

(2017) 05 RAJ CK 0163
In the Rajasthan High Court
Case No : 18808 of 2015

Laxmi Devi

APPELLANT

Vs

State of Rajasthan & ors.

RESPONDENT

Date of Decision : 30-05-2017

Acts Referred:

Citation : (2017) 05 RAJ CK 0163

Hon'ble Judges : Ajay Rastogi, Dinesh Chandra Somani

Bench : DIVISION BENCH

Advocate : Abhishek Pareek, Shika Pareek, A.S.Khangarot

Judgement

1. These batch of writ petitions have been referred by the Id.Single Judge on account of two conflicting views to be examined by the Division Bench of this Court "Whether a delay of two years in the physical/efficiency test following the written examination during which a woman candidate became pregnant would entitle to seek postponement of the date of her physical efficiency examination or such date cannot be postponed to the detriment and rejection of the woman candidate."

2. It reveals from the order passed by the Id.Single Judge dt.20.02.2017 that there are two conflicting judgments of the coordinate Single Bench of this Court on the issue under consideration while in the case of Soniya Sharma Vs. State of Rajasthan & Another [S.B.Civil Writ Petition No.2537/2016] decided on 29.02.2016 it has been held that time of conducting Physical Efficiency Test/ Physical Standard Test be extended in giving her reasonable time of relaxation which could make her possible to participate in the physical/efficiency test in the process of evaluating her merit for appointment on the post of Constable. However, prior thereto a contrary view was expressed by the coordinate Single Bench at the Principal Seat at Jodhpur in Suwa Panwar Vs. The State of Rajasthan and Others [S.B.Civil Writ Petition No.6122/2011] decided on 23.08.2011 where it has been held that maternity is indeed a human right of a woman, having qualified written test for the post of Constable, the candidate

being aware of the need to undergo physical efficiency test ought to have scheduled her pregnancy accordingly so that she could participate in the physical/efficiency test in the process of evaluating her merit for appointment on the post of Constable.

3. In examining the question raised for our consideration, we take note of the facts for proper appraisal of the matter with the consent of the parties from Writ Petition No.18808/2015.

4. The post of Constable Mineral Protection Force is included in the schedule appended to the Rajasthan Mines and Geological Subordinate Service Rules, 1960 to be filled by open selection and in another writ petition, the post of Constable is included in the Schedule appended to the Rajasthan Police Subordinate Service Rules, 1989 and one has to successfully qualify the Physical Efficiency Test/Physical Standard Test prescribed under the relevant service Rules apart from qualifying in the written examination as prescribed under the Rules of 1960/1989 respectively.

5. In the instant case, the post of Constable Mineral Protection Force came to be advertised vide notification dt.20.07.2013 and the eligible candidates including the petitioner submitted their online application and appeared in the written examination which was held on 15.09.2013 and the result of the written examination was declared on 01.10.2013 wherein the petitioner was declared successful. It may be relevant to note that after declaration of result on 01.10.2013 no information was transmitted about the further process to be held and on one fine morning a news item was published on 06.07.2014 to the effect that selections have been cancelled and the vacancies advertised ceased to exist and the participants left their hope about any further action being taken pursuant to advertisement dt.20.07.2013 and it was only on 22.04.2015, the candidates were apprised through a news item that posts are being included for selection of 14th Battalion RAC through Police Department and necessary amendment in the Rules, 1989 have been made vide Notification dt.20.04.2015.

6. The State Government vide notification dt.20.04.2015 enacted the Rajasthan Police Subordinate Service (Amendment) Rules, 2015 inserted a new proviso to the proviso to cl.(a) of R.6 of the Rules, 1989 which read as follows:-
"2.Amendment of Rule 6- After the existing proviso to clause (a) of rule 6 of the Rajasthan Police Subordinate Service Rules, 1989, the following new proviso shall be added, namely-

"Provided further that the direct recruitment to the post of Constable in Rajasthan Armed Constabulary may be made from persons who have qualified the written examination conducted by the Director, Department of Mines and Geology, Rajasthan in the year 2013 for the post of Constable, Mineral Protection Force under the Rajasthan Mines and Geological Subordinate Service Rules, 1960 and after passing such Physical Efficiency Test as may be specified by the Director General cum Inspector General of Police."

