
(2011) 04 RAJ CK 0019

Rajasthan High Court

Case No: Civil Writ Petition No. 139 of 1997

Deepak Maheshwari
and Others

APPELLANT

Vs

The State of Rajasthan
and Others

RESPONDENT

Date of Decision: April 11, 2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) â€” Order 1 Rule 10#Constitution of India, 1950 â€” Article 136, 226#Rajasthan Higher Judicial Service Rules, 1969 â€” Rule 22, 24, 25, 27, 8

Citation: (2011) 04 RAJ CK 0019

Hon'ble Judges: Arun Mishra, C.J; Kailash Chandra Joshi, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Arun Mishra, C.J.

In the writ application, the important question that arises for consideration is with respect to permissibility of the direct

recruitment which was made under the advertisement dated 21.12.1996 and also under the advertisement dated 31.10.1994, which was

challenged later-on by way of amendment in the year 2010. Prayer has also been made to quash the appointment orders dated 2.8.1996

appointing 7 incumbents; dated 20.4.1998 appointing 10 incumbents; dated 28.11.1998 appointing Shri Uma Kant Agarwal; and dated

11.1.2002 appointing Shri Ganga Ram Moolchandani. All these appointments were made pursuant to the advertisements dated 31.10.1994 and

21.12.1996.

2. The writ application No. 139/97 was filed by Sarva Shri Deepak Maheshwari, Umesh Kumar Sharma, Anil Kumar Mishra, Ajay Kumar Jain

and Vijay Kumar Vyas. Initially, a prayer was made to quash the advertisement dated 21.12.1996 advertising 11 vacancies to be filled by way of

direct recruitment. Prayer was also made in the unamended writ application to fill-up the temporary vacancies by resorting to Rule 22 of The

Rajasthan Higher Judicial Service Rules, 1969 (hereinafter referred to as "the Rules of 1969"). Prayer was also made to make promotions of 54

eligible officers of Rajasthan Judicial Service as per provisions of Rule 9(2) of the Rules of 1969. The writ application was heard and decided by

the Division Bench of this Court vide order dated 30th April, 1999. However, before that, an application seeking amendment in the writ

application was filed by the Petitioners on 11.1.1999 to assail the appointment orders issued pursuant to the advertisement dated 21.12.1996. In

the amendment application also, the Petitioners have confined the challenge to the advertisement dated 21.12.1996. Another application was filed

by the Petitioners on 11.1.1999 under Order 1 Rule 10 CPC for impleadment of 11 incumbents (10 were appointed vide order dated 20.4.1998

and one was appointed vide order dated 28.11.1998 pursuant to the advertisement dated 21.12.1996).

3. It is significant to mention here that the application which was filed before this Court seeking amendment in the writ application was not pressed

by the Petitioners till the decision was made by the Division Bench of this Court on 30.4.1999. No challenge was made to the advertisement dated

31.10.1994 and the appointment order dated 2.8.1996 appointing 7 incumbents pursuant to the said advertisement. However, two SLPs were

preferred by the Petitioners before the Apex Court. In the SLP preferred by Petitioner No. 2-Umesh Kumar Sharma, prayer was made for

quashment of the order dated 30th April, 1999 passed by the Division Bench of this Court in Writ Application No. 139/97. Following was the

prayer clause of the SLP preferred before the Apex Court:

It is, therefore, most respectfully prayed that this Hon"ble Court be pleased to grant Special Leave to Appeal under Article 136 of the Constitution

of India against the final judgment and order of the High Court of Judicature for Rajasthan at Jodhpur dated 30.4.1999 in D.B. Civil Writ Petition

No. 139 of 1997 and pass such further or other order or orders as this Hon"ble Court may deem fit and proper in the facts and circumstances of

the case.

4. It is also significant to mention here that the application, which was filed before this Court, seeking impleadment of 11 incumbents was also not

pressed by the Petitioners till decision was made by the Division Bench of this Court on 30.4.1999. However, before the Apex Court, an

application for impleadment bearing IA NO. 3 in SLP (C) No. 12591/1999 was filed and the same was allowed by the Apex Court vide order

dated 28.9.2000. Prayer made in the application, certified copy of which was made available by the learned Counsel appearing on behalf of the

Petitioners, was to implead 11 incumbents, who were appointed pursuant to advertisement dated 21.12.1996. 10 incumbents, namely, Neerja,

Banwari Lal Sharma, Usha Aggarwal, Satya Narayan Derashri, Chander Shekhar Azad, Ranjit Singh Kang, Prakash Gupta, Amar Chand Singhal,

