
(2002) 03 RAJ CK 0003
In the Rajasthan High Court
Case No : Civil Special Appeal No. 402 of 2000

Giriraj Kunwar

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision : 08-03-2002

Acts Referred:

Constitution of India, 1950 — Article 233(2)

Citation : (2003) 2 RLW 967 : (2002) 3 WLC 561 : (2002) 3 WLN 629

Hon'ble Judges : Rajesh Balia, J;K.K. Acharya, J

Bench : Division Bench

Advocate : Sunil Mehta, for the Appellant; Anand Purohit, for the Respondent

Final Decision : Allowed

Judgement

Balia, J.—Heard learned counsel for the parties.

2. The appellant-petitioner, who is a widow, had applied for being appointed against the posts advertised vide Advertisement No. 2 of 1996 issued by District Establishment Committee of Jila Parishad, Udaipur for Teacher Gr. III in the Primary Schools.

3 . The petitioner-appellant had passed Secondary Examination. However, she was not offered appointment in pursuance of the said advertisement though she was called for interview. The petitioner filed the writ petition on the ground that she, being a widow, was not required to come within the merit list of the candidates to be appointed on the post and her case was required to be considered if otherwise found eligible to be appointed in terms of Annexure-1, the General Guidelines issued by Government of Rajasthan dated 23rd June, 1993 and she may be given appointment. She has not claimed to declare the process of selection committee otherwise to be invalid or that appointment given to anyone in pursuance of the said selection be quashed or set aside.

4 . The learned Single Judge without examining the merit has dismissed the writ petition on the ground that since the selection list which was issued in 1997 has

expired, no relief can be granted to the petitioner and that the successful candidates have not been impleaded in the petition and therefore the petition is not maintainable though he found that the contentions raised in the petition are full of substance.

5 . We are of the opinion that so far as the rejection of writ petition on the ground of non-maintainability or laches is concerned, it cannot be sustained. Firstly, the date on which the petitioner is presented is the point of time with which the question of laches is related and the petition comes before the court for hearing is not the material date to consider the case of laches or delay which may affect the grant of relief. The fact that the matter has come up before the Court for consideration on 23rd March, 1997 cannot affect the validity of claim on merit if the petition has been filed without any delay merely because time has taken in the proceedings before the same was taken up for hearing. We find from the record that the selection list has been issued and appointments have been offered in pursuance thereof somewhere between May, 1997 and September, 1997. This inference can well be drawn from the fact that the letter of interview was issued by the Selection Committee only on 1.5.97 and the representation has been made as early as on 23rd Sept., 1997 pointing out that her name has not been included in the merit list and that it is not required for a widow to find her place in the order of merit for being considered and appointed. Soon after making representation writ petition has been filed on 29th Sept., 1997 itself. Select list had not expired till then. Therefore, in our opinion, no delay or negligence on the part of the petitioner can be inferred which could disentitle her to relief on the ground that select list has expired. If merely the expiry of select list during the pendency of the writ petition is to be considered a ground to non-suit the petitioner, it would be negating fundamental rights of the petitioner about equal protection of law if one is treated arbitrarily by any State action. To seek remedy and get remedy for a breach of fundamental right of the Constitution is itself a fundamental right and that cannot be denied solely because of the delay which has caused in the Court after an aggrieved has knocked at the doors at the earliest possible time.

6. Likewise, where the petitioner does not challenge the selection process and does not make party to the selected candidates in the selection made by the selection body but merely claims her right on a different set of rules, the principle of joining the affected parties would not arise inasmuch as by relief granted to the petitioner if she is otherwise found to be entitled is not likely to affect anyone except the authority to whom a direction need to be issued, such authorities are to be impleaded parties thereto and such authorities in the present case have been impleaded as parties.

