

(2018) 07 RAJ CK 0177
In the Rajasthan High Court
Case No : Civil Writs No. 13187 of 2018

Akhil Bhartiya Valmiki Samaj Aarakshan Samajik Shodh & Vikas Samiti
@APPELLANT@Hash State of Rajasthan & Ors

Date of Decision : 13-07-2018

Acts Referred:

Rajasthan Municipalities (Safai Employees Service) Rules, 2012 — Rule 9, 10, 11

Citation : (2018) 07 RAJ CK 0177

Hon'ble Judges : Munishwar Nath Bhandari, J;Dinesh Chandra Somani, J

Bench : Division Bench

Advocate : P.C. Jain, Ashish Joshi, Mamta, Rajendra Prasad

Final Decision : Dismissed

Judgement

By this writ petition, a challenge is made to the Notification dated 23rd January, 2014 amending Rule 9 of the Rajasthan Municipalities (Safai

Employees Service) Rules, 2012 (for short "the Rules of 2012"). The rule aforesaid provides procedure for direct recruitment on the post of Safai

Karamchari. A challenge is further made to the advertisement dated 13th April, 2018 to invite applications for the post of Safai Karamchari. The

amended rule provides additional method of selection. It is by drawing lottery of the applicants.

Learned counsel for petitioner submits that respondents had issued an advertisement on 25th May, 2012 to invite applications for the post of Safai

Karamchari. At the relevant time, selection on the post of Safai Karamchari could have been made on the basis of merit, interview, experience and

not by way of lottery. The respondents amended Rule 9 of the Rules of 2012 vide impugned Notification dated 23rd January, 2014 so as to add lottery

as a method of selection. The procedure aforesaid is illegal and unconstitutional. It is for the reason that lottery system cannot make selection based

on merit or taking into consideration the experience. It should otherwise be a primary consideration for selection and appointment of any post which

includes the post of Safai Karamchari. In view of the above, if respondents would proceed pursuant to amended provision then merit as well as

experience may be sacrificed. The amendment vide Notification dated 23rd January, 2014, thus deserves to be struck down so as the advertisement

dated 20th April, 2018 followed by amended advertisement dated 28th April, 2018.

It is also stated that even if method of lottery is allowed, there would be no surety of selection without manipulation. At times, while drawing lottery,

things are managed to favour one or other candidates thus even the lottery system cannot be said to be a proven system to eliminate voice of

arbitrariness or unfairness. Therefore, no purpose remains in applying the procedure of lottery in making selection to the post of Safai Karamchari.

The aforesaid aspect was examined by the Karnataka High Court in the case of Shri B.P. Nagaraju Gowda Vs. The Union of India, Writ Petition

No.19633/2014, decided vide order dated 26th August, 2015. The procedure of selection by lottery system has been deprecated. Applying the

judgment aforesaid, the Notification dated 23rd January, 2014 may be struck down so as the advertisement subsequently issued on 20th April, 2018

followed by corrigendum dated 28th April, 2018. A prayer is made to allow the writ petition with the aforesaid.

Learned counsel for respondents has contested the writ petition. It is submitted that writ petition is not maintainable in the hands of a Co-operative

Society when it pertains to individual cause. The copy of Constitution of the Co-operative Society or a resolution to file the writ petition has been

submitted. The petitioner has no locus for filing the present writ petition.

It is also submitted that Rule 9 of the Rules of 2012 was amended vide Notification dated 23rd January, 2014. It has been challenged after lapse of

several years without justifying delay. If, at all, there is justification of delay then also a case is not made out for causing interference in the amended

provision. Rule 9 of the Rules of 2012 provides for mode of selection. It can be based on written examination/merit/experience or any or more than

one out of it. The addition is by drawing lottery by way of amendment in the rule.

The purpose to amend the rule is not only to make the things transparent but to

avoid voice of arbitrariness in making selection so as allegation of corruption therein. It can be raised if one of the methods, other than lottery system is applied. As per rule then existing, the appointment could have been given based on the merit. It can be assessed by way of interview or written examination but interview keeps a room of doubt for fair selection, that too, when number of candidates applied for the post are not in hundred or thousand but in lac. Even if their merit is adjudged by way of interview, the voice of arbitrariness may be raised.

So far as written examination is concerned, it is not feasible for the reason that no educational qualification has been provided under the Rules of 2012 for the post of Safai Karamchari. In absence of qualification for the post, everybody is entitled to apply for the post subject to other eligibilities i.e. age, etc. In view of the above, even an illiterate person can apply for the post of Safai Karamchari. In that case, if the written test is conducted, it will eliminate an illiterate person. The aforesaid was realised by the respondents while considering the issue minutely.

The experience is another criteria given under Rule 9 of the Rules of 2012. The respondents applied aforesaid method to make selection in few municipalities but therein also, allegations of corrupt practices in obtaining experience certificates were made. On an inquiry pursuant to the directions of the Government, it was found that fake and forged experience certificates have been obtained by the candidates. The selection therein could not be completed for the aforesaid reason. Taking into consideration the aforesaid, the Government took a decision to amend the rules further so as to evolve the method of lottery for selection of the candidates. It is to avoid voice of arbitrariness and even manipulation. The procedure aforesaid is not generally applied for the selection but it is a peculiar case where a candidate is eligible irrespective of his qualification and at the same time, no other conditions exist so as to apply mode of selection other than of lottery.

