

(2005) 05 RAJ CK 0084

In the Rajasthan High Court

Case No : Civil Writ Petition No. 4876 of 2004

Neelam Sharma (Miss)

APPELLANT

Vs

Rajasthan Public Service Commission and Others

RESPONDENT

Date of Decision : 18-05-2005

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 15(1), 15(3), 16
Rajasthan Judicial Service Rules, 1955 — Rule 9, 9(3)

Citation : (2005) 4 RLW 2736 : (2005) 3 WLC 676

Hon'ble Judges : V.K. Bali, J

Bench : Single Bench

Advocate : P.C. Jain, for the Appellant; S.S. Raghav and Arvind Pareek, on behalf of M.S. Raghav, P.S. Asopa and Dinesh Yadav, for the Respondent

Final Decision : Allowed

Judgement

V.K. Bali, J.—Miss Neelam Sharma, a law graduate who claims to be having a brilliant academic record, takes strong exception for having not been called for interview in general category and in the manner debarring her from competing for appointment in the Rajasthan Judicial Service. Through present petition filed by her under Article 226 of the Constitution of India she seeks a direction to be issued to the Rajasthan Public Service Commission, the first respondent herein, to call her for interview and in consequence of her coming within the advertised posts, to issue a direction to the State Government as also the High Court of Judicature for Rajasthan, the second respondent herein to recruit her and give her appointment as per the rules and regulations.

2. The facts, on which the petitioner seeks appointment in the Rajasthan Judicial Service, even though in brief, need a necessary mention.

3. The petitioner appeared in the written test conducted by the first respondent for the purpose of recruitment in the Rajasthan Judicial Service in short "RJS". She is said to have passed LL.B; three Years Course from the University of Rajasthan. She claims to be a meritorious student having passed all the

examinations right from the beginning in first division. In BA, her subjects were English Literature, Psychology and Sociology. She obtained 61% marks in the aggregate. In the year 2003, she appeared in the examination of LL.B. Professional and qualified the same while obtaining more than 59% marks. Pursuant to the advertisement issued by the first respondent for the purpose of filling of vacancies in RJS she appeared in all the four written examinations conducted on 22.2.04 and 23.2.2004. In the advertisement that was published, it was mentioned that there were 108 vacancies including the back log of SC, ST and reversed class quota. It was also mentioned that 47 vacancies were for general category, out of which nine vacancies were reserved for women candidates. The petitioner obtained 153 marks in the written test but was not called for interview even though the first respondent called such candidates for interview who had obtained only 148 marks.

4. It is the case of the petitioner that recruitment in the RJS is governed by the Rajasthan Judicial Service Rules, 1955 hereinafter referred to as the "Rules of 1955". Rule 9 of the Rules of 1955 envisages reservation for SC, ST and women candidates. Sub Rule 3 of Rule 9 envisages reservation for the women candidates. Reservation of women candidates is 30 per cent of the total seats in reservation in general category besides reservation given to SC, ST, OBC etc. It is further the case of the petitioner that it was given out in the result published and notified in various news papers that the cut off marks in general category of male candidates would be 148 but in the case of women candidates in general category who obtained 154 marks or above would alone be called for interview. Article 15 of the Constitution envisages making of special provisions for women and children whereas Article 16 of the Constitution envisages granting of equal opportunity in the matter of employment. It is the case of the petitioner that women candidates have to be given precedence in the matter of appointment. The very fact that there is reservation to the extent of 30% would clearly mean that 30% seats are required to be reserved for women candidates although in case of merit this percentage of reservation can go high as the women candidates are also eligible to be appointed in the general category without banking upon reservation meant for women. It is further the case of the petitioner that candidates in reserved category of scheduled castes, were called for interview even though they had obtained 120 marks in the written test whereas scheduled tribe male candidates who obtained 121 marks were called for interview. The cut off marks for general male candidates were 148 whereas for women candidates in general category, the cut off marks were 154.

5. On the facts as detailed above, the counsel appearing for the petitioner vehemently contents that the petitioner having obtained 153 marks in the aggregate had fulfilled the requirement for interview provided in Schedule-III appended to the Rules of 1955 and that being so, the first respondent had no discretion to fix the eligibility criteria for interview contrary to the specific rule. It is also urged by him that different eligibility criteria for interview for male and female candidates in the same category i.e., general category is violative of

Article 14, 151 and 161 and 162 of the Constitution. Different eligibility criteria for interview based on general discrimination in the same category i.e., General category is no classification, contends the learned Counsel.

