

(2015) 09 RAJ CK 0068

In the Rajasthan High Court

Case No : Civil Writ Petition Nos. 13990, 14062, 14063, 14065, 14118, 14121, 14122, 14124, 14125, 14126, 14128, 14129, 14130, 14131, 14132, 14134, 14135, 14136, 14137, 14138, 14139, 14140, 14141, 14142, 14143, 14144, 14145, 14146, 14147, 14148, 14149, 14150, 14152,

Kamla Devi and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 23-09-2015

Acts Referred:

Citation : (2015) 09 RAJ CK 0068

Hon'ble Judges : Mohammad Rafiq, J;Anupinder Singh Grewal, J

Bench : Division Bench

Advocate : Pradeep Kalwania, Sushila Kalwania, Gajender Sharma, Shashi Choudhary, Laxmi Kant (Malpura), Subhash Sharma, Mahendra Sharma, Vikram Singh, R.K. Gouttam, Ganesh Chaturvedi, Ashindra Gautam, R.D. Meena, Hoshiyar Singh Arya, Ashwini Jaiman, Aatish Jain, Sun

Judgement

1. All these writ petitions have been filed by petitioners, who are widows, challenging validity of Rule 16 of the Rajasthan Vidhyalay Sahayak Subordinate Service Rules, 2015 (for short, "the Rules of 2015") read with Column-4 of Schedule-I thereof, in so far as they prescribe minimum experience of one year's working as eligibility for recruitment to the post of Vidhyalay Sahayak and Rule 25 of the said Rules, which provides for weightage of 15 marks on the basis of experience.

2. Learned counsel for petitioners submitted that experience defined in Rule 2(j) of the Rules of 2015, need not necessarily of teaching as it includes both academic/non-academic work. Rule 10 of the Rules of 2015 provides that reservation of vacancies for women candidates shall be 30% category wise in direct recruitment, out of which 8% shall be for widows and 2% for divorcee women candidates. Rule 15 of the Rules of 2015, which contains provision regarding age, in its Clause (ix) provides that there shall be no upper age limit in the case of widow and divorcee women. Rule 16 provides that a candidate for

direct recruitment to the post enumerated in Schedule-I, shall possess qualifications and experience given in column 4 of the Schedule-I. It is argued that the State Government in the prescription made under different Service Rules has provided for relaxation in regard to requirement of experience for widows. Reference, in particular, is made to proviso to Rule 11 of the Rajasthan Education Subordinate Service Rules, 1971, which stipulates that the widow and divorcee women will be given relaxation in qualification of S.T.C. or B.Ed., as case may be, for the post of Teacher or Senior Teacher, if they are otherwise eligible and furnish an undertaking to the effect that they shall acquire qualification of S.T.C. or B.Ed., as may be relevant, within a period of three years. Also relied is Rule 266A of the Rajasthan Panchayati Raj Rules, 1996, which provides that notwithstanding anything contained in these Rules, the widow/divorcee women, who have been given appointment on the post of teacher, after relaxing required education qualification of B.S.T.C./B.Ed., under the erstwhile proviso to Rule 266, shall be regularized from the date they acquire the requisite educational qualification.

3. Learned counsel for petitioners further argued that the State Government have, by issuing notification inviting applications for appointment on the post of Vidhyalay Sahayak, now sought to make recruitment on 30522 posts of Vidhyalay Sahayak and 8% thereof, which would be roughly 2441 posts, are reserved for widows. According to Rule 10 of the Rules of 2015, in the event of non-availability of the eligible and suitable widow and divorcee women candidates in a particular year, the vacancies so reserved for widow and divorcee women candidates shall be filled in 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 carried forward to the subsequent year.

4. Learned counsel for petitioners argued that the State Government have come out with an ambitious scheme of making appointment on so large number of posts after a long time and if the petitioners, who are all widows due to unfortunate circumstances of life, are deprived of right to consideration for appointment against the posts meant for widows, for the reason of prescription of experience of one year, they would face grave hardship. Reference is made to Rule 41 of the Rules of 2015, which provides that in exceptional cases, where the Administrative Department of Government is satisfied that operation of the rule relating to age or regarding requirement of experience for recruitment, causes undue hardship in any particular case, the Government may relax the provisions of the Rules thereabout.

