

(2020) 07 RAJ CK 0168

In the Rajasthan High Court

Case No : Civil Writ Petition No. 8108, 8657, 8682, 8700, 8719, 8726, 9022, 9389, 10475, 10543, 10724, 12718, 13382 Of 2019

Madan Lal

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 08-07-2020

Acts Referred:

Rajasthan Municipalities (Safai Employees Service) Rules, 2012 — Rule 9A
Constitution Of India, 1950 — Article 226, 311(2)

Citation : (2020) 07 RAJ CK 0168

Hon'ble Judges : Dr. Pushpendra Singh Bhati, J

Bench : Single Bench

Advocate : Lokesh Mathur, H.S. Sidhu, Rishabh Tayal, A.D. Ujjwal, Jhamak Nagda, Sajjan Singh Rajpurohit, M.S. Godara, Tirupati Chandra, S.S. Nirban, Akshay Nagori, G.S. Panwar, Manoj Joshi, Sanjay Pandit, Suniel Purohit

Final Decision : Allowed

Judgement

1. In all these writ petitions, the petitioners challenged the order impugned dated 29.03.2019, whereby their appointments as Safai employee were cancelled on account of furnishing wrong affidavit and concealment of information regarding their children, particularly, for violation of Rule 9A of the Rajasthan Municipalities (Safai Employees Service) Rules, 2012 (hereinafter referred to as 'Rules of 2012').

2. Though the present writ petitions have been reserved for judgment on different date(s), but looking to the commonality of the issue involved herein, they have been considered analogously and are being decided by this common judgment.

3. These writ petitions under Article 226 of the Constitution of India have been preferred claiming, in sum and substance, the following reliefs:

"a) by an appropriate writ, order or directions, impugned order dated 29.03.2019

(Annex.5) cancelling the appointment of petitioner may be declared illegal and be quashed and set aside;

b) further by an appropriate writ order or direction the respondents may be directed to reinstate the petitioner as safai employee with all consequential benefits;

c) Any other order or direction, which this Hon'ble Court deemed just and proper be passed in favour of the petitioner.

d) Costs of this writ petition may kindly be allowed to the petitioner."

4. For the sake of brevity, the facts are being taken from S.B. Civil Writ Petition No.8726/2019, for the purpose of the present adjudication.

5. The Department of Local Self Government, Government of Rajasthan issued an advertisement bearing No.01/2018 for recruitment to the post of Safai Employees. The Rules of 2012 provided for recruitment and other conditions of service for the post of Safai employee. Rule 9A, as inserted on 11.04.2018 in the said Rules of 2012, provided for disqualification for appointment of a candidate, who had more than two children on or after 01.06.2002, on the post in question, and the same fact has been concealed by the petitioner. The said Rule 9A of the Rules of 2012 reads as under:

"9A. Disqualification for appointment.- No candidate shall be eligible for appointment to the service who has more than two children on or after 01.06.2002. Provided that-

(i) the candidate having more than two children shall not be deemed to be disqualified for appointment so long as the number of children he/she has on 1 st June, 2002, does not increase.

(ii) where a candidate has only one child from earlier delivery but more than one child are born out of a single subsequent delivery, the children so born shall be deemed to be one entity while counting the total number of children.

(iii) the provision of this rule shall not be applicable to the appointment of a widow of the deceased employee on compassionate ground.

(iv) while counting the total number of children of a candidate, the child born from earlier delivery and having disability, shall not be counted.

(v) any candidate who performed remarriage which is not against any law and before such remarriage he is not disqualified for appointment under this rule, he shall not be disqualified if any child is born out of single delivery from such remarriage."

6. The petitioner, after participating in the selection process, was issued appointment order on 01.09.2018. However, the respondents cancelled her appointment on 29.03.2019, on account of the fact that she had more than two children after 01.06.2002, and the same fact has been concealed by the

petitioner.

