petitioners were appointed on the post of Teacher Gr III (Levels-I and II) respectively. The dispute regarding certain questions and their

answers was raised by few candidates and, as per directions of this court, respondents constituted expert committee for its opinion and based on the expert opinion, result was revised. By virtue of which, petitioners'' merit position has been altered and they are not finding place in the revised merit list. It is one part of factual aspects.

25. The other part is in regard to the RTET which is to be qualified by each candidate to become eligible for appointment to the post of Teacher Gr III. It is as per the NCTE Regulations. Before advertising the posts of Teacher Gr III, the State of Rajasthan through the Board of Secondary Education, Rajasthan conducted RTET. Therein a candidate was required to obtain minimum 60% marks to qualify it. Concession was allowed in favour of reserved category candidates, however, it was subject matter of litigation and is now pending before the Hon''ble Apex Court. The dispute regarding certain questions was raised in regard to RTET also. As per the directions of this court, there is revision of marks of RTET. By virtue of which many candidates are not possessing required qualifying marks to become eligible for the post of Teacher Gr III. The challenge to the revision of result based on the expert committee opinion is not pressed by any of the petitioners. By virtue of revision of result of RTET, the merit position for the post of Teacher Gr III is altered inasmuch as 20% weightage is given to the marks obtained in the RTET for determination of merit for the post of Teacher Gr III. In view of above, there are two sets of candidates, thus issue is required to be dealt with separately.

26. I am first dealing with the issue in regard to RTET as revision of marks therein make certain candidates to be ineligible for appointment to the post of Teacher Gr III. As earlier stated, RTET was conducted by the State prior to selection on the post of Teacher Gr III as aforesaid is one of the required qualifications. The candidates who could secure minimum 60% marks were made eligible for appointment on the post of Teacher Gr III. Concession to the reserved category candidates is given, however, it is subject to final outcome of the appeal pending before the Hon''ble Supreme Court. On the revision of the result of RTET, if a candidate became ineligible for the post of Teacher Gr III for want of required marks, then question comes as to whether he/she can be continued in the name of equity or for similar reasons. The issue needs to be determined in the light of the judgment cited by learned counsel for petitioners. The thrust of the arguments is that once a candidate is appointed, revision of result should not result in his discontinuance/termination. To answer the question aforesaid, it would be relevant to refer circular/Regulations of the NCTE, which is quoted thus-

Qualifying marks-

9. A person who scores 60% or more in the TET exam will be considered as TET pass. School managements (Government, local bodies, Government aided and unaided).

(a) may consider giving concessions to persons belonging to SC/ST, OBC, differently abled persons, etc., in accordance with their extant reservation policy;

(b) should give weightage to the TET scores in the recruitment process; however, qualifying the TET would not confer a right on any person for recruitment/employment as it is only one of the eligibility criteria for appointment.

27. One needs to possess minimum qualifying marks in RTET to become eligible for appointment to the post of Teacher Gr III. In view of above, if a candidate is not in possession of the required marks in RTET then he is ineligible for appointment.

28. If the facts of present writ petitions are looked into, on issuance of the result of the RTET, petitioners were declared eligible for appointment on the post of Teacher Gr III and finding place in the merit, they were given appointment. Now, by virtue of a dispute regarding questions and answers of RTET, revised result has been issued. Many petitioners are not in possession of required qualifying marks in RTET thus became ineligible for appointment to the post of Teacher Gr III. The respondents have assessed the position aforesaid based on their circular where concession/relaxation has been given to reserve category candidates otherwise as per judgment of the Division Bench in the case of State of Rajasthan v. Vikas Kumar Agrawal, every candidate is required to possess minimum 60% in TET.

29. In my opinion, ineligible candidates cannot be continued in service inasmuch as difference is to be made between ineligible candidates and eligible candidates. An ineligible candidate has no right to continue in service. It may be that they became ineligible due to revision of result of RTET. If this court directs to continue them, it would be dehors the instructions/regulations of the NCTE. In none of the judgments referred by learned counsel for petitioners, a direction has been given by the Apex Court to continue even ineligible candidates. In those cases, a candidate could not be figure in the merit list due to revision of result but it was not a case where one became ineligible due to revision of result. Thus facts of present cases are distinguishable to that extent. In regard to those candidates who are now ineligible for appointment to the post of Teacher Gr III as they are not possessing required qualifying marks in RTET, a direction for continuance or restraining the respondents to terminate their services cannot be given. In the background aforesaid, those petitioners who are not possessing qualifying marks in RTET after revision of result, have no right to continue in service. Accordingly, first issue is decided against the petitioners.

30. The revision of result of RTET is having another aspect for consideration. The candidates are in possession of required qualifying marks in RTET even after revision of result but it effects their merit position for the post of Teacher Gr III thus their cases have to be separated from those candidates who are not in possession of required qualifying marks in RTET. Their cases have to be considered along with those who are not finding place in the merit list of Teacher Gr III due to revision of

marks. The cases would be considered after taking into consideration the revised marks in RTET and test for the post of Teacher Gr III.

