
(2019) 08 RAJ CK 0126

In the Rajasthan High Court

Case No : Civil Writ Petition No. 12361 Of 2019

Neetu Bohra

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 21-08-2019

Acts Referred:

Citation : (2019) 08 RAJ CK 0126

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Advocate : M.R. Singhvi, Bhavit Sharma, K.S. Rajpurohit, Shreyansh Mehta

Final Decision : Dismissed

Judgement

This writ petition has been filed by the petitioner seeking a direction to the respondents to permit the change of category of the petitioner.

The petitioner applied for the post of Nurse Gr.II in Direct Recruitment-2018 by her application dated 22.06.2018 (Annex.3) by indicating her status as 'general women'. Unfortunately, her husband died on 14.07.2019. On account of change in her marital status, the petitioner submitted an application to the respondents to change in her category and treat her application in 'widow category', however, as no response was given, the present writ petition has been filed seeking a direction.

Learned counsel for the petitioner made submissions that the issue raised in the present writ petition is squarely covered by the judgment in State of Rajasthan & Ors. v. Ms. Jamna Rajpurohit : D.B. Special Appeal (W) No.82/2013, decided on 30.08.2013, whereby the Division Bench in identical circumstances, permitted change of category by inter-alia observing as under :-

"It remains a matter of hard reality and of fact that each of the writ-petitioners was a married woman with her husband very much alive at the time of her filling up the application form. They had submitted the form and filled in the category

as applicable. It had been an unfortunate aspect that after filling up of the forms, they lost their respective husbands. The cases of the writ-petitioners could not have been considered as that of seeking any 'permission' to change the category. In fact, their category got changed for vis major over which, they had no control; rather they would have never wished it to happen.

Vis major i.e., act of God, refers to an occurrence taking place exclusively due to natural causes, and being of external nature, and further being the one which cannot be anticipated or provided against. Sudden demise of a person remains essentially a matter beyond the control and anticipation of human beings. Such an unfortunate event could nevertheless happen, as has happened in the present cases. The appellants cannot be considered justified in suggesting that such an unfortunate event can also be ignored by them with a perfunctory reference to the stipulation like the one referred above. It remains trite that the law does not envisage nor countenance an absurdity or impossibility. The propositions of the appellants, running against the very fundamentals of law, are required to be rejected.

We are further of the view that when the appellants have provided for a special reservation to a category of persons requiring help and support of the State i.e., the women suffering widowhood, any provision in that relation ought to be applied with a practical approach and with due respect to the ground realities. The very object behind reservation for widow category would be defeated, if not rendered illusory, if the peculiar facts and circumstances of the case of a woman suffering widowhood after filling up of the application form but before completion of recruitment process, are ignored and she is not considered for appointment in widow category. We are at one that the observations in the orders impugned that in these cases, the concerned authorities were rather under an obligation to consider the candidature of the writ-petitioners in widow category."

It is submitted that as the issue raised is squarely covered, the writ petition be allowed.

Learned Additional Advocate General appearing on caveat on behalf of the respondents submitted that the similar issue was considered by another Division Bench in State of Rajasthan & Anr. v. Jagdish Prasad & Anr. : D.B. Civil Special Appeal (Writ) No.611/2016, decided on 09.09.2016, wherein after noticing the judgment in the case of Jamna Rajpurohit (supra), qua the said judgment, it has been observed as under and therefore, no relief can be granted based on the said judgment :-

"In Jamna Rajpurohit (supra) significantly the Division Bench itself observed that permitting change of category after the last date for submission of applications would make the selections an unending process and yet proceeded to direct it to be done on basis of sympathy. Jamna Rajpurohit (supra) has therefore to be held as per incuriam. The order under appeal based upon the same is also held to be unsustainable."

Learned counsel for the petitioner attempted to make submissions that the judgment in the case of Jagdish Prasad (supra) itself is against the settled practice, wherein the Division Bench ought to have referred the matter to a Larger Bench.

I have considered the submissions made by learned counsel for the parties and perused the material available on record.

The facts are not in dispute and it is also not in dispute that the judgments in the case of Jamna Rajpurohit (supra) and Jagdish Prasad (supra) are conflicting.

However, as in the subsequent judgment of Jagdish Prasad (supra) after noticing the judgment in the case of Jamna Rajpurohit (supra) observations have been made that the said judgment is per incurium, the said finding by the Division Bench in the case of Jagdish Prasad (supra) is binding on this Bench.

In view thereof, the relief claimed by the petitioner based on the judgment in the case of Jamna Rajpurohit (supra) cannot be granted.

The writ petition filed by the petitioner is, therefore, dismissed.