
(2015) 01 RAJ CK 0163
In the Rajasthan High Court
Case No : Civil Writ Petition No. 14630/2009

Indu Singh

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 27-01-2015

Acts Referred:

Constitution of India, 1950 — Article 16

Citation : (2015) 01 RAJ CK 0163

Hon'ble Judges : Veerender Singh Siradhana, J.

Bench : Single Bench

Advocate : R.N. Mathur, Senior Advocate and B.L. Choudhary, for the Appellant;
Manju Joshi, Addl. G.C., Advocates for the Respondent

Final Decision : Allowed

Judgement

Veerender Singh Siradhana, J.—The petitioner has instituted the instant writ application with a prayer for a direction to the State-respondents to include her name amongst the successful candidates for appointment to the post of Agriculture Officer in the "Widow Women Category" in the recruitment process conducted in pursuance to an advertisement dated 05.07.2008, and further, she be also provided reservation in the "Widow Women Category".

2. Briefly, the essential material facts necessary for appreciation of the controversy raised in the instant writ application needs to be first noticed. The petitioner entered into a wedlock on 16.2.2008 with Shri Ashok Kumar Bacholia, who died on 9.11.2008. In response to the advertisement No. 7/2008-09 dated 5.7.2008, inviting applications from the eligible candidates for different posts, the petitioner, submitted her application for consideration of her candidature for appointment to the post of "Agriculture Officer" with Post Code Number 14, in accordance with the provisions of the Rajasthan Agriculture Service Rules, 1960. The recruitment was to be conducted to fill up 96 posts. Reservation was provided for the candidates of Schedule Castes, Scheduled Tribes and Other Backward Classes as well as women in the Open Category and Categories of

Scheduled Castes, Scheduled Tribes and Other Backward Classes. Horizontal reservation was also provided for the persons suffering with disability of specific type as stipulated in the advertisement including to women, in all categories. The petitioner appeared in the Screening Test for the post of Agriculture Officer and was allotted Roll Number 101477. The petitioner also informed the factum of death of her husband to the respondent - Rajasthan Public Service Commission (for short "respondent Corporation"), in response to communication dated 15.09.2009 (Annexure-4), and prayed to change her category, which was accordingly changed from Women Category to Widow Women Category. The petitioner successfully qualified the Screening Test and was called upon to appear before the respondent Commission for interview on 13.01.2009. The result was declared by the respondent Commission on 23.10.2009 for the post of Agriculture Officer reflected Roll Numbers of the successful candidates belonging to General Category, Scheduled Castes, Scheduled Tribe and Other Backward Classes as well as the candidates of Women Category in each of the Categories aforesaid, but did not include "Women Widow Category" in the result-sheet. The petitioner aggrieved by the action of the respondent-State, in not providing reservation for Women (Widow), addressed a representation on 26.10.2009, which did not evoke any response and therefore, instituted the present writ proceedings.

3. This Court while issuing notice of the writ application at the motion stage, on 25.11.2009 directed the respondents to keep one post vacant of "Agriculture Officer" in the category of "Widow (OBC)" in terms of advertisement dated 5.7.2008.

4. In response to the notice of the writ application, the respondents have filed their counter affidavit. The respondent number 2 (RPSC), in its counter affidavit, has pleaded that the petitioner was called for the interview and was considered as to General WE, WD Category candidate. Moreover, the petitioner also applied for the post of "Assistant Agriculture Officer" (AAO), for which she was selected at Merit Number M67 and her name was forwarded to the State Government on 15.01.2010. It is further stated that in the advertisement dated 05.07.2008, there was no reservation for widow for the post of "Assistant Officer", and therefore, the claim is not sustainable in the eye of law.

5. The State-respondent i.e. Department of Agriculture, in its counter affidavit has repelled the claim of the petitioner for the husband of the petitioner died on 9.11.2008 and the last date for submission of the application form being 20.8.2008, and therefore, the petitioner was not entitled for consideration in the widow quota since the status of the petitioner was not that of a "widow" on the last date of submission of the application form. Further, out of 96 vacancies for the post of Assistant Officer advertised 82 candidates have been accorded appointment vide order dated 19.3.2010 and 10 candidates vide order dated 23.3.2010. The claim of the petitioner staked citing a circular providing the reservation to the widow women has been declined for non-availability of the

date of the circular as well as non-furnishing of copy thereof along with the paper book of the writ application.

6. The petitioner has placed on record circular dated 24.06.2008 issued by the Government of Rajasthan, Department of Personnel (A-II), which declares the policy of the government for reservation in various Categories in direct recruitment to the government posts as well as in promotions in government service in the backdrop of the constitutional provisions with reference to the reservation. The government policy as per circular dated 24.06.2008 has not been disputed by the respondents.

7. I have heard the learned counsel for the parties and with their assistance, perused the materials available on record.

8. On 03.09.2010 taking note of the averments made in paragraph 2 of the reply filed on behalf of the respondent Commission, this Court observed thus:--

"Petitioner and Officer-In-Charge appeared in person.

