
(2009) 02 RAJ CK 0027
In the Rajasthan High Court

Bhagwati Devi (Smt.)	Vs	APPELLANT
The State of Rajasthan and Others		RESPONDENT

Date of Decision : 02-02-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2009) 2 WLN 214

Hon'ble Judges : H.R. Panwar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

H.R. Panwar, J.—By the instant writ petition under Article 226 of the Constitution of India, the petitioner seeks a direction to the respondents to appoint her on the post of Prabodhak under Other Backward Class (Female) category (for short "the OBC (Female) hereinafter) with all consequential benefits.

2. Briefly stated the facts of the case to the extent they are relevant and necessary for the decision of this writ petition are that the petitioner belongs to OBC (Female) category. A certificate issued by the competent authority i.e. Tehsildar, Ajmer Annex.1 dt. 25.07.1994 has been placed on record stating that Bhagwati Devi D/o Kailash Chand Sen, Village Lidi, District Ajmer is by caste "Nai" which falls in the category of OBC as notified by the State Govt. by notification dt. 28.09.1993. The petitioner has also placed on record the Certificate Annex.1A dt. 13.11.2006 issued by the Tehsildar, Pali stating therein that petitioner Bhagwati Devi W/o Manoj Kumar, Pali is a member of OBC as notified by the State Govt. vide notification dt. 20.09.1993. It has also been stated that she does not fall in the category of creamy-lie. According to the petitioner, the petitioner possessed the qualifications of Senior Secondary, Bachelor of Arts and BSTC and is having experience of teaching in primary schools for more than five years. She has placed on record the documents in support of the pleadings Annex.2 and Annex.2A. The petitioner was appointed on the post of Para-Teacher on 06.07.2002 by the respondent State. A certificate

Annex.3 issued by the Headmaster, Govt. Upper Primary School, Giradara, District Pali stating therein that the petitioner has been working as Para-Teacher since 06.07.2002 continuously. The respondents vide Annex.4 issued an advertisement inviting applications for the post of Prabodhak for various districts in Rajasthan. Initially, 20060 posts of Prabodhak were advertised which were subsequently enhanced to 28060. In the Pali district, initially 496 posts of Prabodhak were advertised which were subsequently enhanced to 660. The petitioner being eligible for appointment applied for the post of Prabodhak under OBC (Female) category within stipulated time vide Annex.5. The petitioner was called for interview by the respondent on 10.08.2008 vide Annex.6 and the relevant testimonials which the petitioner carried were verified by the respondents. The respondent No. 3 published a combined merit list of all categories in which the petitioner's name has been placed at serial No. 350 in general category though the petitioner belongs to OBC (female) category and applied for the post of Prabodhak under OBC (Female) category by annexing the relevant documents showing her to be a member of OBC (Female) and thereby the respondents wrongly denied appointment to the petitioner. Hence this writ petition.

3. A reply to the writ petition has been filed by the respondents stating therein that along with the application form, the petitioner annexed two OBC certificates. Out of two OBC Certificates, in first certificate, the name of petitioner's father has been shown and in other certificate, the name of petitioner's husband has been shown and according to the respondents, the condition mentioned in the advertisement was that the benefit of backward class candidate can be given only to the candidate who submits certificate with the father's name and since the petitioner did not submit the certificate showing her father's name and therefore, she has been placed in merit list of General candidates. It has further been stated that so far name of petitioner's husband is concerned, his name as Manoj Kumar Sharma in the merit list has wrongly been shown by the respondents due to typographical error.

4. I have heard learned Counsel for the parties.

5. It is contended by learned Counsel for the petitioner that firstly the petitioner fulfills all requisite qualifications as advertised by the respondents vide advertisement Annex.4. The stand taken by the respondents that the petitioner did not disclose her father's name falls flat in view of the material available on record. Even according to the reply to the writ petition filed by respondents, it has been stated that the petitioner has annexed with her application two OBC certificates showing her to be a member of OBC (Female) category, one showing her father's name and other showing name of her husband. Since the certificate was issued showing father's name way back in the year 1994 and thereafter when the petitioner married, the another certificate dt. 13.11.2006 showing her husband's name and petitioner submitted both the certificate of OBC. Both the certificates show that the petitioner is a member of OBC (Female). Apart from

this, the petitioner fulfills all requisite qualifications as has been advertised and this fact has not been disputed by the respondent State. The stand taken by the respondent is contrary to the record which is evident from the Annexure-1 and Annexure-1A as also admitted in the reply filed by the respondents that the petitioner has already filed the certificate belonging to OBC (Female) category showing her father's name and her husband's name as well. Learned Counsel further submits that in the instant case the petitioner has annexed two certificates showing her to be member of OBC (Female), one showing her father's name and other showing her husband's name, however, this Court in *Mrs. Sahendra Bai and Ors. v. R.P.S.C. and Anr.* 2008 (4) WLC (Raj.) 252 has held that after the woman having married, the father's name is not required to be shown and if any such condition is imposed that is erroneous. In *Mrs. Sahendra Bai and Ors. v. R.P.S.C. and Anr.*, (supra) this Court observed as under:

