HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

D.B. Civil Writ Petition No. 9961/2018

1. Sharad Kumar Sharma S/o Late Shri Laxmi Narayan, Aged About 45 Years, Civil Line, Kushalgarh, District Banswara (Raj.).
2. Jagdish Prasad Choudhary S/o Shri Hanuman Ram Jat,, Aged About 40 Years, Village Upla Bhoiwada, Banswara (Raj.).
3. Ajit Kumar Meena S/o Shri Sharwan Lal,, Aged About 40 Years, C/o Family Court, Banswara (Raj.).

----Petitioners

Versus

1. The State Of Rajasthan, Through The Secretary, Department Of Personnel, Government Of Rajasthan, Secretariat, Jaipur (Raj.).
2. The District And Session Judge, Banswara (Raj.).

----Respondents

Connected With

D.B. Civil Writ Petition No. 14489/2018

Kalu Singh S/o Shri Bheru Singh, Aged About 50 Years, Th/11, Govt. Colony, Jodhpur Road, Pali.

----Petitioner

Versus

1. Rajasthan High Court, Jodhpur, Through Registrar General.
2. District Judge, Pali.
3. The State Of Rajasthan Through Secretary, Department Of Personnel (A-Gr.ii), Government Of Rajasthan, Secretariat, Jaipur.
4. Amit Vyas, Ldc Grade-Ii, District And Sessions Judge, Pali.
5. Praveen Prajapat, Ldc Grade-Ii, Posted At Senior Civil Judge Cum Addl, Chief Judicial Magistrate Court, Sojat District Pali.
6. Kishore Kumar Vaishnav, Ldc Grade-Ii, Posted At District Judge, Jodhpur Metropolitan.

7. Ajeet Singh, Ldc Grade-Ii, Posted At District And Sessions Judge, Pali.

8. Raju Sen, Ldc Grade-Ii, Posted At Addl. Civil Judge Cum Judicial Magistrate Court No.2, Pali.

----Respondents

For Petitioner(s)	:	Mr. P.R. Mehta with Ms. Tania Mehta. Mr. Sumer Singh Gour.
For Respondent(s)	:	Dr. Sachin Acharya, Sr. Adv. assisted by Mr. Chayan Bothra.

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

Order

27/01/2025

1. The instant writ petitions under Article 226 of the Constitution of India have been preferred, in sum and substance, claiming the following reliefs:-

> "It is therefore, humbly and respectfully prayed that the writ petition may kindly be accepted and allowed and by a writ of mandamus or any other appropriate writ order of direction may kindly be passed:
>
> I. It may kindly be declared that the provision of Rule 5 of the amendment Rules 2017 whereby a rider of five years of service as a process server is made a mandatory condition for promotion on the post of LDC Grade – II may be declare bad, illegal & ultravires to the mandate of constitution and may be struck down.
>
> II. That it may further be declare that the another condition under rule 5 of amendment rules 2017 whereby the criteria for process server and Class IV Employee is made in 1:2 ratio may be declare bad, illegal and ultravires to the constitution of India and may be struck down.
>
> III. It may further be declared that the petitioners are entitled for their consideration for promotion on the post of LDC on the basis of their past five years qualifying service on the post of Class IV Employee and they may be consider consequently for promotion on the post of the LDC.
>
> IV. In alternate further it is prayed that the quota of 1:1 may be fixed for promotion out of the Class IV Employee and

process servers without there being condition of minimum five years of service on the post of process server.

V. That the respondent No.2 may be directed to consider the petitioners for promotion on the post of LDC on the basis their eligibility and qualification and seniority. It is further prayed that if during pendency of the writ petition any promotions on the post of LDC are made then the same may be quashed or set-aside.

VI. That the writ petition preferred by the petitioner may kindly be allowed with all consequential benefits.

VII. Any other appropriate order or direction that may be deemed just and proper in the facts and circumstances of the case kindly is passed in favour of the petitioners."

2. Mr. P.R. Mehta alongwith Ms. Tania Mehta and Mr. Sumer Singh Gour, learned counsel appearing on behalf for the petitioners have demonstrated from the previous Rules in the present case that the earlier promotion channel was from Class-IV posts to the Process Server by 100% promotion, as per the Schedule-II of the Rajasthan Subordinate Courts (Driver & Class-IV Employees) Service Rules, 2017 (‘hereinafter referred as to the ‘the Rules of 2017’). The next promotional step was to LDC (85% of Directed Recruitment + 15% promotion of Class IV Employees) vide Rules 6, subject to fulfilling the academic qualification as per Rule 10.

2.1 Learned counsel further submit that opening the LDC post to both Process Servers and Class-IV employees would be detrimental to the cause of justice as these posts cannot be equated due to earlier existence of Process Servers as promotional post of Class IV, and thus, apportioning the Clerk Grade-II (15% promotion quota) by allocating one post to Process Servers and two posts to Class-IV employees would completely discriminate against the Process Servers, who were previously promoted to their position exclusively from Class-IV posts.

2.2 Learned counsel also submit that while the Hon'ble Apex Court's orders clearly required the implementation of Shetty Commission's recommendation, they did not carry a mandate to reduce the High Court's power to interfere with rule changes that were discriminatory to a class by creating equality among unequals.