7. It was indicated that further selection process shall now be conducted by the respondents in accordance with the Standing Order No.18/2015 dt.26.10.2015 issued in exercise of power u/R.6(a) of Rules, 1989 laying down the procedure for recruitment of Constables for 14th Battalion, RAC which originally was initiated pursuant to advertisement dt.20.07.2013 and immediately thereafter the successful candidates were called to appear in the Physical Efficiency Test in terms of the Standing Order No.18/2015 notified by the respondents on 26.10.2015 (Annex.R/2) at Rajasthan Police Academy, Jaipur on 02.11.2015 and the female candidates have to appear in the physical examination on 08.11.2015. Part-II of the Standing Order No.18/2015 dt.26.10.2015 which has been notified by the respondents in exercise of cl.(a) of R.6 of the Rajasthan Police Subordinate Service Rules, 1989 deals with Physical Efficiency Test/Physical Standard Test. It may be relevant to quote Part-II of the Standing Order, with which we are presently concerned, which reads ad infra:-

"PART-II 2- (A) PHYSICAL STANDARD TEST (PST):-

(i) The candidates who have been declared successful by the Police Department on 14-09-15 shall undergo PST/PET. Height and Chest (weight in case of female candidates) measurements of the candidates will be taken by the Board as per the norms laid down as below:

Detail For Men For Women For men belonging to Hill & Tribal Areas.

Deflated Chest (Minimum)

81 cm. - 79 cm.

Inflated Chest 86 cm. - 84 cm.

Height (Minimum) 168 cm. 152 cm. 160 cm.

Weight (Minimum) - 47.5 Kg. -

(ii) Candidates belonging to the Scheduled Caste and Scheduled Tribe whose height and chest measurement are less by 5 cms. Shall be deemed to be physically fit in case of requisite number of suitable Scheduled Caste/Scheduled Tribe candidates possessing physical fitness standards as laid down above are not available.

(iii) The expansion of chest is required to be minimum 5 centimeter.

(iv) Candidates belonging to the Saharia Tribe of Distt. Baran shall be deemed to be physically fit if:-

(a) a male candidate whose minimum height is not less than 160 centimeter and their deflated chest and inflated chest is not less than 74 centimeter and 79 centimeter respectively; and

(b) a woman candidate whose minimum height and weight is not less than 145 centimeter and 43 Kilogram respectively.

(v) Candidates failing to fulfill the above prescribed standards of height/chest, measurements or weight shall be rejected.

Provision of Appeal in PST:

One chance of appeal is available to the candidates who fail in the PST by the Selection Board. A fee of Rs. 500/- shall be deposited by the candidate along with appeal application and shall be re-examined by the Selection Board with the help of a medical officer.

(B) PHYSICAL EFFICIENCY TEST (PET):-

This test will be qualifying in nature. Candidates who are declared successful in PET will be granted 15 marks. Marks obtained in the PET shall be included for determining the merit of successful candidates. The candidates will undergo the PET at their own risk. Any candidate failing in PET will be disqualified.

Details of marks and time allotted for Physical Efficiency Test shall be under:-

Post	For Men	For Women	Ex-servicemen, Saharia & SC/ST candidates of TSP Area
------	---------	-----------	---

Marks

Walk & Run Time	Walk & Run Time	Walk & Run Time
-----------------	-----------------	-----------------

Constable	10 Km. Run	
-----------	------------	--

65 Minutes maximum	5 Km. Run	
--------------------	-----------	--

35 Minutes maximum	5 Km. Run	
--------------------	-----------	--

35 minutes maximum	15 marks.	
--------------------	-----------	--

Candidate shall be required to submit a fitness certificate issued by a Govt. Medical Officer, prior to appearing for PET. For women candidates who are pregnant there is no separate provision for additional/extra chance and they are specially required to submit a doctor's report in this respect and it will be at their own risk.