It has been averred in para 2 of the reply filed by the RPSC that the petitioner was called for interview for the post of A.O. as Gen. WE, WD category on 13.10.2009 but she was not selected. However, she was found suitable for the post of A.A.O. and her name was forwarded to the State Government. It has been informed to this Court that on the recommendations being made for the post of A.A.O., petitioner has been given appointment.

But it has not been disclosed by the respondent RPSC that how many candidates were selected against the widow quota in terms of the advertisement for the post of A.O., at the same time it may also be disclosed that how many marks were secured by the petitioner in the selection process held for the post of A.O.

RPSC is directed to file additional affidavit disclosing the candidates who are selected against the vacancies of the widow general category for the post of A.O. in reference to the present advertisement and marks secured by the petitioner. The same may be filed within two weeks with an advance copy to the petitioner, who may examine and file counter affidavit, if so advised.

List on 27.09.2010."

9. Again on 09.09.2014, the respondents were called upon to file a specific affidavit in the backdrop of the observations made in the order dated 03.09.2010. The order dated 09.09.2014 reads thus:--

"Respondents are directed to file specific affidavit in view of the order dated 03.09.2010 of this Court specifying as to how many female candidates of widow category were appointed out of total 28 posts reserved for women. Said affidavit shall be filed positively by the Deputy Secretary of the Department of Agriculture, Government of Rajasthan, Jaipur on or before 29.09.2014 failing which he shall appear in person along with the record.

Copy of this order be sent to the Deputy Secretary, Department of Agriculture, Government of Rajasthan, Jaipur for compliance.

List on 29.09.2014."

10. The Deputy Secretary in compliance of the order dated 09.09.2014 has filed an additional affidavit deposing thus:--

"1. That as per advertisement dated: 05.7.2008 the total number of 96 posts of Agriculture Officer were advertised out of which 28 posts were reserved for female candidates.

2. That out of 28 reserved posts for female candidates 4, 3 and 6 posts were reserved for SC, ST and OBC female candidates and thus remaining 15 posts were for female general category. There was no any reserve post for widow quota in the advertisement itself.

3. That in view of the aforesaid fact when there was no reservation for widow quota, no any female candidate under widow quota has been granted appointment."

11. The learned counsel for the petitioner reiterating the pleaded facts and grounds of the writ application emphatically argued that the denial of the respondents to the effect that no reservation for the Category of Women Widow is absolutely illegal, arbitrary and contrary to the materials available on record as well as contrary to the very policy of the reservation declared vide circular dated 24.06.2008 in the backdrop of the mandate of Article 16 of the Constitution of India providing for reservation. The learned counsel referring to the advertisement dated 05.07.2008 invited the attention of the Court to Clause (3), which made a provision for horizontal reservation with reference to the post of "Agriculture Officer" in favour of the women. Clause (4) of the advertisement dated 05.07.2008 further provided reservation to the extent of 5% for the Category of Women Widow. Thus, it is apparent on the face of record that the advertisement made a specific provision for reservation, for the Category of Women Widow with reference to the vacancies of the post of "Agriculture Officer".

12. Learned counsel further referring to notification dated 21.09.2007, stressed that the Rajasthan Various Service (Amendment) Rules, 2007, by substitution for existing rules as mentioned in Clause Number 3, against each of the Service Rules as mentioned in Column Number 2 of the Schedule appended thereto, made the following substitutions:--

"Reservation of vacancies for woman candidates:--

Reservation of vacancies for women candidates shall be 30% category wise in direct recruitment out of which 5% shall be for widow candidates. In the event of nonavailability of the eligible and suitable widow candidates in a particular year, the vacancies so reserved for widow candidates shall be filled by other women candidates and in the event of non-availability of eligible and suitable women

candidates, the vacancies so reserved for them shall be filled up by male candidates and such vacancies shall not be treated as horizontal reservation i.e. the reservation of women candidates shall be adjusted proportionately in the respective category to which the women candidates belong." 13. A glance at the Schedule in the notification dated 21.09.2007 would reveal that the Rajasthan Agriculture Service Rules, 1960, finds an entry at Serial Number 16 and the existing rule has been indicated as 9B.

14. The respondents have not disputed the policy declared by the Government vide circular dated 24.06.2008 providing reservation in government service in the backdrop of the mandate of Article 16 of the Constitution of India. Clause (16) of the circular aforesaid makes a provision for reservation for women including widows. At this juncture, it would be gainful to consider the text of Clause (16) of the circular dated 24.06.2008 and sub-clauses thereof, which reads thus:--

"16. Reservation for women including widows:

16.1 After determining the vacancies for the SC/ST/OBC categories, vacancies reserved for women are to be determined. Vacancies for women are reserved category wise or in other words vertically. Reservation for women is vacancy based. As noted earlier, this necessitates maintenance of rosters. To operation this reservation, four separate rosters are to be maintained - one for each of the four categories of SC, ST, OBC and OC - since reservation for women was introduced. Separate rosters for all the categories are necessary since reservation for women is category wise. Roster points reserved for women are given in Schedule W. The rosters will maintain a running account of all the persons who join service. The number of points reserved for women from amongst the total number of roster points against which appointment is to be given as per the running roster for that particular category will provide the number of vacancies (of the total vacancies for the category) which are to be reserved for women.

