

(2005) 05 RAJ CK 0009

In the Rajasthan High Court

Case No : Civil Writ Petition No. 7306 of 2004

Anita Kumari

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 25-05-2005

Acts Referred:

Constitution of India, 1950 — Article 14, 309
Rajasthan Educational Service (Collegiate Branch) Rules, 1971 — Rule 10
Rajasthan Educational Service Rules, 1970 — Rule 10
Rajasthan Medical and Health Service (Collegiate Branch) Rules, 1962 — Rule 11

Citation : (2005) 4 RLW 2350

Hon'ble Judges : S.K. Keshote, J

Bench : Single Bench

Advocate : S.S. Jat, for Mohd. Rafiq, A.A.G., J.K. Agarwal, A.G.A. and B.L. Jaiman, Secretary to the Government, Education Department, for the Respondent

Final Decision : Allowed

Judgement

S.K. Keshote, J.—These two letter petitions are before the court for final disposal.

2. Petitioners, namely, Anita Kumari (In Writ Petition No. 7306/04) and Ishwar Jakhar & Pradeep Mayla (In Writ Petition No. 7308/04), made the grievance in the matter that prescribing of minimum age of 24 years for appointment on the post 01 Lecturer in school education, is not justified. The petitioners sent the letters to the court and the same are treated as writ petitions on 11.10.2004. Notices were issued to the respondents, returnable on 8.11.2004.

3. On 3.12.2004 Shri J.K. Agarwal, Additional Government Advocate, put appearance and on his request time was granted to file reply and the matters were adjourned to 14.1.2005. The matters came up for hearing in the court on 17.1.2005. Though more than one month and fourteen days time was available to the respondent State but reply to the writ petitions was not filed.

4. On 7.1.2005 again the learned Additional Government Advocate made a

request for grant of further two weeks time to file reply to the writ petitions.

5. The Rajasthan Public Service Commission was not considered necessary party to the writ petitions and on that date its name was deleted from the array of the respondents from both the writ petitions.

6. On 17.1.2005, the learned Additional Government Advocate, Shri J.K. Agarwal, further prayed for grant of two weeks time to file reply to the writ petitions but looking to the fact that the State of Rajasthan and its Officers take litigation pending against them leisurely, the court granted them four weeks time for this purpose.

7. On 17.2.2005 the matter came up for hearing. Though four weeks time was granted to the State to file reply to the writ petitions, it failed to file the same and the Additional Government Advocate, appearing on its behalf, as usual prayed for grant of two weeks time to file reply and the court, taking a lenient view, granted the same.

8. On 22.3.2005 the matters were placed on the Board but could not reach and came up for hearing on the Board on 18.5.2005 for hearing. In between 22.3.2005 and 18.5.2005 the period of one month and twenty-six days was available with the respondent State, had it really been desirous of filing reply to the writ petitions but on its behalf reply to the writ petitions has not been filed. On 18.5.2005 Shri J.K. Agarwal, Additional Government Advocate, put appearance and sought adjournment on the ground that his name has not been shown on the Board; the court granted the prayer made and fixed the matter on 20.5.2005. The matters came up for hearing on 23.5.2005 and on that date also the name of Shri J.K. Agarwal was not shown and hence the matters were adjourned to 25.5.2005.

9. The State has not chosen to file reply to the writ petitions for the reasons best known to it. We appreciate Shri B.L. Jaiman, the Secretary to the Government, Education Department, Government of Rajasthan, Jaipur, present in the court, who gave out that the amendment in the Rajasthan Education Service Rules, 1970 (hereinafter shall be referred to as "the Rule, 1970") in order to reduce the minimum age of 24 years prescribed for appointment to the post of Lecturer in School Education, to 21 years, is under consideration of the Government of Rajasthan. Be that as it may be, the amendment has not been brought so far, in the Rules, 1970.

10. The Rajasthan Public Service Commission, Ajmer, (for short, "the RPSC") vide its advertisement No. 3/2004-2005, dated 18.8.2004, invited application for selection of the candidates on the post of Lecturer in School Education, in the said advertisement it is notified that on 1.7.2005 the minimum age of candidates should not less than 24 years.

