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**(2013) 05 RAJ CK 0180**

**In the Rajasthan High Court**

**Case No :** Special Appeal (Writ) No. 101 of 2013 with Stay Application No. 2289 of 2013 in Civil Writ Petition No. 19733 of 2012 (with 3 other connected matters)

Renu Sharma and Another

APPELLANT

Vs

RPSC and Others

RESPONDENT

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**Date of Decision :** 16-05-2013

**Acts Referred:**

**Citation :** (2013) 3 WLN 167

**Hon'ble Judges :** Mohammad Rafiq, J; Meena V. Gomber, J

**Bench :** Division Bench

**Advocate :** Tanveer Ahmed in Appeal No. 101/2013, for the Appellant; S.N. Kumawat, Additional Advocate General with Mr. Shantanu Kumawat, Advocate for State of Rajasthan as well as Rajasthan Public Service Commission and Mr. Vigyan Shah, Advocate for Private Respondents in Appeals No. 101/2013 and 248/2013, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

Mohammad Rafiq, J.—Service of notice on respondents in Special Appeal No. 101/2013 is taken to be complete as Shri Vigyan Shah has put in appearance on behalf of respondents no.4 to 6, who were the petitioners in Writ Petition No. 19733/2012. Respondents No. 1 to 3 are duly represented by the Additional Advocate General. Suvidhya Yadav filed Writ Petition No. 20299/2012 and Shri Vigyan Shah was her counsel. She is respondent no.1 in Special Appeal No. 366/2013, therefore, on the askance of the Court, Shri Vigyan Shah accepts notice on her behalf. Respondents no.2 and 3 are the State and its functionary and therefore Shri S.N. Kumawat, Additional Advocate General, accepts notices on their behalf. Hence, service is complete.

2. Service of notice on respondents in Special Appeal No. 248/2013 is also taken to be complete as Shri Vigyan Shah has put in appearance on behalf of respondents no.1 to 3, who were the petitioners in Writ Petition No. 19733/2012.

Respondents No. 4 and 5 are duly represented by the Additional Advocate General.

3. All these matters are taken up for final disposal at admission stage.

4. Shri Tanveer Ahmed, learned counsel for the appellants has argued that in clause 5.4 of the advertisement notification issued by the Rajasthan Public Service Commission, Ajmer, dt. 17.02.2012, there was a clear stipulation to the effect that out of the posts reserved for female candidates, 8% would be reserved for widow candidates and 2% would be reserved for deserted female candidates. This was based on the Notification dt. 24.01.2011, whereby the Government promulgated the Rajasthan Various Service (Amendment) Rules, 2011, inserting an omnibus amendment in as many as 106 Service Rules of the State. The Notification also contained a Schedule and the substitution was made in the existing rules as mentioned in Column No. 3 against each of the Service Rules as mentioned in Column No. 2 of the Schedule.

5. Shri S.N. Kumawat, learned Additional Advocate General, argued that in all the aforesaid three, namely, advertisement as well as English and Hindi version of the amended Rules, it is clearly mentioned that 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 divorcee/deserted women candidates. The learned Single Judge has also at page 3 of the impugned judgment mentioned that reservation to the extent of 8% and 2% to the widow and divorcee respectively would be out of 30% reservation meant for female candidates and not on overall number of vacancies meant for any of the category, yet in the operative part of the judgment, the learned Single Judge has directed that calculation of 8% and 2% reservation for widow and divorcee/deserted respectively would not be made on total posts advertised for each category but would be on 30% posts reserved for female candidates alone.

6. Shri Vigyan Shah, learned counsel for petitioners-respondents has cited a judgment of Single Bench of this Court dt. 15.03.2013 in Writ Petition No. 11119/2012, wherein the learned Single Judge has noted the admission of the learned Additional Advocate General that he has supported the argument of the petitioner therein on the aspect of computation of the aforesaid quota by 8% and 2% reservation for the widows and divorcee, respectively, on 30% posts reserved for them and not on the total number of posts. Learned counsel, therefore, submitted that the view taken by the learned Single Judge is perfectly justified.

7. Shri S.N. Kumawat, learned Additional Advocate General, submitted that what he contended before the learned Single judge was that the reservation has been provided strictly as per the amended Notification dt. 24.01.2011, which envisages 8% and 2% reservation for the widows and divorcee/deserted women candidates respectively.