It is stated that even in few cases, where interview was conducted to make selection, the issue was brought before the court as to how interview of lac of candidates can be completed within a duration given therein. The interview always keeps a room of doubt about its genuineness. In the light of the aforesaid, the State Government has rightly took a decision to amend Rule 9 of the Rules of 2012 thus interference in the amendment may not

be made. It is more so when the petitioners have not come with the case that amendment in the rules lacks legislative competence or it is hit by

Constitution of India. In the light of the aforesaid also, amendment in the rule by a policy decision should not be interfered.

Learned Additional Advocate General Shri Rajendra Prasad further submitted that to make selection fool-proof, a software was got prepared. After

getting software, it was sent for audit so that it is properly examined keeping no room of doubt about manipulation. Finally, the Information Technology

Department, State of Rajasthan was consulted. They were engaged to complete the work in a fair and proper manner. A prayer is, accordingly, made

to dismiss the writ petition as otherwise interim order is causing difficulty to various Municipalities to carry out cleaning work. It is in absence of

required hands. The intention of the State Government is to keep required number of hands to carry out cleaning work in a proper manner. A prayer

is, accordingly, made not only to vacate the stay order but to dismiss the writ petition.

At this stage, learned counsel for petitioner submits that this petition has been filed on behalf of Valmiki Samaj. It is involved in cleaning work by

tradition and if lottery system is allowed then they may not get job which otherwise is meant for them only. Taking into consideration the background

of Valmiki Samaj, interference in the process of selection may be made.

We have considered rival submissions of learned counsel for the parties and perused the record.

By this writ petition, a challenge is made to the Notification dated 23rd January, 2014 amending Rule 9 of the Rules of 2012 and even the

advertisement dated 13th April, 2018. It would be gainful to refer the unamended provision for ready reference and, accordingly, Rule 9 of the Rules

of 2012 is quoted hereunder: Unamended provision:

â??9. Procedure for direct recruitment.- The Chief Municipal Officer shall invite applications for direct recruitment through advertisement in the two

state level daily newspapers and shall make appointment on the basis of either conducting written examination/interview /merit/experience or on the

basis of one or more criteriaâ??s as mentioned above.â??

The perusal of Rule 9 of the Rules of 2012 shows that the Chief Municipal Officer would invite applications from and amongst eligible candidates and

appointment would be made by conducting written examinations/interview/merit/experience or on the basis of one or more criteria, as given above.

The State Government then brought a Notification dated 23rd January, 2014 amending Rule 9 of the Rules of 2012. The amended provision is also

quoted hereunder for ready reference:

Amended provision:

â??9. Procedure for direct recruitment.- The Chief Municipal Officer shall invite applications for direct recruitment through advertisement in the two state level daily newspapers and shall make appointment on the basis of either conducting written examination/ interview/merit/experience /lottery system amongst eligible candidates or on the basis of one or more criteriaâ??s as mentioned above.â??

As per amended provision, apart from criteria for selection existing under Rule 9 (pre-amended), addition of lottery system has been made. The amendment has been challenged by the petitioner on various grounds.

It has been admitted by learned counsel for the parties that, in past, when selections were made by the criteria then existing, litigation came before the court thus selections and appointments could not be completed. This court passed a detailed order to apply lottery system in the selection. It was in the case of Sushila Vs. State of Rajasthan & Ors., SB Civil Writ Petition No.1177/92, decided vide order dated 21st October, 1992. After the judgment aforesaid, appointments were made based on lottery system alone.

This was questioned subsequently in the case of Sarla & Ors. Vs. State of Rajasthan & Ors., SB Civil Writ Petition No.13275/2013, along with connectedÂ matters, decided vide order dated 4th September, 2013. Therein, it was held that selections cannot be made based on lottery because procedure aforesaid has not been provided under the Rules. The subsequent judgment was thus in reference to Rules and by holding that earlier judgment was given in the circumstances then existing and cannot be applied in perpetuation unless rules are amended. The respondents then brought amendment under challenge. The only ground for challenge is that lottery cannot determine the merit of the candidates and may even ignore experience and other relevant aspects. The selections may even be made in ignorance of the physical fitness of candidates, who may not be fit to undertake cleaning work.

The aspect aforesaid has been replied by learned Additional Advocate General. It is submitted that rule does not provide any educational qualification

for the post of Safai Karamchari. In view of the above, even an illiterate person can participate in the selection process. If the Government conducts

written test to make selection, the issue may be raised by those who are not having educational qualification and otherwise not provided under the

Rules thus at no point of time, written examination has been conducted.