11. The petitioner, in Writ Petition No. 7306/2004, stated that vide advertisement No. 02/2004-2005 the RPSC invited the application from eligible candidates for

selection on the post of Senior Teacher in Sanskrit Department, Government of Rajasthan, and for that post the prescribed minimum age is of 18 years as on 1.7.2005; the petitioners submitted that the pay scale of the post of Senior Teacher in Sanskrit Education and that of Lecturer in School Education is Rs. 6500-10500. The petitioners have also referred to the fact that the minimum age prescribed for selection on the post of Lecturer in College Education, is of 21 years. They have also brought certain facts on the record that in Central School Organization, New Delhi, Navodya Vidyalaya Samiti, New Delhi, Delhi Subordinate Services Selection Board, New Delhi, Uttaranchal Public Service Commission, Haridwar, UP Public Service Commission, Allahabad and UP Secondary Education Service Selection Board, Allahabad, the minimum age prescribed for selection on the post of Lecturer in School Education or PGT Teachers in Education carrying the pay scale of Rs. 6500-10500, is of 21 years. The petitioners further made reference to the facts that for the Rajasthan Administrative Services or the Indian Administrative Services the minimum age prescribed for selection is of 21 years. They have also made reference to the CDS, NDA, Assistant Commandant etc. where the minimum age prescribed for selection is of 21 years.

12. Petitioner Anita Kumari (In Writ Petition NO. 7306/04) has attained the age of twenty-one-year-and-six-month as on 21.7.2005; she possessed the qualification of M.A. (hindi) and B.Ed, prescribed for the post of Lecturer in School Education but due to the minimum age of 24 years as on 1.7.2005 prescribed for that post, she could not apply for the same.

13. The petitioners submitted that by prescribing the minimum age of 24 years for the post of Lecturer in School Education the respondent State has not only barred them to apply for the post but thousands of similarly situated eligible candidates have been deprived of appearing in the selection.

14. On the record the reply of the respondent No. 2, the RPSC, to the writ petition, is there. Therein the RPSC has given out that it is a selecting body and has published the age eligibility in the advertisement as prescribed under the relevant service Rules. In para No. 2 thereof it has submitted that this Court as well as the Apex Court have decided that the minimum and maximum age for a particular service can be prescribed by the State Government in the Rules look in to the nature of the job. It has next been stated that the Government of Rajasthan has not amended the Rules, 1970, which prescribe the minimum age of 24 years for the post of Lecturers in School Education and, as such, it has rightly mentioned the minimum age of 24 years in the advertisement.

15. There cannot be any quarrel with the proposition that the State has authority to prescribe the minimum and maximum age for appointment to a particular public service in the service rules framed under Article 309 of the Constitution of India, but the question is whether prescribing the minimum age of 24 years for appointment on the post of Lecturer in School Education under the Rules, 1970, fulfils that criteria and the respondent State is justified in prescription thereof in

the Rules, 1970.

16. At the very outset it is pertinent to mention here that the respondent State has not filed reply to the writ petition and it has not given out any justification, reason or cause to justify prescription of minimum age of 24 years for the Lecturer in School Education, under the Rule, 1970. Shri B.L. Jaiman, the Secretary to the Government, Education Department, Jaipur, Made a statement in the court that the State is seriously considering matter of amendment in the Rules, 1970 with regard to the minimum age eligibility prescribed for the post of Lecturer in School Education. From this statement of the Secretary to the Government, Education Department, it follows that the prescription of the minimum age eligibility of 24 years for the post of Lecturer in School Education is not justified.

17. The learned Additional Advocate General does not dispute that almost in all the subordinate Services in the State the minimum age eligibility for appointment is 21 years. It is also not in dispute that for the administrative services in the Center or the State the minimum age eligibility is 21 years.

18. The recruitment to the posts and other service conditions of service of persons appointed to the Rajasthan Education Service (Collegiate Branch) is governed by the Rajasthan Education Service (Collegiate Branch) Rules, 1971 (for short, "the Rules, 1971"). Under the Rules, 1971 the appointments are to be made on the post of Lecturer in College Education 100% by direct recruitment. Rule 10 of the Rules, 1971 provides that a candidate for direct recruitment to the post enumerated in Group (c) (ordinary time sale posts) of the Schedule must have attained the age of 21 years and must not have attained the age of 30 years on the first day of July of the year in which the applications are invited by the Commission (RPSC). The minimum qualification prescribed for direct recruitment under the Rule, 1971 for the post of Lecturer is as laid down from time to time by the University of Rajasthan or Board of Technical Education in respect of Lecturer in Non-Engineering Subjects in Polytechnics only.

