

(2020) 01 RAJ CK 0012

In the Rajasthan High Court

Case No : Civil Writ Petition No. 15807 Of 2019

Gagandeep

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 15-01-2020

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2020) 01 RAJ CK 0012

Hon'ble Judges : Dinesh Mehta, J

Bench : Single Bench

Advocate : Om Prakash Kumawat, Piyush Bhandari, Sunil Beniwal

Final Decision : Allowed

Judgement

1. The petitioner has approached this Court invoking Article 226 of the Constitution of India laying challenge to his rejection of his candidature as an outstanding sports person, pursuant to the advertisement dated 14.02.2013.

2. The facts in nutshell relevant for the present purposes are, that the respondent - State issued an advertisement for recruitment of Lower Division Clerk on 14.02.2013, fixing the last date of submitting application form as 22.03.2013, said date was subsequently extended to 18.04.2013.

3. The advertisement provided reservation to the extent of 2% of the seats to 'Outstanding Sports Person'. Relevant Clause - 6 of the advertisement aforesaid reads thus :

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(ii) ?????? ?????? ?????? ??? 12.5 ?????????? ?????????? ?????????? ?? ?????? ??? 2 ?????????? ??
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4. Before the last date of furnishing application form could reach, vide notification dated 15.03.2013, the State Government introduced Rajasthan Various Service (Amendment) Rules, 2013 (hereinafter referred to as the 'Rules of 2013') making them effective from immediate effect. Accordingly, various Service Rules of the State were amended in relation to provisions relating to reservation of 'Outstanding Sportspersons', rather concerned Rules were substituted in the manner that medal winner in any National Tournament or in All India Inter University Tournament in individual event or in Team event in any Sports and Games, recognised by Indian Universities Association were also included in the definition of outstanding sportsperson.

5. It will not be out of place to reproduce the Rules, which stood prior and after the promulgation of Rules of 2013, which reads thus :

"Outstanding Sportsperson shall mean and include the Sportsperson belonging to the State who have participated individually or in team, in the Sports & Games recognized by the International Olympic Committee and Indian Olympic Association or, in International Championship in Badminton, Tennis, Chess and Cricket recognized by their respective National Level Association, Federation or Board; with the following descriptions for each class of the Civil Services :

Class of Service

Description

Subordinate Service

Has represented India in Asian Games, Asian Asian Championship, Common Wealth Games, World Championship, World School, SAARC Games or Olympic Games where he (in an individual item) or his team (in a team event) has obtained Ist, IInd and IIIRD position.

6. The definition of 'outstanding sportsperson', after amendment reads thus :

"Explanation :- "Outstanding sportspersons" shall mean and include the

sportspersons belonging to the State, who,-

(i) represented Indian Team in Individual or in Team event in any International Tournament of any Sports and Games, recognized by the Indian Olympic Association or concerned recognized National Sports Federation;

Or

(ii) represented Indian Team in Individual or in Team event in any International Tournament of any Sports and Games, recognized by the Indian School Sport Federation or concerned recognized National School Games Federation;

Or

(iii) Medal Winner in the Individual or in Team event in any National Tournament of any Sports and Games, recognized by the Indian Olympic Association or concerned recognized National Sports Federation;

(iv) Medal Winner in the All India Inter University Tournament in Individual event or in Team event in the any Sports and Games, recognized by Indian Universities Association."

7. According to the case set up by the petitioner, after aforesaid amendment in the Rules, the petitioner having won a silver medal in National Taekwondo Championship - 2001, submitted his application form and staked his claim against the seats reserved for outstanding sports persons.

8. For completion of facts, suffice it to state that the petitioner's candidature was earlier rejected doubting his qualification of Computer Application, for which the petitioner had filed a writ petition being SB Civil Writ Petition No.7072/2014. Petitioner's such writ petition was allowed and the respondents were directed to consider his candidature while treating his qualification in computer application to be valid.

9. The petitioner thereafter participated in documents verification, after which the respondents issued list of selected candidates. Said list of selected candidates did not include petitioner's name, whereas persons less meritorious than him, have been offered appointment. Petitioner approached the respondents and enquired about non-inclusion of his name, only to learn that his candidature has been rejected, as he is having certificate of playing at National Level Championship, but the advertisement conditions permitted that only persons having secured medal at International level alone are to be considered as outstanding sports persons.