Sita Ram and Ram Singh Meena were appointed vide order dated 20th April, 1998 and one person, namely, Shri Uma Kant Agarwal was

appointed vide order dated 28.11.1998. Prayer was also made to implead 7 incumbents, namely, Bulaki Das Saraswat, Shashital Gupta, Usha

Dube, Mahendra Kumar Maheshwari, Vishnu Kumar Mathur, Anuradha Sharma and Sukhpal Bundel, who were appointed vide order dated

2.8.1996 pursuant to the advertisement dated 31.10.1994. Another application was moved before the Apex Court to implead one more

incumbent, namely, Shri Ganga Ram Moolchandani, who was appointed vide order dated 11.1.2002 pursuant to the advertisement dated

21.12.1996. In the applications, it was submitted that considering the appointments, which have been made so far of the aforesaid persons, quota

has been exceeded. However, no prayer was made before the Apex Court for quashment of the appointment orders of the incumbents, who were

appointed pursuant to the vacancies which were advertised vide advertisement dated 31.10.1994.

5. The Apex Court vide order dated 7.7.2009 set aside the judgment of the Division Bench of this Court dated 30.4.1999 passed in Writ Petition

No. 139/2007 as the writ petition was dismissed by the High Court without examining the case on merits, in view of its judgment in the case of

Veena Verma (D.B. Civil Special Appeal No. 410/98 decided on 30.4.1999) and remitted the matter to the High Court to decide the same afresh

on merits in accordance with law, in view of the decision in High Court of Judicature for The High Court of Judicature for Rajasthan Vs. Veena

Verma and Another, The relevant portion of the order of the Apex Court dated 7.7.2009 is quoted below:

For the reasons given above (as detailed in the judgment). CA No. 5699, 5702 and 5700 of 2000 are allowed. The impugned judgment of the

High Court is set aside and the order of the learned Single Judge dismissing the writ petitions filed by Veena Verma stands restored. There shall be

no order as to costs.

Consequently, CA No. 5701/2000 is also allowed. As the High Court dismissed WP NO. 139/1997 without examining the case on merits, in

view of its judgment in the case of Veena Verma, the order dated 30.4.1999 in WP No. 139/97 is set aside and the writ petition is remanded to

the High Court for disposal on merits in accordance with law.

6. After the case was remitted to this Court for afresh decision on merits in accordance with law, an application was filed by the Petitioners in

which prayer was made for the first time to assail advertisement dated 31.10.1994 by which 7 vacancies were advertised and prayer was also

incorporated so as to quash the appointments of 7 incumbents made vide order dated 2.8.1996 pursuant to the advertisement dated 31.10.1994.

The amendment was allowed by this Court vide order dated 29th November, 2010, subject to the objection which can be taken in respect of the pleas which have been raised now.

7. In the amended petition, it has been averred that the advertisements dated 31.10.1994 and 21.12.1996 are illegal. There could not have been

any direct recruitment against the ex-cadre temporary posts, as such, appointments of the incumbents, which have been made pursuant to the

aforesaid advertisements, be quashed. It was further submitted that under Rule 22 of the Rules of 1969, the vacancies were to be filled-up only by

way of promotion from amongst the persons, who are in-service. No direct recruitment could have been made against the ex-cadre posts. The

determination of the vacancies, which was made on 31.10.1994, was illegal. There were no vacancies available for direct recruitment in the cadre

strength. Similarly, there were no vacancies on 21.12.1996. The cadre strength on both the aforesaid dates was 89. The method resorted to by the

High Court was that every officer was initially promoted under Rule 22 on temporary/officiating basis, not on substantive basis. The promotions

were required to be made as per Rule 8(i) of the Rules of 1969. The vacancies for direct recruits could not have been notified at all. Reliance has

been placed on the decision of the Apex Court in the case of Veena Verma (supra). As the earlier decision was not rendered by the Division

Bench of this Court on merits, the case has been remitted by the Apex Court to this Court for afresh decision on merits in accordance with law.

Rule 22 can be resorted to when no substantive cadre posts are available. The appointments were required to be made under Rule 9(1) and 9(2)

of the Rules of 1969 and there must have been 57 simultaneous cadre posts in the schedule-I appended to the Rules of 1969.

8. In the return filed on behalf of the High Court, it is contended that for ascertaining the vacancies in the year 1993, a Committee was constituted

which recommended for filling-up 7 posts in RHJS cadre by direct recruitment. The report of the Committee was placed before the Full Court on

29.9.1993 and the Full Court resolved to advertise 7 vacancies. Thereafter, advertisement was issued on 31.10.1994 and the process was

initiated and ultimately appointments of 7 incumbents were made vide order dated 2.8.1996.