31. As indicated above, there is a revision of marks of RTET as well selection test for the post of Teacher Gr III affecting their merit position. Total number of such candidates are 287 on the post of Teacher Gr III (Level-I) and 2455 candidates on the post of Teacher Gr III (Level-II). The revision of result based on expert opinion is challenged but not pressed as otherwise this court has very limited jurisdiction to interfere in the expert opinion.

32. In view of above, the only question for my consideration is as to whether termination can be effected on revision of result either due to deletion of certain questions or correction of answer. The issue aforesaid was considered by the Apex Court in the case of Rajesh Kumar and Others etc. Vs. State of Bihar and Others etc., . The correction in the answer script and revaluation was allowed and held to be just and legal. A direction for fresh selection in view of application of improper answer key was not accepted. The revaluation of answer key and the result was held to be a good option to do justice to those who suffered on account of erroneous key. It was held that such evaluation need not necessarily result in ousting of appellants found below cut off marks based on revised list. Paras 17 to 19 are quoted hereunder for ready reference-

17. That brings us to the submission by Mr. Rao that while re-evaluation is a good option not only to do justice to those who may have suffered on account of an erroneous key being applied to the process but also to writ Petitioners-Respondents 6 to 18 in the matter of allocating to them their rightful place in the merit list. Such evaluation need not necessarily result in the ouster of the Appellants should they be found to fall below the ''cut off mark in the merit list. Mr. Rao gave two reasons in support of that submission. Firstly, he contended that the Appellants are not responsible for the error committed by the parties in the matter of evaluation of the answer scripts. The position may have been different if the Appellants were guilty of any fraud, misrepresentation or malpractice that would have deprived them of any sympathy from the Court or justified their ouster. Secondly, he contended that the Appellants have served the State efficiently and without any complaint for nearly seven years now and most of them, if not all, may have become overage for fresh recruitment within the State or outside the State. They have also lost the opportunity to appear in the subsequent examination held in the year 2007. Their ouster from service after their employment on the basis of a properly conducted competitive examination not itself affected by any malpractice or other extraneous consideration or misrepresentation will cause hardship to them and ruin their careers and lives. The experience gained by these Appellants over the years would also, according to Mr. Rao, go waste as the State will not have the advantage of using valuable human resource which was found useful in the service of the people of the State of Bihar for a long time. Mr. Rao, therefore, prayed for a suitable

direction that while re-evaluation can determine the inter-se position of the writ Petitioners and the Appellants in these appeals, the result of such reevaluation may not lead to their ouster from service, if they fell below the cut off line.

18. There is considerable merit in the submission of Mr. Rao. It goes without saying that the Appellants were innocent parties who have not, in any manner, contributed to the preparation of the erroneous key or the distorted result. There is no mention of any fraud or malpractice against the Appellants who have served the State for nearly seven years now. In the circumstances, while inter-se merit position may be relevant for the Appellants, the ouster of the latter need not be an inevitable and inexorable consequence of such a re-evaluation. The re-evaluation process may additionally benefit those who have lost the hope of an appointment on the basis of a wrong key applied for evaluating the answer scripts. Such of those candidates as may be ultimately found to be entitled to issue of appointment letters on the basis of their merit shall benefit by such re-evaluation and shall pick up their appointments on that basis according to their inter se position on the merit list.

19. In the result, we allow these appeals, set aside the order passed by the High Court and direct that-

(1) answer scripts of candidates appearing in ''A'' series of competition examination held pursuant to advertisement No. 1406 of 2006 shall be got re-evaluated on the basis of a correct key prepared on the basis of the report of Dr. (Prof.) CN Sinha and Prof. KSP Singh and the observations made in the body of this order and a fresh merit list drawn up on that basis.

(2) Candidates who figure in the merit list but have not been appointed shall be offered appointments in their favour. Such candidates would earn their seniority from the date the Appellants were first appointed in accordance with their merit position but without any back wages or other benefit whatsoever.

(3) In case writ Petitioners-Respondent Nos. 6 to 18 also figure in the merit list after re-evaluation of the answer scripts, their appointments shall relate back to the date when the Appellants were first appointed with continuity of service to them for purpose of seniority but without any back wages or other incidental benefits.

(4) Such of the Appellants as do not make the grade after re-evaluation shall not be ousted from service, but shall figure at the bottom of the list of selected candidates based on the first selection in terms of advertisement No. 1406 of 2006 and the second selection held pursuant to advertisement No. 1906 of 2006.

(5) Needful shall be done by the Respondents-State and the Staff Selection Commission expeditiously but not later than three months from the date a copy of this order is made available to them.

