

**(2009) 01 RAJ CK 0063**  
**In the Rajasthan High Court**

Jagdish Prasad Bairwa

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

---

**Date of Decision :** 16-01-2009

**Acts Referred:**

Constitution of India, 1950 — Article 14, 16

**Citation :** (2009) 3 WLN 206

**Hon'ble Judges :** Mohammad Rafiq, J

**Bench :** Single Bench

**Final Decision :** Allowed

---

**Judgement**

Mohammad Rafiq, J.—Heard learned Counsel for the parties.

2. This writ petition has been filed by the petitioner challenging action of the respondents in not considering his case for appointment on the post of Physical Training Instructor (PTI) Grade-III. The respondents by advertisement dt. 28.07.2003 notified 92 vacancies for appointment on the said post, out of which 11 posts were reserved for Scheduled Tribe. The petitioner applied for such appointment. Interview for the aforesaid appointments took place on 03.09.2003.

3. Contention of Shri Rajveer Sharma, learned Counsel for the petitioner is that call letter was received by the petitioner on 04.09.2003 asking him to appear in the interview on 03.09.2003. Learned Counsel has produced on record photostat copy of the envelop by which the call letter was received by him. According to the petitioner, this letter itself was received in the Post Office on 02.09.2003 but it was delivered to the petitioner on 04.09.2003 and by that time, interviews had already taken place on 03.09.2003. The petitioner immediately on receipt of call letter approached the respondent No. 3 namely; District Education Officer (Secondary) Sriganganagar with his grievance, but he refused to consider the case of the petitioner. Resultantly, the other junior persons below in merit than the petitioner, have been selected and appointed, but the petitioner was denied the right to consideration for appointment. Learned Counsel relied on the

judgment in the case of Surendra Kumar v. State of Rajasthan and Ors. 2006 (1) WLC 525 and argued that this Court in exactly identical circumstances, directed the respondents to appoint the petitioner.

4. Shri Aklesh Jain, learned Deputy Government Counsel opposed the writ petition and argued that information about of interviews to be held on 03.09.2003 was published in daily Hindi newspaper Rajasthan Patrika on 31.08.2003 and, therefore, it was required of the petitioner to have been vigilant enough and ensure that he attended the interview. If the petitioner failed to appear for interview he cannot stand to gain by his own fault. He further stated that the interviews were fixed on 03.09.2003 at 10.00 a.m. and there is the possibility that the petitioner applied in other districts too where interviews took place on the same day and therefore, he could not appear in selection in question.

5. Learned Counsel for the petitioner has rejoined and submitted that the petitioner did not at all appear in any other district for interview on that date and the fact that call letter was received in the Post Office on 02.09.2003 and that it was delivered to the petitioner on 04.09.2003 has not been denied to the respondents. Learned Counsel cited the judgment in Indraj Meena v. State of Rajasthan and Ors. SBCWP No. 759/03 decided on 11.03.1993 in which it was held that mere publication of notice in the newspaper was not sufficient to deny the right to consideration the candidate for admission.

6. I have given my anxious consideration to the rival submissions and perused the material on record and also the cited judgments.

7. This Court in Surendra Kumar (supra) in exactly identical circumstances where the interviews were fixed on 29.03.2004 and call letter requiring the petitioner to appear for interview was received in the post office concerned on 29.03.2004 itself, therefore, it was delivered on 30.03.2004, held that when the call letter was received by the candidate one day after the date of interview, he cannot be blamed for non-appearance in the interview. The respondents were directed to consider case of the petitioner and appoint him, if he is found to stand in merit. Relevant observations in this behalf are made in para No. 12 of the judgment, which are abstracted hereunder:

It is admitted position that the petitioner was eligible candidate and in view of eligibility, his candidature was required to be considered in the interview held on 29.03.2004. It is evident from Annexure 2 that the call letter was received by the Chanana post office on 29.03.2004 at 2.30 pm, which was delivered at the postal address of the petitioner, on the same day, at 4.00 pm. Thus, it is amply clear that the petitioner received the delayed call letter on account of no fault on his part, but delay as well as fault was on the part of the respondents. It is also evident from Annexure-3 the telegram, sent by the District Education Officer, Secondary-1, Alwar whereby the petitioner was required to appear for interview on 29.03.2004, that it was delivered to the petitioner on 30.03.2004, at 3.40

pm., on account of delay and fault on the part of the respondents, whereas the interview had taken place on 29.3.2004. So far as the publication of the date of interview in the newspaper "Dainik Bhaskar" is concerned, no date has been given by the respondents as to on which date, the information with regard to the date of interview, was published in the newspaper. The petitioner immediately submitted representations (Annexure 4 and 5 respectively), ventilating his grievances that on account of the fault on the part of the respondents, call letter was communicated to him after completion of the interview, but his representations were not considered by the respondents. Thus, in this view of the matter, the respondents have denied the legitimate claim of the petitioner and violated the principles of natural justice.

8. Argument with regard to publication of notice in the newspaper albeit, in the context of a case of admission, was considered by this Court in *Indraj Meena supra* and was rejected observing thus:

The plea of the respondents that the petitioner should have acted upon Annexures R/2/2 cannot be accepted for two reasons. Firstly, the respondents had not indicated in the syllabus of examination or in the Marksheet or the result sheet that they would publish intimation for deposit of fees and documents in some Newspaper. Therefore, the respondents cannot rely on publication of notice dt. 12.02.1993 in the Newspaper. Secondly, the petitioner is not expected to read a particular Newspaper and therefore, even if the respondent No. 2 had got the notice published in a particular Newspaper, the petitioner cannot be denied the benefit of admission for his failure to read that Newspaper.

9. Even otherwise, what is not denied by the respondents is that there was no weightage for the interview and the interview was only meant to verify the testimonials of the petitioner. But this could be done even on 01.04.2004 when the petitioner appeared before the District Education Officer. The District Education Officer ought to have appreciated that if delay in appearance of the petitioner was caused on account of the non-receipt of the call letter, the testimonials could have been verified on that date.

10. Action of the respondents in not considering the case of the petitioner for appointment thus resulted in grave injustice to him inasmuch as the candidates far less meritorious than him have been appointed and he has been denied such appointment. Such action of the respondents is therefore, held to be arbitrary and discriminatory and violative of Articles 14 & 16 of the Constitution of India.

11. In the result, the writ petition is allowed. The respondents are directed to now interview the petitioner on any date as may be fixed by respondent No. 3 and verify his testimonials and if he is found to secure more marks than any of the appointed candidates, grant him appointment in accordance with rules, with effect from the date the candidate immediate below him, has been appointed. The petitioner shall however be only entitled to notional benefits for the intervening period. Compliance of the judgment be made within three months

from the date, copy of the judgment is produced before the respondents.