3. Dr. Sachin Acharya, learned Senior Counsel assisted by Mr. Chayan Bothra, appearing on behalf of the respondents submits that the Shetty Commission clearly recommended that Process Servers, possessing the requisite qualifications, were to be considered for promotion along with other categories of Class-IV Employees to the extent of 25% of the LDC cadre in the ratio of 1:2 (Process Servers - 1 & Class-IV Employees -2).

3.1 Learned Senior Counsel further submits that the judgment of the Hon'ble Apex Court in the case of ***All India Judges Association & Ors. v. Union of India & Ors. in I.A. Nos. 71A, 135-136, 137-138 & 142 IN W.P. (C) No.1022/1989*** dated 07.10.2009 mandated that the High Court was under an obligation arising out of the directions of Hon'ble Apex Court to ensure implementation of the Shetty Commission's recommendation within a reasonable time period.

4. Upon this, Mr. P.R. Mehta, learned counsel for the petitioner tried to convince the Court that the power of interfering in the legislation once the same has been promulgated in pursuance of the Shetty Commission report would always lie open to this Court and it was open for this Court to examine, if there was any kind of discrimination or anomaly, which was arising in the Rules.

5. The pre-amendment position of the Rules of 2017, reads as follows:-

Readers & Assistant (R.14(iii))



UDC (R.14(ii))



LDC (85% Direct Recruitment & 15% Promotion of Class IV employees vide Rule 6 provided academic qualification as per R.10)



Process Server (100% Promotion as per Schedule II of Rajasthan Subordinate Courts (Driver and Class-IV employees) Service Rules, 2017)



Class IV posts

5.1 The post amendment scenario changed and amendment in Rule 6 was introduced, which reads as follows:-

> "**Amendment of rule 6**:- The existing rule 6 of the said rules shall be substituted by the following:-
>
> "Methods of recruitment.- (i) Recruitment to the staff after the commencement of these rules shall be made:-
>
> …
>
> (b) to the general cadre as Clerk Grade-II by a Competitive Examination:
>
> Provided that 25% of the total number of vacancies of the Clerk Gr-II in each Judgeship shall be reserved for being filled in promotion from amongst, **the process server and class IV employees who have put in five years service** in the Judgeship concerned **and possess the academic qualification prescribed in these rules for the post of Clerk Grade-II in 1:2 (1 Process Server and 2 Class IV Employees)**;"..."

5.2 This Court has seen the Chapter VIII of the recommendations of the Shetty Commission relating to Rajasthan, relevant portion whereof, read as follows:-

(d)	Reservation in Class-III/ Group-C posts (Clerical Cadre)	:	Process Servers who possess the requisite qualification shall be considered for promotion along with other categories of Class-IV employees to the extent of 25% in L.D.C. cadre in the ratio of 1:2 (Process Servers-1 and other Class IV employees-2)

5.3 This Court has examined the precedent law laid down by the Hon'ble Apex Court in the matter of ***All India Judges Association's & Ors. v. Union of India & Ors.), in IA Nos. 71A, 135-136, 137-138 & 142 IN W.P. (C) No.1022/1989,*** the operative portion whereof is reproduced hereunder:

> "In view of these circumstances, we direct that hereafter these matters be considered by the respective High Courts of the State/Uts. We direct that:
>
> > i) The High Courts, on judicial/administrative side, will ensure implementation of the recommendations of the Shetty Commission within a reasonable period of one year. The High Court shall permit writ petitions or applications that may be filed by the individual or staff association representing the various members of the staff.
> >
> > ii) The High Courts shall also see that the recommendations are implemented w.e.f. 1.4.2003.
> >
> > iii) There shall be benefit of one advance increment on the existing pay-scale instead of initial pay-scale. In many of the States, the same benefit has not been given to the Members of the staff, the High Court should also see that these recommendations are implemented.
> >
> > iv) In some of the States based on various other pay commissions Reports, benefits had been given to the members of the staff, these benefits, if any, given shall be in addition to the recommendations given by the Shetty Commission. In any case, if the members of the staff association/subordinate staff getting higher benefits under any of the recommendations of

> the pay commission/Government Orders, they shall be permitted to avail those benefits."

5.4 This Court finds that such amendment has been brought in compliance of the directions of the Hon'ble Apex Court. This Court is also conscious of the fact that there was a litigation of ***Rajasthan Judicial Employees Association Vs. State of Rajasthan***, reported in ***[2018] 0 Supreme (Raj.) 321***, in which also, directions were given by the this Hon'ble Court for making the necessary implementation vide judgment dated 01.02.2018.

5.5 The limited point that the Court has to consider now is that whether an implementation of the precedent law laid down by the Hon'ble Apex Court in the case of All India Judges Association (supra) and the mandate carried by it, which resulted into the necessary amendment and implementation of Shetty Commission could be interfered with by this Court. Ordinarily, if there was an expansion or inclusion or under inclusion and if there was a variation which was permissible in the language of the Shetty Commission, then this Court could have gone into it. Here is a case where there is a clear mandate of the Hon'ble Apex Court to implement the Shetty Commission and also that the Shetty Commission has categorically recommended the same Rule which has been amended. Thus, since the language is having a mandate of the Hon'ble Apex Court, it leaves this Court with no option of any kind of interpretation or any kind of exclusion or inclusion, in the given circumstances.

6. In the given circumstance and without making any comments on merits, the present petitions are disposed of, while

leaving the petitioners at complete liberty to take up their issue before the Hon’ble Apex Court, if so advised.

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

59-60-Zeeshan/DevrajP/-