6. Pursuant to the notice issued by this Court, respondents have filed reply. Cause of the petitioner has been opposed. There would be no need at all to refer to the pleadings mentioned in the written statement as factual position enumerated in the writ petition has been admitted. It is thus conceded position that the petitioner competed for the post under contention in the general category meant for females and further that whereas the cut off marks in the written examination for male candidates were 148, the same for female candidates were 154. The petitioner had obtained 153 marks in the written test. Learned Counsel defending the respondents has opposed the cause of the petitioner on the solitary ground that once the cut off marks for female candidates in general category were fixed as 154, the petitioner was not at all entitled to be called for interview. Before, however, the court might adjudicate upon the only question that has been debated before this Court, it would be relevant to mention that on 4.8.2004 the Hon"ble Judge then seized with the matter passed the following order:

"Learned Counsel for the petitioner submits that the petitioner secured 153 marks in the RJS written examination whereas cut off marks for the women category is 154 marks, therefore, the petitioner did not receive any call letter for interview.

Learned Counsel for the petitioner submits that in the general category the cut off marks is 148 marks and she should first be considered in the general category in view of the ratio decided by this Court in the case of Paras Mal Jain v. State reported in 2002 1 WLC 1 : RLW 20023 Raj. 1835.

Having heard learned Counsel for the petitioner, at this stage, I direct the respondents to allow the petitioner provisionally to appear in the interview, but shall not declare the result of the petitioner and the result of the petitioner be kept in sealed cover till further orders by this Court."

7. On 11.10.2004 another Hon"ble Bench before whom the matter came up for hearing passed the following order:

"The result of the interview of the petitioner has been produced before this Court as directed and she has secured 25 twenty five marks in the interview and her marks in the written examination is 153 one hundred, fifty three. Thus in the aggregate she has secured 178 one hundred seventy eight marks. Therefore, she has although not qualified in the General Category, as the cut off marks for the last selected candidate is 182, she has qualified for a post in the reserved category earmarked for women candidates. The counsel for the petitioner as also for the RPSC wants to address the Court regarding the implication on the results of the other candidates as also on the question whether she is fit to be granted a seat in the reserved category meant for women. This writ petition therefore, be

listed for final disposal tomorrow i.e. On 12.10.2004."

8. The same Hon"ble Bench on 4.3.05 passed the following order:

"List this writ petition for final disposal at the admission stage on 11.3.2005 as it appears that the petitioner prima facie has an unimpeachable case in her favour since she had qualified for appointment in the judicial services in the general category as also in the reserved category earmarked for women; yet she has been denied the appointment which the counsel for the RPSC has not been able to justify.

It is pointed out that the training for the judicial officers is already going on and the petitioner might be deprived of the training on account of this litigation, even if she succeeds later.

Since the petitioner has qualified for a post in the general category as also in the category for women, as other women candidates are much lower in merit, I see no justification why she should unnecessarily be made to wait. Therefore, under the special facts and circumstances of this case, the respondents are directed to permit the petitioner to participate in the training programme held for the Judicial Officers-the benefit of which however, shall be subject to the result of this writ petition.

The writ petition be listed for final disposal at the admission stage as already indicated hereinabove."

9. I have heard learned Counsel for the parties and have examined records of the case. It may be mentioned at the very outset that the sole criteria for reserving or earmarking vacancies for the women candidates, is to have such minimum vacancies to be occupied by women candidates. Reservation for women in service is made so that they may have a proper representation in the service. It is keeping in view this object that in the Rules of 1955 30% seats have been reserved for women candidates. It is too well settled that whereas women candidates have to be appointed against the vacancies meant for their quota, their strength in the service can always be more than the reserved seats. In other words, whereas it is not possible to reduce vacancies earmarked for women candidates it shall always be permissible and rather desirable to have more women candidates appointed on the post under consideration. That being so, there would be no bar for women candidates to compete on the basis of their own merit while applying under a particular category. A Division Bench of this Court in Hari Om Awasthi and Ors. v. Rajasthan Public Service Commission RLR 2003 3 1 while dealing with Rule 93 of the Rules of 1955 itself has held that in case the women candidates are selected on the basis of their own merit in an open competition category, they will not be counted against the quota fixed for them in the reserved category. The facts of the case aforesaid reveal that the Commission had advertised 116 posts of Munsif and Judicial Magistrate under various categories. Some of the petitioners in the case aforesaid had applied in the general category i.e., Under the open merit category. Petitioners No. 4 and 5

