



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Civil Writ Petition No. 7829/2024

1. Twinkle Singh daughter of Shri Dharmendra Singh, aged about 34 years, resident of Elanza 806, Arihant Adita, Pal Gangana Road, Jodhpur (Rajasthan)
2. Amit Kumar son of Shri Attar Singh, aged about 41 years, at present resident of G-134, Sector-5, Kudi Bhagtasani Housing Board, Jodhpur (Rajasthan)
3. Jatin son of Shri Dinesh Kumar, aged about 33 years, resident of 5-G-88, Sector-5, Kudi Bhagtasani Housing Board, Jodhpur (Rajasthan)
4. Hanuman Ram Bhati son of Shri Bhalla Ram, aged about 38 years, resident of 158, Adarsh Nagar, Near Vastu Nagar, Kudi Bhagtasani Housing Board, Jodhpur (Rajasthan)
5. Arvind Kumar Khandelwal son of Shri Lalit Kumar, aged about 35 years, resident of 21E/184, Chopasani Housing Board, Jodhpur (Rajasthan)
6. Mohammed Zeeshan son of Shri Mohammed Iqbal, aged about 37 years, resident of 03 Baitul Rida Jai Enclave Bajrang Vihar, Guda Road Jhalamand Jodhpur (Rajasthan)
7. Arun Kumar Yadav son of Late Shri Onkar Nath Yadav, aged about 35 years, at present resident of 79, Gandhi Nagar, Gudha Road, Jhalamand (Rajasthan)
8. Mohit Kumar son of Shri Vinod Kumar, aged about 33 years, resident of 5-G-88, Sector-5, Kudi Bhagtasani Housing Board, Jodhpur (Rajasthan)
9. Abhishek Kushwaha son of Late Shri Satish Kumar Kushwaha, aged about 36 years, resident of 4-I-22, Sector-4, Kudi Bhagtasani Housing Board, Jodhpur (Rajasthan)
10. Anshul son of Late Shri Darshan Kumar, aged about 33 years, at present resident of 79, Gandhi Nagar, Gudha Road, Jhalamand (Rajasthan)

-----Petitioners

Versus

1. The High Court of Judicature for Rajasthan, through Registrar General, Jodhpur.
2. The Registrar (Administration), Rajasthan High Court, Jodhpur.
3. The Registrar (Examination), Rajasthan High Court, Jodhpur.



4. Shahenshah Rizvi, at present Junior Personal Assistant, Rajasthan High Court, care of Registrar General, Rajasthan High Court, Jodhpur.

-----Respondents

For Petitioner(s) : Mr. Lokesh Mathur, Advocate
For Respondent(s) : Ms. Abhilasha Bora with
Ms. Khushbu Choudhary, Advocates

HON'BLE MR. JUSTICE SHREE CHANDRASHEKHAR
HON'BLE MR. JUSTICE KULDEEP MATHUR

JUDGMENT

Reserved on : 03/09/2024

Pronounced on : 03/03/2025

Per, Hon'ble Shree Chandrashekhar, J.

Ten Junior Personal Assistants employed under the establishment of the Rajasthan High Court at Jodhpur are aggrieved by the notice issued on 01st May 2024 by the Registrar (Examination) requiring them to appear in the Efficiency Test for promotion to the post of Personal Assistant-cum-Judgment Writer. According to the petitioners, they cannot be subjected to the Efficiency Test and their candidature for promotion to the post of Personal Assistant-cum-Judgment Writer should be considered applying the criteria of seniority in the rank of the Junior Personal Assistant.

2. By an order dated 14th May 2024, a co-ordinate Bench of this Court permitted the High Court to continue with the process of promotion to the post of Personal Assistant-cum-Judgment Writer. But there was a rider that the actual promotion shall not be granted without prior permission of the Court. This Court further observed that the participation of the petitioners in the Efficiency



Test shall not prejudice their rights to contest the matter on merits.

3. The petitioners have made the following prayers :-

"It is, therefore, respectfully prayed that this Writ Petition may kindly be accepted and allowed and:-

a) by an appropriate writ, order or direction, notice dated 01.05.2024 (Annex.7) issued by Registrar (Examination), Rajasthan High Court for holding efficiency test for promotion to the post of Personal Assistant-cum-Judgment Writer may be quashed and set aside;

b) by an appropriate writ, order or direction, Rajasthan High Court, may be directed to not to hold any efficiency test for the petitioners for considering them for promotion to the post of Personal Assistant-cum-Judgment Writer;

c) by an appropriate writ, order or direction, Rajasthan High Court may be directed to promote the petitioners on the post of Personal Assistant-cum-Judgment Writer relaxing the criteria of efficiency test;

d) alternatively, by an appropriate writ, order or direction, holding of efficiency test for Junior Personal Assistants appointed vide order dated 02.03.2020 on 15.05.2024 under notice dated 09.05.2024 (Annex.10) along with petitioners be declared unreasonable and unjust and it may be directed that same be held after efficiency test is held for the petitioners followed by the result thereof qua the petitioners so also the consequential promotion of the petitioners on the post of Personal Assistant-cum-Judgment Writer.

e) Any other order or direction, which this Hon'ble Court deems just and proper be passed in favour of the petitioners;

f) Costs of this petition may kindly be allowed to the petitioners;"