Considering the aforesaid case laws on the subject and considering the facts of the present matters, in my view, the RPSC cannot say that even though certificates issued by the State Authorities may be good for contesting elections or for any other purpose, but the same cannot be said to be applicable for getting public employment. It cannot be said that simply because the petitioners are married, they lose the protection of reservation altogether even though they were belonging to a particular reserved category before their marriage and even after their marriage their caste falls under reserved category in the State of Rajasthan. In any case, when the authorities of the State of Rajasthan have already granted certificates treating such candidates to be in reserved category, unless such certificate are set aside in appropriate manner, they are binding and are required to be acted upon. The RPSC cannot sit in appeal over such certificates and if they do so, they would be acting in the excess of their powers. It is not the constitutional mandate that a person belonging to a particular reserved category in one State can never get the benefit of reservation in other State. This Court is dealing with the question about married woman who have now permanently settled in the State of Rajasthan for all times to come and they can be said to be permanent residents of the State of Rajasthan for all practical purposes. It is as such not in dispute that the petitioners are now permanently residing in the State of Rajasthan as certain documentary evidence is also placed on record in this behalf and in many cases even their names have also been enrolled in the Voters' list, therefore, it cannot be said that simply because they have settled in the State of Rajasthan by virtue of their marriage, they cannot be said to be permanent residents of the State of Rajasthan. However, it is no doubt true that simply by way of migration or transfer from one State to other, a person cannot get the benefit of reservation, which he might be getting in his/her parental State. However, in the case of a married lady, if she was treated in a particular reserved category before her marriage and her caste or tribe is treated to be in the reserved category even in the State where she has migrated by virtue of her marriage, there is no reason to deny her the benefit of reservation. Considering the said aspect, it can be said that the petitioners are qualified to be

considered in their respective reserved category (SC/ST/OBC) on the basis of certificates issued by the authorities of the State in this behalf by treating them to be permanent residents of State of Rajasthan.

6. It is further submitted that firstly the posts for OBC (Female) candidates are still lying vacant and even if respondents come with a case that posts have been filled, then also, the rightful claim of the petitioner cannot be denied. Learned Counsel for the petitioner has relied on decision of Hon''ble Supreme Court in Purushottam Vs. Chairman, M.S.E.B. and Another, wherein the Hon''ble Supreme Court while considering the question as to whether a duly selected person for being appointed and illegally kept out of employment on account of untenable decision on the part of the employer, can be denied the appointment on the ground that the panel has expired in the meantime, held that the right of the appellant to be appointed against the post to which he has been selected cannot be taken away on the pretext that the said panel has in the meantime expired and the post has already been filled up by somebody else. Usurpation of the post by somebody else is not on account of any defect on the part of the appellant but on the erroneous decision of the employer himself. In that view of the matter, the appellant's right to be appointed to the post has been illegally taken away by the employer. On these premises, Hon''ble Supreme Court set aside the impugned order therein and directed the Maharashtra State Electricity Board to appoint the appellant therein to the post for which he was duly selected within two months from the date of the order.

7. In the instant case, the petitioner is a meritorious person and so far as the category to which she belongs is OBC (Female). She stands at serial No. 2 in overall merit of OBC and at serial No. 1 in the OBC (Female) category. Instead of placing the petitioner at serial No. 1 in the OBC (Female), she has been placed at serial No. 350 by showing her to be under General category. In my view, such an action of the respondents is wholly erroneous and unjustified. The right of the petitioner to be appointed after having been duly selected and finding high in the merit at serial No. 1 in the OBC (Female) category and at serial No. 2 in OBC as a whole, has been taken away on the pretext that she has not filed the certificate showing her father's name which is obviously incorrect since she has placed on record two certificates which have been admitted in the reply by the respondents. In the circumstances, therefore, in my view, the petitioner has been denied the appointment on erroneous decision by the respondent employer. In this view of the matter, the writ petition deserves to be allowed.

8. Consequently, the writ petition is allowed. The respondent No. 3 District Education Officer and Additional Chief Executive Officer (Primary Education), Zila Parishad, Pali is directed to appoint the petitioner on the post of Prabodhak for which she stands duly selected within a period of 15 days from the date of producing the certified copy of this order. For some reasons, if the post of OBC (Female) has been filled then to create a supernumerary post and appoint the petitioner with all consequential benefits. No order as to costs.