applied under open merit category as well as under the OBC category. They appeared in the written test held by the Commission and were declared successful in the written examination. They were called for interview as well. After interview, 97 candidates were selected as against 116 posts and the select list was notified accordingly. Petitioners did not figure in the select list. Aggrieved by their non selection, they filed writ petition in this Court. In support of their writ petition, it was contended on their behalf that the women candidates were selected in excess of the quota prescribed for them and in case they were selected as per the quota, the petitioners would have found their place in the select list. The aforesaid contention was repelled by observing that "learned Counsel for the petitioners is labouring under a mistaken belief that the advertisement makes a reservation in favour of the male candidates. As already pointed out, no reservation could be made exclusively for male candidates. Reservation in the case of women candidates has been made in view of the fact that there is inadequate representation of women in the Rajasthan Judicial Service. The reservation has been made to remove inequality and disparity between the sexes in the context of employment in the Rajasthan Judicial Service. Clause 3 of Article 15 specifically provides that nothing in Article 15 shall prevent the State from making any special provision for women and children. Articles 15 and 16 are instances and facets of the "right to equality", which is enshrined in Article 14 of the Constitution. While Article 153 is of general application, Article 161 operates in the field of public employment. It does not mean that Article 153 goes out of operation insofar as matters of public employment relating to women are concerned. Article 14 read with Articles 153 and 161, in order to provide equality of opportunity to women, empower the State to make reservation in appointments or posts in favour of women." The Division Bench of this Court then placing reliance upon the judgments of Supreme Court in *Indra Sawhney and Ors. v. Union of India and Ors.* 1992 Supp. 3 SCC 217, *R.K. Sabharwal and others Vs. State of Punjab and others*, , *Ritesh R. Sah Vs. Dr. Y.L. Yamul and others*, and *Union of India and others etc. Vs. Virpal Singh Chauhan etc.*, held that "it is clear that women candidates who get selected in the open competition field on the basis of their own merit, will not be counted against the quota fixed for them in seats or posts reserved for them in different categories. Thus, the argument of the petitioners must be rejected as the Supreme Court has clearly enunciated that the reserved category candidates are entitled to compete for the non- reserved posts and once selected to the said posts, their number cannot be added and taken into consideration for computing the percentage of reservation. The same logic would apply in the case of female candidates selected under reserved categories, after competing with the male candidates, on one hand, and competing exclusively with candidates of their own sex, on the other hand."

10. The matter, in view of the division bench decision of this Court in *Hari Om Awasthi supra*, which is based upon a number of Supreme Court judgments referred to above, is thus no more *res integra*. The petitioner herein was entitled

to compete with male candidates as well and in case she had obtained cut off marks meant for male candidates to be called for interview, she had also to be treated at par with them and called for interview. By interim orders reproduced above, this Court, it appears, came to the rescue of the petitioner and allowed her to be interviewed even though provisionally. In interview, she had secured marks which were enough for her to be appointed as other candidates competing with her even though in women category have secured lesser marks than her. It is conceded position that the petitioner had obtained more marks than other women candidates who have been selected and appointed. The petitioner, in considered view of this Court, deserves to be appointed to the Rajasthan Judicial Service against the advertised posts.

11. This Court would have examined challenge to lesser cut off marks provided for male candidates as compared to the women candidates but inasmuch as the petitioner deserves to be appointed on the principle that she could not be denied competition in the general category of male candidates, there is no need to deal with this aspect of the case even though this Court would hasten to add that *prima facie*, providing lesser cut off marks for male candidates in general category than that of female candidates of general category appears to be discriminatory any thus violative of Article 14 of the Constitution of India. The same also appears to be against the very object of giving minimum representation as per reservation of the women candidates under the rules.

12. In view of the above discussion, this writ petition is allowed and direction is given to the respondents to issue appointment letter to the petitioner in case she has successfully undergone the training which was provided to her once again under interim orders issued by this Court. This Court has not been apprised as to whether a seat for the petitioner has been kept vacant or not. In case one seat has been kept vacant, there would be no problem in appointing the petitioner. If, however, no seat might have been kept vacant and all the advertised posts might have been filled, the Government may create supernumerary post or make appointment of the petitioner against a post which may be vacant on account of passage of time. It will be inequitable at this stage to relieve the last candidate in the category of petitioner but in case the respondents, for some valid reason, may not be able to create supernumerary post or make appointment of the petitioner against a post which may be lying vacant because of passage of time, the last candidate in the category of the petitioner shall have to be relieved. Petitioner, in any case, has to be given appointment. Inasmuch as the petitioner has suffered because of delay in not having been appointed on the post, which she deserved, for a long time, a further direction is issued to the respondents to issue her appointment letter within fifteen days from the date of receipt of copy of this order. A copy of this order be given to the learned Advocate General and the Registrar General of this Court under the signatures of the Court Master.