
(2014) 02 RAJ CK 0199
In the Rajasthan High Court
Case No : Civil Writ petition No. 10867 of 2012

Reetu Kalasua

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 26-02-2014

Acts Referred:

Constitution of India, 1950 — Article 16, 309

Citation : (2014) 3 CDR 1768 : (2014) 141 FLR 894 : (2014) LabIC 2913 :
(2014) 4 RLW 3282 : (2014) 3 SCT 489

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Advocate : Nupur Bhati and T.S. Rathore, Advocate for the Appellant; B.L. Bhati, Advocate for the Respondent

Judgement

Dr. Vineet Kothari, J.—The petitioner, Reetu Kalasua, is divorced woman, who applied for the selection for the post of School Lecturer (English) in pursuance of the Advertisement (Annex.3) dated 22.7.2011 for which 167 posts were notified by the respondent-Rajasthan Public Service Commission (for short, hereinafter referred to as "RPSC") on the requisition of the Education Department of the State Government. The petitioner having secured Merit position at 167 in the selection list with Roll No. 101148 vide Annex. 5 had filed her application in the category "divorced women" belonging to ST/TSP area and vide the admission card (Annex. 4) she was allowed to undertake this examination on 1.3.2012 and 2.3.2012. However, at the time of selection process, even though she had filed her divorce application on 13.1.2011 in the Family Court, Udaipur vide the Case No. 15/2011 - Reetu v. Rajendra Kumar Meena, but she could get the divorce decree only on 28.2.2012 after about 4 months of the last date for filing the on-line application on 30.8.2011 but even before she appeared in the examination for said selection process on 1.3.2012 and 2.3.2012 vide the Admission Card (Annex. 4). Her selection came to be cancelled by the RPSC vide the impugned order (Annex. A1) dated 24.4.2013, filed by the petitioner alongwith second stay petition, on the ground that since on the cut-off date of filing the on-line

application on 30.8.2011, the petitioner did not have the proof of her divorce viz. the divorce decree as it was given only on 28.2.2012, therefore, her case could not be considered against the special category of reservation for divorced women of 2% of number of the posts, but only under the general category of woman belonging to ST and TSP area, of which the cut-off marks were above the marked obtained by the petitioner at 233.55. Aggrieved by the same, the present writ petition has been filed in this Court on 4.10.2012.

2. By the consent of the learned Counsels for both the sides, the matter was heard finally at this stage in view of facts of the case.

3. Dr. Nupur Bhati, learned Counsel for the petitioner has drawn the attention of the Court towards the cut-off marks given by the respondent-RPSC vide Annex. 6 dated 8.5.2012 in the category of "Scheduled Tribe" in "divorced women" category of 68.30 and the petitioner had obtained the marks above the said cut-off marks; and she urged that by way of amendment in the Rajasthan Various Services (Amendment) Rules, 2011 vide the Notification dated 24.1.2011, all the relevant services rules applicable in the State, stood amended with the following reservation for divorced woman candidates inserted in all the relevant rules. The relevant amendment reads as under:

GOVERNMENT OF RAJASTHAN

DEPARTMENT OF PERSONNEL

(A-Gr. II)

No. F. 7(2)DOP/A-II/88/Pt. I Jaipur, dated: 24.1.2011

NOTIFICATION

In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of Rajasthan hereby makes the following rules further to amend the various service Rules as specified in the Schedule appended herewith; namely:--

1. Short title and commencement.--(1) These rules may be called the Rajasthan Various Service (Amendment) Rules, 2011.

(2) They shall come into force with immediately effect.

2. Amendment.--The existing rule as mentioned in Column Number 3 against each of the Service Rules as mentioned in Column Number 2 of the Schedule appended hereto, shall be substituted by the following, namely:

Reservation of vacancies for women.--Reservation of vacancies for women candidates shall be 30% category wise in direct recruitment out of which 8% shall be for widows and 2% for divorced women candidates. In the event of non-availability of eligible and suitable widows and divorced women candidates in a particular year, the vacancies so reserved for widows and divorced women candidates shall be filled by other women candidates and in the event of non-

availability of eligible and suitable women candidates, the vacancies so reserved for them shall be filled up by male candidates and such vacancies shall not be carried forward to the subsequent year and the reservation shall be treated as horizontal reservation i.e. the reservation of women candidates shall be adjusted proportionally in the respective category to which the women candidates belong.