9. It is further submitted that 12 officers were promoted on adhoc basis vide order 26.5.1993; 21 on officiating basis vide order dated 26.5.1993;

11 vide order dated 1.11.1993; 9 vide order dated 9.2.1995; 3 vide order dated 15.4.1995; 2 vide order dated 25.1.1996; and one vide order

dated 1.7.1996. These promotions on officiating basis were made under Rule 22 of the Rules of 1969. The copies of the said orders have been

filed collectively as Annex.R/2/2 alongwith the return.

10. It is further submitted that in 1996, another Committee was constituted to determine the vacancies. The Committee vide its report dated

18.11.1996 recommended for filling of 11 posts by way of direct recruitment. Consequently, advertisement was issued on 21.12.1996. It is also

pointed-out that after notifying the vacancies, certain persons were appointed on adhoc/officiating basis under Rule 22 of the Rules of 1969 vide

orders dated 30.12.1996 (Annex.R/2/3) and 12.2.1997 (Annex.R/2/4) with the rider that they will have to give way to the direct recruits

whenever their appointments were made. Their appointments were purely on officiating/adhoc basis. The process of selection was completed.

However, in the meantime, cadre strength of RHJS was increased from 89 to 150 vide notification dated 24.2.1998 (Annex.R/2/5). Thus, cadre

strength with effect from 24.2.1998 was 150.

11. It is also contended that 21 officers including four Petitioners were promoted from RJS cadre to RHJS cadre on officiating basis vide order

dated 18.5.1999; 21 officers on officiating basis vide order dated 4.6.1999; one officer on officiating basis vide order dated 10.2.2000; 11

officers on officiating basis vide order dated 11.2.2000; 4 officers on ad hoc basis vide order dated 24.2.2001; one officer on ad hoc basis vide

order dated 15.2.2002; 42 officers on officiating basis vide order dated 4.4.2002. These orders have been filed collectively as Annex.R/2/13

alongwith the return.

12. It is further contended that 26 promotees were made substantive vide order dated 28.5.1990; 6 vide order dated 16.6.1992; 13 vide order

dated 24.8.1996; 68 vide order dated 25.6.1999; and 40 vide order dated 22.11.2002. These orders have been filed collectively as

Annex.R/2/14 alongwith the return.

13. It is further contended that 6 officers, who were appointed by way of direct recruitment vide order dated 2.8.1996 were also confirmed under

Rule 27 of the Rules of 1969 vide order dated 8.10.1998; 10 officers, who were appointed vide order dated 20.4.1998 were confirmed vide

order dated 30.8.2000; 10 officers, who were appointed vide order dated 3.5.2001 and 18.5.2001, were confirmed vide order dated

17.12.2003; Shri Uma Kant Agarwal, who was appointed vide order dated 28.11.1998 was confirmed vide order dated 24.2.2001; and Shri

Ganga Ram Moolchandani, who was appointed vide order dated 11.1.2002, was confirmed vide order dated 25.3.2004. These orders have been

filed collectively as Annex.R/2/15 alongwith the return.

14. It has been submitted that requisite number of direct recruits has never exceeded the sanctioned strength and limit prescribed under the Rules

of 1969. The working cadre strength could have been taken into consideration. There was no violation of the Rules of 1969. The Petitioners have

been appointed subsequently to the direct recruits. Hence, no interference is called for and the writ petition is liable to be dismissed.

15. In the return filed on behalf of the other Respondents, it is contended that there is delay in respect of assailing the advertisement dated

31.10.1994 and also in challenging the appointments made pursuant to the said advertisement. In the original writ application, no such prayer was

made. Even before the Apex Court also, prayer was not made to quash the advertisement dated 31.10.1994. After remand of the case, though

amendment sought for was allowed, but prayer has been made in the year 2010, which was highly belated one. The appointments of the

Petitioners have been made under Rule 22 of the Rules of 1969 on adhoc/officiating basis subject to give way to the direct recruits whenever their

appointments were made. The appointments of the Petitioners in-fact were made much later in point of time after direct recruitment was already

made. Strength has to be judged in view of Rule 9(1). Proviso to Rule 9(1) makes it clear that the direct recruitment shall at no time exceed one

third of the total strength of the service. The provisions of Rule 9(2) are subject to the provisions of Rule 9(1). Rule 9(2) provides that after every

three persons appointed by promotion, the fourth person shall as far as possible be appointed by direct recruitment. As the Rule 9(2) is subject to

the provisions of Sub-rule (1), it has to be taken that strength was one third of total strength of service. In the case of Veena Verma (supra), the

Apex Court has laid down that 7 vacancies, which were advertised vide advertisement dated 31.10.1994 for direct recruitment, were in

accordance with the Rules of 1969. Thus, the question cannot be re-agitated in the High Court. The decision of the Apex Court is binding.