10. Calling in question, rejection of petitioner's candidature, Mr. Kumawat, learned counsel for the petitioner, submitted that the petitioner had won a silver medal in National Taekwondo Championship - 2001 and he is an outstanding sports person as per the amendment introduced by the State Government w.e.f. 15.03.2013, hence rejection of his claim as outstanding sportsperson is illegal.

11. He argued that the provisions of reservation being beneficial in nature, should be applied as prevalent on the date of consideration of candidature. He argued that relevant rules have been amended w.e.f. 15.03.2013, by virtue of Rajasthan Various Service (Amendment) Rules, 2013, much before the last date of submitting application form. As such petitioner was entitled to be considered as outstanding sportsperson. He added that as a matter of fact, the petitioner applied for the post as an outstanding sportsperson, considering the amendment introduced by the State Government.

12. With these submissions, learned counsel argued that the respondents have erred in applying the condition of the advertisement as it existed, instead of applying the applicable law, thus depriving him of his right.

13. Mr. Piyush Bhandari, associate of Mr. Sunil Beniwal, Additional Advocate General, submitted that terms of the advertisement are sacrosanct and the recruitment has to be carried out on the basis of terms and conditions of the advertisement. According to him, the subsequent amendment in the Rules, brought into force vide notification dated 15.03.2013, cannot be made applicable to a recruitment, which has been set in motion.

14. He argued that if the petitioner is given benefit of the Rules, it would do injustice to many such candidates, who despite being eligible as per the amended Rules, did not apply considering the conditions of the advertisement.

15. He further added that the law applicable on the date of advertisement needs to be applied and since on the date of advertisement, i.e. 14.02.2013, the Rules were not amended, no direction can be issued to the respondents to apply the amended Rules, as it would amount to changing rules of game after the game has begun.

16. Learned counsel for the petitioner in rejoinder, inviting Court's attention towards Annex.13, submitted that the respondents themselves have applied the amended Rule to one Rajeew Kumar S/o Dharampal and selected him, accepting his claim as an outstanding sportsperson, having played at National Level.

17. Heard.

18. After considering the rival submissions and given my thoughtful consideration of the matter, this Court is of the opinion that the petitioner is entitled for the relief, as claimed and deserves to be considered against the post meant for outstanding sportsperson. The reasons are set out hereunder.

19. It is settled proposition of law that the law applicable on the last date of application form is to be considered while examining candidature of a person. In this case, indisputably the last date of submission of application form was 13.03.2013, which stood extended to 18.04.2013 and the Rules were amended on 15.03.2013.

20. It is also settled that beneficial legislation should be given its full play.

Extending the benefits, of reservation even to National players by way of notification dated 15.03.2013 was intended to include sportsperson, who had played at the National Level, whereas earlier it was confined to a sportsperson, who had played at International Level.

21. It is to be noticed that the Rajasthan Various Service (Amendment) Rules, 2013 have been substituted, consequent to the amendment brought vide notification dated 15.03.2013. The earlier Rules relating to outstanding sportsperson were obliterated and as a matter of fact, on the date when petitioner's candidature was being considered, the Rules did contain a provision that petitioner and all other candidates having played at National Level were entitled to be considered as an outstanding sportspersons.

22. It is relevant to note that the advertisement itself contained following stipulation under the caption 'Special Note' (????? ???) :

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23. Such provision contained in the advertisement leaves no room for ambiguity that it was required of the respondent/State to apply latest/applicable law.

24. In the net analysis of factual and legal matrix, this Court feels that the writ petition deserves to be and, hereby, allowed.

25. The respondents are directed to consider petitioner's candidature against the seats reserved for outstanding sportsperson, of course, after verifying other eligibility conditions.

26. Needful be done within a period of two months from today.

27. Petitioner's computer qualification shall be considered favourably, as has already been held by this Court in petitioner's earlier writ petition being SB Civil Writ Petition No.7072/2014. Respondents shall give due regard to State Government Circular dated 11.07.2018 (Annex.10).

28. The stay application is disposed of.