
(2014) 08 RAJ CK 0059

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 1133/2013

Madhavi Bhatnagar

APPELLANT

Vs

Rajasthan Public Service Commission

RESPONDENT

Date of Decision : 13-08-2014

Acts Referred:

Citation : (2014) LabIC 4460

Hon'ble Judges : Vijay Bishnoi, J;Govind Mathur, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Vijay Bishnoi, J.—This appeal is directed against the order dated 11.09.2013 passed by the learned Single Bench in S.B. Civil Writ Petition No. 1667/2013, whereby the writ petition filed by the appellant has been dismissed.

2. A Co-ordinate Bench of this Court has issued notices to the respondents of this appeal on 16.01.2014. On behalf of the respondent No. 1-Rajasthan Public Service Commission, Advocate Shri Tarun Joshi has filed Vakalatnama on 07.04.2014 and notice upon the respondent No. 2 was also served on 07.04.2014.

3. On 30.07.2014, the appellant was present in the Court and insisted upon hearing the matter but since no one was present on behalf of the respondents, this Court had ordered for issuance of the notices to the respondent as to why this appeal be not finally heard and accepted at admission stage. The said notices were served upon the respondent No. 2 on 08.08.2014, however, no one has put in appearance on behalf of respondent No. 2. It is also noticed that though the name of Shri Tarun Joshi, counsel for the respondent-RPSC is shown in the cause list, yet neither he nor any body is present on behalf of RPSC. The appellant present in person has desired to argue the appeal and we have no option except to hear the appellant.

4. Brief facts of the case are that the RPSC issued an advertisement on

06.09.2011 and invited applications from the eligible candidates for recruitment on the posts of Accountant/Junior Accountant. Pursuant to the advertisement dated 06.09.2012, the appellant-petitioner has also applied. The examination for the advertised posts of Accountant/Junior Accountant was held on 26.01.2012 and the result of the said examination was declared on 09.05.2012. The appellant-petitioner was declared successful in the said examination and was placed in merit. However, subsequently, number of grievances/objections were raised and a Single Bench of this Court at Jaipur Bench in its order dated 30.07.2012 passed in S.B. Civil Writ Petition No. 10216/2012-Sonia Jha vs. RPSC, Ajmer and 10 other writ petitions, directed the RPSC to examine the grievances/objections of the candidates examined from the expert committee. The RPSC undertook the said exercise and after getting the report from the expert committee, declared the revised result of the examination on 29.09.2012. In the revised result so declared by the RPSC, the appellant-petitioner again secured the cutoff marks and was placed in merit. Thereafter again, some candidates had challenged the revision of the merit and also raised grievances regarding the question paper before the Single Bench of this Court at Jaipur and vide order dated 14.12.2012, the Single Bench of this Court at Jaipur, had directed the RPSC to revise the result by deleting the defective questions and prepare the merit based on the correct questions only. Pursuant to the directions given by the Single Bench of this Court at Jaipur Bench in S.B. Civil Writ Petition No. 16800/2012-Jitendra Kumar Jhalani vs. State of Rajasthan & Anr. along with 11 other writ petitions, the respondent-RPSC again revised the merit list and in the said result, the examination, which carried total marks of 900, was reduced to 831 and the petitioner was not able to secure minimum marks in aggregate and, therefore, she was declared as fail.

5. Being aggrieved with the decision of the RPSC, the appellant preferred writ petition before this Court, however, the learned Single Bench has dismissed the writ petition, while holding that she cannot claim grace marks for the purpose of considering her case for preparation of merit as per the proviso to Rule 22 of the Rajasthan Subordinate Accounts Service Rules, 1963 (for short "the Rules of 1963" hereinafter). The learned Single Bench has also held that the contention of the appellant that the respondents have allowed the benefit of grace marks to certain persons is not supported by any evidence and even if the Commission has awarded grace marks to some candidates contrary to Rule 22, then also this Court cannot direct to commit the same mistake in case of the appellant. After observing this, the learned Single Judge has rejected the writ petition.