7. A Division Bench of this Hon'ble Court, vide judgment dated 02.04.2019 decided D.B. Civil Writ Petition No.16572/2018 (Anita & Ors. Vs. State of Rajasthan & Ors.), whereby Rule 9A of the Rules of 2012 was struck down and any consequential quashing of appointments were set aside, while the concerned litigants were directed to be given appointment with all consequential benefits.

8. Heard Mr. Lokesh Mathur, Mr. H.S. Sidhu, Mr. Rishabh Tayal, Mr. A.D. Ujjwal, Mr. Jhamak Nagda, Mr. M.S. Godara, Mr.S.S. Nirban, Mr. Akshay Nagori and Mr. G.S. Panwar, learned counsel appearing for the petitioners, and Mr. Suniel Purohit, learned counsel appearing for the respondents.

9. Mr. Lokesh Mathur, learned counsel for the petitioners submitted that once Rule 9A of the Rules of 2012, containing the provision for disqualification for appointment on the post in question, and which was the basis of passing of the impugned order(s) of cancellation of appointments of the petitioners, has been struck down, then there is no reason why such cancellation of appointment order(s) can be sustained in the eye of law.

He relied upon the precedent law laid down by the Hon'ble Supreme Court in Avtar Singh Vs. Union of India & Ors., reported in AIR 2016 SC 3598 (para 22). The said para 22 reads as under:

"22. The employer is given 'discretion' to terminate or otherwise to condone the omission. Even otherwise, once employer has the power to take a decision when at the time of filling verification form declarant has already been convicted/acquitted, in such a case, it becomes obvious that all the facts and attending circumstances, including impact of suppression or false information are taken into consideration while adjudging suitability of an incumbent for services in question. In case the employer come to the conclusion that suppression is immaterial and even if facts would have been disclosed would not have affected adversely fitness of an incumbent, for reasons to be recorded, it has power to condone the lapse. However, while doing so employer has to act prudently on due consideration of nature of post and duties to be rendered. For higher officials/higher posts, standard has to be very high and even slightest false information or suppression may by itself render a person unsuitable for the post. However same standard cannot be applied to each and every post. In concluded criminal cases, it has to be seen what has been suppressed is material fact and would have rendered an incumbent unfit for appointment. An employer would be justified in not appointing or if appointed to terminate services of such incumbent on due consideration of various aspects. Even if disclosure has been made truthfully the employer has the right to consider fitness and while doing so effect of conviction and background facts of case, nature of offence etc. have to be considered. Even if acquittal has been made, employer may consider nature of offence, whether acquittal is honourable or giving benefit of doubt on technical reasons and decline to appoint a person who is unfit or dubious character. In case employer

comes to conclusion that conviction or ground of acquittal in criminal case would not affect the fitness for employment incumbent may be appointed or continued in service."

He further submitted that though the aforementioned precedent law was pertaining to the criminal cases and was in a much more tighter jacket or consideration due to the strict standards of employment for the persons having criminal antecedents, but, in this case, taking ahead the jurisprudence of discretion of an employer to terminate the services of an employee, on account of omission, when it is a foregone conclusion that suppression is immaterial, and even if the facts would have been disclosed, they would not have adversely affected the fitness of an incumbent for employment, and last but not least, the present petitioners are at the lowest pedestal of the government posts. He also submitted that a circular issued by the respondents themselves, in relation to the recruitment on the post in question, contained the following condition, calling for lenient scrutiny, looking into the backwardness and lesser educational qualification of the candidates:

"यह भर्ती सफाई कर्मचारियों के लिये है तथा आवेदक कम पढ़े लिखे एवं पिछड़े वर्ग से संबंधित है, इस लिये प्राप्त आवेदन पत्रों पर सहानुभूति पूर्वक विचार किया जावे तथा जांच के दौरान अनावश्यक रूप से तकनीकी कमियों के आधार पर आवेदन पत्र निरस्त नहीं किये जावे। "

