

ITEM NO.58

COURT NO.3

SECTION XV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

I.A. 10-12, 16-18, 22-24, 28-30, 34-36, 40-42, 46-48, 52-54, 58-60, 64-66, 70-72, 76-78, 82-84 OF 2017, 13-15, 19-21, 25-27, 31-33, 37-39, 43-45, 49-51, 55-57, 61-63, 67-69, 73-75, 79-81, 85-87 AND 88-90 OF 2017 /2017 in Civil Appeal No(s). 1464-1466/2017

STATE OF RAJASTHAN & ORS

Appellant(s)

VERSUS

CAPTAIN GURVINDER SINGH & ORS ETC. ETC.

Respondent(s)

(for intervention and interim relief and office report)

WITH

I.A.No.2/2017 in C.A. No. 1463/2017

(With appln. (s) for directions and Office Report)

SLP(C) No. 14956-14958/2017

(With Office Report)

Date : 09/05/2017 These applications were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE J. CHELAMESWAR
HON'BLE MR. JUSTICE S. ABDUL NAZEER

Signature Not Verified
Digitally signed by Mr. Tushar Mehta, AAG
Date: 2017.05.15
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Reason: I am the author of this document.

For Appellant(s)

Mr. Tushar Mehta, AAG
Mr. Shiv Mangal Sharma, AAG
Mr. Arjun Singh, Adv.
Mr. Rohit K. Singh, Adv.

Mr. Ankit Anandraj Shah, Adv.
 Mr. Mrinal Kanti Mandal, Adv.
 Mr. Parijat Sinha, Adv.
 Ms. Reshmi Rea Sinha, Adv.
 Mr. Rudra Dutta, Adv.

For Respondent(s) Mr. Gurvinder Singh, In-person
 Mr. V. Giri, Sr. Adv.
 Mr. Pradeep Aggarwal, Adv.
 Mr. Shobit Tiwari, Adv.
 Mr. Lal Pratap Singh, Adv.
 Mr. Umesh Pratap Singh, Adv.
 Mr. Aniket Bhattacharya, Adv.
 Mr. Gaurav Kejriwal, Adv.
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 Ms. Padma Priya, Adv.
 Mr. Dhruv Sharma, Adv.
 Mr. P. V. Saravana Raja, Adv.
 Mr. Guru Krishna Kumar, Sr. Adv.
 Mr. Ombir Singh Mandaar, Adv.
 Mr. Ankit Anandraj Shah, Adv.

UPON hearing the counsel the Court made the following
 O R D E R

All the IAs stand disposed of, in terms of the signed order.

[O.P. SHARMA]
 AR-CUM-PS

[RAJINDER KAUR]
 COURT MASTER

(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

INTERLOCUTORY APPLICATION NOS. 10-12, 16-18, 22-24,
28-30, 34-36, 40-42, 46-48, 52-54, 58-60, 64-66, 70-72,
76-78, 82-84 OF 2017, 13-15, 19-21, 25-27, 31-33, 37-39,
43-45, 49-51, 55-57, 61-63, 67-69, 73-75, 79-81, 85-87 AND
88-90 OF 2017

IN

CIVIL APPEAL NOS. 1464-1466 OF 2017

State of Rajasthan & Others ... Appellants

Versus

Captain Gurvinder Singh & Others Etc. Etc. ... Respondents

WITH

I.A. NO. 2/2017 IN CIVIL APPEAL NO. 1463 OF 2017

AND

SPECIAL LEAVE PETITION (CIVIL) NO. 14956-14958 OF 2017

ORDER

By a judgment impugned in Civil Appeal No. 1464-1466 of 2017, the High Court of Rajasthan struck down the Rajasthan Special Backward Classes (Reservation of Seats in Educational

Institutions in the State and of Appointment and Posts in Services under the State) Act, 2015 (hereafter, 'THE ACT'). Aggrieved by the same, the State of Rajasthan preferred the above-mentioned appeals.

2. By THE ACT, the State of Rajasthan provided a reservation of 5 per cent in educational institutions and government services in favour of "special backward classes". As a consequence, 54% of the available opportunities became reserved for various segments of the society. Hence the litigation.

3. On 3.2.2017, this Court ordered:-

"Leave granted.

An enactment of the State of Rajasthan providing for reservations in favour of certain backward classes has been struck down by the High Court by the Judgment under appeal.

We are informed by learned Attorney General that pursuant to the impugned enactment, the benefits of the reservation in the matter of admission to educational institutions and employment under the State are already given by making certain appointments.

We deem it appropriate to direct the appellant(s) to maintain status quo obtaining as on today.

The admissions so made to the educational institutions and appointments so made by the State shall not be

disturbed pending final hearing of the matter. We also make it clear that no fresh admissions and appointment shall be made pursuant to this interim order.”

4. The applicants in these applications claim that they are identically situated as those candidates falling under the category of “special backward classes” who have been appointed prior to the judgment of the High Court. In view of the interim order dated 3.2.2017, candidates, who had been appointed, are continuing in service. Their continuance is made subject to the final orders in the appeals. There is no justification for not appointing these applicants who also belong to the same class and who have been declared successful in the selection process for appointment of various posts.

5. On an earlier occasion, when these applications were heard, it was argued on behalf of the candidates belonging to non-reserved segment of the society that permitting appointment of people such as the present applicants would result in deprivation of appointment to the candidates belonging to classes

other than the reserved categories. Therefore, submitted the applications be dismissed.

6. At that stage, the learned Attorney General submitted that the State would consider the possibility of appointing these applicants and people who are similarly situated without depriving the general category candidates of their right of appointment, if necessary by creating supernumerary posts and also subject to the condition that such appointments of the candidates belonging to the "special backward classes" would be purely subject to the result of these appeals.

7. When the matter is taken up today, an affidavit of Shri Shiv Ram Singh Sihag, Joint, Legal Remembrance, Department of Personnel, Government of Rajasthan, Jaipur dated 8.5.2017 alongwith an annexure R2 is placed before us. It appears therefrom that in all, there are 1252 candidates who are declared successful in the examination conducted for various posts indicated in the Annexure who would be entitled for the benefit of above-mentioned Act, if it were to be eventually upheld.

8. The learned Additional Solicitor General Shri Mehta appearing for the State of Rajasthan submitted that the State has taken a decision to create supernumerary post to accommodate the applicants and other similarly situated persons belonging to the special backward classes, if this Court permits the same.

9. Having regard to the above-mentioned facts and circumstances, we deem it appropriate to pass the following order:-

(i) All the posts originally advertised shall be filled up strictly in accordance with law i.e. without applying the provisions of THE ACT.

(ii) The State is at liberty to appoint the above-mentioned 1252 candidates belonging to the "special backward classes" to the various posts on a temporary basis by creating supernumerary posts in different categories, if so advised. However, any appointment so made shall not confer any right on such candidates for any appointment on

permanent basis in the eventuality of the instant appeals being dismissed.

(iii) The State must incorporate appropriate provision in the appointment orders to be issued to indicate the temporary nature of the appointment as indicated in paragraph (ii).

(iv) The State shall proceed to make appointments of the originally advertised posts in accordance with law without waiting for the disposal of the instant appeals.

(v) We also direct that the Annexure R-2 referred to above shall be appended to this order.

10. All the IAs stand disposed of.

.....J.
(J. CHELAMESWAR)

.....J.
(S. ABDUL NAZEER)

New Delhi

May 9, 2017