Only one chance shall be given for Physical Efficiency test. There will be no appeal for Physical Efficiency Test."

(Emphasis supplied.)

8. After the Physical Efficiency Test/Physical Standard Test, a combined merit list of the qualified candidates was prepared in accordance with the Government Circular dt.04.03.2014 and selected candidates have to appear for medical examination as referred in Part-IV cl.(6), at this stage opportunity has been afforded to the candidate who for any reason is found to be temporary unfit and defect can be rectified within six months as per the opinion of the Medical Officer and further opportunity has been afforded for their medical examination for

appointment after the prescribed period of six months provided the candidate is found fit by the medical board. It may be relevant to quote Part-IV cl.(6) Medical Examination of the Standing Order, which reads ad infra:-

"6. MEDICAL EXAMINATION:-

Immediately after the declaration of the merit list, requisite number of candidates in accordance with the number of vacancies, whose names appear in the merit list shall be required to undergo a Medical Test by a Government Medical Officer. The appointing authority will ask the medical officer to submit the medical report of the candidates in the enclosed Proforma (annexure-A). Candidates with knock -knee, varicose veins, squint, stammering, and flatfoot or any other deformity, disease of permanents/serious nature or vision less than 6/6 in both eyes without glasses or medical condition which makes the candidate unsuitable for appointment in police force shall be ineligible for appointment. The Appointing Authority shall move the Chief Medical and Health Officer/Principal Medical Officer concerned to detail one or more medical officers, as required, for this purpose. Candidates who are found temporarily unfit and whose defect can be rectified within 6 months as per the opinion of the Medical Officer shall be eligible for appointment after the said period provided they are found fit by medical board. Candidates who fail to conform to the prescribed standards of medical fitness even on re-examination within stipulated time shall be declared medically unfit for appointment and their candidature shall stand cancelled."

9. The petitioner made a representation on 08.11.2015 that she is at the advanced stage of pregnancy of 36 weeks and it may not be possible for her to appear for physical examination and she may be granted a reasonable relaxation in meeting out the requirement and if possible date for physical examination may be fixed somewhere in April, 2016 and necessary documents were annexed along with the application to justify the advanced stage of her pregnancy but no one listened to her request and the respondents declared the result of the candidates who appeared for physical test in terms of the Standing Order dt.26.10.2015 and for the aforesaid reason, the petitioners approached this court by filing the instant writ petitions.

10. In the connected Writ Petition No.11990/2015, pursuant to the advertisement dt.14.07.2013 the petitioner participated in the selection process held for the post of Police Constable which is included in the schedule appended to the Rajasthan Police Subordinate Service Rules, 1989 to be filled by open selection and she appeared in the written examination which was held on 02.06.2013 and result of the written examination was declared on 10.12.2014 and the petitioner was declared successful and the successful candidates have to qualify in the Physical Efficiency Test/Physical Standard Test on 03.04.2015 in terms of the Standing Order No.4/2013 dt.29.06.2013 which has been issued by the respondents in supersession of the earlier Standing Order No.5/2010 issuing necessary instructions to regulate recruitment of Constable, Constable (Operator), Constable (Driver), Constable (Band) and Constable (Mounted) in

Sections-I, II, III and IV of the Rajasthan Police Subordinate Service Rules, 1989. Part-II of the Standing Order No.4/2013 deals with Physical Standard Test/ Physical Efficiency Test. It may be relevant to quote Part-II of the Standing Order, with which we are presently concerned, which reads ad infra:-

"PART-II All candidates declared successful in written test shall undergo Physical Standard Test (PST).

(A) PHYSICAL STANDARD TEST:-

The candidates who qualify in the written test as mentioned above will be called for the height, chest/weight measurements (height and weight in case of female candidates). Measurements of the candidates will be taken by the Board as per the norms laid down in the Rajasthan Police Subordinate Service Rules, 1989. Candidates failing to fulfill the prescribed standards of height, chest/weight measurement shall be rejected.