10. Mr. Rishabh Tayal, learned counsel for the petitioners has drawn the attention of this Court towards the adjudication already made by this Hon'ble Court in Pavani Devi Vs. State of Rajasthan & Ors. (S.B. Civil Writ Petition No.4067/2019 decided on 18.07.2019) & other connected petitions, relevant portion of which reads as under:-

"Replies to the writ petitions have been filed by the respondents, inter alia, indicating that though the petitioners were issued orders of appointment on 30.08.2018, as there were discrepancies in the number of children indicated in the application and the documents, which were produced at the time of joining, wherein, the petitioners claimed to have given their children in adoption and if the children purportedly given in adoption were clubbed, the petitioners were ineligible for appointment in terms of the advertisement, therefore, the respondents sought directions from the Directorate regarding the manner in which they were to be dealt with and, therefore, they were not accorded appointment.

Learned counsel has also produced copies of communications sent by the respondents to the State Government seeking guidance.

Submissions have also been made regarding suppression of facts from this Court and it has been prayed that the petitions be dismissed. However, it is admitted that posts are lying vacant.

Learned counsel for the petitioners submits that the plea raised by the respondents, in view of the judgment in the case of Anita & Ors. v. State of

Rajasthan & Ors. : D.B. Civil Writ No. 16572/2018, 02.04.2019, has lost significance, inasmuch as, Rule 9A of the Rajasthan Municipalities (Safai Karamchari) Service Rules, 2012 ('Rules of 2012') has been struck down and, therefore, the plea sought to be raised by the respondents has no substance.

I have considered the submissions made by learned counsel for the parties.

A perusal of the said guidance sought by the respondents indicates that the respondent Board has raised the issue on account of the claimed adoption as the adoption deeds were only notarized and not registered and implication thereof.

In view of the above fact situation, wherein, essentially the objection raised by the respondents pertains to the eligibility of the petitioners on account of their having more than two children after the cut off ate as indicated in the advertisement and the claim made pertaining to giving of the children in adoption.

The fact that the relevant provision i.e. Rule 9A of the Rules of 2012 has already been struck down, the action of the respondents in now denying the petitioners joining pursuant to their orders of appointment dated 30.08.2018 cannot be sustained.

Consequently, the writ petitions filed by the petitioners are allowed. The respondents are directed to permit the petitioners to join pursuant to the order of appointment dated 30.08.2018. The petitioners would be entitled to all consequential benefits. However, they will be entitled to monetary benefits only from the date they are permitted to join.

Needful may be done within a period of four weeks.

11. Mr. Suniel Purohit, learned counsel for the respondents, however, categorically submitted that though Rule 9A of the Rules of 2012 has been struck down, but still the respondents are right in cancelling the appointments of the petitioners or not giving them appointments, because the petitioners have suppressed and concealed material information and have given wrong information as well as furnished wrongful affidavits, which give the respondents a clear power to cancel their appointments.

He has drawn the attention of this Court towards the condition contained in the advertisement, which stated that if there is a wrong information furnished by a candidate, then employment of the concerned candidate may be cancelled and legal action could be initiated against him/her.

12. Learned counsel for the respondents relied upon the precedent law laid down by the Hon'ble Supreme Court in District Collector & Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram & Anr. Vs. M. Tripura Sundari Devi, reported in (1990) 3 SCC 655 (paras 6 & 7). The said paras read as under:-

"6. It must further be realised by all concerned that when an advertisement

mentions a particular qualification and an appointment is made in disregard of the same, it is not a matter only between the appointing authority and the appointee concerned. The aggrieved are all those who had similar or even better qualifications than the appointee or appointees but who had applied for the post because they did not possess the qualifications mentioned in the advertisement. It amounts to a fraud on public to appoint persons with inferior qualifications in such circumstances unless it is clearly stated that the qualifications are relaxable. No court should be a party to the perpetuation of the fraudulent practice. We are afraid that the Tribunal lost sight of this fact.