4. The petitioners have pleaded that an advertisement for appointment on the post of Junior Personal Assistant was published on 08th September 2015 and a recruitment exercise was undertaken by the Rajasthan High Court. The final result was published on 25th February 2016 and ninety-two persons were offered temporary appointment as Probationer Trainees on the fixed remuneration of Rs.13,200/- for a period of two years



subject to the conditions contained in the order dated 15th March 2016 issued under the signature of the Registrar (Administration). A similar recruitment exercise was undertaken in the year 2020 and fifty-one persons selected for the post of Junior Personal Assistant were offered appointment as Probationer Trainee vide order dated 02nd March 2020. In the meantime, the petitioners completed four years in service and made a representation to the Registrar General of the Rajasthan High Court seeking promotion to the post of Personal Assistant-cum-Judgment Writer on the basis of their seniority. At that time, there were twenty-one sanctioned posts of Personal Assistant-cum-Judgment Writer out of which eighteen posts fell vacant which were filled up through promotion by an order dated 09th October 2020. Under the notice dated 01st May 2024, thirty Junior Personal Assistants were provisionally permitted to appear in the Efficiency Test (English) along with two candidates for the Efficiency Test (Hindi). Aggrieved thereby, the petitioners made a representation on 01st May 2024 to the Registrar General of the High Court seeking exemption from appearing in the Efficiency Test. In this representation, they referred to the previous representation made in the year 2020 seeking exemption from the Efficiency Test which was considered by the Hon'ble Committee constituted by the Chief Justice and twelve Junior Personal Assistants of their batch were promoted to the post of Personal Assistant-cum-Judgment Writer by relaxing the Rules. According to the petitioners, they nurtured legitimate expectation in view of the previous decision of the Hon'ble Committee to grant exemption from the Efficiency Test



that the same treatment would be meted out to them in future. However, their representation dated 01st May 2024 has been rejected without assigning any reason.

5. This is the case pleaded by the petitioners that the aforementioned eighteen Junior Personal Assistants were granted promotion on the basis of their seniority and they were not asked to appear in the Efficiency Test. They are therefore claiming that they deserve equal treatment and are entitled for exemption from the Efficiency Test, else, they would suffer hostile discrimination. The notice issued by the Registrar (Administration) on 01st May 2024 is under challenge also on the ground that it would be unfair to ask the petitioners to compete with the Junior Personal Assistants who were appointed about four years after them and are junior to them in the cadre of Junior Personal Assistant. The petitioners are dissatisfied also for the reason that the Junior Personal Assistants who were appointed along with them in the year 2016 and promoted in the year 2020 to the post of Personal Assistant-cum-Judgment Writer are now competing for promotion to the post of Senior Personal Assistant-cum-Judgment Writer whereas they are languishing on the post of Junior Personal Assistant and are directed to appear for the Efficiency Test. In the writ petition, the petitioners have projected their grievance in the following manner :-

"6. That all the petitioners having been appointed in year 2016 completed four years period in year 2020. Thereafter, a representation in year 2020 was submitted by the petitioners along with other candidates who were appointed under order dated 15.03.2016 to the Registrar General, Rajasthan High Court, Jodhpur requesting to hold promotion on the post of Personal Assistant-cum-



Judgment Writer only on the basis of seniority, exempting the efficiency test. A true and correct copy of representation submitted in year 2020 is submitted herewith and marked as ANNEXURE-04.

7. *That acceding and accepting the representation submitted by the petitioners along with other candidates in year 2020, efficiency test for promotion to the post of Personal Assistant-cum-Judgment Writer was exempted by the Rajasthan High Court and promotion order dated 09.10.2020 was issued for the senior most Junior Personal Assistants falling in the list of candidates appointed under order dated 15.03.2016. A true and correct copy of order dated 09.10.2020 is submitted herewith and marked as ANNEXURE-05.*

8. *That therefore, it is apparent that the candidates who were appointed on the post of Junior Personal Assistant in the same selection process as that of petitioners were granted promotion to the post of Personal Assistant-cum-Judgment Writer without having to undergo efficiency test.*

9. *That subsequently, Rajasthan High Court, Jodhpur held recruitment for the post of Junior Personal Assistants in year 2020. The successful candidates were issued order of appointment dated 02.03.2020 issued by Registrar (Administration), Rajasthan High Court. A true and correct copy of order dated 02.03.2020 is submitted herewith and marked as ANNEXURE-06.*

10. *That the petitioners were shocked and surprised when they came to know about notices dated 01.05.2024 issued by Registrar (Examination), Rajasthan High Court, Jodhpur whereby an efficiency test for promotion to the post of Personal Assistant-cum-Judgment Writer was scheduled to be held on 15.05.2024. Under the notice dated 01.05.2024, all the petitioners were instructed to participate in the aforesaid test. A true and correct copy of notice dated 01.05.2024 containing the list of eligible candidates for efficiency test, is submitted herewith and marked as ANNEXURE-07.*

11. *That having come to know about efficiency test scheduled on 15.05.2024, the petitioners immediately submitted a representation dated 01.05.2024 to Registrar General, Rajasthan High Court. In the representation, it was stated that earlier they have submitted a representation in year 2020 for relaxing the condition of efficiency test which was accepted by Rajasthan High Court and fifteen candidates were promoted on the post of Personal Assistant cum Judgment Writer. Further, it was submitted that in the past also, efficiency test for the post of Personal Assistant has been exempted. It was therefore, prayed that no efficiency test be held for the petitioners as well, in order to maintain parity amongst candidates*



of same batch i.e. who were appointed on the post of Junior Personal Assistant under order dated 15.03.2016. A true and correct copy of representation dated 01.05.2024 is submitted herewith and marked as ANNEXURE-08.