Besides, challenge to the advertisement dated 31.10.1994 is highly belated and after thought and the amendment has been allowed subject to just

objections.

16. With respect to determination of vacancies notified vide advertisement dated 21.12.1996, it is submitted that appointments were in-fact made

in the year 1998 when the cadre strength stood revised to 150.36 incumbents, who were recruited by way of direct recruitment, were holding the

post in the year 1998 including those 11 incumbents, who were appointed pursuant to the advertisement dated 21.12.1996 (10 vide order dated

20.4.1998 and one vide order dated 28.11.1998). The cadre strength was 150 when 11 incumbents were appointed in the year 1998. Thus, at no

point of time, Rule 9(1) was violated in any manner by the High Court. It is further submitted that at no point of time, the High Court intended to

fill-up the cadre strength meant for direct recruits by way of promotees. There is no violation of any of the rights of the Petitioners. The

appointments made pursuant to the advertisements dated 31.10.1994 and 21.12.1996 are within the cadre strength as per Rule 9 of the Rules of

1969. Hence, no interference is required to be made and the writ petition deserves to be dismissed.

17. Mr.M.R. Singhvi, Sr. Advocate with Mr. Arvind Singh Rathore and Petitioner No. 2-Shri Umesh Kumar Sharma has submitted that Rule 9(2)

of the Rules of 1969 has to prevail, which provides that after every three persons, fourth person shall as far as possible be appointed by direct

recruitment. Thus, out of 89 cadre posts available on 31.10.1994, when 7 vacancies were advertised, 20 incumbents were already holding the

posts. Therefore, working out 25% of the posts, out of 89, only 22 posts could have been filled up by way of direct recruits. Thus, there was no

scope to advertise 7 vacancies vide advertisement dated 31.10.1994 as 20 incumbents were already working. Counsel further submitted that

cadre strength was raised vide notification dated 24.2.1998, but in-fact, the advertisement was issued on 21.12.1996 when the cadre strength was

only 89. 25 incumbents were already working and number of posts advertised for direct recruits on 21.12.1996 were 11. These 11 vacancies

could not have been advertised and filled by making appointments vide order dated 20th April, 1998 and 28th November, 1998. Counsel further

submitted that in light of decision of Apex Court in Veena Verma's case (supra), no appointment of direct recruits could have been made as

against the ex-cadre posts, which were temporary posts. The appointments of direct recruits could have been made within the cadre strength as

said temporary posts were required to be occupied by in-service candidates by way of promotion under Rule 22 of the Rules of 1969. Counsel

has further submitted that appointments of Respondents No. 3 to 21 be quashed being illegal and against the Rules.

18. Mr. R.N. Mathur, Sr. Advocate with Mr. Sanchit Tamra for the Respondents No. 6, 7, 8 and 9, Mr. S.P. Sharma, Sr. Advocate with Mr.

Gaurav Sharma for the Respondent No. 16, Mr. V.K. Mathur with Mr. B.L. Gupta for the Rajasthan High Court and Mr. G.R. Poonia, Sr.

Advocate, Addl. Advocate General with Mr. Mahendra Singh for the State have submitted that challenge to the advertisement dated 31.12.1994

is not open as the Apex Court in Veena Verma's case (supra) has settled the position that 7 vacancies, which were notified vide advertisement

dated 31.10.1994, were as per Rule 9 of the Rules of 1969. As there were 28 vacancies available at the time of issuance of advertisement dated

31.10.1994, 7 vacancies were rightly advertised and filled up. The appointments did not exceed the cadre strength.

19. With respect to the appointments made vide order dated 2.8.1996, it is further submitted that the advertisement dated 31.10.1994 was neither

assailed in the original writ application nor before the Apex Court in SLP. Mere impleadment of the incumbents without making any prayer for

quashment of the orders of appointments before Apex Court was not enough as the main prayer in the SLP was confined for quashment of the

orders of appointments made pursuant to the advertisement dated 21.12.1996. Later on, after the case was remitted by the Apex Court to this

Court for afresh decision on merits in accordance with law, prayer has been made for quashment of the advertisement dated 31.10.1994 and the

appointments of Respondents No. 3 to 9 made pursuant thereto vide order dated 2.8.1996. Such prayer was highly belated one. The

appointments could not have been assailed by way of filing amendment application in the year 2010 and in any case, in view of the decision of the

Apex Court in the case of Veena Verma (supra), there is no merit in the submission of the Petitioners to assail the advertisement dated 31.10.1994

advertising 7 vacancies for direct recruitment.

