

(2016) 02 RAJ CK 0166

In the Rajasthan High Court

Case No : SB Civil Writ Petition Nos. 1632, 1644, 1708, 1717, 1718, 1740, 1741, 1769, 1770, 1771, 1705, 1784 and 1785/2016

Ramawatar Matwa and Others

APPELLANT

Vs

Board of Secondary Education and Others

RESPONDENT

Date of Decision : 05-02-2016

Acts Referred:

Citation : (2016) 1 WLCRajUC 618

Hon'ble Judges : M.N. Bhandari, J.

Bench : Single Bench

Advocate : Anoop Dhand, Harendra Singh, B.M. Sharma, Kuldeep Aswal, Sudarshshan Laddha, R.K. Saini, Gajender Sharma, S.K. Beniwal, Ram Pratap Saini, Vikram Singh Shekhawat and S.K. Singodiya, for the Appellant; Vinod Gupta, for the Respondent

Final Decision : Disposed off

Judgement

M.N. Bhandari, J.—1. This bunch of writ petitions involves common questions of law thus were heard together and are decided by this common order.

2. Learned counsel for petitioners submit that the non-petitioner-Board of Secondary Education, Ajmer issued an advertisement No. 4/2015 to invite applications for appearance in the Rajasthan Eligibility Examination for Teachers - 2015 (for short "the REET"). The applications were to be submitted on line through "e-mitra". The required details to fillup application forms were given in the advertisement itself. The petitioners belong to rural belt thus approached e-mitra for submission of their application forms. Application forms were submitted through e-mitra, however, in few cases, fee paid to e-mitra for its onward transmission to the respondent-Board was not made. In other cases, e-mitra did not fill correct date of birth, subject, course like B.Ed. or BSTC, gender etc. In one case, receipt number of the amount earlier deposited in pursuance to the RTET-2013 was given instead of token number. It was on account of mistakes committed by e-mitra the petitioners have been deprived to appear in

REET-2015, as admit cards are not generated.

3. In those writ petitions, fee was not transferred by the e-mitra to the non-petitioner Board and the status of petitioners application on website as on 31.1.2016 is shown to be "pending", the petitioners remained under bona fide belief that their fee must have been transferred to the non-petitioners. Due to mistake of e-mitra, petitioners may not be deprived to appear in REET-2015. It is more so when it is only a qualifying examination for the post of Teacher and will not create any right of employment. Hence, for the aforesaid reason also, petitioners may be permitted to appear in the test.

4. Reference of the judgment in the case of "Datar Singh versus State of Rajasthan & Anr.", SB Civil Writ Petition No. 9170/2012, decided on 11.9.2012 by Principal Seat at Jodhpur, has been given. Therein also, similar issue came up for consideration and finding mistake of e-mitra, prayer was granted in favour of the petitioners therein. The judgment in the case of Datar Singh and connected writ petitions was upheld by the Division Bench thus, similar directions may be given in these petitions also.

5. It is also submitted that non-petitioners even issued a press note on 3.2.1015 to permit the candidates to change their gender i.e. male or female. The mistake, if any, for it was also committed by e-mitra. When permission has been given for correction of gender, there remains no reason not to permit the petitioners to correct the information wrongly given by e-mitra while submitting application forms on line.

6. Learned counsel for non-petitioners has contested the case. He submits that notice of the writ petitions was given to him by the court looking to urgency of the case as the REET-2015 is scheduled for 7.2.2016. The advertisement bearing No. 4/2015 is elaborate one. A candidate was required to read it carefully and then to submit application form on line. If, due to the lapse of the candidate, proper information was not filled by e-mitra, benefit thereof may not be given to the candidate. After submission of application form, one was required to read it properly. It is for the reason that after submission of the application form, a copy thereof is given to the candidate by e-mitra. The liberty was given to seek corrections after going through the form.

7. At the first instance, press note was issued on 18.12.2015, whereby, candidates were given liberty to apply again if their application form has been rejected for any reason whatsoever. One day's time was given for it. It was also provided that those who did not deposit the amount of fee with e-mitra, it may be deposited by 19.12.2015. The period was then extended by four days i.e. upto 23.12.2015 by issuing another advertisement. The candidates were required to submit application form again if it was rejected for whatsoever reasons or to deposit fee if not already deposited with e-mitra. None of the petitioners availed the opportunity despite knowing about rejection of their application forms.

8. The non-petitioners thereupon issued another press note No. 6/2015 giving further opportunity to rectify the error, if any, in submission of application form by e-mitra. Those candidates who applied for correction's, rectification was made in their application form. Despite opportunity given to the petitioners to seek rectification in the application forms, they did not avail it. In view of above, now, this court may not allow rectification in the application form of the petitioners at this stage when non-petitioners have already made arrangements for the test to the size of the applications, found proper.

9. So far as press note dated 3.2.2015 is concerned, it is limited to change of gender and does not apply to rejection of form because mentioning of wrong gender has not resulted in rejection of the application form. The press note dated 3.2.2015 does not apply to the aforesaid and, in fact, no new arrangement are required to be made by the non-petitioners even if the change of the gender is made at the request of the candidate. In view of aforesaid facts, none of the petitioners is entitled to the relief, as claimed.

