

(2018) 07 RAJ CK 0096
In the Rajasthan High Court
Case No : Civil Writs No. 13491 of 2018

Anita Devi @APPELLANT@Hash State of Rajasthan & Ors.

Date of Decision : 03-07-2018

Acts Referred:

Constitution of India, 1950 — Article 16

Citation : (2018) 07 RAJ CK 0096

Hon'ble Judges : VEERENDR SINGH SIRADHANA, J

Bench : Single Bench

Advocate : Sudesh Kasana

Final Decision : Disposed Off

Judgement

Learned counsel for the petitioner, at the very outset, submits that the controversy raised in the instant writ application is no more res-integra in view

of the adjudication by a Coordinate Bench of this Court in S.B. Civil Writ Petition Number 8899/2012:

Ms. Jamna Rajpurohit v. State of Rajasthan & Ors., decided on 29th August, 2012, which has also been confirmed by the Division Bench of this Court

declining intra-court appeal (D.B. Special Appeal (Writ) No.82/2013: State of Rajasthan & Ors. v. Ms. Jamna Rajpurohit [2013 (4) CDR 2275].

A reference has also been made to the order dated 17th May, 2016, passed by a Coordinate Bench of this Court in the case of Kamla Devi v. The

Department of Panchayati Raj & Anr.: S.B. Civil Writ Petition No.16540/2013, observing thus:

Indisputably, the petitioner had applied for the post of Teacher Grade-III as an OBC woman, but before the selection could be finalised, her

husband expired and she had promptly preferred application for change of her category. The application of the petitioner had been preferred before

finalisation of the selection. The case of the petitioner is squarely covered by the judgment of the coordinate Bench of this Court in the case of Ms.

Jamna Rajpurohit vs. State of Rajasthan & Ors. (supra) wherein the petitioner had applied for the change of category from general woman to widow

category and the respondents had objected thereto on the ground that such a change could not be permitted after the receipt of the application.

However, the Coordinate Bench of this Court allowed the writ petition and directed the respondents to consider candidature of the petitioner for the

post of Teacher Grade-III in the widow category. The relevant extract of the judgment is reproduced hereunder:

“It is true that the petitioner applied for consideration of her candidature for recruitment on the post of Teacher Grade-III (Second Level) under the

General category because on the date on which she filled up her form her husband was alive and, later on, admission card was issued to her for

appearing in the written-examination on 02.06.2012. Unfortunately, her husband died on 18.06.2012, therefore, immediately the petitioner preferred

representation to the respondents for changing her category from General to Widow; but, the prayer of the petitioner was rejected ostensibly in view

of clause 19 (1) of the advertisement.

It is not in dispute that the petitioner applied under the General category but it is also correct that before declaration of result her husband died on

18.06.2012 which is a natural calamity. Therefore, obviously the fact of death of petitioner's husband was to be considered by the authorities of the

welfare State in view of the fact that women fall under the weaker section of the society as per Article 16 of the Constitution of India. The petitioner

is only asking for considering her candidature for appointment as Teacher Grade-III (Second Level) under the “Widow” category as per her merit

in the written-examination. In my opinion, the decision has not been taken by the authority concerned objectively because the respondents

themselves are changing category at their own for the candidates belonging to SC/ST/OBC to General category if they secure marks to compete as

per their merit with General category and considering as per their merit with General category and considering those reserve category candidates

under the General category; meaning thereby, the candidates belonging to SC/ST/OBC category are getting benefit of change of category from

reserve class to General if found meritorious, then, same analogy can be put into operation for young widow also.

Further, it is important to take judicial note of the fact that unlike other reserve categories the status falling under the "Widow" category purely

rests upon happening of an event in the course of life of a woman and no sooner husband of a woman dies she is rendered widow for all purposes

including her consideration for employment purposes under the widow category and denial shall rather render the proceedings vitiated and violative of

Constitutional provisions. Therefore, the concerned authority was under obligation to exercise its power for granting relief to the petitioner. However,

it has not been done in this case.

In the facts and circumstances of this case, I deem it appropriate to direct the respondents to consider the candidature of the petitioner under the

category of widow for the reason that before declaration of the result after appearing in the examination the husband of the petitioner died on

18.06.2012.

In view of the above discussion, this writ petition is allowed. Impugned order Annex.-9 dated 08.08.2012 passed by the Principal Secretary,

Panchayati Raj & Rural Department, Government of Rajasthan, Jaipur, so also, communication Annex.-10 dated 24.08.2012 passed by the Zila

Parishad, Pali are quashed and set aside. The respondents are directed to consider the 4 candidature of the petitioner for appointment on the post of

Teacher Grade-III (Second Level) in Social Studies subject as per her merit under the "widow" category.