Explanation:-- In the case of widow, she will have to furnish a certificate of death of her husband from the competent Authority and in case of divorcee she will have to furnish the proof of divorce.

4. Learned Counsel for the petitioner, Dr. Nupur Bhati, also urged that the petitioner was living separately from her husband with two male children since 2006 and had already filed a divorce application in the year 2011 on 13.1.2011 when the aforesaid selection process was started. She further submitted that both the parties i.e. the petitioner and her husband, had also entered into a formal agreement of taking divorce in the presence of two witnesses, and the copy whereof is place on record as Annex. 2 dated 16.7.2010. However, since the Court process took its own time and the Divorce decree was granted only on 28.2.2012, just before even the written examination for the said selection process on 1.3.2012 the petitioner made a representation to the Secretary of the Secondary Education Department alongwith the copy of Divorce decree dated 28.2.2012 to consider her case against such reserved category for divorced woman only for which she had applied for the said post. However, before such representation could be considered by the Secretary, Secondary Education Department, the respondent-RPSC cancelled her selection vide the order impugned dated 24.4.2013 (Annex. A/1) filed alongwith second stay petition, cancelling her selection. Therefore, the learned Counsel for the petitioner urged that quashing the communication of the respondent-RPSC, the case of the present petitioner deserves to be considered in that special category even now since all the posts reserved for the said category has not yet been filled-up.

5. Per contra, Mr. B.L. Bhati, learned Govt. Counsel appearing for the Education Department, urged that on the last cut-off date of submission of the on-line application form i.e. on 30.8.2011, the petitioner could not be said to be belonging to the category of "divorced woman" and merely because she filed her divorce application expecting and anticipating that such divorce decree will be granted in future, she could not claim consideration of her case against the reservation of 2% of posts for that category at that point of time and, therefore, the RPSC was justified in cancelling her selection considering her case in the general category of woman belonging to ST category of TSP area, as she was belonging to ST category in TSP area where the cut-off marks were admittedly higher than the marks obtained by the petitioner.

6. He also urged that granting of divorce decree later on, on 28.2.2012 cannot undo the said cancellation of the selection by the RPSC and the petitioner cannot be given the benefit of consideration of her case for appointment as School Lecturer (English) on the basis of such later decree of divorce.

7. No one has appeared on behalf of respondent-RPSC despite service.
8. I have heard the learned Counsels for the parties and given my thoughtful consideration to the rival submissions and documents on record.
9. A coordinate bench of this Court in the case of Ms. Jamna Rajpurohit v. State of Rajasthan and others, (SBCWP No. 8899/2012, decided on 29.8.2012), was seized with similar controversy, wherein the woman candidate applied in general category in the selection process for Teacher Grade III (Level II) pursuant to the advertisement dated 27.2.2012, and appeared in the written examination on 2.6.2012, however, after fifteen days of the said examination on 2.6.2012, unfortunately her husband died on 18.6.2012. The petitioner there, Ms. Jamna Rajpurohit, applied for change of her category from "general women" to "widow category" for claiming her appointment in the reserved category for widows and similar contentions were raised by the respondent before this Court that the change of category later on cannot be permitted. Repelling those contentions, the co-ordinate bench of this Court allowed the writ petition and directed the respondents to consider the candidature of the petitioner for the said post of Teacher Grade III in the widow category. The reasoning given by the learned Single Judge in the aforesaid case, is quoted below for ready reference:

It is true that the petitioner applied for consideration of her candidature for recruitment on the post of Teacher Grade-III (Second Level) under the General category because on the date on which she filled up her form her husband was alive and, later on, admission card was issued to her for appearing in the written-examination on 2.6.2012. Unfortunately, her husband died on 18.6.2012, therefore, immediately the petitioner preferred representation to the respondents for changing her category from General to Widow; but, the prayer of the petitioner was rejected ostensibly in view of Clause 19(1) of the advertisement.