12. That it is worthwhile to note that the Junior Personal Assistants who were granted appointment along with petitioners under order dated 15.03.2016 and were promoted to the post of Personal Assistant by order dated 09.10.2020 are now been considered for promotion to the post of Senior Personal Assistant-cum-Judgment Writer. The Registrar (Examination) Rajasthan High Court has also issued notice dated 01.05.2024 whereby an efficiency test has been scheduled for promotion to the post of Senior Personal Assistant-cum-Judgment Writer. The said notice contains list of eligible candidates for efficiency test. A bare perusal of the list shows that the Personal Assistants-cum-Judgment Writer who were issued promotion orders under order dated 09.10.2020 are now being considered for the post of Senior Personal Assistants. A true and correct copy of notice dated 01.05.2024 is submitted herewith and marked as ANNEXURE-09."

6. On the other hand, the respondents have highlighted the powers of the Chief Justice of the High Court under Article 229 of the Constitution of India and taken a stand that relaxation in the Rules cannot be claimed as a matter of right. They have taken the position that Rule 30 of the Rajasthan High Court Staff Service Rules, 2002 (in short, 'Staff Service Rules') gives power to the Chief Justice to grant relaxation in age or experience and, that, exemption from Efficiency Test was previously granted by the Chief Justice by exercising that power to relax the Rules. In the affidavit-in-opposition, the respondents have taken the following stand :-

"5. That thus, the Hon'ble Chief Justice has absolute power under Article 229, read with Rule 5(2) with respect to prescribing conditions of recruitment and service of the employees of the High Court by way of general or special Orders. One such example of the exercise of the said power is the (general) Order Dated 5th December 2002 which



lays down the methods of appointment and conditions of service for various employees of the High Court. That the Hon'ble Chief Justice also on several occasions specifies by general orders, any other methods of recruitment/promotion or conditions of service (either in addition to or deviating or relaxing any special/general order in the nature of Order of 2002) of the employees as they deem fit in particular situation, while exercising their power provided under Article 229 & Rule 5 is meant to facilitate the smooth working of the system and the institution.

That in continuation of the same, Rule 30 of the Rules of 2002 further extends this power of the Hon'ble Chief Justice as follows:

"30. POWER TO RELAX THE RULES: In exceptional cases where the Chief Justice is satisfied that operation of the Rules relating to age or regarding requirement of experience for recruitment causes undue hardship in any particular case or where the Chief Justice is of the opinion that it is necessary or expedient to relax any of the provisions of these Rules with respect to age or experience of any person he may by orders dispense with or relax the relevant provision of these rules to such extent and subject to such conditions as he may consider necessary for dealing with the case in a just and equitable manner, provided that such relaxation shall not be less favorable than the provisions already contained in these Rules.

That 'experience' has been defined in Rule 2(ix) follows: "Experience" wherever prescribed in these Rules as a condition for promotion within service from one category to another or to senior posts, in the case of a person holding lower posts eligible for promotion to higher post shall include the period for which the person has continuously worked on such lower posts after substantive appointment in accordance with these Rules or in accordance with the Rules or orders superseded by these Rules."

6. *That thus, if the Hon'ble Chief Justice is of the opinion that it is necessary/expedient, he may relax the Rules of 2002 with respect to age or requirement of experience. The power to relax any special or general order passed under the exercise of the Rules of 2002 is also implicit in the said power under Rule 30. It may be submitted that Rule 30 gives power to Hon'ble Chief Justice to grant relaxation in age or experience only. There is no express or implied power to grant exemption from appearing in efficiency Test. The exemption or relaxation from appearing in the efficiency Test which was granted in October 2020 was an exceptional exercise, may be because the High Court administration was not in a position to hold efficiency Test in the wake of spread of COVID-19. It is submitted that relaxation of the*

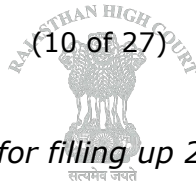


Rules cannot be claimed as a matter of right. That, thus, it is established that while the Order of 2002 prescribes for certain recruitment/promotion and service conditions, any deviation from them is also within the powers of the Hon'ble Chief Justice. However, such a deviation cannot be claimed by the employees as a matter of right.

10. That, though the previous promotion orders from the post of Junior Personal Assistant to the post of Personal Assistant cum Judgment Writer had been issued following a few specific orders by the Hon'ble Chief Justice, solely adopting the criteria of seniority cum merit, without conducting the efficiency test, but that cannot be used as a precedent for future promotions. That furthermore, any insistence by the Petitioners for granting promotions solely on the basis of seniority cum merit and to completely by pass the requirement of seniority cum efficiency cannot be sustained for the very reason that there is no inherent independent right that the Petitioners possess for the same.

11. That furthermore, any past practice with regard to relaxation in prescribed rules cannot be used a precedent afterwards. The requirement of seniority cum efficiency eligibility criterion has assumed more importance in the modern era where knowledge and efficiency in the speed of dictation, error free typing and use of computers and electronic systems has become a necessity. That this fact itself is enough to explain the need of efficiency test on 15.05.2024. That no rightful parity can be sought in this respect with those persons who are either seniors or especially from the same batch of the Petitioners who have been allowed the benefit of relaxation because the same was done owing to the urgent requirement of filling up certain vacancies. That it may be said that the hesitation, resistance and objection of Petitioners in facing the efficiency the test suggests their fear or apprehension of either under-performance or not being up to the mark/standards required to be met for the posts being held by them and also the promotion being sought by them.

