

(2017) 12 RAJ CK 0033
In the Rajasthan High Court
Case No : 11208 of 2017

Durga Shankar S/o. Shri Bhanwar Lal Harijan
Vs
The State of Rajasthan

APPELLANT

RESPONDENT

Date of Decision : 12-12-2017

Acts Referred:

[3998](#) Constitution of India, [3998-226](#) Article 226 -
Power of High Courts to Issue certain writs

Citation : (2017) 12 RAJ CK 0033

Hon'ble Judges : Pushpendra Singh Bhati

Bench : SINGLE BENCH

Advocate : Chaitanya Gahlot, B.S.Sodha, Yashwant Mehta

Final Decision : Disposed

Judgement

1. Learned counsel Shri Yashwant Mehta is directed to appear on behalf of respondent No.2 and by concurrence of both the parties, the matter has been heard finally.

2. This writ petition under Article 226 of the Constitution of India has been preferred with the following prayers:-

"a) by an appropriate writ, order or direction, the respondents may kindly be directed to appoint the petitioner on the post of Safai Karmachari with respondent no.2 in pursuance of advertisement (Annex.1) and application by the petitioner dated 29.8.2012 (Annex.2).

b) Any other appropriate order or direction, which this Hon"ble Court consider just and proper in the facts and circumstances of this case, may kindly be passed in favour of petitioner.

c) Costs of writ petition may kindly be awarded to the petitioner."

3. Learned counsel for the petitioner states that in the similar case being S.B.Civil Writ Petition No.7031/2014 (Smt.Pushpa Vs. The State of Rajasthan & Anr. decided on 21.04.2016), on the same issue, the same municipal council and the same parties were there.

4. The following order was passed by this Hon"ble Court on 21.04.2016 in Smt.Pushpa Vs. State & Anr. (supra):-

"1. The present writ petition has been filed under Article 226 of the Constitution of India seeking appointment as Safai Karamchari under the provisions of Rajasthan Municipality (Safai Karamchari Service) Rules, 2012.

2. The petitioner belonging to the Scheduled Caste category, sought appointment on the post of Safai Karamchari with Municipal Council, Rajsamand on the basis of an advertisement notified on 25.05.2012. As per the advertisement, the age limit for applicants was mentioned to be minimum of 18 years and maximum of 35 years as on 01.01.2012 with a five years" relaxation for candidates belonging to Scheduled Caste, Scheduled Tribe, etc. The petitioner submitted her application to the respondent No.2 which shows the date of birth as 24.10.1973, which made her to be of 38 years 2 months and 7 days as on the cut- off date, i.e. 01.01.2012. By taking benefit of the relaxation of years, the petitioner was within the age limit of 40 years for candidates of Scheduled Caste, Scheduled Tribe, etc. The petitioner annexed a copy of the ration card (which reflected her age as 45 years) for establishing her residence within Rajsamand and also annexed birth certificate issued by the respondent No.2 itself showing her date of birth to be 24.10.1973. The respondents rejected

the application of the petitioner as being overaged by taking into consideration the age as mentioned in the ration card. The petitioner contacted the respondent No.2 requesting that her candidature be considered by taking her correct age to be as that mentioned in her birth certificate but to no avail. A written representation was also moved for giving her an opportunity of being heard but the same was not considered. Aggrieved, the present writ petition has been filed.

3. Mr. Chaitanya Gahlot, Advocate appearing on behalf of the petitioner, has vehemently contended that the respondents have acted illegally by ignoring the candidature of the petitioner for the appointment to the post of Safai Karamchari purely by relying upon the age as mentioned in the ration card. It is contended that the birth certificate as issued by the respondent No.2 itself ought to have been relied upon wherein the date of birth has been mentioned as 24.10.1973 making her eligible to be considered for appointment.

4. Per contra, Dr. Prathistha Dave, AGC, appearing for the respondents, has argued that the candidature of the petitioner has been rightly rejected as the

ration card annexed along with the application itself showed the age of the petitioner to be 45 years. It is further argued that no relief can be given to the petitioner on account of the fact that the persons have already been appointed and the same have not been impleaded as necessary parties in the writ petition.

5. I have heard counsel for the parties and have perused the record of the case.

6. Admittedly, the application, which is annexed along with the writ petition, shows that the petitioner had mentioned her age to be of 38 years 2 months and 7 days as on the cut-off date of 01.01.2012. The respondent No.2 itself had issued a birth certificate on 20.06.2012 showing the date of birth to be 24.10.1973. It is clear that the respondents have not taken the birth certificate issued by their own office into consideration and have erroneously relied upon the ration card in which age of the petitioner has been

reflected as 45 years. As per the advertisement, the age limit prescribed for a Scheduled Caste candidate was 40 years as on 01.01.2012 and admittedly the petitioner having been born on 24.10.1973, was eligible to be considered for appointment.

7. However, the selected candidates have not been made party to the present writ petition and their appointments cannot be disturbed without hearing them. Resultantly, the respondent No.2 is directed to reconsider the case of the petitioner for appointment to the post of Safai Karamchari while determining the age of the petitioner on the basis of the birth certificate issued by them and in case she is considered fit for appointment, the same be offered to her if any vacancy exists. The needful be done within a period of two months after affording the petitioner due opportunity to represent her case.

8. In view of the above, the writ petition stands disposed of accordingly.

5. In light of the aforequoted order, the present writ petition is also disposed of, with the direction to the respondents to reconsider the case of the petitioner within a period of two months, after giving proper opportunity to the petitioner to represent his case, strictly in accordance with law.