33. The next judgment is in the case of Sabita Prasad & Ors. (supra). Therein, the panel prepared for appointment was held to be unconstitutional thus a prayer was

made not to continue any candidate appointed out of the aforesaid panel. Referring to various judgments, it was found that while passing orders in favour of the petitioners, invariably a protection is given in favour of those who are not party and continued in service. It was a case where after holding the panel to be unconstitutional, Government took a decision not to disturb those who have already been appointed and continued in service. The Apex Court held decision of the Government to be just and proper as the appointees were not party to the litigation and otherwise the High Court had given a protection to those who were already appointed while holding panel to be unconstitutional.

34. The judgments in the case of Suresh Kumar v. RPSC (supra), Ramesh Chand v. RSRTC (supra) and Naresh Kumar Sharma and Others Vs. State of Rajasthan and Another, are similar inasmuch as this court saved those who were not party to the litigation. The dispute regarding appointment to the post of Teacher Gr II for different subjects was not directly involved in the case of Suresh Kumar v. RPSC (supra). Therein, change of result of General knowledge affected selection to the post of Teacher Gr II. This court observed that while revising the result of Teacher Gr II of other subjects, it should not affect the person already appointed. The observation aforesaid was looking to the fact that a challenge to the selection to the post of Teacher Gr II for different subjects was not involved therein and otherwise the candidates appointed were not party to the litigation. The observation therein is not evolving any ratio so as to apply to other case.

35. The position of fact is similar in the case of Ramesh Chand v. RSRTC (supra) wherein after finalisation of the result and appointment, the question of correctness of the answers was raised. Therein, interference in the appointments was not made only for the reason that it will unsettle the selection and appointment of the candidates already appointed and were not party to the litigation.

36. In view of above and as held by the Apex Court in the case of Sabita Prasad (supra), invariable observations or directions are issued not to touch appointments of those who are not party to the litigation. Para 30 of the judgment in the case of Sabita Prasad is quoted hereunder--

30. The non-interference with the appointment of teachers from the panel who stood already appointed cannot in our opinion form the basis of Article 14 argument. The fundamental right of equality implies that persons in like situations, under like circumstances, are entitled to be treated alike. Reasonable classification according to some principle to recognise intelligible inequalities or to avoid or correct inequalities is permissible. It is in this background that we must divert our attention to the charge of violation of Article 14. Indeed, if the action of the State can be shown to be arbitrary, then notwithstanding any classification it would offend Article 14 and be liable to be struck down. Those who had been appointed out of the panel as and when the vacancies arose and had continued in service did acquire some right to so continue and the action of the State Government in protecting their

services cannot be said to infringe Article 14, which even though all pervasive, has to be considered in the facts and circumstances of each case. The appointed and the non-appointed teachers formed separate and distinct classes. In saving the appointments of those who stood already appointed and were serving there was no arbitrariness whatsoever on the part of the Respondents. It indeed is no body''s case that the decision taken by the State was actuated by any motive or the scrapping of the panel after 2.7.1989, was mala fide. Even otherwise; when the State decided to respect the equities which have arisen in favour of the teachers already appointed and serving, no fault can be found with it. Equity reforms and moderates the rigour and hardness of the law and the State acted fairly and bona fide to respect and balance the equities in favour of the appointed candidates. We must, therefore, reject the charge of arbitrariness in view of the peculiar facts of this case more particularly since we have already found that the persons on the panel had not acquired any indefeasible right to appointment merely by being placed on the panel. It also deserves to be noted here that the Appellants had not questioned, as it is, the validity of appointment of the teachers, already appointed, but have on the other hand sought treatment similar to the one of the appointed teachers. The decision to save the appointments of the teachers already appointed, who form a distinct and separate class, is therefore fair and reasonable and does no suffer from the vice of arbitrariness. This view also accords with the judgment in Subash Chander Marwaha''s case (supra) and the law laid down by the Constitution Bench in Shankarsan Dash''s case (supra). We must, therefore reject the argument of discrimination between the two classes of teachers, namely, those who stood appointed and the others who were waiting to be appointed and in whose favour no indefeasible right accrued, only by being brought on the panel, to be appointed.

37. The para aforesaid shows that there should be a difference between the appointees and non-appointees thus while deciding a particular writ petition, some safeguard can be given to the appointee, if they are not party to the litigation.

38. The judgment in the case of P. Shiva Vs. The Union of India (UOI) and Others, decided by High Court of Karnataka is not in regard to recruitment but for promotion. The view taken therein was that even if one has not secured required marks for acquiring eligibility, he/she should not be affected unless it is by way of fraud or malpractice or irregularities. In my opinion, the judgment aforesaid is having only persuasive value and, with respect, cannot be accepted to be laying down correct law inasmuch as difference has to be made between ineligible and eligible candidates. The continuance of ineligible candidates would mean violation of the rules or a direction dehors the statutory provisions.

