

(2018) 11 RAJ CK 0043
In the Rajasthan High Court
Case No : Civil Writ No. 15295 Of 2018

**Deepak S/o Shri Vadhawa Ram @APPELLANT@Hash Jaipur Vidyut
Vitaran Nigam Limited and ors**

Date of Decision : 26-11-2018

Acts Referred:

Citation : (2018) 11 RAJ CK 0043

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Advocate : Navneet Poonia, Prateek Surana, Mohit Choudhary

Final Decision : Dismissed

Judgement

This writ petition has been filed by the petitioner questioning the action of the respondents in not selecting the petitioner in the recruitment for the post

of Technical Helper despite the fact that the petitioner has secured higher marks than the cut-off marks in the category of OBC (Non-creamy layer).

It is inter alia indicated in the writ petition that though the petitioner belongs to OBC (Non-creamy layer) category, by mistake he filled up online

application form in the category of Backward Caste "Creamy layer and thereafter when the result was declared and petitioner found out the said

mistake, approached the respondents, however, he is not being considered in his category.

Though no reply to the writ petition has been filed by the respondents, it is inter alia indicated that the issue raised in the present writ petition is

squarely covered by judgment in Ram Kumar Sankhla v. State of Rajasthan & Ors.: S.B. Civil Writ Petition No.14892/2018, decided on 25.10.2018.

It is submitted that the petitioner was well aware of his category and despite that took a chance of filling up his category in Backward Caste "Creamy layer

Creamy layer as higher number of available posts in that category and only after declaration of the result, has sought change of his category, which is not permissible.

Learned counsel for the petitioner submitted that the petitioner was in possession of requisite documents, however, committed mistake in filling up the online application and, therefore, his category may be directed to be changed.

I have considered the submissions made by learned counsel for the parties and have perused the material available on record.

A bare look at the record indicates that the petitioner filled up the form in the category of Backward Caste "Creamy layer and admit card was

issued to the petitioner indicating the said status and annual family income above Rs.2,50,000/- was shown. Despite receiving of the said admit card

indicating the status of the petitioner as BC "Creamy layer, petitioner appeared in the examination and did not approach the respondents for change

of category. It is only after the result has been declared that the petitioner has sought change of category.

A Co-ordinate Bench of this Court while dealing with the same situation pertaining to the same recruitment though for another post, came to the

following conclusion:-

"It may be stated at the outset that the recruitment notification clearly postulates in condition No.3(iv) that the candidates were to carefully fill

and verify the details filled in the online application and that no change would be possible/entertained after clicking the "Final Submit" button. As

stated above, the petitioner filled in the application form on the last date of submitting online application form i.e., 11.06.2018. The fee for General

Category is prescribed at Rs.850/-whereas for the OBC category it is only Rs.550/-. The petitioner not only selected his category in the application

form as unreserved but he also consciously paid the fee for general category i.e., Rs.850/-. Thus, the contention advanced by Mr. Bhati that the

petitioner inadvertently selected the unreserved category while filling online application form is totally cooked up by way of afterthought and untenable.

The contention of Shri Bhansali that the petitioner intentionally chose to fill the application form in the unreserved general category because the

number of seats in the said category were significantly more than those reserved for the OBC is the only reason why the petitioner chose the said

course of action. The petitioner waited for the result and for the first time the application for change in category was moved on 28.08.2018 i.e., just

two days before the document verification. The petitioner seems to have realized at this stage that he would not be able to make the grade in the

unreserved general category and thus decided to change his category from unreserved to general category looking to his marks and as the cut off for

the backward classes was significantly lower. However, as mentioned above, change in category was specifically prohibited by the respondents in the

instructions stipulated in the recruitment notification itself. Furthermore, the contentions advanced by Shri Bhansali that last post (left vacant) in the

OBC category on account of non-joining by Shri Dinesh Kumar would go to the next meritorious candidate in the said category comes weight and

third party interest has definitely been created in favour of such candidate. Thus, the judgments in the cases of Kavita Choudhary (supra) and Kalu

Ram (supra) relied upon by Shri Bhati are totally distinguishable and the controversy is squarely covered by the Division Bench's judgments in the

cases of Piyush Kaviya (supra), Neetu Harsh (supra) and Managing Director, AVVNL,, Ajmer (supra), relied upon by Shri Bhansali. The petitioner

cannot be permitted to make change in his category at this belated stage.

In the wake of above discussion, I find no merit in this writ petition which is rejected as such. The stay application is also dismissed.â??

The fact situation of the present case being similar to that of Ram Kumar Sankhla (supra), the judgment applies on all force. In view thereof, there is

no substance in the writ petition, the same is, therefore, dismissed.