It is not in dispute that the petitioner applied under the general category but it is also correct that before declaration of result her husband died on 18.6.2012 which is a natural calamity. Therefore, obviously the fact of death of petitioner's husband was to be considered by the authorities of the welfare State in view of the fact that women fall under the weaker section of the society as per Article 16 of the Constitution of India. The petitioner is only asking for considering her candidature for appointment as Teacher Grade-III (Second Level) under the "Widow" category as per her merit in the written-examination.

In my opinion, the decision has not been taken by the authority concerned objectively because the respondents themselves are changing category at their own for the candidates belonging to SC/ST/OBC to General category if they secure marks to compete as per their merit with General category and considering as per their merit with General category and considering those reserve category candidates under the General category; meaning thereby, the candidates belonging to SC/ST/OBC category are getting benefit of change of category from reserve class to General if found meritorious, then, same analogy

can be put into operation for young widow also.

Further, it is important to take judicial note of the fact that unlike other reserve categories the status falling under the "Widow" category purely rests upon happening of an event in the course of life of a woman and no sooner husband of a woman dies she is rendered widow for all purposes including her consideration for employment purposes under the widow category and denial shall rather render the proceedings vitiated and violative of Constitutional provisions. Therefore, the concerned authority was under obligation to exercise its power for granting relief to the petitioner. However, it has not been done in this case.

In the facts and circumstances of this case, I deem it appropriate to direct the respondents to consider the candidature of the petitioner under the category of widow for the reason that before declaration of the result after appearing in the examination the husband of the petitioner died on 18.6.2012.

In view of the above discussion, this writ petition is allowed. Impugned order Annex.-9 dated 8.8.2012 passed by the Principal Secretary, Panchayati Raj & Rural Department, Government of Rajasthan, Jaipur, so also, communication Annex.-10 dated 24.8.2012 passed by the Zila Parishad, Pali are quashed and set aside. The respondents are directed to consider the candidature of the petitioner for appointment on the post of Teacher Grade-III (Second Level) in Social Studies subject as per her merit under the "widow" category.

10. The State took up the matter further before the Division Bench in intra-court appeal but the State's appeal being DBSAW No. 82/2013 - State of Rajasthan and Others Vs. Ms. Jamna Rajpurohit, , [Along with connected three SAW(s)] reported in was dismissed by the Division Bench of this Court on 30.8.2013 by holding as under:

The appellants have repeatedly harped on the stipulations of the nature as contained in clause 19(1) of the advertisement dated 27.2.2012 which reads as under:--

Such a stipulation appears to be logical to some extent and the appellants appear to be right in their assertion that in an ordinary case, the particulars stated in the application cannot be permitted to be altered, lest it becomes an unending process. However, the appellants, representing a welfare State, appear totally perfunctory in their approach when suggesting that even the categorization of a married woman to a widow upon happening of an unfortunate event, i.e., demise of her husband after filing of the application, could also be considered hit by the stipulation aforesaid. The stipulation as occurring in clause 19(1), obviously, operates in the case where the candidate has filled up the application form stating his/her category and after the last date, seeks change of the category or any other particular stated in the application. The said stipulation directly relates to an attempt by the candidate to seek alteration of the particulars in the application form on his/her own volition. The prayer for such nature alteration can, of course, be denied under the said stipulation but then,

the same cannot be considered operating in the case of present nature where the woman candidate is neither seeking alteration of any particulars stated in the application nor seeking change of category of her own accord or on account of any of her mistake. The prayer herein had been for consideration of the case of the individual writ - petitioner in widow category because of an unfortunate event, and because of a peculiar reason, that she was rendered a widow after filling up the application form upon demise of her husband.

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.

In view of the above, these appeals stand dismissed summarily, subject, of course, to the observations foregoing.

11. After hearing the learned Counsel for the parties and upon perusal of the record, this Court is of the opinion that the case of the present petitioner stands on slightly a better footing than the case of the Ms. Jamna Rajpurohit (supra).