16.2 Let us again turn to the first example of 66 vacancies in the subordinate accounts cadre as given above. We will calculate the vacancies reserved for women in case of SC and OBC categories. In both cases, the total vacancies in the category are 12. If one were to calculate 30% of 12, it would yield 3.6, suggesting to reserve 3 or 4 vacancies for women. However, this is not the correct method for determining reservation for women. However, this is not the correct method for determining reservation for women. To find out the vacancies reserved for women in a particular category, one has to look at the history of appointments made to people of that particular category, as maintained in the roster for that category. If in the case of OBC category, say, since reservation was introduced for women, a total of 11 OBC category candidates have been given appointment to the junior most post in the cadre by direct recruitment, one should look at roster points 12 to 23 to find out the number of points reserved for OBC women. Since roster points 14, 17 and 20 are reserved for

women, 3 of the 12 vacancies reserved for OBC category must be kept for women. Let us say in the case of SC category on the other hand, only 9 SC category women have been given appointment by direct recruitment at the junior most cadre post. Then one should be looking at rosters 10 to 21. In this case, one finds that four roster points - 10, 14, 17 and 20 - are reserved for women. Therefore, in case of SC category, 4 of the 12 SC posts should be reserved for women.

16.3 Reservation, in case of women, is, thus, vacancy based and not post based, as it is for SC/ST/OBC categories. To calculate reservation for women, it is not enough to take a look at the status of the cadre as it exists today alone as is sufficient to determine reservation for SC/ST/OBC categories (except in small cadres or where vacancy based roster is still to be applied). To determine reservation for women as well as for other categories for which reservation is vacancy based (Persons with disabilities, ex-servicemen, sports persons), it is necessary to have a record of the past for which it is essential to maintain rosters.

16.4 Within women, there is a sub-category of widows, for which there is 5% reservation. This is again vacancy based. It is also category wise. In the above example, one of the vacancies in both SC (out of 4) and OBC (out of 3) categories should be reserved for widows. If suitable widows are not available for appointment, the post should be filled up by women of the same category."

15. A bare perusal of the Clause (16) of the circular dated 24.06.2008 would reveal that reservation for women is vacancy based and within the category of women, there is a sub category of widows for which 5% reservation, which is again vacancy based as contemplated under Clause 16.5, which illustrates that one of the vacancies in both (out of 4) and OBC (out of 3) categories should be reserved for widows. If suitable widows are not available for appointment, the post should be filled up by women of the same category.

16. The fact that the advertisement did contain stipulation providing for reservation for women including women of widow category, as would be reflected from a conjoint reading of Clause 3 and 4 with reference to the post of "Assistant Officer", the case of the petitioner ought to have been considered in the category of "Women Widow". The notification dated 21.09.2007 amending the existing rule as mentioned in Column Number 3, as against each of the service rules as mentioned in Column Number 2 of the Schedule appended thereto, was substituted providing reservation of vacancies for women candidates to the extent of 30%, category wise, in the direct recruitment out of which 5% has been reserved for widow candidates and in the event of non-availability of suitable widow candidate(s), the vacancies are to be filled up by other women candidates of the category.

17. The contentions raised by the learned counsel for the petitioner have substance in view of the specific stipulation made in the advertisement involved

herein. A conjoint reading of Clause (3) and (4) of the advertisement dated 5th July, 2008, leaves no room for any doubt that reservation to the extent of 5% for the category of women widow is specifically provided. The Rajasthan Various Service (Amendment) Rules, 2007 amended the Rajasthan Agriculture Service Rules, 1960, and made a provision for reservation for women including widows. The policy of reservation declared by the Government vide circular dated 24th June, 2008, has not been disputed. The additional affidavit filed on behalf of the Commission in view of the order dated 3rd September, 2010 and 9th September, 2014, is absolutely vague and did not furnish the information that was specifically sought for. Be that as it may, the stand of the respondents in declining the claim of the petitioner is illegal and cannot be sustained. The writ petition has substance and merits acceptance.

18. For the reasons discussions herein above, I have no hesitation in holding that the case of the petitioner ought to have been considered by the respondent Commission against the vacancy reserved for Women Widow Category, as per the terms and conditions stipulated under Clause (3) and (4), with reference to post of "Agriculture Officer", in the advertisement dated 5.7.2008. The relevant rules as amended vide notification dated 21.9.2007 provides for reservation to the extent of 5%.

19. In the result, the writ application succeeds and is hereby allowed.

20. The respondents are directed to consider the case of the petitioner for appointment to the post of "Agriculture Officer" against the vacancy reserved for Women Widow Category, in pursuance to the advertisement dated 5.7.2008, with all consequential benefits on notional basis.

21. In view of the final adjudication on the writ application, the stay application stands closed.

22. However, in the facts and circumstances of the case, there shall be no order as to costs.