

(2018) 03 RAJ CK 0214

In the Rajasthan High Court

Case No : Civil Writ Petition No. 3752, 3753 of 2018

Mukesh Kumar @APPELLANT@Hash State of Rajasthan

Date of Decision : 20-03-2018

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Citation : (2018) 03 RAJ CK 0214

Hon'ble Judges : DR. PUSHPENDRA SINGH BHATI, J

Bench : Single Bench

Advocate : Lokesh Mathur, Sanjay Pandit

Final Decision : Disposed Off

Judgement

1. The petitioner has preferred this writ petition for the following reliefs :-

(a) by an appropriate writ, order or direction, the respondents may be directed to provide appointment to the petitioner as Safai employee with all consequential benefits.

(b) Any other appropriate writ, order or direction which this Hon'ble Court may deem just and proper in the facts and circumstances of the case may kindly be passed in favour of the petitioner.

(c) Writ petition filed by the petitioner may kindly be allowed with costs.

2. Learned counsel for the petitioner states that the petitioner shall be satisfied if his case is considered and a speaking order is passed in terms of

precedent law laid down by this Court in Rohit Kumar Vs. State of Rajasthan & Ors., (S.B. Civil Writ Petition No.1983/2015, decided on

15.12.2017), the order whereof reads as follows :

1. The petitioner has preferred this writ petition under Article 226 of the Constitution of India with the following prayers:

â??(i) The communication dated 11.02.2015 may kindly be declared illegal and respondents may also be directed to give appointment to the petitioner

on the post of Safai Karamchari on and from the date other selected candidates were given appointment with all consequential benefits.

(ii). The respondents be directed to grant arrears of salary with interest @ 18% per annum.

(iii). Any other order or direction, which this Honâ??ble Court deemed just and proper be passed in favour of the petitioner.

(iv). Costs of the writ petition may kindly be awarded to the petitioner.â??

2. Brief facts as noticed by this Court are that the respondents issued an advertisement dated 25.05.2012 for the post of Safai Karamchari. The draw

were opened and the petitioner was selected and asked to produce his original certificates vide communication dated 11.02.2015. The appointment

order was thereafter issued on 01.10.2014 but the appointment was not activated on account of the petitionerâ??s brother Avinash Kumar having

been given appointment under the same advertisement.

3. Learned counsel for the petitioner has shown from the advertisement as well as the appointment order that no such condition was prescribed by the

respondents at the time of advertisement which could debar the petitioner only on account of his brother having being appointed.

4. Learned counsel for the petitioner has relied upon the judgment of Division Bench of Honâ??ble this court in the matter of Municipal Corporation

Jodhpur Vs. Mohal Lal & Ors. (D.B. Civil Special Appeal No.79/2017) decided on 09.03.2007,â?? which reads as under :â??Heard learned counsel

for the appellant.

The appeal is directed against the judgment passed by learned Single Judge dated 20.11.2006 excluding the candidature of the respondent. The

respondent was excluded from consideration for the post of safai wala under the appellant Municipality solely on the ground that under executive

instructions of the Government where any member of the family was already serving under the Municipality or any other service shall not be

considered for the post of safai wala.

The learned Single Judge has allowed the writ petition relying on the decision of the Hon'ble Supreme Court in case of Baliram Prasad Vs. Union of

India & Ors. reported in AIR 1997 SC 637. The denial of opportunity to seek

appointment under the State or any instrumentality of the State on the ground that any member of the family or relative is already under service amounts to forfeit the fundamental rights under Article 14 and 16 of the Constitution of India which grants right of equality before law and equality in the matter of opportunities for any service under the State.

Apparently, the right to seek employment is individual right and is not depended on any other member of the family or relative being in employment.

There is no nexus with the object sought to be achieved by excluding the members of the family of the already employed person or relative of

employed person from seeking job opportunities as an individual. It cuts across his fundamental right to seek his individual existence by dint of his own

talent and qualification and affects his right to live with dignity, by depriving him reach to job opportunities on wholly irrational ground.

In view of the aforesaid clear position emerging from the judgment of the Hon'ble Supreme Court in Bali ram's case the provisions of the Constitution

we do not find any error in the judgment under appeal.

The appeal is accordingly dismissed in limine.â??

5. Learned counsel for the respondents has however refuted the submissions and has stated that they have passed the guidelines on 03.05.2013 and

according to that, two persons from the same family cannot be given appointment.

6. After hearing counsel for the parties and perusing the record of the case, this Court is of the opinion that disqualifying the petitioner only on the

ground that his brother has already been appointed in the same advertisement is contrary to the basic right of equality in public employment. This

Court finds that there is no such condition imbibed in the advertisement dated 25.05.2012. In the impugned order, it is stated that the debarring is in

accordance with Rule 7 of the Rules of 2012, however, on perusal of the Rules 7 of the Rules 2012, it is clear that the said rules are only for the

purpose of reservation and do not carry any bearing on the present facts and has not created any bearing upon the petitioner to be appointed. Further

the guidelines dated 03.05.2013 cannot be applied on the present petitioner as the games of the rule cannot be changed during the selection process by

the respondents prejudicial to the petitioner. It is settled by number of judgments of the Honâ??ble Apex Court that games of the rule during the

currency of the advertisement shall not be changed so as to prejudice the petitioner.

7. Thus, the writ petition is allowed and the communication dated 11.02.2015 is quashed and set aside and the respondents are directed to give

appointment to the petitioner on the post of Safai Karamchari arising out of the advertisement dated 25.05.2012. Such exercise shall be completed

within a period of 60 days from today.â??

3. In light of such submission, the present writ petition is disposed of with a direction to the respondents to consider candidature of petitioner strictly in

terms of the aforementioned precedent law within a period of 30 days from today by passing a speaking order.Â The petitioner shall be at liberty to

approach this Court, in case, need arises.