39. In the case of Vikas Pratap Singh and Others Vs. State of Chhattisgarh and Others, the issue again came up before the Apex Court. Therein, revision of result was due to revaluation of answer script where 8 questions of Paper-II were found to be incorrect. Due to revaluation, 26 appellants could not find place in the merit,

accordingly their appointments were cancelled. Paras 16 to 20 and 25 to 28 of the above judgment are quoted hereunder for ready reference-

16. In respect of the Respondent-Board''s propriety in taking the decision of re-evaluation of answer scripts, we are of the considered view that the Respondent-Board is an independent body entrusted with the duty of proper conduct of competitive examinations to reach accurate results in fair and proper manner with the help of Experts and is empowered to decide upon re-evaluation of answer sheets in the absence of any specific provision in that regard, if any irregularity at any stage of evaluation process is found. (See: Chairman, J and K State Board of Education Vs. Feyaz Ahmed Malik and Others, and Sahiti and Others Vs. The Chancellor, Dr. N.T.R. University of Health Sciences and Others, . It is settled law that if the irregularities in evaluation could be noticed and corrected specifically and undeserving select candidates be identified and in their place deserving candidates be included in select list, then no illegality would be said to have crept in the process of re-evaluation. The Respondent-Board thus identified the irregularities which had crept in the evaluation procedure and corrected the same by employing the method of re-evaluation in respect of the eight questions answers to which were incorrect and by deletion of the eight incorrect questions and allotment of their marks on pro-rata basis. The said decision cannot be characterized as arbitrary. Undue prejudice indeed would have been caused had there been re-evaluation of subjective answers, which is not the case herein.
17. In view of the aforesaid, we are of the considered opinion that in the facts and circumstances of the case the decision of reevaluation by the Respondent-Board was a valid decision which could not be said to have caused any prejudice, whatsoever, either to the Appellants or to the candidates selected in the revised merit list and therefore, we do not find any infirmity in the judgment and order passed by the High Court to the aforesaid extent.

18. It is brought to our notice that in view of the interim orders passed by the learned single Judge the Appellants have now completed their training and have been in service for more than three years. Therefore the only question which survives for our consideration and decision is whether after having undergone training and assumed charge at their place of posting the 26 Appellants be ousted from service on the basis of cancellation of their appointment qua the revised merit list.

19. Shri Rao would submit that the case of these Appellants requires sympathetic consideration by this Court, since the appointment of Appellants on the basis of a properly conducted competitive examination cannot be said to have been affected by any malpractice or other extraneous consideration or misrepresentation on their part. The ouster of 26 Appellants from service after having successfully undergone training and serving the Respondent-State for more than three years now would cause undue hardship to them and ruin their lives and careers. He would further

submit that an irretrievable loss in terms of life and livelihood would be caused to eight Appellants amongst them who have now become over aged and have also lost the opportunity to appear in the subsequent examinations. He would place reliance upon the decision of this Court in Rajesh Kumar and Others etc. Vs. State of Bihar and Others etc., wherein this Court has directed the Respondent-State to re-evaluate the answer scripts on the basis of correct model answers key and sympathetically considered the case of such candidates who, after having being appointed in terms of erroneous evaluation and having served the State for considerable length of time, would not find place in the fresh merit list drawn after re-evaluation and directed the Respondent-State against ousting of such candidates and further that they be placed at the bottom of the fresh merit list.

20. The pristine maxim of fraus et jus nunquam cohabitant (fraud and justice never dwell together) has never lost its temper over the centuries and it continues to dwell in spirit and body of service law jurisprudence. It is settled law that no legal right in respect of appointment to a said post vests in a candidate who has obtained the employment by fraud, mischief, misrepresentation or mala fide. (See: District Collector and Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram and Another Vs. M. Tripura Sundari Devi, , Hindustan Lever and others Vs. Hindustan Lever Mazdoor Sabha and others, and Union of India and others Vs. M. Bhaskaran, G. Radhakrishnan and C. Devan, . It is also settled law that a person appointed erroneously on a post must not reap the benefits of wrongful appointment jeopardizing the interests of the meritorious and worthy candidates. However, in cases where a wrongful or irregular appointment is made without any mistake on the part of the appointee and upon discovery of such error or irregularity the appointee is terminated, this Court has taken a sympathetic view in the light of various factors including bona fide of the candidate in such appointment and length of service of the candidate after such appointment (See: Vinodan T. and Others Vs. University of Calicut and Others, ; State of U.P. Vs. Neeraj Awasthi and Others, .

25. Admittedly, in the instant case the error committed by the Respondent-Board in the matter of evaluation of the answer scripts could not be attributed to the Appellants as they have neither been found to have committed any fraud or misrepresentation in being appointed qua the first merit list nor has the preparation of the erroneous model answer key or the specious result contributed to them. Had the contrary been the case, it would have justified their ouster upon re-evaluation and deprived them of any sympathy from this Court irrespective of their length of service.

