

(2018) 09 RAJ CK 0129
In the Rajasthan High Court
Case No : Civil Writs No. 19483 of 2018

Anupama Choudhary @APPELLANT@Hash State of Rajasthan & Ors

Date of Decision : 19-09-2018

Acts Referred:

Constitution of India, 1950 — Article 15, 15(3), 16, 16(1), 16(2)

Citation : (2018) 09 RAJ CK 0129

Hon'ble Judges : Inderjeet Singh, J

Bench : Single Bench

Advocate : Jai Singh Rathore, Syed Saadat Ali, Shailesh Prakash Sharma

Final Decision : Dismissed

Judgement

This writ petition has been filed by the petitioner with the following prayer:-

â?? It is, therefore, most humbly prayed that your Lordships may graciously be pleased to accept and allow this writ petition and further call for the

entire record of the case and examine the same and;

I. By way of an appropriate writ, order or direction in the nature thereof, thereby, the respondents may kindly be directed that at the time of final result

of the technical helper under above

Advertisement 2018-19, the benefit of 30% horizontal women reservation be provided to the petitioner.

ii. Any other appropriate order or direction which this Honâ??ble Court deems fit and proper in favour of the Petitioner may kindly be passed.â??

Counsel for the petitioner submits that the advertisement was issued by the respondents for filling up the post of Technical Helpers but not provided

benefit of 30% reservation to the women candidates.

Counsel for the respondents submits that against the same advertisement other candidate Gunesh Kumari filed S.B. Civil Writ Petition No. 14344/2018

which was dismissed by the coordinate bench of this court vide order dated 26.07.2018, which reads as under:-

30% horizontal reservation to women candidates has been excluded in the recruitment process involved herein, initiated vide advertisement No.

JVVNL/Karmik/Rectt/01/2018-19; while inviting on-line applications from the eligible candidates; is the cause for institution of the instant writ application.

Briefly, the essential skeletal material facts are; that the candidature of the petitioner has been declined by the respondent-Jaipur Vidyut Vitran Nigam

Limited, Jaipur (for short, JVVNL), in response to advertisement No. JVVNL/Karmik/Rectt/01/2018-19, wherein on-line applications from

eligible candidates were invited for appointment to the post of Technical Helper w.e.f. 2nd July, 2018, to 23rd July, 2018. Last date was later on

extended 31st July, 2018. It is pleaded case of the petitioner that the respondents have committed gross-illegality and violated fundamental rights of the

petitioner (woman), for not providing 30% horizontal reservation in the respective vacancies including the post of Technical Helper.

Learned counsel for the petitioner asserted that the action of the respondents, is in flagrant violation of notification dated 31st May, 1999, incorporating

provision for 30% reservation for women candidates in Rajasthan Subordinate Offices Ministerial Service Rules, 1999. Moreover, the

respondents have also made provision for 30% horizontal reservation under the Regulations of 2017, providing for reservation to women candidates.

The respondents have failed to incorporate horizontal reservation for women candidates in the respective category in the advertisement involved

herein; depriving the petitioner and other similarly situated women candidates; hence, the omission is ex facie illegal, arbitrary, and contrary to the Law

and Policy of reservation of the State respondents so also militates against constitutional mandate.

In response to the notice of writ application, respondent No.2, has filed its counter affidavit raising preliminary objections as to the very maintainability

of the writ application. According to respondent No.2, the writ application suffers with the vice of non joinder of proper and necessary party i.e.

JVVNL; therefore, merits rejection of that count alone.

Learned counsel for respondent No.2, while supporting the action of the respondents in not providing for horizontal reservation to the extent 30% for women category candidates relied, upon opinion of a Division Bench of this Court in the case of Deep Mala Gautam & Anr. Vs. The State of

Rajasthan & Ors.: DBCWP No. 12949/2015, decided on 2nd May, 2018, relying upon law declared by the Apex Court of the land in the case of Indira

Sawhney & Ors. Vs. Union of India: AIR 1993 SC 477. A reference has also been made to opinion of this Court in the case of Suresh Kumar Vs.

State of Rajasthan & Ors.: SBCWP No. 8084/2007, decided on 24th February, 2018, wherein such a claim staked by a candidate relying upon Section

32 of the Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995; for no reservation was provided to differently abled

persons, while making recruitment to the posts of Subordinate Technical Cadre, was declined; keeping in view, the nature of work and duties attached

to the post.

I have heard learned counsel for the petitioner and with his assistance perused the relevant materials available on record as well as gave my

thoughtful consideration to the rival submissions at Bar.