7. We are of the opinion that the decision relied on by the learned Single Judge do not warrant any straight jacket rule which appears to have been applied by the learned Single Judge. The fact that after adverting to the contention raised by the petitioner about her exclusion from the service, in the facts and

circumstances, the Supreme Court has not found it necessary to give benefit to the petitioner, cannot be read as laying down a principle that even if the petitioner comes in time and the matter is decided, relief should be refused without considering it on merit.

8. The other case to which reference is made by the learned Single Judge is Miss Sushma Suri v. Govt. of National Capital Territory of Delhi (1). It was a case in which the selection process itself was challenged as unfair on the ground that the petitioners were excluded from competing at the selection and were denied equality of opportunity in the matter of employment by not treating the applicants to be advocates within the meaning of Article 233(2) of the Constitution of India for the purpose of recruiting to the Judicial Service. When the selection process itself was challenged during the course of proceedings, the selection has been completed and the appointment have been given. Obviously if any relief was to be granted to the petitioner it would have resulted in quashing the selection process and setting aside the appointment given in pursuance thereof. In the aforesaid circumstances, the Supreme Court has said after holding in favour of the petitioners that it is not possible to give any relief to the appellant because when she commenced the litigation recruitment process was still going on but now the process is complete, selected candidates have already been appointed, they have reported for duty at different places and they are also not impleaded as parties in the proceedings.

9. It may be noticed that for not granting relief non-impleadment of the parties was not the only ground but in the totality of circumstances, keeping the larger interest, the Supreme Court has not thought it fit to grant relief in that particular case without laying down any principle that in all such cases in no circumstances if without impairing the selection a relief can be granted to the petitioner still such petitioner be non-suited.

10. On merit of the case, it appears to us that for ameliorating the conditions of destitute women who are divorced or widowed, a separate scheme was postulated by the State Govt. for providing them means of livelihood. That scheme which has been placed by the petitioner on record as Annexure-1, lays down the following guidelines.

^^fo/kok@rykd"kqnk efgykvsd dh fu;qfDr gsrq funsZ"k

?ekad ,Q- 139 ?14 16? t;iqj Kf"kK 92@3040 t;iqj

fnukad 23-6-93

leLr eq[;k dk;Zdkjh vf/kdkjh ,oa lfpo

ftyk ifj"knA

mijksDr fo"k;kUrxZr fofHkUu dk;Zdkjh vf/kdkfj;ksa }kjk foHkkx ls ekxZn"kZu pkgk tkrk jgk gS ,oa foHkkx esa bl lECu/k esa ekxZn"kZu gsrq dkQh la[;k esa i= izkIr gks jgs gSaA vr% foHkkx }kjk fu.kZ; fy;k tdkj fo/kok @ rykd"kqnk

efgykvksa dk fu;qfDr gsrq fuEu funsZ"k izlkfjr fd;s tkrs gSa%&&

?1? ftyk LFkkiuk lfeFr o"kZ esa nks ckj twu vkSj fnIEcj ekg esa fo/kok rykd"kqnk
efgykvksa ds vkosnu & i= @ izek.k i=ksa @ lacaf/kr fdjM dh L?hfuax dj p;u
dk;Zokgh dj funs"kky; xzkeh.k fodkl ,ao iapk;rh jkt foHkkx ls vuqeksnu djok;sxA

?2? budk p;u leLr vkjf{kr inksa dks ckaVus ds ckn lkekU: inksa gsrq fd;k tkosxA

?3? ,slh efgykvksa gsrq fdlh esfjV dk fu/kkZj.k ugha fd;k tkosxA

?4? ,slh efgykvksa dh dksbZ mPpre vk;q lhek ?58 o"kZ rd? ugha gksxA

?5? bl laoxZ dh vizf"kf{kr efgykvksa dk Hkh p;u fd;k tkosxk ysfdu muls rhu o"kZ
dk ca/ku i= Hkjok fy;k tk;s fd os rhu o"kZ esa izf"k{k.k izkIr dj ysxA

