
(1999) 04 GAU CK 0033
In the Gauhati High Court
Case No : Civil Rule No. 5386 of 1996

Kamala Devi

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 29-04-1999

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 16, 21
Employment Exchanges (Compulsory Notification of Vacancies) Rules, 1960 — Rule 3

Citation : (1999) 2 GLT 505

Hon'ble Judges : D. Biswas, J

Bench : Single Bench

Advocate : B.K. Sharma, P.K. Tiwari, B. Buragohain and J. Handique, for the Appellant; G.A. and B.K. Das, D. Mazumdar and P.K. Roy, for the Respondent

Judgement

D. Biswas, J.—This writ petition has been filed for quashing Rule 3(e) of the Employment Exchange (Compulsory Notification of Vacancies) Rules, 1960 (Annexure-C 1) on the ground of being ultra vires of the provisions of the constitution.

2. Rule 3(e) prohibits appointment of women to the posts of messengers in the State Bank of India. The Petitioner who had enrolled her name in the Employment Exchange was under the expectation that her name would be forwarded by the Employment Exchange Officer for consideration by the Respondents for appointment to one of the post of Messengers. After a lapse of considerable time, when she did not get any letter of call, she enquired and could come to know that the interview for the post of Messenger was already held on 16.10.1996. Immediate thereafter, she moved this Court for quashing the aforesaid prohibitory provision incorporated in Rule 3(e) along with other consequential reliefs.

3. It would appear that this Court while issuing notice on 28.10.96 directed the Respondents to keep a post vacant till admission of the writ petition. Thereafter, vide order dated 12.11.97, this Court extended the operation of the order dated

28.10.96 until further orders.

4. The Respondents in their brief affidavit-in-opposition denied that the provisions incorporated in Rule 3(e) is violative of the provisions of the Constitution on the ground that the job of the Messenger is not suitable for women as she is to move from office to office to run errands in addition to other manual works inside the office.

5. I have heard Mr. B.K. Sharma assisted by Mr. P.K. Tiwari and others for the Petitioner and Mr. B.K. Das assisted by Mr. D. Mazumdar and Mr. P.K. Roy Learned Advocates for the Respondents.

6. The nature of job of a Messenger as depicted in the affidavit by the Respondents cannot be said to be of such a nature not meant for women. The male candidate may be more suitable for the post as it requires constant movement from office to office. That cannot be treated as a sufficient ground for excluding the women candidates from the Purview of consideration for appointment to the post of Messenger. Article 15 provides that the State shall not discriminate against a citizen on the ground only of religion, race, caste, sex, place of birth or any of them. Articles 14, 15 and 16 from part of the Constitutional code of guarantees violation thereof will infringe the rights under Article 21 of the Constitution. In the instant case, the prohibitory clause incorporated in Rule 3(e), as quoted above, prohibiting women from appointment to the post of messenger is undoubtedly violative of Article 14 and 21 . On this point of view, the above clause has to be quashed..

7. Shri B.K. Das, learned senior Counsel at the time of argument placed before this Court a letter dated 6.5.1997 written by the Chief Manager (Office Admn.) which shows that the State Bank Authorities have decided to do away with the policy of debarring women candidates for appointment as Messengers. But no documents could be produced to show that the aforesaid provision in Rule 3(e) have been amended. It is, therefore, necessary to quash the provision of Rule 3(e) being violative of the provisions of the constitution. In view of the discussion above, the decision rendered in AIR 1979 SC 1863 , (1996) 2 SCR 59 , Prabodh Verma and Others Vs. State of Uttar Pradesh and Others, and Bhagwanti and Ors. v. Subordinate Services Selection Board, Haryana and Anr., 1995 Supp (2) SCC 663, cited at the bar are not being discussed.

8. In the result, the writ petition is disposed of. The provision incorporated in Rule 3(e) of the Employment Exchanges (Compulsory Notification of Vacancies) Rules, 1960 is hereby quashed. Since a post was ordered to be kept vacant by this Court, the Respondent authorities are directed to initiate process for filling up the post in accordance with law. The Respondent No. 6 represented by the Director, Employment Exchanges and Craftsman Training, on receipt of requisition from the State Bank of India authorities shall forward the name of the Petitioner for consideration for appointment in accordance with law along with other similarly situated candidates. Other reliefs prayed for in the Writ petition

cannot be allowed as it is likely to create serious administrative problems.

No order as to costs.