Another method for selection can be interview. We have seen that whenever selections are made solely on the basis of interview, issues about

arbitrariness and favouritism are raised. It is apart from the allegation of corruption. Accordingly, even method of interview was not adopted for

selection. The selection can be based on experience also. Therein, the voice of arbitrariness would not exist. The respondents applied the aforesaid

method for appointment in Municipal Corporation, Ajmer but lot of complaints were received questioning the experience certificates issued by the

contractors. The State Government caused an inquiry where most of the experience certificates were found to be fake. The State Government

realised that even the aforesaid mechanism is giving room to corrupt practices.

We need not to assess as to whether selections through lottery system would be proper or otherwise effective so as to eliminate room of arbitrariness,

discrimination, favouritism or corrupt practices. We, however, find that selections through lottery adopted in past were not subjected to litigation thus

remained successful. Accordingly, if respondents have come out with the amendment in the rules to include lottery system as one of the modes for

recruitment, it cannot be said to be without their competence or to suffer from constitutional validity. It has been brought for the object sought to be

achieved. It is not a post which needs selection based on the educational qualification or otherwise but it is the lowest post of Safai Karamchari.

Therein also, rules require physical fitness of the candidates thus a doubt created by learned counsel for petitioner about selection of those candidates

not physically fit cannot be accepted. For that, reference of Rule 10 would be relevant and is quoted hereunder:

10. Physical fitness.- A candidate for direct recruitment to the service must be in good mental and bodily health and free from any physical defect

likely to interfere with the efficient performance of his duties and must produce a

certificate to that effect from a Medical Officer.â??

It would be relevant to even refer Rule 11 where initial appointment is provided on probation. If services are not found satisfactory in the period of

probation, a candidate can be discontinued. Taking into consideration the framework of the rules, we do not find that amendment is made for oblique

motive or to make a room to favour or otherwise the appointment may be given to a person not physically fit.

Learned counsel for petitioner has even made the reference of Valmiki Samaj occupied in the job of cleaning work.Â

It is submitted that members of the Valmiki Samaj are doing cleaning working for last many decades thus it has become their traditional job. By

evolving method of lottery, they may be deprived to get appointment on the post of Safai Karamchari affecting their traditional work. We find

argument to be counterproductive, rather, damaging to the Valmiki Samaj itself. If we accept the plea about traditional work of safai by Valmiki Saja

then it would mean that members should not go for other jobs. It is even when they are entitled for reservation in service being members of Scheduled

Caste. If they would continue to work as Safaiwala then would not explore the possibility of other jobs. It may be higher and better post for their

career. It is otherwise a fact that post of Safai Karamchari cannot be earmarked for one society or caste thus argument in reference to Valmiki Saja

cannot be accepted.

Learned counsel for petitioner has made reference of the judgment of the Karnataka High Court in the case of Shri B.P. Nagaraju Gowda (supra).

Therein, the system of lottery to make appointment has been deprecated. The facts of the aforesaid case are quite distinguishable. It has already been

discussed that the written examination to make selection would not be possible in this case as even illiterate persons are eligible to apply for the post.

In case of written examination, he would be indirectly ousted from selection in violation of the rules. This court has further discussed the outcome of

selection solely based on the interview, that too, in a case where the applications received are not in hundred or thousand but in lac. If the mechanism

of interview is evolved, it would not only take long time but can be questioned by the candidates about its subjectivity.

Taking into consideration facts of this case, we do not find that method of

selection by lottery is illegal. The judgment of the Karnataka High Court in the case of Shri B.P. Nagaraju Gowda (supra) does not apply to the facts of this case.

Learned counsel for petitioner has raised question about fairness in the system of lottery. It has been submitted that manipulations can be made even

in lottery. We have given our serious consideration on the aforesaid issue thus called for the record to find out as to how lottery has been drawn. The

record shows that a software was prepared by engaging an independent firm. The aforesaid software was then sent for audit to find out as to whether

it is full-proof or not. After getting audit report, further process was undertaken by involving the Information and Technology Department, State of

Rajasthan. Thus in the process of lottery, the Municipal Councils were not directly involved, rather, they got the software prepared from an

independent firm followed by an audit report and lastly, it involved an independent Department of State of Rajasthan namely, Information and

Technology. The petitioner has not brought on record any fact which may question the independence of the system in drawing lottery thus the issue

about fairness in drawing lottery system remains for the sake of it.

Learned counsel for petitioner has even made reference of the previous judgment of this court in the case of Sushila (supra), whereby, an order was

passed for making selection on the basis of lottery. The judgment aforesaid was given when fairness in selection by other modes was questioned. To

overcome with the difficulty and to have fairness in the selection, the direction to hold selection by evolving method of lottery was given. The

respondents, thereafter, adopted the said method for many years. It was stopped when a writ petition was filed to question the mode of selection by

lottery. This court caused interference for the reason that rules were not providing mode of selection by lottery. The respondents thus made an

amendment to continue old system, as was directed earlier by this court in the case of Sushila (supra). In view of the above, the judgment holding

recruitment through lottery to be illegal was in given facts and circumstances. At that time, the rule was not providing mode of recruitment by way of

lottery.

In view of the discussion made above, we do not find any ground to cause interference in the amendment made by Notification impugned herein. The

writ petition is thus dismissed.Â