10. The judgment of this court in the case of Datar Singh (supra) was on its facts. Therein, candidates were not given opportunity to rectify the error's which exist herein. A candidate failed to avail the opportunity for rectification of the error, cannot be given benefit of his own default thus judgment in the case of Datar Singh (supra) is not applicable to the facts of this case.

11. I have considered rival submissions of the parties and perused the record.

12. The advertisement bearing No. 4/2015 was issued by the non-petitioners to call the application forms for appearance in REET-2015. It is an examination which is required to be passed by a candidate to qualify for appointment to the post of Teacher. The candidates were permitted to apply on line through e-mitra. All the petitioners submitted their application forms through e-mitra and a copy thereof was given to the candidate concerned. After submission of application forms, non-petitioners issued a press note on 18.12.2015 giving liberty to the candidates to apply again if their applications have been rejected for any reason whatsoever and if fee is not deposited with e-mitra, then to submit it again. The press note issued on 18.12.2015 is reproduced hereasunder-

13. Therein, one day's time was given to the candidates to do the needful i.e. upto 19.12.2015, however, non-petitioners issued another press note to extend the period from 18.12.2015 to 23.12.2015. In view of above, each one was given an opportunity to submit application form afresh or deposit the fee. None of the petitioners came forward for submission of new application forms or to deposit the fee. The non-petitioners, thereupon, again issued a press note on 30.12.2015 calling upon the candidates for rectification of error in the application form. The press note bearing No. 12/2015 issued by the non-petitioners is also reproduced hereasunder-

14. If any rectification was required in the application forms submitted through e-mitra, petitioners were having an opportunity to get it rectified, however,

petitioners failed to do the needful i.e. to correct age, gender, date of birth and lastly the qualification i.e. B.Ed. or BSTC and all related mistakes in the application form. It may be that due to mistake of e-mitra, certain informations were wrongly submitted in the application but the candidate having supplied copy of the application form, should have read it to find out the error therein. It seems that the petitioners did not care to go through the application form submitted by them to seek rectification of the error. The opportunity for it was available on the first occasion pursuant to the advertisement 18.12.2015 and subsequently when the date was extended upto 23.12.2015. The candidates whose application forms were rejected could have submitted application by the aforesaid date and, same way, if the fee has not reached to the non-petitioners, to deposit it immediately.

15. None of the petitioners ever made an application to seek rectification of the error in pursuance to the circular dated 31.12.2015 thus default cannot be to their benefit.

16. If the non-petitioners would not have given opportunity to rectify the error committed by e-mitra then this court could have covered this case by the judgment in the case of Datar Singh (supra) but the facts of this case are distinguishable.

17. In few cases, it is submitted that as on 31.1.2016, status of application forms was shown as "pending" whereas, according to the non-petitioners, immediately on rejection of the application form, it went on the e-mail or on mobile of the applicant through SMS immediately as there was system of automatic generation of the information thus the status "pending" was not shown in any of the case. However, I find that if in any of the case pertaining to deposition of fee, status was shown to be "pending" on 31.1.2016, then such case deserves to be considered. It is for the reason that there is no mistake in their application form so as to seek rectification by the candidate. Due to mistake of e-mitra, who did not deposit the amount with the non-petitioners then such a default of non-payment of fee cannot be noticed by the petitioners unless they are informed about rejection of the application form for want of fee. The status of the application form was shown as "pending" on 31.1.2016, fee would be accepted by such petitioners, however, if any of the petitioners was given information about their non-payment of fee and he did not approach the non-petitioners in pursuance to the press note issued from time to time and his form was rejected prior to 31.1.2016, then would not be covered by the direction aforesaid.

18. So far as other petitioners are concerned, they have failed to get rectification of error in their application form despite of opportunities given thus cannot be benefited for their own default. They are not entitled to any relief. They cannot be permitted to seek rectification only in pursuance to the press circular dated 3.2.2015. The said circular is also quoted hereunder for ready reference-

19. The press note permits the candidates to make corrections in the gender (male or female) within seven days of the examination. A candidate may apply through post or in person. It would not be accepted if by last date of submission of the application form, the fee was not paid and it remained pending. The petitioners are not entitled to the benefit of the circular dated 3.2.2015. There, the rectification of error was to the limited extent and it has not resulted in rejection of the form.

20. With the aforesaid directions/observations, all the writ petitions are disposed of. In case, status of any of the petitioners is in regard to fee is shown to be "pending", fee would be deposited with the non-petitioners within one week from today and, in the meanwhile, they would be permitted to appear in REET-2015 schedule to be held on 7.2.2016. The petitioners would make a representation to the non-petitioners by 11.30 AM on 6.2.2016 for it. Their representation may accordingly be considered in the light of the directions given above.

21. It may, however, be observed that in case REET-2015 is deferred on 7.2.2015 for whatsoever reasons, then non-petitioners can take a decision as to whether left out candidates may also be allowed to seek rectification of their mistakes by giving one more opportunity.