

(2007) 01 RAJ CK 0086
In the Rajasthan High Court

Krishna Kumari (Miss)

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 16-01-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2007) 3 RLW 1846

Hon'ble Judges : H.R. Panwar, J

Bench : Single Bench

Judgement

H.R. Panwar, J.—By the instant writ petition under Article 226 of the Constitution of India, the petitioner seeks a direction to the non-petitioners to appoint her on the post of Physical Training Instructor Gr.III against General Boy OBC Category advertised in pursuance of the Advertisement Annex.5 issued on 28.7.2003.

2. I have heard learned Counsel for the parties.

3. The facts and circumstances giving rise to the instant writ petition are that the non-petitioners advertised the posts of Physical Training Instructor Gr.III vide Annex.5 dated 28.7.2003. In pursuance of the advertisement Annex.5, the petitioner submitted an application for appointment along with her testimonials. The petitioner claims to be eligible for the said post having the requisite educational qualification. Along with the application form, the petitioner annexed the Certificates Annex. 1 and Annex.2 issued by Board of Secondary Education, Rajasthan, Annex.3 Post Graduate Diploma in Physical Education (One Year Course) issued by Mohan Lal Sukhadia University, Udaipur, Annex.4 certificate issued by University Sports Board, Rajasthan Vidhyapeeth, Udaipur and a certificate showing her to be the member of Other Backward Class (OBC) Annex.R-1 dated 14.7.1995. The non-petitioners did not consider the certificate Annex.R-1 showing the petitioner to be a member of OBC on the ground that the certificate was issued in the year 1995, whereas the certificate should not be more than one year's old and vide order Annex.7, the petitioner was required to furnish a fresh certificate showing herself to be a member of OBC. In compliance

of the order Annex.7 dated 6.9.2003/9.9.2003, the petitioner again obtained the certificate showing herself to be a member of OBC as also that she does not fall in the category of Creamy- lair. The said certificate was submitted by the petitioner vide Annex.9 which was received by the non-petitioners on 15.9.2003, yet the petitioner was not considered for the post of Physical Training Instructor Gr.III. Hence, this writ petition.

4. It is contended by learned Counsel for the petitioner that the petitioner fulfills the requisite qualification for the said post and therefore, declining to consider the candidature of the petitioner for appointment is illegal. Learned Counsel for the petitioner as relied on a Division Bench decision of this Court in Shaitan Singh v. State of Rajasthan and Anr. (168) RLR 2003(3) 754 wherein this Court held that denial of appointment on the post of Teacher Gr.III on the ground that OBC certificate issued to appellant therein by Tehsildar was defective and appellant could not produce the corrected certificate at the time of interview, however, the same was produced after the interview, is denial of fundamental right of being considered for appointment without any fault on the part of the appellant therein.

5. A reply to the writ petition has been filed by the non- petitioners and in para 10, the non-petitioners have admitted the contents mentioned in para No. 12 and 13 of the writ petition. In para No. 12 and 13 it is stated by the petitioner that the petitioner thereafter received one letter from respondent- department dated 9.9.2003 on 12.9.2003 whereby the petitioner was asked to submit a fresh OBC certificate. The petitioner immediately applied for the fresh OBC certificate and the same was obtained and submitted before the Department on 15.9.2003 vide Annex.8. While replying the para No. 14 and 15 of the writ petition the non-petitioners averred that though the petitioner is a female candidate and appointment was to be made for the male school and in such circumstances a guidelines-cum-clarification was sought by the respondent No. 2 from the Directorate vide communication dated 6.9.2003 and it was found that such appointment can be given since the petitioner was not under the Creamy-lair though belongs to OBC and as such her candidature was required to be considered in general category and in general category she was not selected for appointment on merit list. The non-petitioners also came with a case that the petitioner has not been given appointment on account of stay order passed by this Court at Jaipur Bench, however, no stay order has been placed on record. At any rate, from the correspondence noticed above, it appears that the case of the petitioner has not been considered on the ground firstly that the petitioner being a female candidate applied for boys schools which subsequently was clarified by the Directorate vide communication dated 6.9.2003 that female candidate can apply for boys school and secondly that the petitioner though is a member of OBC but she falls under the category of creamy-lair. The Certificate Annex.8 as also the averments made in the reply to the writ petition in para 11 clearly go to show that the petitioner was not under the creamy- lair. In the circumstances, therefore, therefore, in my view, the respondents fell in error in denying the

consideration of the candidature of the petitioner for the post of Physical Training Instructor Gr.III and therefore, the writ petition deserves to be allowed. This Court by an interim order dated 14.10.2003 made it clear that the appointment to the post of Physical Training Instructor Gr.III made in pursuance of Annex.5 dated 28.7.2003 shall be subject to the decision of this writ petition.

6. In the result, the writ petition is allowed. The non- petitioners are directed to consider the candidature of the petitioner for the post of Physical Training Instructor Gr.III advertised vide Advertisement Annex.5 dated 28.7.2003 and if the petitioner is otherwise eligible, she may be appointed accordingly with notional benefits if any available to the petitioner. Stay petition also stands disposed of. There shall be no order as to costs.