26. In our considered view, the Appellants have successfully undergone training and are efficiently serving the Respondent-State for more than three years and undoubtedly their termination would not only impinge upon the economic security of the Appellants and their Dependants but also adversely affect their careers. This

would be highly unjust and grossly unfair to the Appellants who are innocent appointees of an erroneous evaluation of the answer scripts. However, their continuation in service should neither give any unfair advantage to the Appellants nor cause undue prejudice to the candidates selected qua the revised merit list.

27. Accordingly, we direct the Respondent-State to appoint the Appellants in the revised merit list placing them at the bottom of the said list. The candidates who have crossed the minimum statutory age for appointment shall be accommodated with suitable age relaxation.

28. We clarify that their appointment shall for all intents and purpose be fresh appointment which would not entitle the Appellants to any back wages, seniority or any other benefit based on their earlier appointment.

40. The perusal of the paras quoted above reveals that so far as revaluation of the answers and revision of the result is concerned, no illegality exist therein. The Hon''ble Supreme Court further considered the issue as to whether revaluation should oust the candidates earlier appointed.

41. The issue aforesaid is required to be viewed from two aspects. First is as to whether there can be re-valuation of the answer script so as to ignore incorrect answers or to correct the answers given in the key. It is held permissible by the Hon''ble Apex Court in catena of judgments and specially the judgments (supra), thus one proposition becomes clear that there can be change in the answer script so as to correct the questions and answers.

42. The question further comes as to for whose advantage, it needs to be corrected? The obvious answer is that those who had given correct answer of a question but could not obtain marks because of erroneous setting of answer key of a particular question or questions and, at the same time, benefited those who had given incorrect answer, yet secured marks due to the reasons stated above. If incorrect answer key is allowed to remain as it is, it would be to the benefit of those who had given incorrect answer and taken benefit of the default of the respondents in setting erroneous answer key and secured marks over and above meritorious candidates. Thus, it becomes clear that revaluation of answer script is to benefit meritorious candidates.

43. The next question and the crucial issue is that if revaluation of answer script ultimately results in revision of merit list to the benefit of meritorious candidates, then can a candidate going out of merit should be allowed to continue in service? If the answer is given in affirmative then it would result in giving benefit to a candidate who had given incorrect answers to certain questions and even after correction of answers and coming out of the merit would still take benefit of default of the respondents. They will continue even though there are candidates with better marks after revised result.

44. If the candidates, already appointed, are continued then the question would be as to how the revised merit list would be operated for the meritorious candidates. It is settled law that the size of the posts for recruitment is to be determined by the administration and if, that is so, then giving direction for appointment of meritorious candidates out of the revised merit list would mean a direction to give appointment in excess to the posts advertised. If a direction to give appointment in excess to the posts advertised cannot be given then meritorious candidates would be deprived from appointment. In that case, what would be the purpose of revaluation of the answer script or the questions?

45. If a view is taken to direct the respondents to adjust those who have already been appointed against future vacancies, then equity in favour of such candidates would be at the cost of meritorious candidates of next recruitment thus, under all circumstances, a direction to continue less meritorious candidates would be proper or not, needs to be considered. The reference of the judgment of the Hon''ble Supreme Court in the case of Hoshiar Singh Vs. State of Haryana and Others, would be relevant and para 10 thereof is quoted here as under--

10. The learned counsel for these appellants have not been able to show that after the revised requisition dated January 24, 1991 whereby the Board was requested to send its recommendation for 8 posts, any further requisition was sent by the Director General of Police for a larger number of posts. Since the requisition was for eight posts of Inspector of Police, the Board was required to send its recommendations for eight posts only. The Board, on its own, could not recommend names of 19 persons for appointment even though the requisition was for eight posts only because the selection and recommendation of larger number of persons than the posts for which requisition is sent. The appointment on the additional posts on the basis of such selection and recommendation would deprive candidates who were not eligible for appointment to the posts on the last date for submission of applications mentioned on the advertisement and who became eligible for appointment thereafter, of the opportunity of being considered for appointment on the additional posts because if the said additional posts are advertised subsequently those who become eligible for appointment would be entitled to apply for the same. The High Court was, therefore, right in holding that the selection of 19 persons by the Board even though the requisition was for 8 posts only, was not legally sustainable.