Appeal was preferred by the State against this judgment. However, the Division Bench of this Court in D.B. Special Appeal (Writ) No.82/2013, State

of Rajasthan & Ors. vs. Ms. Jamna Rajpurohit [2013 (4) CDR 2275] dismissed the appeal on 30.08.2013. The operative part of this judgment is

reproduced hereunder:

"The appellants have repeatedly harped on the stipulations of the nature as contained in clause 19 (1) of the advertisement dated 27.02.2012 which

reads as under:-

1½ vkosnuk i= izLrwr djus dh vfZUre fnukad 2-04-2012 jkf= cts rd vkuykbZu vkosnu i= Lohdkj fd;s tk;saxsaA rRiâ?pk r mÃœ ocs lkbZV ij

miyC/k vkuykbZu fILVe Lor% gh cUn gks tkosxkA vkuykbZu vkosnu dh leLr

izfof""V;ka i.w kZ ,oa lgh ugha gksus ij vkosnu i= vLohd`r dj fn;k

tkosxkA vkuykbZu vkosnu i= esa nh xbZ tkudkj ds fy, ftEesnkjh vkons u dh gkxs hA vkons u i= esa dh xbZ izfof""V;ksa esa vfUre fnukda ds ckn fdlh

Hkh izdkj ds ifjorZu dh vuqefr ugha nh tk;xs h vkSj uk gh bl ckcr izLrqr fdlh izkFkZuk i= ij fopkj fd;k tkosxkAA?

Such a stipulation appears to be logical to some extent and the appellants appear to be right in their assertion that in an ordinary case, the particulars

stated in the application cannot be permitted to be altered, lest it becomes an unending process. However, the appellants, representing a welfare State,

appear totally perfunctory in their approach when suggesting that even the categorization of a married woman to a widow upon happening of an

unfortunate event, i.e., demise of her husband after filing of the application, could also be considered hit by the stipulation aforesaid. The stipulation as

occurring in clause 19(1), obviously, operates in the case where the candidate has filled up the application form stating his/her category and after the

last date, seeks change of the category or any other particular stated in the application. The said stipulation directly relates to an attempt by the

candidate to seek alteration of the particulars in the application form on his/her own volition. The prayer for such nature alteration can, of course, be

denied under the said 5 stipulation but then, the same cannot be considered operating in the case of present nature where the woman candidate is

neither seeking alteration of any particulars stated in the application nor seeking change of category of her own accord or on account of any of her

mistake. The prayer herein had been for consideration of the case of the individual writ-petitioner in widow category because of an unfortunate event,

and because of a peculiar reason, that she was rendered a widow after filling up the application form upon demise of her husband.

It remains a matter of hard reality and of fact that each of the writ-petitioners was a married woman with her husband very much alive at the time of

her filling up the application form. They had submitted the form and filled in the category as applicable. It had been an unfortunate aspect that after

filling up of the forms, they lost their respective husbands. The cases of the writ-petitioners could not have been considered as that of seeking any

â??permissionâ?? to change the category. In fact, their category got changed for vis major over which, they had no control; rather they would have

never wished it to happen.

Vis major i.e., act of God, refers to an occurrence taking place exclusively due to natural causes, and being of external nature, and further being the

one which cannot be anticipated or provided against. Sudden demise of a person remains essentially a matter beyond the control and anticipation of

human beings. Such an unfortunate event could nevertheless happen, as has happened in the present cases. The appellants cannot be considered

justified in suggesting that such an unfortunate event can also be ignored by them with a perfunctory reference to the stipulation like the one referred

above. It remains trite that the law does not envisage nor countenance an absurdity or impossibility. The propositions of the appellants, running against

the very fundamentals of law, are required to be rejected. We are further of the view that when the appellants have provided for a special reservation

to a category of persons requiring help and support of the State i.e., the women suffering widowhood, any provision in that relation ought to be applied

with a practical approach and with due respect to the ground realities. The very object behind reservation for widow category would be defeated, if

not rendered illusory, if the peculiar facts and circumstances of the case of a woman suffering widowhood after filling up of the application form but

before completion of recruitment process, are ignored and she is not considered for appointment in widow category.

We are at one that the observations in the orders impugned that in these 6 cases, the concerned authorities were rather under an obligation to consider

the candidature of the writpetitioners in widow category.

In view of the above, these appeals stand dismissed summarily, subject, of course, to the observations foregoing.â??

Learned counsel for the petitioner has contended that the judgment of the Division Bench had attained finality as no appeal was preferred thereagainst

by the State.

Therefore, I am of the considered view that the case of the petitioner is squarely covered by the judgment of the Division Bench of this Court in the

case of State of Rajasthan & Ors. vs. M.s Jamna Rajpurohit (supra).

Consequently, the petition is allowed and the respondents are directed to consider the case of the petitioner for appointment as Teacher Grade-III in

the OBC widow category and offer her appointment if she is, otherwise, eligible

for the post. This exercise shall be completed by the respondents within a period of three months from the date of receipt of certified copy of this order.â??

It is further contended that in view of the factual matrix aforesaid and the controversy already set at rest; for the present; the petitioner would be satisfied, if the State-respondents are directed to consider and decide the representation of the petitioner, within a time frame, in the backdrop of the law declared in the case of Ms. Jamna Rajpurohit (supra), which she is ready and willing to address within two weeks hereinafter.

In view of the limited prayer addressed; the instant writ proceedings are closed with a direction to the petitioner to address a comprehensive representation ventilating the grievances raised in the writ application.

In case, a representation is so addressed within the aforesaid period, the State-respondents are directed to consider and decide the same by a reasoned and speaking order as expeditiously as possible in accordance with law. However, in no case later than ten weeks from the date of receipt of the representation along with a certified copy of this order.

With the observations and directions, as indicated above, the writ application stands disposed off.