?6? vkosnu&& i= foHkkx }kjk layXu izk:i esa gh leLr izek.k & i= izys[kksa dh
lR;kfir izfr;ksa lfgr eaxk;k tkosA

?8? ;g fd ;g ,d vfrfjDr foHkkxh; izf?;k gS ftldk izpkj izlkj vko";d ugha gSA

funs"kd ,oa fof"kV "kklu lfpo

xzkeh.k fodkl ,oa ikapk;rh jkt foHkkx]

jktLFkku & t;iqj

11. Apparently, the aforesaid scheme is to be operated by the Establishment Committee twice in the year for identifying such widow/divorced women to whom appointment can be given against general posts. It does not specify any selection for the post but it is inherent that they must be suitable for such post. Though no age limit has been prescribed and until one reaches the age of superannuation could be offered appointment but it is made clear that wherever a special training is required, such appointed women candidate has to give an undertaking to undergo the training within three years i.e. to say where a trained employee is required in a particular branch, there must be available time to the women so appointed to secure training to lend effective service. If such time is not available, she may not be given appointment even if she has not crossed 58 years of age. For such women candidate the minimum educational qualification prescribed is Secondary or its equivalent but it nowhere postulates that appointment to a woman with Secondary falling in this clause can be given to a post which requires a higher qualification like graduate or postgraduate qualification.

12. Apparently, the relevance of the Secondary qualification, or for that matter modified to Sr. Secondary may be understood in the context that originally for appointment of Teachers Gr.III High School or Secondary was the minimum educational qualification which has later on raised to Senior Secondary Certificate. That context is apparent from the fact that in the first which for offering appointment to the post of Teacher Gr.III by the District Establishment Committee to widowed or divorced women in clause. 6 of the Guidelines referred to above was amended by inserting "Senior Secondary passed or its equivalent"

for the words "Secondary passed". It was submitted that the circular dt. 23.6.93 has been superceded by notification dt.27.1.96 Ex.R/1. This latter circular has been placed on record by the respondents as Annexure R/I with the reply. However, this submission is not supported on reading of the Ex.R/1. Circular dt. 27.1.96 merely modifies circular dt. 23.6.93 by substituting qualification of "Secondary" with "Sr. Secondary" or its equivalent. Moreover, it also reveals substantiating the petitioner's case that only such women out of the select list of widowed or deserted be appointed as Grade III Teacher who are either Sr. Secondary passed or trained. This clearly envisage a separate list of widowed and deserted women.

The Circular reads as under :-

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xzkeh.k fodkl ,oa ikapk;rh jkt foHkkx

?ekad ,Q- 139 ?14&16? t;iqj @ f"kk{kk @ 92 @ 155 t;iqj

fnukad 27-1-1996

eq[; dk;Zdkjh vf/kdkjh

,oa lfpo]

ftyk ifj"kn ?leLr?

fo"k; % ? fo/kok @ ifjr;Drk efgykvkksa dh fu;qfDr gsrq funsZa"ka

izlax% ? bl foHkkx dk i= ?ekad % ,Q- 139 ?14 & 16? t;iqj @ f"kk{kk @ 92 @ 3040 fnukad n23-6-93

ekU;oj]

mijksDr fo"k;kUrxZr bl foHkkx }kjk fo?kok@ rykd"knk efgykvkksa dh fu;qfDr gsrq tkjh uhfr funsZa"ka i= fnukad 23-6-93 ds fcUnq la[;k & 1?,d? p;u dk;Zokgh ds i"pkr funs"kk; xzkeh.k fodkl ,oa iapk;rh jkt foHkkx ls vuqeksnu fy;s tkus ds funsZ"ka gS] ,oa fcUnq la[;k & 6 ij ISd.Mjh ;k led{k ekU;] U;wure "kS{kf.kd ;ksX;rk vfuok;Z gksus dk vadu gSaA