20. With respect to the advertisement dated 21.12.1996, it is submitted that as the cadre strength was increased from 89 to 150 posts, 11

incumbents could have been appointed. Considering the increased cadre strength of 150 vide notification dated 24.2.1998, appointments, which

were made on 20th April, 1998 and 28th November, 1998, were within the sanctioned strength of direct recruits and their quota had not

exceeded more than one third and there was no violation of Rule 9(1) or 9(2) of the Rules of 1969.

21. It is further submitted that the appointment orders of the Petitioners were initially issued under Rule 22 purely on adhoc/officiating basis subject

to give way to the direct recruits as and when their recruitments were made. The appointments of 7 direct recruits were made vide order dated

2.8.1996 pursuant to the advertisement dated 31.10.1994. In pursuance of advertisement dated 21.12.1996, 10 incumbents were appointed vide

order dated 20.4.1998; one incumbent namely, Uma Kant Agarwal was appointed vide order dated 28.11.1998 and one incumbent namely, Shri

Ganga Ram Moolchandani was appointed vide order dated 11.1.2002. Rule 9(1) was not violated in any manner and strength has to be taken to

be 33% for direct recruits out of cadre strength. Counsel for the Respondents have placed reliance on the decisions of the Apex Court in Veena

Verma's case (supra). Rajasthan Judicial Service Officers' Assn. Vs. State of Rajasthan and Another, , Prakash K. and Another Vs. State of

Karnataka and Others, S. Sumnyan and Others Vs. Limi Niri and Others, AIR 1977 251 (SC) and Ashok Pal Singh and Others Vs. U.P. Judicial

Services Association and Others, .

22. First we come to the question whether the Petitioners can be permitted to assail the advertisement dated 31.10.1994 by way of incorporating

amendment in the year 2010. Under the said advertisement, 7 posts of direct recruits were advertised and pursuant thereto, the Respondents No.

3 to 9 were appointed vide order dated 2.8.1996. The original writ application was preferred in this Court in the year 1997 in which the

Petitioners have not prayed for quashment of the aforesaid advertisement and the appointments of Respondents No. 3 to 9 made pursuant thereto

vide order dated 2.8.1996. Apart from that, the applications dated 11.1.1999 for amendment of the writ application and also for impleadment

were filed before this Court separately. No prayer was made so as to array as Respondents the aforesaid persons (Respondents No. 3 to 9). No

prayer was also made in the amendment application for quashing the aforesaid advertisement dated 31.10.1994 as well as the appointments made

pursuant thereto of Respondents No. 3 to 9 vide order dated 2.8.1996. In the Apex Court, prayer was made only to quash the decision rendered

by the Division Bench of this Court on 30.4.1999. It was contended that in view of the appointments, which were made under the advertisement

dated 31.10.1994, the vacancies were occupied and there was no scope for filling further vacancies pursuant to the advertisement dated

21.12.1996. It was also submitted before the Apex Court for the first time that there were in-fact no vacancies in 1994 and 1996 for direct

recruits, but the prayer was confined in the SL Ps, which fact is not in dispute, to quash the order passed by the Division Bench of this Court. No

prayer was made before the Apex Court for quashment of the appointment order of Respondents No. 3 to 9 dated 2.8.1996 made pursuant to

the advertisement dated 31.10.1994. Thus, prayer has been made for the first time in this Court in the year 2010 by way of amendment, which

was allowed subject to the just objections. The challenge was highly belated one. The Petitioners were not even born in the cadre of Higher

Judicial Service at that time. They came to be promoted much later that too on adhoc/officiating basis subject to give place to the incumbents after

direct recruitment was made which was in contemplation at the relevant time. However, direct recruitment of Respondents No. 3 to 9 was made

much earlier. The Petitioners, namely, Deepak Maheshwari, Umesh Kumar Sharma, Anil Kumar Mishra and Vijay Kumar Vyas were promoted

under Rule 22 of the Rules of 1969 vide order dated 18th May, 1999 (Annex.R/2/13) and their promotions were with the rider that they will have

to make room for the direct recruits as and when the recruitment was made. The Petitioner No. 4 Ajay Kumar Jain stood compulsorily retired. He

was also promoted vide order dated 12.2.1997 (Annex.R/2/4) under Rule 22 of the Rules of 1969 on adhoc basis for a period of one year or till

regular selection was made. The surviving Petitioners were promoted on 18.5.1999 under Rule 22 of the Rules of 1969 whereas the Respondents

No. 3 to 9 were appointed by way of direct recruitment on 2.8.1996.