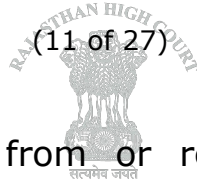
12. That furthermore, any objection of the Petitioners for facing the efficiency test along with the persons of their junior batch is also not tenable. This is so firstly because they have not raised any challenge either to the Rules of 2002 or the Order of 2002 which prescribes for conducting the efficiency test. There is no bar in the same for holding a common efficiency test because it is merely a condition/standard to be met. The promotion is granted not solely on the basis of efficiency. Rather, the criteria for the same s seniority cum efficiency as per



Clause 15 and that too only for filling up 25% of the total vacancies in a cyclic manner. The rest of the 75% vacant posts are prescribed to be filled up according to seniority cum merit. That if the Petitioners are successful in the efficiency test along with their juniors, then their seniority would play a part in determining their promotion. If on the other hand, they are unsuccessful, it will still not defeat their promotional avenues, because irrespective of that, they would still be able to get a promotion to the remaining 75% of the posts on the basis of seniority cum merit.

13. *That it is important to note that the requirement of 'seniority cum efficiency' in Clause 15 is to promote talent, which is also in the best interest of the system, especially owing to the nature of their posts."*

7. Mr. Lokesh Mathur, the learned counsel for the petitioners contended that the notice dated 01st May 2024 for holding the Efficiency Test for promotion to the post of Personal Assistant-cum-Judgment Writer is arbitrary and the petitioners are subjected to hostile discrimination. The learned counsel submitted that the exemption from Efficiency Test granted in the year 2020 for promotion to the post of Personal Assistant-cum-Judgment Writer was not an isolated event rather it was a regular feature and such orders of exemption from Efficiency Test were also passed in the past. In this context, the learned counsel for the petitioners referred to the order of promotion to the post of Personal Assistant-cum-Judgment Writer issued on 30th March 2022 in favour of Sunil Solanki who was holding the post of Junior Personal Assistant but was not asked to undergo the Efficiency Test. Per contra, Ms. Abhilasha Bora, the learned counsel for the respondents contended that the powers of the Chief Justice under Article 229 of the Constitution of India read with Rule 5 of the Staff Service Rules are intended at facilitating the smooth working of the establishment of the High Court and the Chief Justice has



ample power to deviate from or relax any condition of the recruitment or promotion.

8. The history of the high Constitutional post of the Chief Justice of High Court goes back to the Charter of 1774 establishing the Supreme Court of Calcutta which was replaced by the High Courts established under the High Courts Act, 1861. Later on, the Letters Patent was granted on 14th May 1862 to the Calcutta High Court and that was amended in the year 1919. Under the Letters Patent, the Chief Justice of the High Court of Judicature at Fort William in Bengal was vested with the powers to appoint as many such clerks and other ministerial officers as were necessary for the administration of justice. The Letters Patent further conferred authority on the Chief Justice to decide the salary of all and every officer and clerk to be approved by the Governor General-in-Council. These powers of the Chief Justice of the High Court were preserved under section 106 of the Government of India Act, 1915 and under section 241 of the Government of India Act, 1935. Even after independence, the powers and the status of the Chief Justice of the High Court are maintained under Chapter X of the Constitution of India.

9. Article 216 of the Constitution of India provides that every High Court shall consist of a Chief Justice and he shall be the authority under Article 229 of the Constitution of India to appoint officers and servants of the High Court. Clause 2 of Article 229 of the Constitution of India provides that the conditions of service of the officers and servants of a High Court shall be prescribed by the Rules made by the Chief Justice of the High Court or by some

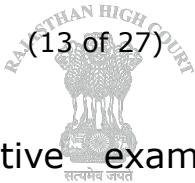


other Judge or officer of the Court authorized by the Chief Justice to make Rules for the said purpose subject to the approval of the Governor of the State in cases of fixation of salaries, allowances, leave or pensions of the officers and servants of the High Court.

The administration of the High Court vests in the Chief Justice is also discernible from the expression employed in Article 229 of the Constitution which uses the word "Chief Justice" whereas Article 235 which envisages control over the sub-ordinate Courts uses the word "High Court". In "*M. Gurumoorthy v. Accountant General Assam & Nagaland & Ors.*"¹ the Hon'ble Supreme Court observed that the unequivocal purpose and obvious intention of the framers of the Constitution in enacting Article 229 were that in the matter of appointment of the officers and servants of a High Court it is the Chief Justice or his nominee who is to be the supreme authority. The Hon'ble Supreme Court further held that Article 229 has distinct and different scheme and contemplates full freedom to the Chief Justice in the matter of appointments of the officers and servants to the High Court and their conditions of service.

