

(2020) 01 RAJ CK 0010
In the Rajasthan High Court
Case No : Civil Writ Petition No. 7092 Of 2019

Akshay Kumar Khatri

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 15-01-2020

Acts Referred:

Rajasthan Municipalities (Safai Employees Service) Rules, 2012 — Rule 9A
Constitution Of India, 1950 — Article 14

Citation : (2020) 01 RAJ CK 0010

Hon'ble Judges : Dinesh Mehta, J

Bench : Single Bench

Advocate : Kuldeep Mathur, Kailash Choudhary, Manish Vyas

Final Decision : Allowed

Judgement

1. By way of present writ petition, the petitioner has challenged rejection of his candidature for appointment on the post of Constable (Driver), as his driving license was issued within one year of the date of advertisement.
2. Precisely stated, the facts pertinent for the present purposes are that the respondents issued a combined advertisement dated 25.05.2018 for recruitment of Constable and Constable (Driver), which included 16 posts of Constable (Driver) for the District - Chittorgarh.
3. The petitioner, having a valid driving license, issued on 14.10.2017, vied for the post of Constable (Driver), pursuant to the advertisement aforesaid.
4. The Selection process involved two stages, (i) written examination and (ii) physical efficiency test. The petitioner having cleared the written examination, called to take part in the physical efficiency test and was declared successful.
5. However, after documents verification, petitioner's name was not shown in the select list, which was published on 19.09.2018.
6. On inquiry being made, the petitioner was informed that his candidature was

rejected in the face of condition No.8(iv) of the advertisement, which reads thus :-

"(iv) कॉन्स्टेबल ड्राइवर पद की पात्रता हेतु आवेदक के पास विज्ञप्ति जारी होने की दिनांक से एक वर्ष पूर्व का बना हुआ स्थाई ड्राइविंग लाइसेंस (LMV / HMT) होना आवश्यक है।"

7. Challenging the action of the respondents in rejecting petitioner's candidature, learned counsel for the petitioner argued that condition No.8(iv) of the advertisement is not only arbitrary and violative of fundamental rights guaranteed by Article 14 of the Constitution of India, but also contrary to the standing order No.12/2018, dated 18.05.2018, issued by the Director General of Police (Headquarter).

8. While inviting Court's attention towards terms and conditions of the advertisement aforesaid, he submitted that it is clearly provided that in case of any dispute, stipulation contained in the standing order dated 18.05.2018 would be final. He thereafter navigated the Court through the entire standing order to point out that the same does not contain any provision relating to the date of issuance of license. He argued that since the standing order is silent in this regard, the petitioner cannot be denied appointment on the basis of condition No.8(iv) of the advertisement.

9. Mr. Kailash Choudhary, learned counsel appearing for the respondent-State submitted that true it is, that the standing order dated 18.05.2018, does not debar a person on the basis of date of issuance of his driving license; but such condition was introduced in the advertisement with a view to ensure that no candidate is admitted to the employment, unless he is having at least a year's experience to his credit.

10. He further argued that notwithstanding the offending condition, the petitioner not only filled up his form, but also participated in the process and faced rejection of his candidature. Even after rejection (declaration of result on 19.09.2018), he waited for good six months before coming to this Court. With these submissions, defence of acquiescence was taken and it was argued that petitioner cannot challenge his rejection at such belated stage.

11. Having heard learned counsel for the parties and upon perusal of the material available on record, this Court is of the considered view that the respondents have non-suited the petitioner on absolutely flimsy and unsustainable count.

12. Concededly, condition No.8(iv) of the subject advertisement contains a condition that a candidate applying for the post of Constable (Driver) must have a valid driving license issued at least a year before the date of the advertisement, but such requirement or stipulation is neither contained in the standing order dated 18.05.2018 nor in the Rules.

13. A condition in the advertisement, which is dehors standing order or statutory

Rules governing recruitment, cannot be countenanced, more particularly when it restricts the right of employment and impinges upon eligibility.