19. The reference may have to another set of Rules, namely the Rajasthan Medical Service (Collegiate Branch) Rules, 1962 (for short, "the Rules, 1962"). Rules 11 of the Rules, 1962 provides that a candidate for direct recruitment to a Junior post enumerated in Schedule I and II must not have attained the age of 35 years on the first day of January following the last date fixed for receipt of application. The junior post in Schedule-I the post of Lecturer to be filled in 100% by direct recruitment. The junior post to Schedule II of the Rules, 1962, inter alia, are

(i) Clinical Biochemist/Biochemist,

(ii) Chemist,

(iii) Pharmacist,

(iv) Lecturer in Health Education and Family Planning (Non-Medical),

(v) Lecturer in Statistics and Demography,

(vi) Physical Training Instructor and

(vii) Lady Physical Training Instructor.

20. All these post also are to be filled in 100% by direct recruitment as per the Rules, 1962.

21. The academic qualification prescribed for appointment on the post of Lecturer in Health Education Family Planning (Non- Medical) is Master's Degree of a recognized University in any one of the following subjects:-

(a) Psychology,

(b) Sociology,

(c) Social Anthropology,

(d) Social Work

(e) Nursing

(f) Education

OR Master's degree in Public Health Majoring in Public Health Education,

OR Diploma in Health Education,

AND Five years experience in the field of Health Education/Family Planning/Community-Development,

AND on the post Lecturer in Statistics and Demography the minimum educational qualification is, at least second class Master's Degree in Demography with basis Degree in Statistics OR Mathematics with Statistics of a University established by Law in India OR At least second class Master's Degree in Statistics OR Mathematics with Statistics with training in Demography at the Diploma or Certificate level in IIPS, ISI or any other recognized Institute in India or outside India & Three Years experience in teaching and Research in responsible capacity in a University Department or a Research Center of repute.

22. The minimum qualification prescribed for appointment to the post of Clinical Biochemist/Biochemist is M.Sc. (Medical) in Biochemistry, for the post of Chemist is M.Sc. (Chemistry) II division or B. Pharma II division from a University established by Law in India & Research experience of two years in Pharmacy/Biochemistry or Pharmacology and to the post of Pharmacist is M.Sc. (Chemistry) II division or B. Pharma in II division from a University established by Law in India & Research experience of two years in Pharmacy/Biochemistry or Pharmacology.

23. Under the Rules, 1970 the academic qualification prescribed for the post of Lecturer in School Education is Second Class Post Graduate in the relevant

subject with Degree or Diploma in Education Recognized by Government OR Post Graduate in the relevant subject with 5 years" experience of teaching in a recognized institution of above the standard of secondary School.

24. A comparison of the qualifications prescribed under the Rules, 1962, Rules, 1970 and Rules, 1971 for the post of Lecturer in Health Education and Family Planning (Non-Medical), Lecturer in College Education and Lecturer in School Education, respectively, gives out that amongst them Post Graduation in relevant subject is common.

25. The post of Senior Teacher in Sanskrit Education, Government of Rajasthan, is a post equivalent to the post of Lecturer in School Education in the Rules, 1971, which carries pay scale equivalent to the pay scale of Lecturer in School Education i.e. Rs. 6500-10500/-. For the recruitment to the post of Senior Teacher in Sanskrit Education the minimum age eligibility prescribed is 21 years.

26. The minimum age eligibility prescribed in all the services either State or subordinate or the Center, is 21 years.

27. In *John Vallamattom and Another Vs. Union of India (UOI)*, their Lordships of the Hon"ble Supreme Court held that the equality clause enshrined in Article 14 of the constitution of India is of wide import. The restriction imposed by reason of a statute, however, can be upheld in the event it is held that the person to whom the same applies, form a separate and distinct class and such classification is a reasonable one based on intelligible differentia having nexus with the object sought to be achieved.

28. In *State of Haryana and Another Vs. Jai Singh*, , their Lordships of the Hon"ble Supreme Court restated the test for valid classification and held that while considering the challenge based on Article 14 of the Constitution of India as to the arbitrariness in the impugned classification, the court has to examine whether the impugned classification satisfied certain constitutional mandates or not. They are (i) that the classification must be founded on an intelligible differentia, which distinguishes persons or things that are ground together from others left out of the group; (ii) that the differentia must have a rational relationship with the objects sought to be achieved.