10. As to the appointment of the Junior Personal Assistants and Personal Assistant-cum-Judgment Writers, this is common ground that an elaborate procedure has been laid down by the order of Hon'ble the Chief Justice of the Rajasthan High Court in exercise of the powers under Rules 4, 5, 7 and 22 of the Staff Service Rules. The relevant provisions under Part-II of the Staff Service Rules provide that the recruitment to the post of Junior Personal Assistant (English or Hindi) shall be made by direct recruitment

1 [1971] 2 SCC 137.



after holding a competitive examination. The qualification prescribed for the post of Junior Personal Assistant is Graduation or its equivalent examination from any University recognized by the Government. Clause 14 which deals with the procedure for selection provides that a candidate shall be required to pass the examination in Group A (for English) or Group B (for Hindi) and he also must compulsorily pass the computer test under Group C. Clause 14 lays down a procedure also for conducting the stenography test, evaluation of prescribed sheets, marking of mistakes, etc. The relevant provisions under the Staff Services Rules which deal with the recruitment to the post of Junior Personal Assistant are reproduced hereunder :-



“(14) JUNIOR PERSONAL ASSISTANT.- Recruitment to the post of Junior Personal Assistant (English) or Junior Personal Assistant (Hindi) shall made by direct recruitment after holding a Competitive Examination.

(a) Educational Qualification:

- (i) Candidate must be a graduate of any university established by Law in India or its equivalent examination from any university recognized by the Government for the purpose; and
- (ii) Must have basic knowledge of computer

(b) Mode of Selection: The competitive examination for the post of Junior Personal Assistant shall consist of the subject given in two alternative Groups A and B. A candidate shall be required to pass the subject group of the post applied and required to pass the Group C compulsorily.

Group A			
Jr. Personal Assistant (English)	Duration	Speed of Dictation	Marks
English Shorthand	8 Minutes	80 words per Minute	100
Transcription and typing of Dictated passage in English on computer.	60 Minutes	--	
Group B			
Jr. Personal	Duration	Speed of	Marks



Assistant (Hindi)		Dictation	
Hindi Shorthand	8 Minutes	70 words per Minute	100
Transcription and typing of Dictated passage in Hindi on computer.	70 Minutes	--	
Group C			
Computer : There will be speed test on computer			
Speed : Minimum speed should be 8000 depressions per hour on computer. Data will have to be fed in Hindi or English Language or in dual language i.e. English and Hindi			
The test will be in two papers consisting Speed & Efficiency carrying 50 Marks each."			

(c) Method of Conducting Stenography Test -

- (1) The test will be called Shorthand speed assessment test
- (2) Before dictating the final Shorthand passage to the candidates a trial passage containing 200-250 words should be dictated at the same speed at which the final passage is intended to be dictated. The trial passage need not be transcribed and will not taken into account while marking.
- (3) After a lapse of two three minutes, of the dictation of trial passage, the final passage should be dictated by the same person keeping in view the uniformity of speed which can be achieved by marking the passage after every 80-100 words as the case may be.
- (4) After the passage is dictated, five minutes time should be allowed to the candidates for reading the dictated passage.
- (5) The candidates should be required to transcribe the passage on Computer. The trial passage, the shorthand sheets and transcription sheets should be attached together. All the three sheets should bear the name. date. Roll No. of the candidate.

(d) Method of Evaluation of Transcribed sheets.- (1) The mistakes shall be counted as full or partial mistakes, as the case may be.-

(a) The following should be counted as full mistakes.-

- (1) Omission of words or figure.
- (2) Substitution of wrong word or figure.
- (3) Misspelling.
- (4) Two partial mistakes will be equal to one full mistake.

(b) The following should be counted as partial mistakes.-

- (1) Error or Omission in punctuation.
- (2) Wrong use of capital or small letters.
- (3) Wrong indentation of paragraph.

(2) The margin of 5% mistakes, may be allowed. If the mistakes/ omissions are more than 5% of the dictated passage, the excess





number of mistakes over 5% shall be deducted from the total number of words dictated and the speed will be calculated.

Example.-

(1) If the mistakes in a dictated passage of 1000 words in 10 minutes are 50, (5% of 1000) by giving a margin of 5% the speed shall be calculated to be 100 words per minute

(2) If the mistakes in a dictated passage of 1000 words are 100, the margin in 50 words (5 percent of 1000) the excess 50 words (1000-50=950) words.

This shall be divided by the time by 10 minutes. It comes to 950/10=95 words per minute."

11. The post of Personal Assistant-cum-Judgment Writer is filled up by promotion through two different modes. Clause 15 under Part-II of the Staff Service Rules provides that 25% posts of the Personal Assistant-cum-Judgment Writer shall be filled up on the recommendation of a Committee on the criteria of seniority-cum-efficiency and 75% posts shall be filled up on the basis of seniority-cum-merit from amongst the Junior Personal Assistants. It is further provided that there shall be an Efficiency Test to adjudge the suitability of the candidates for promotion against 25% quota for promotion to the post of Personal Assistant-cum-Judgment Writer and those posts shall be filled up on the basis of seniority-cum-efficiency. Clause 15 further provides that the qualifying examination shall be held only to test the ability of the candidates in shorthand speed. It is also indicated therein that the shorthand speed for English should be 95 words per minute and for Hindi 75 words per minute. Furthermore, the "Note" appended to Clause 15 indicates that the shorthand dictation for 5 minutes should be transcribed within 45 minutes. Clause 15 of the Staff Service Rules which contains the relevant provisions for promotion



to the post of Personal Assistant-cum-Judgment Writer provides as under :-

“(15) PERSONAL ASSISTANT CUM JUDGEMENT WRITER.-

Recruitment on the posts of the Personal Assistant cum Judgement Writer shall be made by promotion to 25% posts on the recommendation of a Committee nominated by the Appointing Authority adjudging suitability of the candidates on the criteria of seniority-cum-efficiency and 75% on the basis of seniority-cum-merit from amongst the Junior Personal Assistants.