46. There may be cases where no vacancy exist after appointment. Though, at times, the court passes order saving appointment already given, but, invariably, it is in such cases where appointees are not before the court or there are such similar exceptional circumstances. The direction therein are not propounding a ratio as has been given by the counsel for the petitioners while referring the judgment in the case of Ramesh Chand and Naresh Kumar Sharma (supra). The aforesaid would be considered separately, but, presently, I am reiterating a portion of the judgment in

the case of Vikas Pratap Singh and Others Vs. State of Chhattisgarh and Others, and Rajesh Kumar and Others etc. Vs. State of Bihar and Others etc., , heavily relied by learned counsel for petitioners. Firstly, a part of the judgment in the case of Vikas Pratap Singh, para 20-

...It is also settled law that a person appointed erroneously on a post must not reap the benefits of wrongful appointment jeopardizing the interests of the meritorious and worthy candidates. However, in cases where a wrongful or irregular appointment is made without any mistake on the part of the appointee and upon discovery of such error or irregularity the appointee is terminated, this Court has taken a sympathetic view in the light of various factors including bona fide of the candidate in such appointment and length of service of the candidate after such appointment (See: Vinodan T. and Others Vs. University of Calicut and Others, ; State of U.P. Vs. Neeraj Awasthi and Others, ...

26.....However, their continuation in service should neither give any unfair advantage to the Appellants nor cause undue prejudice to the candidates selected qua the revised merit list.

47. A perusal of the para quoted above reveals that a person appointed erroneously must not reap benefits of wrongful appointment jeopardizing interest of meritorious and worthy candidates. Second part, however, save petitioners'' appointment due to discovery of error or irregularity but it is by taking a sympathetic view in the light of various factors including length of their service.

48. The Apex Court, thereupon, took notice of further fact that continuance of services of the appointees should neither give unfair advantage to the appellants nor cause undue prejudice to the candidates selected qua revised merit list. If the aforesaid is taken into consideration on the facts of these cases, answer would be in negative because the whole purpose of the revision of the merit list would be vitiated and cause serious prejudice to the candidates who find place in the merit list after revision of result if they cannot be given appointment. Thus, while referring to the judgment in the case of Vikas Pratap Singh and Others Vs. State of Chhattisgarh and Others, , this court cannot ignore the reason taken therein for continuance of candidates. It was purely on sympathetic consideration and taking note of their length of service apart from bona fides.

49. The position of fact is similar in the case of Rajesh Kumar and Others etc. Vs. State of Bihar and Others etc., . Therein, Hon''ble Apex Court took notice that the candidates already appointed were not guilty of any fraud, misrepresentation or malpractice. They had otherwise served the State efficiently for nearly 7 years and even become overage for fresh recruitment within the State or outside the State. They lost the opportunity to appear in the subsequent examination held in the year 2007. The portions of paras 17 and 18 of the said judgment is again quoted hereunder for ready reference-

17. That brings us to the submission by Mr. Rao that while re-evaluation is a good option not only to do justice to those who may have suffered on account of an erroneous key being applied to the process but also to writ Petitioners-Respondents 6 to 18 in the matter of allocating to them their rightful place in the merit list. Such evaluation need not necessarily result in the ouster of the Appellants should they be found to fall below the ''cut off'' mark in the merit list...

.....Secondly, he contended that the Appellants have served the State efficiently and without any complaint for nearly seven years now and most of them, if not all, may have become overage for fresh recruitment within the State or outside the State. They have also lost the opportunity to appear in the subsequent examination held in the year 2007. Their ouster from service after their employment on the basis of a properly conducted competitive examination not itself affected by any malpractice or other extraneous consideration or misrepresentation will cause hardship to them and ruin their careers and lives.

18.....In the circumstances, while inter-se merit position may be relevant for the Appellants, the ouster of the latter need not be an inevitable and inexorable consequence of such a re-evaluation. The re-evaluation process may additionally benefit those who have lost the hope of an appointment on the basis of a wrong key applied for evaluating the answer scripts. Such of those candidates as may be ultimately found to be entitled to issue of appointment letters on the basis of their merit shall benefit by such re-evaluation and shall pick up their appointments on that basis according to their inter se position on the merit list.

50. The perusal of portions of the paras quoted above shows that revaluation is a good option to do justice to those who have suffered on account of erroneous key so as to place them in the merit list. It may not necessarily oust the candidates already appointed in a given circumstance. The aforesaid formula cannot be applied in general but only in given case which may be if a candidate has continued in service for long.

51. In the case of Rajesh Kumar and Others etc. Vs. State of Bihar and Others etc., , two reasons were given to continue the candidates ousted from the merit. First was that they were not guilty of fraud, misrepresentation or malpractice etc and second was that they had served for 7 years and lost further opportunity of service.

52. In reference of the judgment above, it become clear that revision of result may not necessarily oust the candidates already appointed, if they are going out of merit list but aforesaid cannot be a rigid formula in view of the ratio propounded by the Hon''ble Apex Court in the case supra itself. It all depends on the facts of each case.

53. If the facts of the instant case are taken note of, appointment of the petitioners was only on provisional basis and subject to outcome of various litigations thus it was made clear that the appointments would not give indefinite right in favour of the candidates appointed. The relevant portion of one of the appointment order is

quoted hereunder for ready reference--

(Vernacular matter omitted.....Ed.)