(B) PHYSICAL EFFICIENCY TEST:-

This test will be qualifying in nature. Candidates who are declared successful in physical Efficiency Test will be granted 15 marks (in case of constable general duty and operator) and 10 marks (in case of constable driver, band and mounted). After qualifying the PET, candidates will be considered for award of marks for special qualifications (in case of constable general duty & constable operator) and for proficiency test (in case of constable band, constable driver & constable mounted). Marks obtained in the Physical Efficiency Test shall be included for determining the merit of successful candidates. The candidates will undergo the Physical Efficiency Test at their own risk. Any Candidate failing in Physical Efficiency Test will be disqualified.

Details of marks and time allotted for Physical Efficiency Test shall be as under:-

Post For Men For Women Ex-servicemen, Saharia & SC/ST candidates of TSP Area

Marks

Item Time Item Time Item Time

Constable (General Duty & Operator)

10 Km. Run

60 Minutes maximum

5 Km. Run

35 Minutes maximum

5 Km. Run

30 minutes maximum

15 marks.

Constable (Driver, Band & Mounted)

10 Km. Run

60 Minutes maximum

5 Km. Run

35 Minutes maximum

5 Km. Run

30 minutes maximum

15 marks.

Candidate shall be required to submit a fitness certificate issued by a Govt. medical Officer, prior to appearing for PET.

Provision of Appeal in PST:

One chance of appeal will be given to the candidates who fail in the PST by the Selection Board. A fee of Rs.500/- shall be deposited by the candidate along with appeal application and shall be re-examined by the Selection Board at the end of the PST on the same day. There will be no appeal for Physical Efficiency Test."

11. After Physical Efficiency Test/Physical Standard Test, a combined merit list of such of the qualified candidates was prepared in accordance with the Government Circular dt.04.03.2014 and at the time of medical examination which is referred to under Part-IV cl.(14), at this stage opportunity was afforded to the candidate who for any reason if found to be temporary unfit and defect can be rectified within six months as per the opinion of the Medical Officer and further opportunity has been afforded for their medical examination for appointment after the prescribed period of six months provided the candidate is found fit by the medical board. It may be relevant to quote Part-IV cl.(14) Medical Examination of the Standing Order No.4/2013, which reads ad infra:-

"14. MEDICAL EXAMINATION:-

Immediately after the declaration of the Merit list, requisite number of candidates in accordance with the number of vacancies, whose names appear in the merit list shall be required to undergo a Medical Test by a Government Medical Officer. The appointing authority will ask the medical officer to submit the medical report of the candidates in the enclosed Proforma (annexure- D). Candidates with knock-knee, varicose veins, squint, stammering, and flatfoot or any other deformity, disease of permanent/serious nature or vision less than 6/6 in both eyes without glasses or medical condition which makes the candidate unsuitable for appointment in police force shall be ineligible for appointment. The Appointing Authority shall move the Chief Medical and Health Officer/ Principal Medical

Officer concerned to detail one or more medical officer, as required, for this purpose.

Candidates who are found temporarily unfit and whose defect can be rectified within 6 months as per the opinion of the Medical Officer shall be eligible for appointment after the said period provided they are found fit by medical board. Candidates who fail to conform to the prescribed standards of medical fitness even on re-examination within stipulated time shall be declared medically unfit for appointment and their candidature shall stand cancelled."

12. It is not disputed that the petitioners have qualified the written examination and there was a long gap in conducting Physical Efficiency Test/Physical Standard Test of the selected candidates who qualified the written examination, the present petitioners in the meanwhile became pregnant and were at the advanced stage of pregnancy and it was not possible for them to appear for Physical Efficiency Test/Physical Standard Test in terms of the Standing Orders issued by the respondents and as they failed to qualify because of the impediment of advanced stage of pregnancy and there being two conflicting views of the Single Bench of this court matter has been referred to be examined by this court.