8. Substitution by amendment inserted in Column 2 of Schedule to various Rules

vide Notification dt. 24.01.2011 is reproduced here below:-

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 widow and divorced women candidates shall be filled by other women candidates and in the even 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 proportionately 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.

9. Similarly, Hindi version of the said amendment is reproduced here below:-

10. A clarification has been issued by the Government in response to the query by the Rajasthan Public Service Commission as to the manner of computation of the aforesaid quota that it would be on overall number of posts and not just on the posts of 30% reserved, out of that for the women candidates. Clarificatory letter was sent by the State Government to the Rajasthan Public Service Commission on 08.04.2011, mention of which is made at Page 7 of Special Appeal No. 248/2013. The said clarificatory letter is reproduced for ready reference:-

I have to say that the reservation have been provided for women candidate as per Department of Personnel (A-2) Notification No. F.7(2)DOP/A-II/88/Pt.I dt 24.01.2011, 30% reservation for women candidates out of which 8% is reserved for widows and 2% for divorced women candidates.

It is clarified that there will be category-wise 10% (8%+2%=10%) reservation for widows and divorced women candidates respectively and rest of 20% will be for other women candidates. Total reservation for all women candidates will be 30%.

11. On perusal of the language of amended rule, both in English as well as Hindi as also Clause 5.4 of the advertisement and in view of clarification of the Government, we are not persuaded to concur with the view expressed by the learned Single Judge because in our considered view, the only interpretation that can be placed on the aforesaid quota rule is that computation has to be made on overall number of vacancies and not just on 30% of the vacancies reserved for women candidates, which is what has been expressly stated therein that 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 divorcee/

deserted women candidates.

12. It is basic principle of interpretation of statute that when meaning and language of the statute is clear and unambiguous, nothing should be added thereto. Courts should interpret the statute in the light of what is clear and explicit. Courts cannot imply, which is not expressed and it cannot interpret the provisions in statute, which is to apply and assumes deficiencies.

13. Supreme Court in *Bansal Wire Industries Ltd. and Another Vs. State of U.P. and Others*, observed that the words used in the Section, rule or notification should not be rendered redundant and should be given effect to it so, when the language of the statute is plain and unambiguous, the Court must give effect to the words used in the statute.

In *Union of India and another Vs. Deoki Nandan Aggarwal*, their lordships of Supreme Court in para 14 observed, as under:-

14.....It is not the duty of the Court either to enlarge the scope of the legislation or the intention of the legislature when the language of the provision is plain and unambiguous. The Court cannot rewrite, recast or reframe the legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on the Courts. The Court cannot add words to a statute or read words into it which are not there.

14. The Supreme Court in *Commissioner of Central Excise, Mumbai Vs. Fiat India (P) Ltd. and Another*, held that the words used by the legislature are generally a safe guide to its intention, whenever the legislature uses certain terms or expressions of well-known legal significance or connotations, the Courts must interpret them as used or understood in the popular sense if they are not defined under the Act or the Rules framed there under.

15. In the instant case, when the rule aforequoted is interpreted on the plain language employed by the rule making authority, what is evident is that 8% and 2% quota respectively for widows and divorcee/deserted has been earmarked and that quota is to be worked out of the total number of vacancies not just on 30% of vacancies reserved for women. Contention that such quota should be computed on the quota that may be earmarked for women candidates and not total number of vacancies as the same was agreed to by the learned Additional Advocate General during argument in Writ Petition No. 20299/2012. In the first place, even if we ignore the disputation by Shri S.N. Kumawat, learned Additional Advocate General regarding the same, law is well settled that there can be no estoppel against the statute and any such concession does not bind the Courts when matter is not before it for true interpretation of any statute or the rule. The Government has a policy of reservation and thereby decided to grant 8% reservation to widow and 2% to divorcee/deserted women, this Court would not be justified in scuttling that policy of the Government by placing such interpretation of the Rule, which is not warranted on plain reading of the Rules. In the result, all the three special appeals succeed and are hereby allowed. The

impugned judgments dt. 15.12.2012 in Writ Petition No. 19733/2012 and dt. 17.12.2012 in Writ Petition No. 20299/2012, are set aside. The computation of reservation would be made as mentioned above. The issue whether or not the females who belong to Schedule Castes/Schedule Tribes/Other Backward Classes can migrate to open category on the ground of their having secured more marks than cut-off in general, would be open to be decided in appeals pending against judgment of the Single Bench dt. 15.03.2013 in Writ Petition No. 11119/2012.

This also disposes of stay applications.