

(2020) 08 RAJ CK 0046
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1991 Of 2019

Manisha Gurjar

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 06-08-2020

Acts Referred:

Constitution Of India, 1950 — Article 14

Citation : (2020) 08 RAJ CK 0046

Hon'ble Judges : Inderjeet Singh, J

Bench : Single Bench

Advocate : R.S. Bhardwaj, Harshal Tholia

Final Decision : Allowed

Judgement

Learned counsel for the petitioner submitted that the issue involved in this writ petition has been considered by Co-ordinate Bench of this court at Principal Seat Jodhpur in the matter of Raju Devi Vs. State of Rajasthan S.B. Civil Writ Petition No. 13486/2018 wherein on 29.09.2018 following order was passed:-

These writ petitions have been filed by the petitioners seeking directions to the respondents to postpone the Physical Standard Test / Physical Efficiency Test ('PST/PET') for the petitioners and afford a reasonable time period to them to appear in and qualifying the PST/PET, post their maternity period pursuant to the Constable Recruitment-2018 initiated vide advertisement dated 25.05.2018 and grant them appointment on the post of Constable (GD), if they find place in the merit list with all consequential benefits.

The respondents issued an advertisement dated 25.05.2010 (Annex.1) for recruitment to the post of Constable. The candidates were required to pass three stages i.e. (1)- written examination, (2)- PST, & (3)- PET. Under the clause pertaining to PET, it was inter-alia indicated as under :-

महिला अभ्यर्थी जो शारीरिक दक्षता परीक्षा के समय गर्भवती हैं उनको सलाह दी जाती है कि वह इसमें भाग नहीं लेवे । यदि भाग लेते हैं तो स्वयं की जिम्मेदारी होगी। इस हेतु पृथक से शारीरिक दक्षता परीक्षा का कोई प्रावधान नहीं है तथा

इसके लिए अतिरिक्त अवसर नहीं दिया जायेगा। "

The petitioners submitted their on-line application forms against the vacancies notified and appeared in the written examination. In the list of candidates declared qualified for second phase of selection process i.e. PST/PET, all the petitioners qualified and their admit cards for appearing in the PST/PET on respective date as indicated in the advertisement were uploaded calling upon the petitioners to appear for PST/PET.

It is inter-alia indicated that for the purpose of PST, the requirement of weight is 47.5 kg. maximum and for PET, the candidates are required to undertake 5 km run, which is required to be completed within maximum 30 minutes with different marks for completing the run within different periods. It is further indicated that the petitioners are at various stages of pregnancy, documents in this regard have been annexed with the writ petition. Submissions have been made that the petitioners are not in position to undergo PST/PET due to their physical condition i.e. pregnancy, as such, they approached the respondents, apprised them about the above fact and made request for grant of reasonable time for undertaking PST/PET. However, in view of Clause (11) of the advertisement, as noticed herein-before, it was indicated that no separate PST/PET can be held and consequently, they were denied any extension in this regard.

It is submitted by learned counsel for the petitioners that the issue raised in the present writ petitions is squarely covered by judgment in the case of *Laxmi Devi v. State of Rajasthan & Ors.* : 2017 LabIC 3188, wherein it was held that the action of the respondents in not granting indulgence to the petitioners to qualify PST/PET because of their pregnancy is illegal and arbitrary and the provisions of the standing order to that extent is not sustainable and therefore, the writ petitions filed by the petitioners deserve to be accepted and the respondents may be directed to afford reasonable time period to the petitioners to appear for PST & PET post their maternity period.

Learned counsel appearing for the respondents opposed the submissions made by learned counsel for the petitioners. It was submitted that the stipulation in the advertisement is very clear wherein it was advised that the female candidates, who were pregnant should not participate in the PET, if they participate, the same should be at their own risk and it was further specifically clarified that there is no provision for separate PET and no additional chance shall be given for the said purpose and therefore, the petitioners, being aware of their physical condition should not have participated in the selection process by filing the on-line form and appearing in the written examination.

Qua the judgment in the case of *Laxmi Devi (supra)*, it is submitted that the facts of the said case were different, wherein there was a delay of two years in the PST/PET following the written examination, during which the women candidates became pregnant and when they were sought to be excluded on that count, the said judgment was delivered. However, in the present case there is no

hiatus between the written examination and PST/PET and therefore, as the petitioners were well aware of the requirement of the notification, having violated the said requirement, they now cannot seek indulgence from this Court and as such, the petitions deserve to be dismissed. I have considered the submissions made by learned counsel for the parties and have perused the material available on record.

The issue raised by the petitioners apparently is no more *res integra* as the same has exhaustively being dealt with by the Division Bench of this Court in the case of *Laxmi Devi (supra)*.

While dealing with the said issue, it was *inter-alia* observed by the Division Bench as under :-

"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.

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.

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.

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.

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.

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. 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.

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.

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."

A perusal of the above would indicate that the Division Bench found that a married woman is not disqualified for appointment and the fact she is pregnant in itself is not a disqualification for participating in the selection process; restriction imposed in the standing order was found to be an attempt by the respondents to defeat the claim of the women candidates; a pregnant woman deserves indulgence of relaxation to qualify after reasonable period in the PST/

PET; a woman cannot be forced to make a choice between bearing a child and employment and that the standing order providing for such a condition was not sustainable.

The submission sought to be made by learned counsel for the respondents seeking to distinguish the above judgment based on the fact that in the above case, there was a difference of two years between the written examination and PST/PET, whereas there is no hiatus between the written examination and PST/PET in the present case, is wholly baseless in view of the ratio of judgment in the case of Laxmi Devi (supra), which has held the very standing order, based on which condition has been imposed in the advertisement, as unsustainable and therefore, the submissions, which are sought to be made, deserve rejection and are consequently rejected. The petitioners are entitled to grant of reasonable time post their delivery period for appearing in the PST/PET, which reasonable time in the circumstances of the case based on the submissions made by learned counsel for the parties appears to be 60 days from the date of delivery.

In view of the above discussions, the writ petitions filed by the petitioners are allowed. The denial of the respondents to extend the period for undergoing PST/PET by the petitioners on account of their pregnancy is not sustainable. The respondents are directed to extend the time for PST/PET by sixty days from the date of their delivery.

It would be required of the petitioners to present themselves before the respondents for PST/PET within a period of sixty days from the date of actual delivery alongwith requisite proof regarding the date of delivery and their physical fitness to undertake the PET and after undergoing the PST/PET, if the petitioners qualify as per the standard laid down under the Rules and find place in the order of merit in their respective category, they may be considered for appointment in terms of the advertisement dated 25.05.2018.

Till such time that the PST/PET of the petitioners is undertaken pursuant to the above order, the candidature of the petitioners shall not be rejected and the respondents would keep one post qua each candidate in the respective categories vacant. No order as to costs.

Learned counsel appearing on behalf of respondent has not disputed the fact regarding passing of judgment by Co-ordinate Bench of this court in the matter of Raju Devi (supra).

In that view of the matter, present writ petition is allowed in terms of judgment passed by the Co-ordinate Bench of this court at Principal Seat at Jodhpur in the matter of Raju Devi (Supra).

Respondents are directed to re-conduct PST/PET for the petitioner and if the petitioner qualified as per the standard laid down under the Rules and finds place in the order of merit in her respective category, she may considered for appointment in terms of the advertisement dated 25.05.2018.