Indisputably, the petitioner a woman candidate, is aggrieved of denial of horizontal reservation to the extent of 30%. It is also not disputed that while

such reservation has been provided by the respondents in other cadres; but for Subordinate Technical Cadre, which included the post of "Technical

Helper".

The claim staked by the petitioner for 30% horizontal reservation to women candidates, in the recruitment process involved herein, for the post of

Technical Helper"; may not detain, this Court for long, in view of law declared by the Apex Court of the land in the case of Indira Sawhney (supra),

wherein the Apex Court of the land declined such a claim observing that, if reservations are kept for women as a class under Article 16(1), an

inequitable phenomenon will emerge for women category would include from both backward and forward classes.

It is further clarified that clause (2) of Article 16, bars reservation in services on the ground of Sex. Moreover, Article 15(3) would not save the

situation since of reservations in the services under the State can only be made under Article 16. At this juncture, it will be profitable to take note of

the text of para 514 in the case of Indira Sawhney (supra), which reads thus:

445..... It is necessary to add here a word about reservations for women. Clause (2) of Article 16 bars reservation in services on the ground of sex.

Article 15(3) cannot save the situation since all reservations in the services under the State can only be made under Article 16. Further, women come

from both backward and forward classes. If reservations are kept for women as a class under Article 16(1), the same inequitous phenomenon will

emerge. The women from the advanced classes will secure all the posts, leaving those from the backward classes without any. It will amount to

indirectly providing statutory reservations for the advanced classes as such, which is impermissible under any of the provisions of Article 16.

However, there is no doubt that women are a vulnerable section of the society, whatever the strata to which they belong. They are more

disadvantaged than men in their own social class. Hence reservations for them on that ground would be fully justified, if they are kept in the quota of

the respective class, as for other categories of persons, as explained above. If that is done, there is no need to keep a special quota for women as such

and whatever the percentage-limit on the reservations under Article 16, need not be exceeded.

In the case of Deepmala Gautam & Anr. Vs. State of Rajasthan & Ors.: DBCWP No. 12949/2015, a division bench of this Court while dealing with

somewhat indetical controversy, wherein such a claim was made, with reference to advertisement dated 28th April, 2015, for the post of ""Technical

Helper""; the Division Bench having considered the claim of the petitioners therein (Deepmala & Anr.), in the backdrop of mandate of Article 15 and

16 of the Constitution of India and its interpretation by the Apex Court of the land in the case of Indira Sawhney (supra), dismissed the writ application

observing thus:

In view of the above, claim of reservation in favour of women is even hit by Article 16(2) and (4) of the Constitution of India. The reservation to

women would cause discrimination in the public employment on the ground of sex. It is not permissible. At this stage, reference of Article 15 of the

Constitution of India would be relevant which provides prohibition of discrimination on the ground of religion, race, caste, sex or place of birth. Article

15(3) of the Constitution of India provides that the State Government would not

be prevented to make any special provision for women and children.

The argument can be raised that pursuant to Article 15(3) of the Constitution of India, the State can come out with the Policy to provide reservation in

favour of women. The argument aforesaid would be in ignorance of Article 16 of the Constitution of India governing public employment thus cannot

be governed by any other Article in conflict to it. Article 16(2) of the Constitution of India bars discrimination on the ground of sex thus Article 15(3)

of the Constitution of India cannot be read in conflict to it. In the light of the aforesaid, we cannot give direction to provide reservation in favour of

woman candidates and, for that, to set aside the order dated 29th March, 2012. Learned counsel for petitioners has made reference of the judgment of

the Constitution Bench of Apex Court in the case of Indira Sawhney & Ors. (supra) to support his argument. Relevant Para 118 of the said judgment

has been referred and is quoted hereunder for ready reference:

“118. It is necessary to add here a word about reservations for women. Clause (2) of Article 16 bars reservation in services on the ground of

sex. Article 15 (3) cannot save the situation since all reservations in the services under the State can only be made under Article 16. Further, women

come from both Backward and forward classes. If reservations are kept for women as a class under Article 16 (1), the same inequitous phenomenon

will emerge the women from the advanced classes will secure all the posts, leaving those from the backward classes without any. It will amount to

indirectly providing statutory reservations for the advanced classes as such, which is impermissible under any of the provisions of Article 16.