54. The part quoted above reveals that the petitioners were given only provisional appointment on probation and it was made clear that such appointment would not cause any indefinite right to continue. It may be due to litigation pending on different issues. The fact further remains that appointments were made only on provisional basis which was not in the case of Vikas Pratap Singh and Others Vs. State of Chhattisgarh and Others, . In the case in hand, the petitioners have worked hardly for 11 months or so thus duration of their service is not so large so as to create equity in their favour. It is, however, shown that some candidates left the service to seek appointment on the post of Teacher Gr III though number of such petitioners are quite limited because in most of the writ petitions, documents in this regard do not exist. In any case, this court, will give appropriate directions to settle equities in their favour.

55. The further issue raised by learned counsel for petitioners is regarding deprivation of the petitioners to apply for the same posts in the next selection as the last date of which was 4.9.2013. The issue aforesaid also needs consideration thus proper directions would be given in the operative portion of the judgment so that action of the State Government may not affect those candidates in the future selection even if they have become overage and if failed to apply for that.

56. In the instant case, number of candidates going out of merit is large as it is running in hundreds and thousands. It was noticed during the course of arguments that around 2455 candidates have gone out of merit for the post of Teacher Gr III (Level-II) and 187 candidates have gone out of merit for the post of Teacher Gr III (Level-I). If such number of candidates are continued and, at the same time, a direction for appointment of equivalent number of candidates coming in the merit is given, it may virtually or to some extent, nullify the next recruitment as appointment of meritorious candidates has to be adjusted somewhere against those vacancies only. It may be true that default in setting out the questions or answers is not due to malpractice, misrepresentation or fraud of the petitioners but then this court should not ignore the fact that effect of continuance of large number of candidates would nullify the very purpose of revaluation itself which otherwise is held to be proper method to correct the irregularities. If, in all circumstances, a candidate going out of merit is continued in service, it would be adjustment of less meritorious candidates at the cost of those who may exist in between new cut off marks and the marks of the petitioners.

57. Now comes the issue in reference to the judgment in the case of Sabita Prasad (supra). It is earlier clarified that writ petition therein was filed to oust those who were not entitled to continue on the post. It is in the light of a decision of the Government to continue such candidates. The Hon''ble Apex Court therein held that

if the State has taken a decision to continue such candidates, it will not violate Article 14 of the Constitution of India. The difference between the appointees and non-appointees is to be made. The facts situation in the instant case is different because it is the Government which has taken a decision to discontinue those candidates who are not coming in the revised merit list. Therein, the court was cautious enough to hold that those who had been appointed out of the panel when vacancy arose and had continued in service, acquire some right to continue and the action of the State Government in continuing their services cannot be said to be infringe Article 14 of the Constitution which even though of persuasive value, has to be considered in the facts and circumstances of each cases. The aforesaid observation has been made in para 30 thus there exist room for this court to decide the issue of continuance and non-continuance of the candidates in the facts and circumstances of each case. Portion of para 30 of the judgment in the case of Sabita Prasad (supra) is quoted again for ready reference--

30. The non-interference with the appointment of teachers from the panel who stood already appointed cannot in our opinion form the basis of Article 14 argument. The fundamental right of equality implies that persons in like situations, under like circumstances, are entitled to be treated alike. Reasonable classification according to some principle to recognise intelligible inequalities or to avoid or correct inequalities is permissible. It is in this background that we must divert our attention to the charge of violation of Article 14. Indeed, if the action of the State can be shown to be arbitrary, then notwithstanding any classification it would offend Article 14 and be liable to be struck down. Those who had been appointed out of the panel as and when the vacancies arose and had continued in service did acquire some right to so continue and the action of the State Government in protecting their services cannot be said to infringe Article 14, which even though all pervasive, has to be considered in the facts and circumstances of each case. The appointed and the non-appointed teachers formed separate and distinct classes. In saving the appointments of those who stood already appointed and were serving there was no arbitrariness whatsoever on the part of the Respondents. It indeed is no body''s case that the decision taken by the State was actuated by any motive or the scrapping of the panel after 2.7.1989, was mala fide. Even otherwise; when the State decided to respect the equities which have arisen in favour of the teachers already appointed and serving, no fault can be found with it. Equity reforms and moderates the rigour and hardness of the law and the State acted fairly and bona fide to respect and balance the equities in favour of the appointed candidates. We must, therefore reject the charge of arbitrariness in view of the peculiar facts of this case more particularly since we have already found that the persons on the panel had not acquired any indefeasible right to appointment merely by being placed on the panel. It also deserves to be noted here that the Appellants had not questioned, as it is, the validity of appointment of the teachers, already appointed, but have on the other hand sought treatment similar to the one of the appointed teachers. The

decision to save the appointments of the teachers already appointed, who form a distinct and separate class, is therefore fair and reasonable and does no suffer from the vice of arbitrariness. This view also accords with the judgment in Subash Chander Marwaha''s case (supra) and the law laid down by the Constitution Bench in Shankarsan Dash''s case (supra). We must, therefore reject the argument of discrimination between the two classes of teachers, namely, those who stood appointed and the others who were waiting to be appointed and in whose favour no indefeasible right accrued, only by being brought on the panel, to be appointed.