7. We are, however, informed that the respondent subsequently acquired another degree in M.A. with second class and has qualified herself to be appointed to the said post. Whatever the merits of the decision given by the Tribunal, we cannot forget that she was entitled to rely upon it till this time where she had succeeded. She was not allowed to join service on January 2, 1986 and thereafter she had approached the Tribunal in January 1987. The decision of the Tribunal was of 31st August, 1987 and thereafter the present Civil Appeal was pending in this Court from December 1987 till this day. Considering the fact that she is compelled to serve, that she has acquired the requisite qualification, that today she may be over aged for the post and the further fact that many who were under qualified were appointed to the post earlier, we feel that it will be unjust to deprive her of the post at this stage. We, therefore, set aside the impugned order of the Tribunal but allow the appeal partially and direct that the respondent should be appointed in the post from the beginning of the ensuing academic year 1990- 91. Since Shri Madhav Reddy contended that there is no vacant post at present, we further direct that, if necessary, a post be created to accommodate her. She will, however, not be entitled to any benefits including back wages till her appointment. "

He has also placed reliance on the precedent law laid down by the Hon'ble Supreme Court in Avtar Singh Vs. Union of India (supra), which has also been relied upon by learned counsel for the petitioners. The paras of the said judgment, as relied upon by learned counsel for the respondents, read as under:

"25. The fraud and misrepresentation vitiates a transaction and in case employment has been obtained on the basis of forged documents, as observed in M. Bhaskaran's case (supra), it has also been observed in the reference order that if an appointment was procured fraudulently, the incumbent may be terminated without holding any inquiry, however we add a rider that in case employee is confirmed, holding a civil post and has protection of Article 311(2), due inquiry has to be held before terminating the services. The case of obtaining appointment on the basis of forged documents has the effect on very eligibility of incumbent for the job in question, however, verification of antecedents is different aspect as to his fitness otherwise for the post in question. The fraudulently obtained appointment orders are voidable at the option of employer, however, question has to be determined in the light of the discussion made in

this order on impact of suppression or submission of false information.

27. Suppression of 'material' information presupposes that what is suppressed that 'matters' not every technical or trivial matter. The employer has to act on due consideration of rules/instructions if any in exercise of powers in order to cancel candidature or for terminating the services of employee. Though a person who has suppressed the material information cannot claim unfettered right for appointment or continuity in service but he has a right not to be dealt with arbitrarily and exercise of power has to be in reasonable manner with objectivity having due regard to facts of cases.

28. What yardstick is to be applied has to depend upon the nature of post, higher post would involve more rigorous criteria for all services, not only to uniformed service. For lower posts which are not sensitive, nature of duties, impact of suppression on suitability has to be considered by concerned authorities considering post/nature of duties/services and power has to be exercised on due consideration of various aspects."

13. After hearing learned counsel for the parties as well as perusing the record of the case alongwith the precedent law cited, this Court is of the view that once Rule 9A of the Rules of 2012 itself has been struck down, then any action of the respondents, in now denying the petitioners their employment, cannot be sustained.

14. This Court is of the firm opinion that the jurisprudence of Avtar Singh (supra) can be taken into consideration as the discretion to cancel the appointments ought to go in favour of the employees, who are on the last pedestal of the government job, and suppression, in the present case, is immaterial, as even if the facts would have been disclosed, the same would not have adversely affected the fitness of an incumbent for employment.

15. This Court has taken note of the fact that for the post in question, the respondents themselves have laid down their policy, relevant portion of which has already been reproduced hereinabove, that the standard of scrutiny ought to be lenient, as the post in question belongs to a very backward and lowly educated contenders.

16. This Court finds that the judgment rendered in Pavani Devi & other connected petitions (supra) covers the present issue.

17. In view of the above, the present writ petitions are allowed, and while quashing and set aside the impugned order(s) dated 29.03.2019, the respondents are directed to reinstate the petitioners in service as Safai employee with all consequential benefits. All pending applications stand disposed of.