23. In view of the above, we are of the considered opinion that challenge to the advertisement dated 31.10.1994 is an after-thought and

Petitioners cannot be permitted to assail it by way of amendment made in the year 2010. The case was remitted only to be decided in light of the

prayer made in the writ application to deal with the advertisement dated 21.12.1996. Apart from that, on merits also, we find that the

advertisement dated 30.10.1994 notifying 7 vacancies was dealt with by the Apex Court in the case of Veena Verma (supra) and the Apex Court

has clearly found that there were 28 vacancies when the vacancies were advertised in the quota of direct recruits and therefore, 7 vacancies were

rightly advertised. On facts, 20 direct recruits were holding posts on the date of advertisement dated 31.10.1994, but after that, 2 incumbents

were retired and on 2.8.1996, when the appointments of 7 incumbents were made, only 18 direct recruits were working out of cadre strength of

89 as apparent from the list/data submitted by the High Court. The Apex Court has laid down that it was open to the High Court to fill-up 7

vacancies, which were rightly advertised. The discussion has been made by the Apex Court in this regard in para no.25 of the judgment in Veena

Verma's case (supra), which is quoted below:

Since only seven posts were advertised, only seven appointments could be made. However, even assuming that more than seven appointments

could be made, since the Full Court of the High Court recommended only seven persons, the Government could not appoint more than seven. The

practice followed by the authorities in recruitment was that vacancies in the RHJS were determined for filling every fourth post by direct

recruitment and these were advertised. At the relevant time, when the vacancies were advertised in the quota of direct recruits, there were twenty

eight vacancies, therefore, seven posts were advertised for direct recruitment in RHJS. Hence, in our opinion, advertisement of seven vacancies

was rightfully done. The Selection Committee was called upon to make the recommendation for seven posts. The list forwarded by the Selection

Committee was considered and all the seven persons, who were recommended by the Selection Committee were recommended by the Full Court

to be appointed.

24. From the aforesaid dictum of the Apex Court, it is apparent that at the time when the vacancies were advertised in the quota of direct recruits,

there were 28 vacancies and therefore, 7 vacancies were rightly advertised by the High Court. It is not open for us to take a contrary view on

facts. We are bound by the Apex Court decision in this regard. It is not open to judicial review on this aspect. It is also not open on merits to re-

agitate this question, that too belatedly as has been done in the instant case. Hence, we take it as a concluded aspect. Thus, even on merits also,

we found the submissions of learned Counsel for the Petitioners to be untenable.

25. It was submitted by Mr. Singhvi that though the Apex Court has found that 7 vacancies were rightly advertised and at that time, there were 28

vacancies, but correct position of vacancies was not placed on record. We find that only 18 incumbents were working on the date of appointments

i.e. 2.8.1996 and on the date of advertisement i.e. 31.10.1994, 20 incumbents were working and 7 appointments were made. They were within

the sanctioned cadre strength as prescribed under Rule 9 of the Rules of 1969. Rule 9 is quoted below:

9. Appointment to the service: (1) Subject to the provisions of these rules, appointment of persons to the service shall be made by the Governor on

recommendation of the Court made from time to time;

Provided that the number of persons appointed to the service by direct recruitment shall at no time exceed one-third of the total strength of the

service.

(2) Subject to the provisions of Sub-rule (1), after every three persons appointed by promotion, the fourth person shall as far as possible be

appointed by direct recruitment. If a suitable person is not available for appointment by direct recruitment the post may be filled by promotion from

amongst the members of the Rajasthan Judicial Service.

26. It is apparent from the proviso to Rule 9(1) that the number of persons appointed to the service by direct recruitment shall at no time exceed

one third of the total strength of the service and as far as possible, as per Rule 9(2), the High Court was required to appoint three persons by way

of promotion and fourth by way of direct recruitment. However, it was subject to the rider provided in Rule 9(1). The mandate of Rule 9(1) was

apparent that recruitment shall at no time exceed one third of the total strength of the service. The words ""as far as possible"" provided in Rule 9(2)

make it clear that it was open to the High Court to make recruitment not exceeding one third of the total cadre strength of the service and as far as

possible, to maintain the system and procedure provided in Rule 9(1) and 9(2). In view of judgment of Apex Court in the case of Veena Verma

(supra), it was not binding upon the High Court to necessarily fill-up one third strength by way of direct recruitment. It was open to the High Court

to fill-up rest of the posts by way of regular promotion. It is rightly submitted by Mr. M.R. Singhvi that intention has to be seen in every case when

such is the Rule. However, the intention of the High Court was clear that it wanted to reserve the vacancies out of the cadre strength for direct

recruits as the promotion orders of Petitioners were issued purely on officiating basis with the rider to give way to the direct recruits when their

appointments were made. The promotions were made under Rule 22 of the Rules of 1969. The intention of the High Court was clear and

categorically and beyond doubt. The High Court has never intended to promote persons from service as against the posts meant for direct recruits

which were advertised in the year 1994 vide advertisement dated 31.10.1994 or even under subsequent advertisement dated 21.12.1996.