The ratio of 1:3 on the basis of seniority-cum-efficiency and seniority-cum-merit shall be vacancy based and the selection shall be made by rotation i. e. the first vacancy shall be filled in on the basis of seniority-cum-efficiency and second, third and fourth vacancies shall be filled in on the basis of seniority-cum-merit.

Provided that no Junior Personal Assistant shall be eligible for promotion to the post of personal Assistant-cum-judgement Writer unless he has put in minimum 4 years service on the post of Junior Personal Assistant.

Provided further that in case of non-availability of suitable candidates from amongst the existing Junior personal Assistant on the establishment of the High Court the posts shall be filled in either by mode of transfer or deputation of suitable candidates from the Personal Assistants of Subordinate Courts or Senior Junior Personal Stenographer/ Personal Assistants of the Government Department of Rajasthan.

EFFICIENCY TEST

The suitability of the candidates for promotion against 25% posts of Personal Assistant cum Judgement Writers which are to be filled in on the basis of criteria of seniority-cum-efficiency, shall be adjudged on the basis of qualifying examination to be held to test the ability of the candidates in Shorthand speed.

QUALIFYING TEST

I. Shorthand (English) 95 words per minute

Or

(Hindi) 75 words per minute

Note: 5 minutes dictation given in Shorthand shall be transcribed within 45 minutes.”



12. The substantive appointment to a post means an appointment made under the provisions of the Staff Service Rules to a substantive vacancy after due selection by any of the methods of recruitment prescribed under the Rules and includes an appointment as a probationer followed by the confirmation in service on completion of the probation period. Rule 2(i) of the Staff Service Rules defines "Appointing Authority" to mean Chief Justice or a Judge or a Committee of Judges or any other Officer who may be specially empowered by the Chief Justice to exercise the powers and perform functions of the Appointing Authority. According to the respondents, the Chief Justice of the High Court possesses absolute power to prescribe the conditions for recruitment of the employees under the establishment of the High Court by issuing a general or special order and, in exercise of such power, the Chief Justice of the High Court of Rajasthan issued a general order on 05th December 2002 under which the mode and manner of the appointment and service conditions of the employees under the establishment of the High Court have been laid down. This is the stand taken by the respondents that the Chief Justice has power to relax any Rule under the Staff Service Rules if it is necessary or expedient to do so and the Chief Justice can grant relaxation in age or as to requirement of experience. It is stated that the exemption from appearing in the Efficiency Test granted by the Chief Justice in October 2020 was an exceptional exercise of such powers and that cannot be referred to by the petitioners as precedent to claim relaxation in the Rule as a matter of right for their promotion. However, the petitioners claim



that such statement was far from the truth and just a ruse to deny parity to the petitioners inasmuch as the test for direct recruitment was conducted for the Chauffeurs for the establishment of the Rajasthan High Court and Drivers for the Rajasthan State Judicial Academy and the Rajasthan State Legal Services Authority, etc. vide notice dated 06th November 2020.

13. The relevant provisions under Rule 30 of the Staff Service Rules read as under :-

"30. POWER TO RELAX THE RULES: In exceptional cases where the Chief Justice is satisfied that operation of the Rules relating age or to experience regarding requirement of for recruitment causes undue hardship in any particular case or where the Chief Justice is of the opinion that it is necessary or expedient to relax any of the provisions of these Rules with respect to age or experience of any person he may by orders dispense with or relax the relevant provision of these rules to such extent and subject to such conditions as he may consider necessary for dealing with the case in a just and equitable manner, provided that such relaxation shall not be less favorable than the provisions already contained in these Rules."

14. A government employee is appointed following the recruitment Rules and can only insist that the provisions in the recruitment Rules as to leave, salary, promotion, etc. should be followed and cannot make a grievance against the action of the respondents who intend to follow the Rules. Under the Staff Service Rules, the promotions are ordinarily made according to seniority but subject to the requirement of Efficiency Test for promotion against 25% posts of Personal Assistant-cum-Judgment Writers. The Efficiency Test is conducted to assess ability of the candidates in shorthand speed and that is only a qualifying examination. As to the requirement of qualifying examination



under the Staff Service Rules, the aspiring Junior Personal Assistants are supplied sufficient and clear information that the qualifying shorthand test in English requires 95 words per minute and in Hindi 75 words per minute. This is also provided in the Rules that 5 minutes' dictation given in shorthand would have to be transcribed within 45 minutes. Pertinently, Rule 22 which lays down the general rule of promotion starts with the expression "subject to the requirement of efficiency" and provides that promotion shall ordinarily be made according to seniority. By the amendment through Notification dated 24th July 2004, a provision for special promotion to an official was incorporated for recognizing merit irrespective of the grade to which the employee may belong or to his seniority within his grade. Proviso to Rule 3 provides that the Chief Justice may from time to time leave unfilled or held in abeyance or abolish or allow to lapse any vacant post, permanent or temporary, without thereby entitling a person to any claim or may after obtaining the sanction of the Governor of State create any post permanent or temporary as may be found necessary. Rule 5 provides that the recruitment to a post or category of posts specified in the second column of Schedule-I shall be made through (a) direct recruitment or (b) promotion or (c) transfer from Subordinate Court or Offices of the Government. By an amendment through the Notification dated 18th July 2019, the previous provision of holding a preliminary examination was deleted and holding of screening test has been left at the discretion of the Chief Justice.





