
(2016) 02 RAJ CK 0103

In the Rajasthan High Court

Case No : .Civil Writ Petition No. 2578 of 2015.

Kheta Ram

APPELLANT

Vs

The State of Rajasthan and another

RESPONDENT

Date of Decision : 19-02-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Rajasthan Medical and Health Subordinate Service Rules, 1965 — Rule 7-C

Citation : (2016) 1 WLCRajUC 585

Hon'ble Judges : Jaishree Thakur, J.

Bench : Single Bench

Advocate : G.R. Punia, Senior Advocate, assisted by Y.P. Khileree, Advocate, for the Appellant; Rishab Tayal and K.L.Thakur, AAG, for the Respondent

Final Decision : Allowed

Judgement

Jaishree Thakur, J. - The present writ petition has been filed under Article 226 of the Constitution of India for seeking an issuance of a direction to the respondents to consider case of the petitioner for appointment to the post of Nurse Grade-II in the category of "outstanding sports-man" in accordance with the amended Rule 7-C Rajasthan Medical and Health Subordinate Services Rules, 1965.

2. The petitioner completed three years" Diploma Course of General Nursing and Midwifery (GNM) in the year 2012 and thereafter got himself registered with the Rajasthan Nursing Council, Jaipur. The petitioner belongs to Other Backward Class Category and a competent authority has issued him OBC Certificate. An advertisement dated 19.2.2013 came to be issued for appointment on the post of Nurse Grade-II as per Rajasthan Medical and Health Subordinate Services Rules, 1965 (for short "the Rules of 1965") the Rules of 1965. As per the advertisement, two percent horizontal reservation has been provided for outstanding sportsperson who belong to Rajasthan State and have participated in games recognised by the International Olympic Committee and Indian Olympic

Federation. The petitioner applied in the category of outstanding sportsman having participated and played a game, namely, Sepaktakraw in various championships sponsored by the State and National Sports Federation and had secured merit position in said championships.

3. Unamended Rule 7-C of the Rules of 1965 provided for outstanding sports-persons who belong to the State of Rajasthan and have participated in the games recognised by the International Olympic Committee and Indian Olympic Federation. It further provided that such sportsperson should have participated in Asian Games or Asian Championships, Common wealth Games, World Championships, world level Inter University Tournaments, SAARC Games or Olympic games in Chess, Badminton, Cricket or tennis, as the representatives of Indian team and to have secured first, second or third rank in individual item or in team competition. Rule 7-C came to be amended vide Notification dated 15.3.2013, which reads as under:-

"Reservation of vacancies for outstanding sports persons:- Reservation of vacancies for 3 outstanding sports persons shall be 2% of the total vacancies outside the purview of the commission in that year earmarked for direct recruitment. In the event of non-availability of the eligible and suitable sports persons in a particular year, the vacancies so reserved for them shall be filled in accordance with the normal procedure and such vacancies shall not be carried forward to the subsequent year. The reservation for sports persons shall be treated as horizontal reservation and it shall be adjusted in the respective category to which the sports persons belong.

EXPLANATION

"Outstanding sports persons" shall mean and include the sports persons belonging to the State, who,-

(i) Represented Indian Team in individual or in Team event in any international Tournament of any Sports and Games, recognised by the Indian Olympic Association or concerned recognised National Sports Federation;

Or

(ii) Represented Indian Team in individual or in Team event in any international or in Team event in any international Tournament of any Sports and Games, recognised by the Indian School Sports Federation or concerned recognised National School Games Federation;

Or

(iii) Medal Winner in the individual or in Team event in any National Tournament of any Sports and Games, recognised by the Indian Olympic Association or concerned 4 recognised National Sports Federation.

Or

(iv) Medal Winner in the All India Inter University Tournament in individual event or in Team event in the any Sports and Games, recognised by Indian Universities Association."

4. The petitioner submitted online application on 26.3.2013 in the category of OBC and outstanding sportsperson. The petitioner was successful in the examination and was called for document verification for the post of Nurse Grade-II. However, as the candidature of the petitioner was not being considered in the category of outstanding sportsperson by relying upon the unamended Rule 7-C of the Rules of 1965, the present writ petition has been filed.

5. Learned counsel for the petitioner relies upon a judgment rendered by a Coordinate Bench of this Court in *Rajkumari v. State of Rajasthan and ors.*, S.B.Civil Writ Petition No. 15961/2015 decided on 16.12.2015, wherein the Single Judge was pleased to decide the issue regarding change of category after last cut-off date and, accordingly, held that the aspirant who had made request for change for category, would be permitted to get benefit of reservation provided required certificate had been submitted.

6. Per contra, counsel for the respondents has contended that the case of the petitioner cannot be considered in the category of outstanding sportsman, as the sports certificate of the petitioner is of November 2014 and as such cannot be considered on account of clause 12 (ii) of the terms and conditions of advertisement dated 19.2.2013 which clearly provided that certificate issued after the cut-off date shall not be considered.

7. I have heard learned counsel for the parties and have perused the record of the case.

8. Admittedly, the petitioner applied online for the post of Nurse Grade-II on 26.3.2013 pursuant to an advertisement dated 19.2.2013 and last date for submission of the online form was 2.4.2013 on which date Rule 7-C of the Rules of 1965 already stood amended.

9. In the case of *Rajkumari* (supra), decided by a Coordinate Bench at Jaipur, the petitioners therein were allowed to change their category after the submission of the application form. Before the court at Jaipur, certain issues had been framed and one of issue no.4 reads as under:-

"(iv) The respondents would further clarify as to whether they would permit change of category of those candidates who had initially submitted the application form showing them to be of open category and thereupon submitted the application to change their category to OBC or other reserved category."

Issue no. 4 came to be decided as under:-

"The fourth issue is regarding permission to change of category of those candidates belonging to reserve caste but somehow, submitted application for open category.

The additional affidavit filed by the respondents clarifies the issue where such a change has been permitted provided the application for change of 6 the category was submitted pursuant to the order dated 28.10.2015. Accordingly, whoever made request for change of category as per the order dated 28.10.2015, would be permitted to get benefit of reservation provided required certificate has been submitted and candidate qualifies for it. With the aforesaid, issue No.4 stands resolved."

Based on this judgment, the petitioner is seeking that he may be considered in the category of outstanding sportsman. The facts reveal that the petitioner had applied for the post of Nurse Grade-II on 26.3.2013 and had tick-marked "outstanding category". The law is well settled that eligibility and qualification of a candidate has to be considered on the Cut off date as mentioned in the advertisement and in case no date is specified in the advertisement then the date the application is submitted will be considered for qualification and eligibility. Since Rule 7 C of the Rules of 1965 stood amended on 15.3.2013 prior to the last cut off date which is 2.4. 2013, therefore, this court has no hesitation in holding that the case of the petitioner has to be considered under the amended Rule 7 C of the Rules of 1996.

10. The judgment rendered in the case of Raj Kumari (supra) will not be applicable in the present case since there is no dispute that Rule 7-C of the Rules of 1965 stood amended prior to the last date of submission of application .

11. The contention raised by the counsel for the respondent state that certificates relied upon by the petitioner after the last date of submission cannot be considered is not an issue to be decided in this writ petition. It is left open to the authorities to 7 consider the candidature of the petitioner as per the terms and conditions of the advertisement but while applying the definition of outstanding sportsman as it stood amended by notification dated 15.3.2013.

12. The writ petition is therefore, allowed in the above terms.