13. Reply to both the writ petitions has been filed by the respondents and narration of facts referred to has not been controverted the submission of the State Counsel Shri S.K.Gupta, Additional Advocate General is that it has been indicated in the Standing Order itself that such of the women candidates who are pregnant, there is no separate provision for additional/extra chance and they are required to submit a Doctor's report in this respect and it will be at their own risk. Although at the stage of Medical Examination, those who are found to be temporary unfit, such defects can be rectified within six months as per opinion of the Medical Officer and if found fit by the Medical Board after such period, may be considered for appointment and their defence is that in the writ petition filed at the main seat at Jodhpur S.B.Civil Writ Petition No.6122/2011 [Suwa Panwar Vs. State of Rajasthan & Ors.] the Court in its judgment dt.23.08.2011 observed that maternity may be a human right of the woman but if the candidate has qualified the written test and was knowing it well that she has to undergo physical test in the event of qualifying the written test, such an important process of selection cannot be made as per convenience of an individual but as individual is required to schedule her programmes and other activities as per such event. The pregnancy cannot be compared with other unseen, unpredictable events like physical accident or some serious ailment and taking that to be a basis, counsel Shri Gupta submits that no error has been committed by the respondents in rejecting the request made by the petitioner seeking deferment of physical test which every candidate has to qualify is an integrated part of the selection process initiated pursuant to the advertisements in question.

14. We have heard counsel for the parties and perused the material on record with their assistance.

15. At the outset, it may be noticed that the married woman is not disqualified for appointment and the fact that she is pregnant in itself is not a disqualification for participating in the selection process nor the pregnancy can be treated as a bar for appointment under the scheme of Rules, 1960/1989 respectively. What is to be looked into is that if any unforeseen inability occurs because of pregnancy during the months before and after child birth while seeking employment or while in service which can be taken care of by granting maternity leave for the period required or because of service hazards one has to qualify with the standards of Physical Efficiency Test/Physical Standard Test how far the right of seeking public employment of a woman candidate, for which she is eligible, can be denied to her.

16. To become a mother is the most natural phenomenon in the life of a woman. An employer has to be considerate and sympathetic towards her and must realize the physical difficulties which a woman would face at the advanced stage of her pregnancy to perform her duties while carrying a baby in the womb or while rearing up the child after birth and this what has been taken note of by the Parliament in its wisdom while enacting the Maternity Benefit Act, 1961. The object behind is to provide all the facilities to a woman in a dignified manner so that she may overcome the state of motherhood honourably, peaceably, undeterred by the fear of being victimized for forced absence during the pre-or post-natal period.

17. Apart from the Art.14 & 16 of the Constitution, which protects rights of the individual citizen, discriminatory treatment of a pregnant woman would also fall foul of Art.42 of the Constitution which requires the State to make provision for securing just and humane conditions of work and for maternity relief and any action denying maternity benefit has to be examined on the anvil of Art.42 which though not enforceable by law is not available for determining the legal efficacy of the action being complained of.

18. It may be noticed that pregnancy is not a disability but is one of the natural consequence of marriage and any distinction made on the ground of pregnancy be always held to be arbitrary and violative of Art.14 of the Constitution.

19. By a restriction which has been imposed by the respondents in the standing orders that the women candidates who are pregnant, there shall be no provision for additional/extra chance and they are required to submit a Doctor's report in this respect and it will be at their own risk, appears to be an ingenious attempt made by the respondents just to defeat the claim of the women candidates. Freedom of personal choice in matters of marriage and family life is one of the liberties protected by the mandate of law and the same if very from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child. The Father of Nation, Mahatma Gandhi eloquently said: "Marriage is a natural thing in life, and to consider it derogatory in any manner is wholly wrong. The idea is to look upon marriage as a sacrament and therefore, to lead a life of self restraint in the married state."

20. To say that one fears to lose employment on getting married is to forget the fact that the bloom or light of all life's happiness consists in marriage. It is nothing more than a civilized way of living. No wonder Channing Pittock Said "Marriage is the greatest educational institution on earth" and certainly protect fundamental rights conferred u/Art.21 of the Constitution where no person shall be deprived of his life or personal liberty except according to procedure established by law and "life" in this Article cannot be considered to be a mechanical one. It is an attendant with all that is required to make the life blossom and all enjoyment within the permissible limits of law.