15. This is not correct to say that the petitioners are subjected to hostile discrimination by asking them to qualify in the Efficiency Test for promotion under 25% quota to be filled up on the basis of seniority-cum-efficiency. The petitioners have admitted that they were among the Junior Personal Assistants who made a representation in the year 2020 for exemption from the Efficiency Test. The order granting such exemption by the Chief Justice was applied uniformly and the petitioners were themselves beneficiary of that order of exemption. This is a matter of record that the petitioners lost their chance for promotion to the post of Personal Assistant-cum-Judgment Writer on account of their lower rank in the seniority list whereas some of their batchmates could make it. There is therefore no question of parity that can be claimed by the petitioners with their own batchmates who got promotion as the Personal Assistant-cum-Judgment Writer. There can be no manner of doubt that if the Chief Justice has exercised the discretion in good faith and not in violation of any law, a writ shall not lie on a specious plea that it could have been exercised differently. The Chief Justice of the High Court is the supreme authority in the matters of appointment of the officers and servants of the High Court and the Constitution of India recognizes that no other person except the Chief Justice should have domain in the internal administration of the High Court. Like the President or the Governor, a writ of mandamus cannot be issued by the writ Court to the Chief Justice of the High Court while exercising the powers under Article 226 of the Constitution of India. It would be highly improper if the High Court issues a direction to the Chief Justice of



the High Court to exercise his discretionary powers to relax the Rules and exempt the petitioners from Efficiency Test. We therefore hold that the petitioners cannot seek a direction for granting them exemption from the Efficiency Test.

16. For the sake of fullness, we would indicate that the pleadings in the writ petition are completely vague and it is not even pleaded that at what position the petitioners are in the seniority list. No details of the Junior Personal Assistants senior to the petitioners are given and the writ petition is completely silent as to why the Chief Justice should exercise the powers under Rule 30 relaxing the condition of Efficiency Test. In our opinion, it would not be in the public interest that the employer deviates from the conditions of service on mere representation by a few employees. The High Court in exercise of jurisdiction under Article 226 of the Constitution of India shall have no powers to issue a direction to the High Court not to follow its own Rules.

17. This is a general proposition that a writ of mandamus can be granted only in a case where there is a statutory duty imposed upon the respondent authority and that statutory obligation was not discharged. It must therefore be shown that there is a legal right in the aggrieved party and a corresponding legal duty imposed upon the respondent authority the performance of which can be claimed in a Court of law. The rule is that mandamus shall not lie where the duty is discretionary and the party upon whom the duty rests has exercised his discretion reasonably and within his jurisdiction, that is, upon facts sufficient to support his action².

² The Law of Extraordinary Legal Remedies by Forest G. Ferris and Forest G. Ferris Jr.



In "*State of Kerala v. A. Lakshmikutty & Ors.*"³ the Hon'ble Supreme Court held that a writ of mandamus is not a writ of course or a writ of right but is a discretionary remedy which can be claimed only by a person who can demonstrate that he has a legal right to insist on the performance of a public duty by the public authority. A prerogative writ like mandamus cannot be demanded *ex debito justitia*. In "*Bihar Eastern Gangetic Fishermenco-Operative Society v. Sipahi Singh & Ors.*"⁴ the Hon'ble Supreme Court observed that the chief function of a writ is to compel performance of the public duty prescribed by a statute and to keep the subordinate tribunals and officers exercising public function within the limits of their jurisdiction. It was further held that in order that mandamus may issue to compel the performance to do something, it must be shown that there is a statute which imposes a legal duty and the aggrieved party has legal right under the statute to enforce its performance. In "*Dr. Rai Shivendra Bahadur v. the Governing Body of the Nalanda College, Bihar Sharif & Ors.*"⁵ the Hon'ble Supreme Court observed as under :-

"5. A great deal of controversy was raised before us as to whether the Statutes framed by the University under Section 20 of the University of Bihar Act have or have not the force of law and whether a writ under Article 226 of the Constitution can issue against the Governing Body of the College i.e. whether the appellant has a legal right to the performance of a legal duty by the respondents. In order that mandamus may issue to compel the respondents to do something it must be shown that the Statutes impose a legal duty and the appellant has a legal right under the Statutes to enforce its performance. It is, however,

3 [1986] 4 SCC 632.

4 [1977] 4 SCC 145.

5 AIR 1962 SC 1210.



wholly unnecessary to go into or decide this question or to decide whether the Statutes impose on the Governing Body of the College a duty which can be enforced by a writ of mandamus because assuming that the contention of the appellant is right that the College is a public body and it has to perform a public duty in the appointment of a Principal, it has not been shown that there is any right in the appellant which can be enforced by mandamus. According to the Statutes all appointments of teachers and staff have to be made by the Governing Body and no person can be appointed, removed or demoted except in accordance with Rules but the appellant has not shown that he has any right entitling him to get an order for appointment or reinstatement. Our attention has not been drawn to any article in the Statutes by which the appellant has a right to be appointed or reinstated and if he has not that right he cannot come to court and ask for a writ to issue. It is therefore not necessary to go into any other question."