14. That apart, impugned condition is per se arbitrary and violative of the Article 14 of the Constitution of India, inasmuch as, it has no nexus with the object sought to be achieved. Candidature cannot be rejected on fortuitous circumstances of issuance of license. There is no difference between the petitioner and other candidate whose license was issued prior to 24.05.2017. Obtaining driving license is like obtaining a qualifying degree. A candidate's eligibility can not be decided on the basis of date of his degree.

15. Mr. Choudhary's argument, in a bid to justify the impugned condition, that the respondents wanted to ensure at least a year's experience, does not stand to logic, more particularly, when the requirement or condition of experience does not exist in the standing order or in the advertisement. That apart, mere possession of license does not ensure experience as a driver, it is at least a qualification to drive.

16. So far as Mr. Choudhary's contention that petitioner having participated in the process with such condition, cannot challenge his rejection, is concerned, this Court is of the view that since, the impugned condition itself is contrary to the standing order dated 18.05.2018, so also against the fundamental rights of getting employment, besides being arbitrary and violative of Article 14 of the Constitution of India, the petitioner can maintain challenge to such condition, despite having participated in the process.

17. In this regard, the observations made by the Division Bench of this Court in its judgment dated 02.04.2019 in bunch of writ petitions led by D.B. Civil Writ Petition No.16572/2018; Anita & Ors. Vs. State of Rajasthan & Ors. are relevant, which are reproduced hereunder:-

"(29) We are also not much impressed with the stand of the State that the petitioners being aware of the amendment in the Rules introduced vide notification dated 11.04.2018 and being cognizant of the impugned condition in the advertisement, are bound by the terms of the advertisement and are precluded from bringing a challenge to the rules and terms of the advertisement on the principle of estoppel.

(30) While dilating upon such contention of learned Addl. Advocate General, we cannot lose sight of the fact that the petitioners before us hail from the lowest strata of the Society and perhaps for this reason the Rules do not prescribe any educational qualification for Safai Employees. Apart from the above, since the petitioners have challenged the impugned condition and the corresponding rule to be violative of their fundamental rights, guaranteed by the Constitution, ingrained in Part III of the Constitution, we do not deem it appropriate to non-suit the petitioners, simply because they have approached this Court, after having taken part in the selection process.

(31) As far as judgments (noticed in para No.15) cited in support of the argument that the petitioners having participated in the selection process cannot turn around and lay challenge to the eligibility condition are concerned, it is to be noted that facts in the cases aforesaid were that the petitioners therein had challenged the eligibility condition or selection criterion to be illegal, whereas in the present case, the petitioners have challenged not only the condition in the advertisement but also the very statute prescribing the disqualification concerned, to be ultra-vires the Act and violative of their fundamental rights. The judgments relied upon by Ms. Borana are, therefore, clearly distinguishable on facts and thus do not deter us from examining the questions posed before us.

(32) If an enactment or law is alleged to be violative of fundamental rights of a candidate and it hits at the root, the petitioners and like candidates cannot be denied audience, merely because they have taken their chance and participated in the process of selection. The indulgence to the petitioners is warranted more because of the fact that as per the Rules of 2012, the selection is based on occurrence of a fortuitous event i.e. "lottery". The petitioners or for that matter any other candidate would normally not venture into challenging the condition or disqualification by bringing appropriate remedy until and unless, he or she is assured of the selection.

(33) That apart, not only the petitioners' application forms were accepted, even appointment orders were issued to them. Hence, there was no occasion for them to lay challenge to the condition of the advertisement or the provision contained in Rule 9A of the Rules of 2012, till their selection stood cancelled.

(34) The petitioners have approached this Court well within a month of receiving the impugned order dated 24.09.2018, vide which their appointment/ selection had been cancelled or questioned.

(35) This being the position, we are of the considered opinion that it would not be just and proper to non-suit the petitioners, merely because they had appeared in the process of selection with the inherent ineligibility and failed to approach the Court prior to participating in the process of selection."

18. As a result of discussion aforesaid, the present writ petition is allowed and the impugned condition No.8(iv) of the advertisement dated 25.05.2018 is quashed. The respondents are directed to give appointment and posting to the petitioner, if he is otherwise eligible.

19. Needful be done within a period of eight weeks from today.

20. Stay petition also stands disposed of.