27. It was also submitted by Mr. Singhvi that as correct vacancies were not placed before the Apex Court and it was also not the question

involved in the case of Veena Verma (supra) that how many vacancies could have been advertised, as such, the decision of the Apex Court laying

down that 7 vacancies were rightly notified, cannot be treated as binding precedent. We are afraid that we can entertain aforesaid submission.

28. Mr. Singhvi has further submitted that there were only two permanent vacancies and remaining strength was worked out by the High Court out

of temporary strength, which was not permissible. We cannot go into this question in view of the decision of the Apex Court in Veena Verma's

case (supra) which is based on interpretation of Rule 9 of the Rules of 1969. Rule 9(1) clearly lays down that at no point of time, direct recruitment

shall exceed one third of the total strength of the service. We find that on 2.8.1996, only 18 incumbents by way of direct recruits were working

and in August 1996, 62 promotees were holding substantive posts. Thus, 27 posts were available of direct recruits in the cadre strength of 89. As

18 incumbents were holding the posts and 7 incumbents were appointed on 2.8.1996, therefore, the cadre strength was never violated as total

incumbents holding the posts by way of direct recruitment on 2.8.1996 came to be 25. Thus, we are of the considered opinion that in whatever

manner the vacancies were worked out by the High Court, but the cadre strength has never increased in violation of the Rules of 1969 vis-a-vis

advertisement dated 31.10.1994. The decision of the Apex Court that 7 vacancies were rightly notified is based on quota worked out on

interpretation of Rule 9, which is binding on us.

29. Thus, we reject the submissions of Mr. Singhvi with respect to the advertisement dated 31.10.1994 firstly on the ground of delay and latches

and secondly, in view of the decision of the Apex Court in Veena Verma's case (supra) laying down that advertisement of 7 vacancies was

rightfully done. Apart from this, on merits also, we find no force in the submissions.

30. Coming to the second part of the challenge made in the writ application with respect to the vacancies being notified vide advertisement dated

21.12.1996, under the said advertisement, 11 vacancies were advertised and pursuant thereto, vide orders dated 20.4.1998, 10 incumbents were

appointed and dated 28.11.1998, Shri Uma Kant Agarwal was appointed. Vide order dated 11.1.2002, Shri Ganga Ram Moolchandani was

appointed in compliance of the judicial verdict of the Apex Court. The date on which the said advertisement was issued on 21.12.1996, the cadre

strength was 89, however, later on, it was increased to 150 before the appointments were made in the year 1998. The increased strength was

notified vide notification dated 24.2.1998. Even if we take 25% recruitment quota under Rule 9(2) as per rotation provided, the number of

incumbents who could have been appointed comes to 37 and if one third as per Rule 9(1) is taken, then number of incumbents who could have

been appointed by way of direct recruitment out of cadre strength comes to 50. However, the fact remains that in 1996, 25 directly recruited

officers were working and one officer was retired on 31.7.1997 and thus, in 1998, only 24 incumbents were working and 11 persons were

appointed in 1998 pursuant to the advertisement dated 21.12.1996, that would take the strength of direct recruits to 35 only, which was well

below 37 incumbents. Though as on the date of advertisement dated 21.12.1996, only 28 posts were available to be filled up by way of direct

recruitment and 25 incumbents were working, as such, 3 posts could have been advertised. However, as the appointments of incumbents were

made on 20th April, 1998 and 28th November, 1998, when the cadre strength stood revised to 150, therefore, the appointments so made were

within the cadre strength and particularly, in view of the fact that on 24.2.1998, only 54 promotee incumbents were working on the substantive

basis in the cadre strength and only 24 persons were working against direct recruits. Large number of posts were vacant. We find that at no point

of time, the cadre strength was violated. Thus, the appointments which were made under the advertisement dated 21.12.1996 were not in excess

of the cadre strength. On 20.4.1998, 54 promotee incumbents were working on substantive basis. On 11.1.2002, when Shri Govind Ram

Moolchandani was appointed, 79 incumbents were working on substantive basis out of promotees in the cadre strength of 150.

31. It is relevant to mention here that Shri Ganga Ram Moolchandani was appointed vide order dated 11.1.2002 by way of judicial verdict of the

Apex Court. Initially, his candidature was rejected on the ground that he was resident of State of UP. However, the Apex Court in Ganga Ram

Moolchandani and Others Vs. State of Rajasthan and Others, directed the High Court to recommend the name of Shri Moolchandani to the

Governor for appointment. Thus, his position has to be considered as per cadre strength of 1998 of direct recruits.