However, there is no doubt that women are a vulnerable section of the society, whatever the strata to which they belong. They are more

disadvantaged than men in their own social class. Hence reservations for them on that ground would be fully justified, if they are kept in the quota of

the respective class, as for other categories of persons, as explained above. If that is done, there is no need to keep a special quota for women as such

and whatever the percentage-limit on the reservations under Article 16, need not be exceeded.”

The perusal of finding of the Apex Court in the para quoted above shows that Article 16(2) of the Constitution of India bars reservation in service on

the ground of sex. The finding has further been recorded that Article 15(3) of the

Constitution of India cannot save the situation since all the reservations in service under the State can be made only under Article 16, thereby, application of Article 15 of the Constitution of India in public employment has not been accepted. Further observation in reference to Article 16(1) of the Constitution of India has also been made. If the finding therein is taken in consonance to the Constitution of India, reservation for women would infringe Article 16(2). The Apex Court, however, made observation that women are vulnerable sections of the society. They are more disadvantaged than men in their own social class. The reservation on the aforesaid ground would be fully justified.

The question for our consideration is as to whether reservation can be provided based on observation aforesaid. In our opinion, it can be by amending the

Constitution to carve out a new category of vulnerable class for reservation and, for that, to even amend Article 16(2) of the Constitution of India. In

absence of it, reservation to women would be in violation of Article 16(2) of the Constitution of India and, for which, finding has been recorded by the

Apex Court in specific terms thus cannot be ignored. In view of the above, unless Constitution of India is amended as per the observation of the Apex

Court in the para quoted above, claim or even reservation in favour of women is hit by Article 16(2) of the Constitution of India. The Apex Court has

not covered it by Article 16(4) of the Constitution of India as there exists advantageous and disadvantageous class of women thus it would be opposed

to Article 16 of the Constitution of India. In view of the above, prayer made in the writ petition cannot be accepted.

We are, however, not in agreement to the respondents that women cannot work on the post in question thus reasoning aforesaid is not acceptable as

women can also undertake technical work but in view of the discussion made above, we are unable to accept the prayer made by the petitioners.

Accordingly, writ petition is dismissed with no order as to costs.

In the face of the fact that the nature of work and duties to be discharged by the incumbent appointed on the post of "Technical Helper", are of the

nature which require physical endurance and involves activity arduous and multifarious in nature including climbing on electric polls, digging of

earth/pitfalls, working with electric wires including work with different types

equipments involving high voltage power supply etc.; the respondents have omitted even to increase the age of the candidates from "35 years" or "37 years", "40 years", while such a provision has been included by amending Various Service Rules, vide notification dated 6th March, 2018. This Court while dealing with the issue of relaxation in maximum age limit for direct recruitment to the post of "Technical Helper" for direct recruitment in Subordinate Technical Cadre in the case of Kumud Gauttam Vs. Jaipur Vidyut Vitran Nigam Limited: SBCWP No. 14563/2018, decided along with analogous matters on even date held thus:

¶22. The amendment vide Notification dated 6th March, 2018, made in various Service Rules, substituting the existing expression "35 years" or

"37 years" by expression "40 years", has been incorporated in Engineers Service Regulations, 2016, Officers Service Regulations, 2017,

Ministerial Staff Service Regulations, 2017 and Scheduled Areas, Ministerial and Class IV Service (Recruitment and other Service Conditions)

Regulations, 2017. However, the respondents have consciously omitted such an amendment in the Regulations of 1975, with reference to the eligibility

age criteria for direct recruitment of Technical Subordinate Cadre i.e. "Technical Helper". The reasons for not incorporating the amendment by

substitution of expression of age "40 years", are not far to seek in view of the physical work, the incumbent holding the post of "Technical

Helper" has to undertake in the course of discharge of his duties i.e. installation of Electric Poles, digging of sand/pit falls and working on Electric

Wires along with different types of equipments pertaining to power supply, climbing the electric poles etc. Hence, conscious omission not to include

the amendment while substituting the expression "35 years" or "37 years" by expression "40 years" as the case may be; has nexus with

the object sought to be achieved.

Thus, the Competent Authority having regard to the nature of duties involving physical arduous endurance has decided even not to incorporate the age

relaxation clause; hence, the claim of the petitioner for 30% horizontal reservation for women candidates is absolutely devoid of any substance.

For the reasons and discussions aforesaid so also in view of the settled legal position declared by the Apex Court of the land; claim of the petitioner

cannot be sustained.

In the result, the writ application fails and is hereby dismissed. No costs.

In view of the judgment passed by the coordinate bench of this court in the matter of Gunesh Kumari (*supra*), the present writ petition stands dismissed. The stay application also stands dismissed.