29. The RPSC may be correct in its approach that for two separate services the Government of Rajasthan, looking to the object and purpose sought to be achieved, may prescribe different minimum age eligibility. The principle is almost settled that there may not be perfect equality in any matter on absolute scientific basis and there may be certain inequalities here and there but the classification made is correct and serve a particular purpose the same may not be judicially interfered with. The State of Rajasthan has to provide necessary factual data to justify the prescription of minimum age eligibility and making the Lecturers in School Education solitary service prescribing 24 years as the minimum age eligibility in comparison to all other services including the teaching posts in the higher education, Sanskrit education, medical education (non-clinical subjects) in

regard to the minimum age eligibility.

30. Looking to the nature of the duties to be discharged and the object to be fulfilled the post of Lecturer in School Education, Lecturer in College Education, Lecturer in Medical Colleges (Non-clinical subjects), Senior Teacher in Sanskrit Education, the Teachers in the Physical Training Centers or the B.Ed. Colleges, it is not gainsay that the work is of teaching, may be of different subjects. The academic eligibility in almost all the aforesaid services is Post Graduation in the subject concerned.

31. That apart in Indian Administrative Services, Indian Police Services, Indian Accounts Services and other allied services and the Rajasthan Administrative Services, Rajasthan Police Services, Rajasthan Accounts Services and other allied services, where the post carry much higher pay scales than that of the Lecturer in School Education, the minimum age eligibility is 21 years. Thus, there is apparent discrimination made by the respondent State by prescribing the minimum age eligibility of 24 years under the Rules, 1971.

32. It is to be stated at the cost of repetition that so far as the job is concerned it is a teaching to the students, may be in different disciplines and the classification made by the respondent State re the age eligibility for appointment/selection on the teaching post of Lecturer in School Education, College Education, Medical Education (non-clinical subject), Teachers Training Colleges or the Physical Training Centers, do not stand to the test for valid classification and the classification is not founded on an intelligible differentia which distinguishes persons or things that are grouped together from other left out of the group and this differentia do not have rational relationship with the object sought to be achieved. This the Rule 10 of the Rules, 1970 to the extent it provides the minimum age eligibility of 24 years on the first day of July next following the last date fixed for receipt of applications for appointment on the post of Lecturer in School Education suffers from vice of hostile discrimination. It is, thus, violative of Article 14 of the Constitution of India and none other than the Secretary to the Government, Education Department, Government of Rajasthan, Jaipur, who is personally present in the Court, has in substance accepted the same. As a result of the aforesaid discussion I am satisfied that this part of the Rule, which makes discrimination as regards to the minimum age eligibility in almost all identical services, cannot be allowed to stand on the statute.

33. In the result both the writ petitions succeed and the same are allowed. The Rule 10 of the Rules, 1970, to the extent it prescribes minimum age eligible of 24 years, is declared ultra vires of Article 14 of the Constitution of India.

34. The RPSC has already invited applications for the post of Lecturer in School Education prescribing therein the minimum age eligibility of 24 years as on 1.7.2005, as a result thereof thousands of candidates, though otherwise having been possessed all the eligibility, have been debarred from applying for the post only on the ground that they do not fulfill the minimum age eligibility criteria.

The RPSC has to provide them opportunity by issuing a corrigendum to the advertisement No. 3/2004-2004, dated 18.8.2004. The applications already received in response to the advertisement No. 3/2004-2005, dated 18.8.2004, shall be valid applications. In response to this corrigendum only the candidates, who were 21 years of age as on 1.7.2005 shall be eligible to apply for the post of Lecturer in School Education. It is made clear that the candidates, who were though eligible i.e. having the minimum age eligibility of 24 years as on 1.7.2005 but did not apply, shall not have any right to apply therefore. After completion on the exercise aforesaid, the RPSC may proceed with the selection for the post of Lecturer in School Education in according with the Rules, 1971 and it is expected to finalize the same say within six months from the date of the receipt of the copy of this order.

35. Both these petitions are the letter petitions and thus there shall be no order as to costs.

36. A copy of this order be sent forthwith to the Secretary to the Government, Education Department, Government of Rajasthan, Jaipur and the Secretary, Rajasthan Public Service Commission Ajmer, for compliance.