58. The Government may take a decision to continue services of those who have already been appointed but then it should not be generally at the cost of meritorious candidates. It would otherwise become a case of misplaced sympathy in favour of the appointees and prejudicial to the cause of meritorious candidates which has not been accepted by the Apex Court in the case of Vikas Pratap Singh and Others Vs. State of Chhattisgarh and Others, .

59. Learned counsel for petitioners have even referred to the judgment of this court where appointments of the candidates were saved. The first judgment is in the case of Suresh Kumar & Ors. (supra). It was a case where correctness of certain questions for the post of Teacher Gr II (Social Science and Mathematics) was questioned apart from General Knowledge. This court noticed that there was a change in the answers in General Knowledge also and it was common for appointment on the post of Teacher Gr II in different subjects. The Rajasthan Public Service Commission agreed to change the result of the post of Teacher Gr II of Social Science and Mathematics. The issue in respect of Teacher Gr II of other subject was not before the court thus, cautiously, a direction was given not to disturb the appointees, otherwise direction aforesaid would have been without hearing the appointees of other subjects apart from the fact that the issue was limited therein for Teacher Gr II in the subject of Social Science and Mathematics. Therein, the direction was given to settle the equities in favour of the meritorious candidates. The issue therein was on different facts and otherwise it is not propounding a ratio but gives a direction in the facts and circumstances of the case.

60. In the instant case, the issue has been discussed and decided elaborately in reference of the judgment of the Apex Court in the case of Rajesh Kumar and Others etc. Vs. State of Bihar and Others etc., and Vikas Pratap Singh and Others Vs. State of Chhattisgarh and Others, .

61. The position of fact in the case of Ramesh Chand v. RSRTC (supra) is again similar. Therein, certain questions were found to be incorrect after appointment of the candidates, however, a direction to amend select list was not given as it was unsettling the selection and appointment without hearing the candidates who have already been appointed thus, on facts, a direction was given not to unsettle the result as the appointees are not heard being not party to the litigation.

62. In the case of Naresh Kumar Sharma & Ors. (supra), the appointments were continued for three years thus a direction for their continuance was given. The direction aforesaid has been taken to be ratio propounded by this court. It is in ignorance to the fact that discussion on the issue does not exist therein thus it remains only a direction. In view of the discussion made above, I find that the impugned order dated 30.8.2013 issued by the Principal Secretary & Commissioner, Rural Development & Panchayati Raj (Panchayati Raj & Elementary Education), Government of Rajasthan or the termination orders, if any, in consequence thereof do not suffer from any illegality. It is in the light of the fact that each issue raised by learned counsel for petitioners have been considered by this court thus sending the matter for post-decisional hearing to observe principles of natural justice would be an empty formality. I do not find any illegality in the action of the respondents and justification of continuance of services of the petitioners, however, some equities exist in favour of the petitioners thus all the writ petitions are disposed of with following directions--

1-This court is not inclined to cause interference in the impugned order dated 30.8.2013 so as the orders of termination.

2-The petitioners were appointed and continued in service for nearly 11 months before passing of the impugned order. The appointment and continuance was not to their default, however, this court cannot ignore revision of merit list and consequence thereof. Thus, detailed judgment has been rendered. To balance the equities, a direction is given to the respondents to allow the petitioners to appear in the next selection without debarring them on the ground of age. If new vacancies have arisen then they would be expected to arrange for the next selection within a period of six months so that petitioners may also compete therein and, if find place in the merit, are given appointment. This direction would, however, not apply to those candidates who have not secured requisite marks in the RTET.

3-The termination of the petitioners may however be effected after considering revised marks in RTET inasmuch as result of RTET has also been revised thus if a candidate has gained marks therein and comes in merit, then not to be terminated.

4-The petitioners, who were earlier serving in the State Government and have resigned to join the post of Teacher Gr III would be continued in the past services if it was with the State Government or its undertaking. For that, The Chief Secretary of the State would pass separate order.

5-The respondents would, however, pay due salary to the petitioners for the period they have worked under their orders or under the interim orders of the court.

6-The petitioners would be at liberty to seek any clarification, if needed, on the judgment of the pending SLPs in the case of "Vikas Sankhla & Ors. etc v. Vikas Kumar Agrawal & Ors. etc.", SLP (Civil) Nos. 23178-23182/2013 and other connected matters.

7-Before parting with the judgment it would be necessary to direct that respondents not to make appointments in future to any post unless they first call for the objections to the questions and answers and finalise it followed by publication of select list. This is to avoid type of litigation brought herein.