

(2020) 07 RAJ CK 0193
In the Rajasthan High Court
Case No : Spl. Appl. Writ No. 228 Of 2020

Rajasthan Subordinate and Ministerial Service Selection
Board, Jaipur And Ors

APPELLANT

Vs

Yashwant Kumar Meena

RESPONDENT

Date of Decision : 23-07-2020

Acts Referred:

Citation : (2020) 07 RAJ CK 0193

Hon'ble Judges : Sangeet Lodha, J;Rameshwar Vyas, J

Bench : Division Bench

Advocate : Vinit Sanadhya, V.L.S. Rajpurohit

Final Decision : Allowed

Judgement

1. This intra-court appeal is directed against order dated 9.12.19 passed by the learned Single Judge of this Court, whereby the writ petition preferred by the respondent seeking directions to the appellants to consider his online application form submitted for recruitment to the post of Livestock Assistant in the category of TSP instead of Non TSP category initially applied for, has been allowed.

2. The facts relevant are that pursuant to the advertisement dated 14.3.18 issued by the Rajasthan Subordinate and Ministerial Service Selection Board, Jaipur, for recruitment to the post of Livestock Assistant, the respondent submitted his online application on 4.5.18. The last date for submission of the application form was 18.5.18. In the meantime, vide notification dated 19.5.18 issued by the President in exercise of the power conferred by sub paragraph 2 of paragraph 6 of Fifth Schedule to the Constitution of India, the Scheduled Areas (State of Rajasthan) Order, 1981, was repealed and the fresh Order Scheduled Areas (State of Rajasthan) Order, 2018, was promulgated, whereby entire Pratapgarh District was declared Scheduled Area. The respondent belonging to Chhoti Sadri became entitle to avail the benefit of TSP Area. According to the respondent, he represented for change of category of his application form from Non TSP category to TSP category but to no avail.

3. The respondent participated in the selection process and the result was declared on 29.1.19. The respondent did not stand in merit and therefore, his name was not included in the select list. After a lapse of about 9 months, since declaration of the result, the respondent filed a writ petition claiming the relief indicated as above, which stands allowed by the learned Single Judge by the order impugned relying upon a coordinate Bench decision dated 23.7.18 rendered in the matter of Manish Kumar Nagda & Ors. Vs. State of Rajasthan & Ors. (S.B. Civil Writ Petition No.8529/2018). Hence, this appeal.

4. Learned counsel appearing for appellants submitted that admittedly when the advertisement dated 14.3.18 was issued, Tehsil Chhoti Sadri was not part of the TSP Area and therefore, the respondent applied in the category of Non TSP Area. Learned counsel submitted that the notification issued does not have retrospective effect and therefore, the vacancies already advertised were required to be filled up according to the position of the TSP and Non TSP Area then prevailing. Learned counsel submitted that in Manish Kumar Nagda's case, the learned Single Judge has seriously erred in holding that the benefit of the notification dated 19.5.18 once issued, the benefit has to be extended to the resident of the TSP Area. It is submitted that the decision in Manish Kumar Nagda's case was questioned by the State by way of intra-court appeal but the same was dismissed as having become infructuous while keeping the question of law involved open. It is submitted that yet another appeal preferred assailing the decision of the learned Single Judge in Manish Kumar Nagda's case is still pending consideration before this Court.

5. Drawing the attention of the Court to para 30 of the decision in Manish Kumar Nagda's case, learned counsel submitted that the petitioners therein, who had approached the Court well in time were given 20 days time from the date of the judgment to give in writing their wish to migrate from Non TSP category to TSP category under different advertisement and therefore, the respondent, who had approached the Court with inordinate delay of about 1½ years, was not entitled for any relief and the writ petition was liable to be dismissed on this count alone.

6. On the other hand, the counsel appearing for the respondent submitted that once the Court laid down that the benefit of notification dated 19.5.18 deserves to be extended to the pending recruitment, then the respondent simply cannot be denied benefit thereof solely on the ground that he has approached the Court with some delay. Learned counsel submitted that the President having included Chhoti Sadri in the Scheduled Area while declaring entire Pratapgarh District as Scheduled Area, it will be unjust to deny benefits thereof to the respondent. Learned counsel submitted that when the notification dated 19.5.18 was issued, the recruitment process in question was at initial stage inasmuch as only the last date for filing online application form had expired. Learned counsel submitted that immediately the representation was made by the respondent for change of category on 29.5.18 and therefore, the delay in filing the petition cannot come in his way.

7. We have considered the rival submissions and perused the material on record.

8. Indisputably, pursuant to the advertisement dated 14.3.18, the respondent had applied for appointment to the post of Livestock Assistant in Non TSP category. The notification declaring Pratapgarh District as Scheduled Area was issued by the President on 19.5.18 i.e. after expiry of the last date for submission of the application form. The respondent has averred that he had made a representation for change of category from Non TSP to TSP on 29.5.18. In this regard, a typed copy of the representation is placed on record as Annexure-4. It is not disclosed in the petition that by which mode the representation was submitted by the respondent to the Secretary, Selection Board. The copy of the representation placed on record does not bear the endorsement of the receipt thereof. As a matter of fact, the representation alleged to have been made as aforesaid, does not inspire confidence. Be that as it may, even if it is assumed that the representation was made by the respondent, the fact remains that he was not permitted to change the category and he participated in the selection process. The written examination for the said recruitment was held on 21.10.18 and the result was declared on 29.1.19, wherein the respondent was not selected. Even thereafter, the respondent did not approach this Court immediately and filed the writ petition as late as on 3.10.19. Thus, apparently the respondent has failed in approaching this Court for redressal of his grievance with utmost expedition and therefore, the writ petition filed with delay and laches after completion of the selection process was liable to be dismissed on this count alone and the learned Single Judge has seriously erred in allowing the petition preferred after inordinate delay relying upon earlier decision in Manish Kumar Nagda's case (supra).

9. It is pertinent to note that in Manish Kumar Nagda's case, the recruitment to the post of Teacher Gr.III initiated vide notification dated 12.4.18 was in question, wherein the writ petition was filed by the writ petitioners on 15.6.18, which was decided by the learned Single Judge vide order dated 23.7.18 and while extending the benefit of the notification dated 19.5.18 to the petitioners therein, they were extended only 20 days time to migrate from Non TSP category to TSP category i.e. from advertisement no.1/18 dated 12.4.18 to advertisement no.2/18 dated 12.4.18. Thus, even on the strength of decision in Manish Kumar Nagda's case (supra), the respondent who had approached the Court after completion of the selection process with inordinate delay of 1½ years could not have been granted any relief, as prayed for.

10. There is yet another aspect of the matter. After completion of the selection process, the persons selected have already been accorded appointment and none of them was impleaded as party respondent in the writ petition and thus, even otherwise no relief could have been granted to the respondent in their absence.

11. In view of the discussion above, the order under appeal passed by the learned Single Judge deserves to be set aside.

12. Accordingly, this intra-court appeal is allowed. The judgment under appeal dated 9.12.19 passed by the learned Single Judge is set aside. The writ petition preferred by the respondent is dismissed. It is made clear that the writ petition is dismissed only on the ground of inordinate delay and laches and therefore, the legal questions arising out of the decision of the learned Single Judge in Manish Kumar Nagda's case, the intra-court appeal against which is alleged to be pending before this Court, are left open. No order as to costs.