
(2019) 01 RAJ CK 0348
In the Rajasthan High Court
Case No : Civil Writ Petition No. 413 Of 2019

Rajbala

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 16-01-2019

Acts Referred:

Citation : (2019) 01 RAJ CK 0348

Hon'ble Judges : Alok Sharma, J

Bench : Single Bench

Advocate : Akshat Choudhary, M.F. Baig

Final Decision : Allowed

Judgement

Visually impaired 75 %, the petitioner applied for writing the Rajasthan State and Subordinate Services Combined Competitive Examination, 2018 in the category of OBC (Non- Creamy Layer) in the PH (low vision). Having been admitted to the examination the petitioner was declared successful in the preliminary examination and found qualified to write the RAS/ RTS Main Examination (NonTSP).

The case of the petitioner is that RAS/ RTS Main Examination 2018 is scheduled to be held on 28/29.01.2019 for which the petitioner needs a scribe. It has been submitted that RPSC guidelines rather arbitrarily provide that although visually challenged candidates would be entitled to a scribe it would be one provided by respondent-RPSC itself to write the RAS/ RTS Main Examination. It has been submitted that the said arrangement is in the cross-heir of Clause IV of the Circular dated 26.02.2013 issued by the Ministry of Social Justice & Empowerment, Department of Disability Affairs, Government of India which allows a visually handicapped candidate to choose a scribe of her own choice to write an examination. It has been submitted that the petitioner's request for being permitted to choose a scribe for writing the RAS/ RTS Main Examination 2018 has been mechanically negated by the respondent-RPSC. Hence this

petition.

Mr.Akshat Choudhary appearing for the petitioner submitted that an identical issue had come up before this court in the case of Kuldeep Jaiman Versus State of Rajasthan & Another (SBCWP No.4192/2017) which was decided on 24.03.2017. Therein after taking into consideration the opposition of the respondent-RPSC to the petitioner's right to a scribe of her own choice at an examination conducted by it, the court held that the petitioner would be entitled to a scribe of his own choice subject to the condition that the said scribe would be educationally qualified one step lower than the minimum educational requirement for writing the examination in issue. The court however allowed the RPSC to depute a special invigilator to oversee that what was being spoken by the petitioner / examinee was so only recorded (and nothing more) on the answer sheet by the scribe. Mr.Akshat Choudhary further submitted that the judgment in the case of Kuldeep Jaiman Versus State of Rajasthan & Another (supra) was followed by the Principal Seat at Jodhpur in the case of Ali Asgar Bohra Versus State of Rajathan & Another (SBCWP No.18922/2018) decided on 15.12.2018 wherein it was again reiterated that a visually handicapped examinee was entitled to a scribe of her own choice at the examination conducted by the RPSC albeit with the caveat that such scribe would educationally one step less qualified than the minimum educational qualification required for examination in issue and also that RPSC would be permitted to depute a special invigilator to oversee and ensure that what was spoken by the examinee was alone recorded on the answer sheet by the scribe.

Per contra, Mr.M.F. Baig appearing for the respondent-RPSC submitted that the guidelines of RPSC provide that where a scribe is needed for writing an examination for a visually impaired candidate, he would be provided one for by the RPSC itself. It has been submitted that this aspect of the matter could not be earlier brought to the court's notice either in the case of Kuldeep Jaiman Versus State of Rajasthan & Another (supra) and Ali Asgar Bohra Versus State of Rajathan & Another (supra). It has been submitted that in the event the petitioner and those similarly situate are held entitled to chose scribe/s it would potentially entail a unfair advantage to such examinees over other examinees as the scribe of the petitioner's choice would be inclined to modulate the answers of the petitioner as dictated/ spoken by her and also use her own knowledge in the course of the candidate's written examination.

Heard. Considered.

On a query put to Mr.M.F. Baig whether any appeal was filed by the RPSC in the case of Ali Asgar Bohra Versus State of Rajathan & Another (supra) and Kuldeep Jaiman Versus State of Rajasthan & Another (supra), he submitted that none was filed and the aforesaid judgments of the court were complied with. In view of the matter, it is quite apparent that the respondent-RPSC itself has deviated from its guidelines which provide that the visually handicapped candidates would be provided a scribe only by it - and not of the examinee's choice - for the purpose

of writing examination/s. Aside of the aforesaid as against the mere guidelines of the RPSC with no legally binding force, the earlier judgments of this court on the same issue operate as precedent with which this court of co-ordinate Bench strength cannot deviate from. Further there is nothing on record that RPSC has a panel of duly selected scribes from which one could appropriately be allocated to the petitioner. Rather Mr.M.F. Baig on a query of the court submitted that it is for the Superintendent of the Examination Center to identify a scribe when sought by an examinee. I am of the considered view that such a power conferred on a Superintendent of an examination center to casually identify a scribe would entail gross arbitrariness to the disadvantage of a visually impaired candidate for it cannot be doubted that a scribe writing the examination for a visually impaired candidate should have an assessed capacity to comprehend and record on paper answers to questions at an examination by a visually handicapped candidate.

The upshot of the aforesaid discussion is that I would be inclined to allow this petition as under:-

(1) that the petitioner would be entitled to choose her own scribe subject to conditions following, for writing the RAS/ RTS Main Examination 2018 commencing 28/29.01.2019.

(2) that the scribe chosen by the petitioner however would be who is one level less educationally qualified than the educational qualification requirement for writing the RAS/ RTS Main Examination 2018. Affidavit of the petitioner in this regard should be submitted to the Secretary, RPSC within five days from today.

(3) that the RPSC would be entitled to appoint a special invigilator to oversee the dictation of the visually impaired petitioner to the scribe nominated by him.

(4) that the RAS/RTS Main Examination 2018 of the petitioner be conducted in a separate room and the special invigilator would be free to place her remarks, if warranted on the answer sheet of the petitioner.

The petition is allowed accordingly.