6. Being aggrieved with the dismissal of the writ petition, the appellant has preferred this appeal.

7. The appellant has argued that as per Rule 22 of Rules of 1963, a candidate, who has obtained minimum of 35% marks in each of the compulsory subjects and minimum of 40% marks in aggregate in the competitive examination shall be considered to have obtained qualifying marks at the examination. However,

the Commission may, in its discretion, award grace marks up to one in each of the compulsory papers and up to three in the aggregate. It is further contended that the appellant has secured 147 marks in the first paper and 183 marks in the second paper and as such, she has obtained minimum of 35% marks in each of the compulsory subjects but in aggregate, she has secured 330 marks, whereas required aggregate 40% marks comes to 332.40 marks, thus, the appellant's marks are short by 2.4 marks to achieve complete 40% of the total marks. It is contended by the appellant the respondent-RPSC has granted grace marks to several other persons to achieve 40% marks in aggregate but in her case, a different yardstick has been adopted and she was denied benefit of 2.4 grace marks as per the proviso to Rule 22. It is contended by the appellant that the learned Single Judge has failed to appreciate the above position and erred in rejecting her writ petition while holding that the appellant cannot claim grace marks for the purpose of considering her case for preparation of merit as per proviso to Rule 22 of the Rules of 1963. The appellant has, therefore, prayed that the impugned order dated 11.09.2013 may be set aside and the writ petition filed by her may be allowed and the relief prayed for in the writ petition be granted.

8. Heard the appellant and perused the impugned order as well as the record.

9. Rule 22 of the Rules of 1963 reads as under:

"22. Qualifying marks at the Examination-Candidates who have obtained minimum of 35% marks in each of the compulsory subjects and minimum of 40% marks in the aggregate in the competitive examination shall be considered to have obtained qualifying marks at the examination. The Commission may in its discretion award grace marks upto one in each of the compulsory papers and upto three in the aggregate:

Provided that grace marks awarded by the Commission shall not be added in the total marks for merit and shall be for the purpose of qualifying a person for recommendation by the Commission for appointment."

10. Before the learned Single Bench, the RPSC filed reply to the writ petition, wherein it is clearly averred that:

"as per the rules, the discretion to award grace marks has been left with the Commission and the Commission in its discretion awarded one mark each in individual paper to certain candidates but the Commission did not deem it proper to award grace marks on the aggregate."

11. It is further averred in the reply that:

"As explained above, the answering respondent in its discretion decided to award bonus marks in individual paper and since the petitioner could not get the minimum qualifying marks on aggregate, her candidature could not be considered for appointment."

12. From the averments made in the reply to the writ petition, it is not in dispute that the appellant has secured 35% marks of qualifying marks in each compulsory paper, however, she has failed to secure 40% marks in aggregate. From the reply of the RPSC, it is also clear that while exercising discretion under Rule 22 of the Rules of 1963, the RPSC has awarded one grace mark to the candidates in compulsory paper, who have not secured 35% minimum marks.

13. After taking into consideration the above fact situation, we are of the considered opinion that when the Commission has granted grace marks to the candidates in the compulsory paper i.e. wherever the candidates did not obtain the minimum marks of 35% in compulsory paper, same yardstick shall apply in respect of the aggregate marks. The Commission cannot be allowed to exercise its discretion in selective manner. In the instant case, the Commission has failed to supply any reason for not exercising its discretion in the case of the appellant. It is made clear that if any candidate despite securing minimum 35% marks in compulsory paper has not been able to secure 40% in aggregate, the Commission has to exercise its discretion to award grace marks to make up for the deficiency of the securing minimum 40% aggregate marks, if it decides to award grace marks to a candidate in compulsory paper to meet the deficiency in obtaining minimum marks. Needless to say that the extent of award of grace marks will be governed by the limit prescribed in Rule 22 of the Rules of 1963.

14. In the present case, when the appellant has secured qualifying 35% marks in each compulsory paper but failed to obtain 40% marks in aggregate, then it is wrong on the part of the Commission to deny her the benefit of grace marks up to three to meet the said deficiency. We are of the opinion that the appellant is eligible for award of grace marks to the extent of shortage of aggregate marks, so as to make it 40%. The appellant has secured 330 marks, whereas 40% comes to 332.40 marks and as such the appellant is short of 2.40 marks and as per Rule 22 of the Rules of 1963, she is entitled to get 2.40 grace marks to make it total 40% in aggregate. The learned Single Bench has erred in not taking into consideration this aspect of the matter, therefore, the impugned order dated 11.09.2013 is liable to be set aside.

15. In view of the above discussions, the present appeal is allowed. The impugned order dated 11.09.2013 is set aside. Consequently, the writ petition filed by the appellant is allowed. The respondent-RPSC is directed to consider the case of the appellant-petitioner for award of the grace marks as per Rule 22 to meet the deficiency to the extent of shortage of 2.40 marks in aggregate and thereafter to consider her case for inclusion in the merit list. If the appellant-petitioner qualifies for the appointment, the respondents are directed to forward her name to the Government for appointment on the post of Accountant/Junior Accountant. The respondents are required to comply with the above directions within a period of two months from the date of production of a certified copy of this order.