HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

D.B. Spl. Appl. Writ No. 209/2024

1. State Of Rajasthan, Through The Principal Secretary, Education Department, Government Of Rajasthan, Jaipur.
2. The Director (Secondary Education), Bikaner.
3. The District Education Officer (Secondary), Pali.

----Appellants

Versus

Bhagwan Lal Singharia S/o Shri Gopa Ram Singharia, Aged About 52 Years, 314/2, Chand Pole Road, Singhariyon Ka Mohalla, Sojat, District Pali. At Present Working As Lecturer (Biology), Govt. Higher Secondary School, Sojat City, District Pali.

----Respondent

Connected With

D.B. Spl. Appl. Writ No. 644/2022

1. The State Of Rajasthan, Through The Principal Secretary, Home Department, Government Of Rajasthan, Jaipur.
2. The Director General Of Police, Government Of Rajasthan, Jaipur.
3. The Police Commissioner, Jodhpur.
4. The Deputy Commissioner Of Police, Headquarter And Traffic, Jodhpur Commissionerate, Jodhpur.

----Appellants

Versus

1. Sriram Barupal S/o Shri Laxman Ram, By Caste Barupal, Resident Of House No 153, Nehru Colony, Ratanada, Jodhpur.
2. Smt, Leela Barupal W/o Shri Sriram Barupal, By Caste Barupal, Resident Of House No 153, Nehru Colony, Ratanada, Jodhpur.

----Respondents

For Appellant(s)	:	Mr. S.S. Ladrecha, AAG Mr. B.L. Bhati, AAG
For Respondent(s)	:	Mr. Surendra Singh Choudhary

HON'BLE DR. JUSTICE PUSHPENDRA SINGH BHATI
HON'BLE MR. JUSTICE CHANDRA PRAKASH SHRIMALI

Order

11/02/2025

1. Learned counsel for the parties jointly submit that the controversy involved in the present case is no more *res-integra* as it has been decided by the Division Bench of this Court vide order dated 14.11.2018 passed in ***State of Rajasthan & Ors. vs. Parbat Singh (D.B. Special Appeal Writ No.1703/2018)***. The order dated 14.11.2018 is reproduced hereunder :-

> "1. Appellants challenge an order dated 29.11.2016 passed by the learned Single Judge.
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> 2. The facts and the dates noted by the learned Single Judge are not in dispute, that writ petitioner was appointed as Teacher Grade-III on 26.12.1992. He was thereafter selected and appointed as a Senior Teacher on 17.07.1997. A third child was born to him on 27.09.2004. As per the notification dated 20.06.2001, if government servant in the State of Rajasthan was blessed with a third child after the date of notification, promotion was liable to be deferred for a period of five years. Benefit of the first ACP was deferred recording that the respondent had a fathered a third child on 27.09.2004. The benefit which had to be granted under the ACP in the year 2006 was actually granted in the year 2011.
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> 3. D.P.C. met to consider eligible applicants for promotion of Senior Teachers to the post of School Lecturer. The respondent was considered and was promoted as a School Lecturer vide order dated 30.05.2015. He was however not relieved on account of the fact he had fathered a third child on 27.09.2004 after the notification dated 20.06.2001 was promulgated.
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> 4. Paragraph 3 of the notification dated 20.06.2001 reads as under:-
>
> > *"3. Amendment :- After the existing sub-rule (1) of rule as mentioned in Column No.4 against each of the Service rules as mentioned in Column No.2 of the Schedule appended hereto, the following new sub-rule shall be added, namely:-*

"(1A) No person shall be considered for promotion for 5 recruitment years from the dated on which his promotion becomes due, if he/she has more than two children on or before after 1st June, 2002."

5. A perusal of the notification would show that a person loses right to be considered for promotion if he/she has more than two children on or before after 1st June, 2002. Consideration for promotion is prohibited for five years.

6. The learned Single Judge has noted that the circular does not speak about the deferment of ACP benefit but applying analogous principles even ACP benefits could be deferred. The learned Single Judge has noted that ACP benefit is granted on account of stagnation and promotion not being earned i.e. financial implication being the same whether ACP benefit is deferred by five years or promotion is deferred by five years. The learned Single Judge has held that once ACP benefits was deferred by five years the writ petitioner could not be penalized once again. We agree.

7. We supplement the reasoning of the learned Single Judge. The third child of the respondent was born on 27.09.2004. He thus became liable not to be considered for promotion for a period of five years. The vacancies which were considered were ultimately filled up in the year 2015. By the time five years deferment period had lapsed.

8. We find no merit in the appeal. The appeal is dismissed."

2. In view of the above, the present special appeal writ is also dismissed in the light of ***State of Rajasthan & Ors. vs. Parbat Singh*** (supra).

3. Stay petitions stands disposed of.

(CHANDRA PRAKASH SHRIMALI),J **(DR.PUSHPENDRA SINGH BHATI),J**

42-43-minki/-