5. It is argued that this court, taking note of aforesaid submissions, vide its order dated 16.09.2015 in Writ Petition No. 13416/2015 - Mintu Choudhary v. State of Rajasthan and Others, and one more writ petition, the widow writ petitioners, who claimed to have submitted applications by registered post prior to 14.09.2015, which was the last date earlier fixed for submission of on-line

applications, permitted them to participate in the selection process by furnishing offline application along-with copy of the order on or before 24.09.2015. The petitioners have now on coming to know about aforesaid order, approached this court. Except the fact that they have filed these petitions after 14.09.2015, there is otherwise no distinction in so far as their status as widow and that of the petitioners in earlier writ petitions. The petitioners ought not to be penalized only for the reason that they approached this court late. This happened only because earlier they were under impression that they were not eligible to apply and now on coming to know about the interim order passed by this court in aforesaid matters, they realized that they also can get chance to participate in the selection process, as off-line application in their case has been permitted to be submitted on or before 24.09.2015. It is prayed that interim order be passed and writ petitions be entertained to examine the validity of aforesaid Rules, which has also been challenged by the petitioners in the present writ petitions.

6. Learned counsel for petitioners also submitted that this court by order dated 14.09.2015 in a bunch of Writ Petitions leading one being D.B. Civil Writ Petition No. 12367/2015, last one therein being D.B. Civil Writ Petition No. 12930/2015 - Mukesh Kumar Yogi and Another v. State of Rajasthan and Others, has, taking note of relaxation provided to disabled under Rule 40(iii) of the Scheme of Rules, 2011 from requirement of experience, passed an order in rem, permitting all differently abled persons to submit offline application on or before 18.09.2015 so as to participate in the process of selection.

7. Shri N.M. Lodha, learned Advocate General appearing for the respondents State, opposed the writ petition and submitted that aforesaid interim order passed by this court on 16.09.2015 in D.B. Civil Writ Petition No. 13416/2015 - Mintu Choudhary v. State of Rajasthan and Others, was passed in peculiar circumstances of the case. Those writ petitioners approached this court prior to 14.09.2015, which was the last date for submission of on-line application form and that they also claimed that they had sent their application form by registered post prior to that date. It was therefore that this court, in addition thereto, permitted them to submit off-line application form along-with copy of the order dated 16.09.2015, on or before 24.09.2015, which was especially fixed for such candidates. The writ petitions having been filed after 14.09.2015, the last date fixed for submission of on-line application forms, no interim order should be passed. Learned Advocate General submits that aforesaid order was passed because the writ petitions had approached this court prior to last date of submission of on-line application forms and that matters remained pending before this court. Therefore, the court was persuaded to pass the order, as it was cognizant of the fact that no one should be made to suffer for delay in taking the matter and passing the appropriate order by the court. But this analogy cannot be applied to the case of the petitioners, who were not vigilant about their right. At the same time, although, learned Advocate General admitted that the issues involved in this set of writ petitions, as far as merits of the cases are concerned, are identical to those raised in the earlier two writ petitions.

8. Having regard to the facts that recruitment by the State Government on the post of Vidhyalay Sahayak is sought to be made on large number of posts, and that several widows, who are otherwise identically situated and have raised identical issue as in earlier writ petitions, and that denied the opportunity to participate in the process of selection, they would be deprived of right of consideration and in the event of sufficient candidates not being available in the widow category, the posts otherwise meant for widows, might go to another category, we are inclined to permit the petitioners to submit off-line application forms along-with the copy of this order, with the clear stipulation that tentative observations made herein are only for the purpose of passing the interim order and would not prejudice the case of either party as the matters will have to be decided on merits after hearing them on the question of validity of the Rules of 2015 challenged before us in these writ petitions and also in the writ petitions already entertained.

9. We therefore direct that the off-line application forms submitted by the petitioners in these matters before 5 o'clock on 24.09.2015 before the District Education Officer (Elementary) concerned, shall be entertained, if submitted along-with copy of this order. It is made clear that participation of the petitioners in the selection process pursuant to this order, would not confer any right/create any equity, in their favour and the same would be subject to final outcome of these writ petitions and that their result shall be kept in sealed cover and shall not be declared save with permission of this court.

10. Two copies of each of writ petitions shall be furnished in the office of the learned Advocate General by the petitioners/their counsels, who shall obtain a receipt thereof from his office and submit the same in the registry of this court within 15 days, failing which this order would come to an end on its own.

11. A copy of this order be also provided to learned Advocate General for needful.

12. Office is directed to place a copy of this order on record of each connected writ petitions.

13. List along-with D.B. Civil Writ Petitions No. 13416/2015 and 13268/2015.