
(2015) 01 RAJ CK 0279

In the Rajasthan High Court

Case No : Civil Writ Petition No. 6183 of 2014

Mala Devi and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 28-01-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2015) 3 CDR 1085 : (2015) 3 SCT 422

Hon'ble Judges : Nirmaljit Kaur, J

Bench : Single Bench

Advocate : Mahaveer Bishnoi, Counsel, for the Appellant; Pratishtha Dave, Addl. Govt. Counsel, Advocates for the Respondent

Final Decision : Allowed

Judgement

Nirmaljit Kaur, J—The prayer in the present petition is for directing the respondents to allow the petitioners to join their duty on the post of Safai Employees in Nagar Parishad, Sirohi from the date the other similarly situated persons have been given appointment with all consequential benefits. The facts in short are that on 25.5.2012, the respondents issued an advertisement for recruitment on the post of Safai Employees under Rajasthan Municipalities (Safai Employees Service), Rules, 2012. The petitioners submitted their application forms along with all requisite documents. On 3.5.2013 after the issuance of the advertisement, new guidelines were issued by the respondents for appointment to the post of Safai Employees. As per the guidelines/instructions dated 3.5.2013, no person, whose one family member is already in the service of the Municipal Council and who is not having experience of two years as Safai Employees, shall be given appointment. The petitioners' name found mention in the select list. Vide order dated 22.1.2014, the Commissioner, Nagar Parishad, Sirohi issued the select-list of the various candidates for Nagar Parishad, Sirohi. The name of petitioner No. 1 stood at Serial No. 38. The name of petitioner No. 2 stood at Serial No. 9 and the name of petitioner No. 3 at Serial No. 40. As per

the aforesaid order, the petitioners were required to join their duties within a period of 15 days. The selected candidates were also required to submit affidavit with respect to the above conditions. The petitioners duly complied with the same. However, the petitioners were not allowed to join duties and were told verbally that they are not having certain requisite eligibility according to the guidelines dated 3.5.2013. Reply has been filed.

2. As per the reply Vikram Kumar i.e. petitioner No. 2 was not found eligible by the Enquiry Committee on the ground that his father was working under employment of Municipal Council, Sirohi on the post of driver. With respect to petitioner No. 2 i.e. Tarun Kumar, it is stated that Enquiry Committee found him also ineligible as his father was already in the service on the post of Safai Employee in Municipal Council, Sirohi. Thus, they were refused appointment on the said ground.

3. Learned counsel for the petitioners states that after checking documents etc., petitioner No. 1 has been granted appointment. Hence, the present petition qua petitioner No. 1 is rendered infructuous and survives only qua petitioners No. 2 & 3. Learned counsel for the parties were heard at length.

4. For proper adjudication, it is necessary to reproduce the guidelines/instructions No. 7, 8 & 9, the same reads as under:

5. It is evident from the perusal of the said guidelines/instructions that if at all, the guidelines are applicable, only in case one or more family members apply in pursuance to the same advertisement and take part in the same selection process, whereas, in the case of the present petitioners, their respective fathers are in the employment of Municipal Council, Sirohi since many years prior to the application filed by the present petitioners in pursuance to the advertisement dated 25.5.2012. Thus, the father of the petitioners were appointed almost 15 to 20 years ago. It is admitted that there is no provision in the Rajasthan Municipalities (Safai Employees Service) Rules, 2012 barring more than one member of the same family from getting employment in the Municipal Council. Although no guidelines or instructions can be issued contrary to the said rules, even then, the instructions itself do not bar one or two members from the same family to be selected for appointment on the post of Safai Employees under another selection process in pursuance to a subsequent advertisement. Thus, the respondents cannot deny appointment to the petitioners on their respective posts either under the rules or under the said instructions. The said instructions/guidelines are not applicable to the petitioners in the facts of the present case.

6. In another case of similar nature, this Court allowed S.B. Civil Writ Petition No. 7436/2014 (Rahul Siyota v. State of Rajasthan & Anr.), decided on 22.1.2015 by holding as under:--

"In the facts of the present case, it is evident that the father of the petitioner was appointed 10 years ago and the present petitioner has applied on his own merit in pursuance to the advertisement dated 25.05.2012 being fully qualified

and after attaining the qualifying age. Thus, the respondent No. 2 has erred in refusing the appointment to the petitioner by misinterpreting the guidelines. Thus, the action of the respondents in not granting the appointment is arbitrary, against the Rule & guidelines and violative of Article 14 and 16 of the Constitution of India."

In view of the above, the present petition is allowed. The respondents are directed to give appointment to the petitioners No. 2 & 3 on the post of Safai Employees forthwith i.e. within one week from today. The appointment shall be deemed to be from the date when the other persons of the same select list were given appointment.