12. The present petitioner as per the facts noticed by the Family Court in its judgment dated 28.2.2012, reveal that she was living separately with two male children since 2006 on being harassed by her husband, and the marriage in question having taken place on 26.5.2002 ultimately resulted in a divorce decree. The parties to the said matrimony also agreed for a mutual divorce vide the agreement dated 16.7.2010 (Annex. 2 to the writ petition). To get a legal recognition of her status of divorcee, the present petitioner filed the divorce application before the Family Court, Udaipur in the year 2011 on 13.1.2011 and the case No. 15/2011 was registered by the said Family Court and ultimately, the divorce decree was passed by the learned Family Court, Udaipur, on 28.2.2012. The time taken in grant of divorce decree by the Family Court, Udaipur, cannot be said to be on account of any fault of the petitioner and on the contrary it appears that on account of no contest put up by the husband, the Court took much time lesser than usual and granted the divorce decree on 28.2.2012. The petitioner was apparently living separately from her husband since 2006 with two male children and being in that destitute position, applied for the said selection process of School Lecturer (English) in the category of "divorced woman" belonging to ST of TSP area under the genuine and legitimate expectation that she would get the divorce decree from the competent Court as soon as possible, which she did ultimately on 28.2.2012 even before she appeared in the written examination for the said selection process on 1.3.2012 and 2.3.2012.

13. In the face of the circumstances, that the posts reserved for this category to the extent of 2% under the amendment in the Services Rules vide the Notification dated 24.1.2012 and the petitioner admitted got more marks than the cut-off marks for this category at 68.30, this Court finds little justification for rejection of the case of the petitioner for considering her appointment in that reserved category of "Divorced woman" belonging to ST in TSP area.

14. This Court cannot lose sight of the fact that all disadvantages attributable to the said category for which special reservation was carved by the State, unfortunately got attached to the present petitioner. She is not only a person belonging to backward class, namely, Scheduled Tribe in backward area, namely, TSP, but she has also unfortunately suffered a separation from her matrimonial home after four years of her marriage and with two male children was living separately from her husband since 2006 in a destitute condition and had even applied for the divorce decree in the year 2011, itself, before she applied for the present job and got such decree during the said selection process itself just before appearing in the written examination on 1.3.2012 and 2.3.2012. The facts speak for themselves and nothing more genuineness of her case for consideration of her appointment in this reserved category, can be found and, therefore, taking of a rather technical or pedantic approach of the part of RPSC that by the cut-off date for filing on-line application on 30.8.2011, she did not possess proof of her divorce, the said approach does not appear to be sound to this Court at all.

15. The date in question for submission of the on-line application form could be relaxed by the respondent- Education Department, while considering her case for appointment who is ultimately appointing authority and the recommendation of the respondent - RPSC in this regard rejecting her case vide the impugned communication dated 24.4.2013 (Anne. A/1), does not assign any other reason then said the cut-off date in question but the same deserves to be quashed by this Court for the aforesaid reasons.

16. The petitioner's case, in the considered opinion of this Court, in the facts and circumstances of the case, definitely deserves to be considered in the reserved category for divorced woman belonging to ST/TSP area. More so, the judgment delivered by the co-ordinate benches of this Court in the case of Ms. Jamna Rajpurohit (supra), applies on all fours (sic force?) to the present petitioner. The said judgment of the learned Single Judge has become final with the dismissal of intra-Court appeal preferred by the State being DBSAW No. 82/2013 - State of Rajasthan and others v. Ms. Jamna Rajpurohit, [Alongwith connected three SAW(s)] decided on 30.8.2013, quoted above. No further document of any challenge laid before the Apex Court has been placed before this Court. Accordingly, this writ petition is allowed and the impugned order of the respondent - RPSC dated 24.4.2013 (Annex. A/1) is quashed and the respondent-Education Department of the State Government is directed to consider the case of the present petitioner for appointment as School Lecturer (English) against the aforesaid reserved category of divorced woman belonging to ST/TSP area and offer her appointment on the said post. The aforesaid exercise be completed within one month from today. No costs. A copy of this order be sent to the concerned parties forthwith.