U;wure "kS{kf.kd ;ksX;rk esa f"kk{kk foHkkkx dh uhfr ds vuqlkj la"kk/ku dj pkyw o"kZ ls v;/kikd r`rh; Js.kh ij fu;qfDr gsrq U;wure "kS{kf.kr ;ksX;ark ^ ^ISd.Mjh ds led{k** ds LFkku ij ^ ^lhfu;j ISd.Mjh mRrh.kZ vFkok led{k** gksuk vfuok;Z gksxka fo/kok vkSj ifjR;Drk efgykvkksa dh fufeZr ojh;rk lwph esa ls dsoy mu fo/kokvksa @ ifjR;kDrk efgykvkksa dks fu;qfDr nh tkos tks ;k rks izf"kf{kr gks ;k lhfu;j ISd.Mjh ijh{kk mRrh.kZ gksA

blds lkFk gh mDr ifji= fnukad 23-6-93 esa vaf"kr la"kk/ku dj funsZaf"kr fd;k tkrk gS] fd Hkfo"; esa fo/kok @ ifjR;Drk efgykvkksa dh fu;qfDr lEcU/kh leLr dk;Zokgh ftyk LFkkiuk lfeR ds }kjk gh dh tkosx foHkkx ls vuqeksnu dh vko";drk ugha jgsxka

,l- Mh- @ &&

?jkds"k JhokLro?

funs"kd ,oa fof"k"B "kklu lfpo]

xzkeh.k fodkl ,oa iapk;rh jkt foHkkkx

jkt- t;iqjA**

13. Literally translated the relevant part of the document, modifying Circular dated 23.6.93, reads -

Keeping in view the policy of Education Department about the minimum qualification prescribed for Grade III Teachers, the Sr. Secondary has been prescribed as minimum qualification for such appointment. From amongst list of widow and deserted women only such of widow/deserted woman may be given appointment who is either trained or Sr. Secondary pass.

14. It further directs in modification of Circular dated 23.6.93 that appointment of widow or deceased woman shall be given by District Establishment Committee, for which approval from the Govt. Department will not be required.

15. In fact this document extends the benefit to all widows and deserted women and does not confine its benefits to deserted women by divorce only.

16. Moreover another document dt. 12.3.96 has been furnished by the petitioner with additional affidavit showing that about requirement of minimum qualification the position has been restored to as in the Circular of 1993, recalling the modification made vide Circular No. 151 dated 27.1.1996.

17. These two circulars clearly indicate that this qualification clause was referable only for considering their appointment to the post of Teacher Gr. III and not to any other post. In view thereof, separate mention was also made in the advertisement which was issued on 19th August, 1996 that except for widow or divorced women, the minimum qualification for other candidates shall be Senior Secondary and BSTC or B.Ed, with any other academic qualification which has been recognised by the Govt. of Rajasthan in its Education Department or Board of Secondary Education, Rajasthan, equivalent thereto. Apparently, read together the two circulars, advertisement and the rules governing the recruitment to the post, the petitioner could not have been excluded from consideration solely on the basis of her qualification or not finding place in the order of merit amongst general candidates as such. As a matter of fact, widowed/divorced women form a class by themselves and selection of such candidates for offering appointment to the post identified for recruitment through such women ought to have been considered separately.

18. Since no appointment in pursuance of selection or the selection process has been challenged, it would be appropriate that this appeal as well as the writ petition is disposed of with direction to the respondents particularly the District

Establishment Committee to consider the case of the petitioner as a widow in terms of the aforesaid circulars on any available post of Teacher Gr. III within its jurisdiction by considering the candidature of like candidates if any by resort to the biennial selection process which has been envisaged under the Circular dated 23rd June, 1993 which appears to be independent of general regular selection.

19. Accordingly, this appeal is allowed, the judgment under appeal is set aside and the writ petition is disposed of accordingly with no orders as to costs.

20. This will not entail any benefit to the petitioner for any period anterior to the date of appointment, if offered to her.