18. Notwithstanding some defects in the pleadings, the joint Efficiency Test for promotion to the post of Personal Assistant-cum-Judgment Writer is such a contentious issue that requires examination by this Court. The grievance projected by the petitioners is that their chances of promotion would diminish if the Junior Personal Assistants who were appointed through a different recruitment exercise at a later point in time are permitted to participate in the same exercise for promotion under 25% quota as provided under Clause 15 of Part-II of the Staff Service Rules. This is the case of the petitioners that by permitting the Junior Personal Assistants who were appointed in a different financial year to claim promotion against the vacancies occurring even prior to their appointment, the High Court has acted contrary to the Rules for promotion on the post of Personal Assistant-cum-Judgment Writer as provided under Clause 15. To counter this stand, the respondents have taken a position that there is no bar



under the Rules for holding a common Efficiency Test because such test is merely a standard (benchmark). According to the respondents, this benchmark is required to be fulfilled by the candidates seeking promotion under 25% vacancy in the cadre of Personal Assistant-cum-Judgment Writer and, that, the promotion is not made solely on the basis of the Efficiency Test rather the criteria is seniority-cum-efficiency. Moreover, even if the petitioners fail in their attempt to qualify the Efficiency Test that would not compromise their promotional avenue and they would still be able to get promotion under the remaining 75% posts on the basis of seniority-cum-merit.

19. As understood in service jurisprudence, the chances of promotion are not the conditions of service and are defeasible. A government employee cannot claim promotion as a matter of right and he can only be considered for promotion according to the extant Rules. Notwithstanding the provision that the Efficiency Test is only qualifying in nature and the Junior Personal Assistants shall be granted promotion according to their seniority, holding of a common Efficiency Test without segregating the vacancies available for the appointees of different financial years would be unfair, improper and shall cause prejudice to the candidates like the petitioners. This is the power of the Appointing Authority under Rule 6 to determine the actual number of vacancies as on 01st April every year occurring during the financial year. This is further provided under Rule 6(c) that if a post is to be filled in through more than one method as prescribed in the Rules or Schedule-I then the apportionment of vacancies determined under



Clause (a) to sub-rule (1) to each such method shall be done maintaining the prescribed proportion for the overall number of posts already filled in. Under Rule 6(2), the Appointing Authority shall also determine the vacancies of earlier years, yearwise, which were required to be filled in by way of promotion if such vacancies were determined and filled earlier in the year in which year they were required to be filled in. This is also very clear that the method of recruitment on the post of Personal Assistant-cum-Judgment Writer under Clause 15 is unambiguous. It provides that the Junior Personal Assistants shall be called in the ratio of 1:3 for promotion on the basis of seniority-cum-efficiency and seniority-cum-merit as well. It is further provided that the first vacancy out of the total posts available shall be filled in on the basis of seniority-cum-efficiency and then the second, third and fourth vacancy shall be filled in on the basis of seniority-cum-merit. Most importantly, 2nd proviso to Clause 15 provides that in case of non-availability of suitable candidates from amongst the existing Junior Personal Assistants in the establishment of the High Court the posts shall be filled in either by mode of transfer or deputation of suitable candidates from the Personal Assistants of subordinate Courts or Personal Stenographers/Personal Assistants of the Government Department of Rajasthan.

20. The scheme of promotion under Clause 15 does not contemplate permitting the Junior Personal Assistants recruited in two different recruitment years to appear together in the Efficiency Test vying for promotion against the vacancies which occurred even prior to their appointment. This is well known that

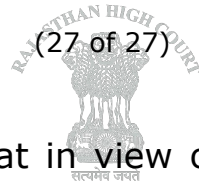


there may be large number of employees in the cadre but the number of vacancies for promotion could be limited. Under Clause 15 read with Rule 8, the petitioners shall have a right to seek promotion on the basis of seniority-cum-efficiency against 1/4th of the total number of vacancies in the cadre of Personal Assistant-cum-Judgment Writer occurring prior to the recruitment of Junior Personal Assistants in the year 2020. But any vacancy remaining unfilled under this quota cannot be made available to the candidates appointed in the year 2020 until the entire batch of 2016 is called for the Efficiency Test as per the Rules. Therefore, a chance to get selected under 25% vacancy on the basis of the Efficiency Test shall be extended to others who were appointed in the same financial year along with the petitioners. In the event that some posts of the Personal Assistant-cum-Judgment Writer remain vacant then such posts shall be filled up either by mode of transfer or deputation of suitable Personal Assistants of subordinate Courts or Personal Stenographers/Personal Assistants of the Government Department of Rajasthan. We therefore hold that the Junior Personal Assistants appointed in the year 2020 or thereafter cannot seek promotion to the post of the Personal Assistant-cum-Judgment Writer competing with the batch of 2016 against the vacancies that occurred prior to 02nd March 2020. However, we are not inclined to go back in the past and disturb the previous promotions. One of the reasons for this hands-off decision is that there is no specific challenge to the promotion granted vide order dated 09th October 2020.





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21. We were informed that in view of the order dated 14th May 2024 the Efficiency Test was conducted but the final result was not published. The respondents shall now publish the result and promotions shall be granted only in the manner as indicated hereinabove.

22. In view of the foregoing discussions, the prayer made at Clause (d) is allowed and this writ petition succeeds to the aforementioned extent.

23. D.B. Civil Writ Petition No.7829 of 2024 is allowed in the manner and to the extent indicated hereinabove.

(KULDEEP MATHUR),J

(SHREE CHANDRASHEKHAR),J

AjaySingh/-

Whether fit for reporting : Yes/No