32. Thus, we hold that cadre strength has not been violated at the time of appointments made in 1998 as in 1998, the cadre strength stood revised

to 150 and, therefore, they were within the cadre strength of direct recruits. The fact also remains that the High Court resolved and recommended

to revise the cadre strength from 89 to 251, however, it was revised to 150. Thus, we are not inclined to accept the submission of the learned

Counsel for the Petitioners that appointments of Respondents were made exceeding the quota, in view of the cadre strength being revised to 150

and later on, to 245. Even at present under revised strength of 245, only 26 direct recruits are working. Thus, the Respondents' appointments

were well within the cadre strength of 150.

33. There was no specific quota prescribed for direct recruits under the Rules of 1969, it can be said in view of the decision of the Apex Court in

Veena Verma"s case (supra) that it was enabling provision for the High Court and it was open to the High Court to fill up the vacancies upto one

third and remaining vacancies could be filled up by way of promotees but the fact remains that promotions on substantive basis were not made and

posts were advertised and filled for direct recruits as per revised cadre strength. The cadre strength of direct recruits has never exceeded. Thus,

we are not inclined to quash the appointment orders of the Respondents particularly after they have served for more than a decade with effect from

1996 and onwards and some of them have also retired by now or removed or not confirmed.

34. The Petitioners have claimed that High Court instead of direct recruitment should have resorted to Rule 22 of the Rules of 1969 by making

temporary/officiating appointments of in-service candidates. It is not their case that they were entitled to be promoted in the regular cadre. Large

number of senior persons were working as against temporary posts than the Petitioners in the quota of promotees. Thus, they could not have

staked any claim as against the posts within the cadre. It is not their case that any junior to them was given temporary/officiating promotion under

Rule 22 of the Rules of 1969.

35. Rule 22 of the Rules of 1969 is quoted below:

22. Temporary or officiating appointment.- On the occurrence of temporary or permanent vacancies the Court shall recommend to the Governor

the names of the candidates from amongst the persons who are eligible for appointment to the service by promotion under Clause (i) of Rule 8 for

temporary or officiating appointment.

36. Rule 22 has reference to Rule 8 which provides sources of recruitment i.e. by direct recruitment and promotion in RHJS cadre.

37. The Petitioners could not have staked their claim as against the permanent vacancies as large number of senior in-service incumbents were

working on temporary posts outside cadre. It is not petition filed by way of public interest litigation, but Petitioners are claiming individual right. The

Petitioners had no right to be appointed as against the permanent vacancies within the cadre to which direct recruitment was made.

38. Rule 24 of the Rules of 1969 provides that seniority has to be counted from the date of substantive appointment in permanent vacancy

including appointment on probation under Rule 25. Rule 25 of the Rules of 1969 deals with probation of incumbents appointed under Rule 8(ii) by

way of direct recruitment. Rule 27 of the Rules of 1969 deals with confirmation of probationer so appointed.

39. The Petitioners were appointed much later than the Respondents, that too on temporary/officiating basis. As on 2.8.1996 when 7 incumbents

(Respondents No. 3 to 9) were appointed, 183 senior officers were working in RHJS by way of promotion on various posts including temporary

one and on 20.4.1998 when 10 incumbents (Respondents No. 10 to 19) were appointed, 195 promotee senior officers were working. Thus, the

Petitioners had no chance to be appointed within the cadre strength. They had claimed promotion under Rule 22 prior to appointments of

Respondents for which they had no right in view of the fact that the appointments of Respondents made in 1996 and 1998 by way of direct

recruitment did not violate the mandate of Rule 9 and their appointments were within permissible limit of cadre strength which has not been

violated.

40. However, at the same time, as submitted by Mr. Singhvi, method of appointing incumbents on officiating basis under Rule 22 of the Rules of

1969 was adopted with the stipulation to give way to the direct recruits whenever their appointments were made. The Petitioners have not been

confirmed so far, so as to confer them benefit of seniority. It is to be worked out on administrative side by the High Court. Thus, the question of

seniority is not raised by the learned Counsel for the Petitioners.

41. For the reasons stated above and considering the fact that the Respondents were appointed much earlier and the Petitioners were appointed

subsequently and considering the nature of their appointments and in view of Rules 9, 22, 24 and 27 of the Rules of 1969, we are not inclined to

make interference in exercise of writ jurisdiction under Article 226 of the Constitution of India.

42. Accordingly, the writ petition is dismissed. No costs.

43. At this stage, it is submitted by the learned Counsel for the Petitioners that they want to file SLP before the Apex Court, as such, operation of

this order be stayed. In-fact, we have not quashed appointments as prayed, as such, we do not find any case so as to stay the operation of this

order. The prayer stands rejected.