21. Here is a case of a married woman who chooses to have a child, can the State or an authority like the respondents impose itself and curtail this life or personal freedom of the woman? No detailed discussion is required in the matter of appointment against such post which prescribes for Physical Standard Test/Physical Efficiency Test and it shall no longer be necessary to declare woman candidate completely unfit if she is found to be unfit during the period when she is ordinarily required to appear in the Physical Standard Test/Physical Efficiency Test for qualifying in the selection process.

22. In the given facts & circumstances, she certainly deserves indulgence of relaxation which she has to qualify after the reasonable period which the authority in the given circumstances considers appropriate in affording her an opportunity to qualify the Physical Standard Test/Physical Efficiency Test depriving or eliminating her from the selection process for the reason that she is at the advanced stage of pregnancy on the date notified by the respondents to appear in the Physical Standard Test/Physical Efficiency Test, in our considered view, is certainly arbitrary & violative of Art.14 of the Constitution.

23. The restriction which has been imposed by the respondents fundamentally does not hold good and it is certainly prejudicial & against Indian womanhood which pervades the service Rules and there is a reasonable basis for the charge of bias under the Rules and it makes an ominous indifference of the executive to bring about the banishment of discrimination in the service Rules.

24. It cannot be forced upon a woman to have a choice between bearing a child and employment as it interferes both - with her reproductive rights and her right to employment and such an action cannot have any place in the present modern era.

25. We would refer to a passage occurring at page 166 of Swamy's Complete Manual on Establishment and Administration. The said passage reads ad infra:-
"Employment of women candidates in state of Pregnancy-

(a) For appointment against posts carrying hazardous nature of duties- Where a pregnant woman candidate is to be appointed against a post carrying hazardous nature of duties, e.g., in Police Organisations, etc., and she has to complete a period of training as a condition of service and who as a result of tests is found to be pregnant of twelve weeks standing or over shall be declared temporarily unfit

and her appointment held in abeyance until the confinement is over.

She should be re-examined for a fitness certificate six weeks after the date of confinement, subject to the production of medical certificate of fitness from a registered medical practitioner. The vacancy against which the woman candidate was selected should be "kept reserved for her. If she is found fit, she may be appointed to the post kept reserved for her and allowed the benefit of seniority in accordance with para 4 of Annexure to MHA OM No. 9/11/55-R.S, dated the 22nd December, 1959.

(b) For appointment against posts which do not prescribe any elaborate training- It shall no longer be necessary to declare a woman candidate "compulsorily unfit" if she is found to be pregnant during medical examination before appointment against posts which do not prescribe any elaborate training, i.e., She can be appointed straightway on the job."

26. Once it is observed & held that maternity is a human right of a woman and so longer the married woman is not disqualified from participating in the selection process and is not an impediment and after having qualified the written test, at the stage when she has to undergo the Physical Standard Test/Physical Efficiency Test became pregnant with advanced stage and the pregnancy being not a disability but one of the natural consequence of marriage, the woman candidate deserves indulgence of qualifying the physical standards after affording a reasonable time in attaining fitness which the authority may consider to be appropriate keeping in view the provisions of the Maternity Benefit Act, 1961.

27. Based on the aforesaid discussion, we are of the view that there can be no conclusion other than to hold that action of the respondents in not granting indulgence to the petitioners in failing to qualify Physical Standard Test/Physical Efficiency Test because of their advanced stage of pregnancy is illegal and arbitrary and the impugned provisions of the Standing Orders to the extent they lay down that pregnancy would render a candidate unfit is legally not sustainable.

28. Consequently, the instant batch of writ petitions succeed & is hereby allowed. The respondents are directed to call upon the petitioners for their Physical Standard Test/Physical Efficiency Test after giving them due notice and if they qualify with the standards laid down under the relevant scheme of Rules and find place in the order of merit in their respective category, they may be considered for appointment in terms of their advertisements dt.20.07.2013/14.07.2013 respectively. Necessary compliance be made within four months. No costs.