
(2007) 08 RAJ CK 0009
In the Rajasthan High Court

R.P.S.C.

APPELLANT

Vs

Smt. Sangita Jain and Another

RESPONDENT

Date of Decision : 10-08-2007

Acts Referred:

Citation : (2008) 2 RLW 1215

Hon'ble Judges : Sangeet Raj Lodha, J;Gyan Sudha Mishra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Gyan Sudha Misra, J.—This appeal has been preferred by the Rajasthan Public Service Commission (for short "RPSC") against the judgment and order dated 13.3.2007 passed by the learned Single Judge in three writ petitions. However, this appeal has been preferred in the matter of SBCWP No. 3589/2001 only which had been filed by the petitioner/respondent herein Smt. Sangeeta Jain for a writ of mandamus to the appellant-R.P.S.C. as also the State of Rajasthan for granting her appointment on the post of Assistant Agricultural Engineer against 20% posts which had been earmarked for the women candidates as 48 posts were advertised and 20% of 48 posts would be 9.6 meaning thereby 10 posts in round figure.

2. The procedure for appointment which had been laid down in the advertisement dated 26.10.1996 as amended by Corrigendum dated 21.12.1996 and yet another corrigendum dated 30.1.1997, envisaged that the applicant would have to go through the Screening Test and thereafter would be required to appear for the interview.

3. The respondent-Smt. Sangita Jain admittedly did not appear for the screening Test as according to her contention the number of applicants in the women category were only 8 and there were at least 10 posts which were to be filled by the women applicants. It is stated that the petitioner-respondent herein although appeared for the screening Test, she could not clear the same. However, the

other applicants filed a writ petition for a writ of mandamus to the respondent-appellant herein for grant of appointment on the post of Agricultural Engineer.

4. The petitioner-Smt. Sangita Jain-respondent herein was already functioning as a Junior Engineer in the Agricultural Department of the Government of Rajasthan and she filed a writ petition for a direction that one post of Assistant Agricultural Engineer among the women category be granted to her as the applicants among the women category are less than 10. The writ petition appears to have been contested not by the Government of Rajasthan but by the examination conducting body that is the appellant-R.P.S.C. It was contended by the Counsel for the R.P.S.C. that the petitioner/respondent herein Smt. Sangita Jain had not cleared the Screening Test and therefore was not called for the interview and therefore she had no right of appointment to the post of Agricultural Engineer, however, the learned Single Judge, who had an occasion to test the case of the respondent-Smt. Sangita Jain along with two others, noted that the applicants among the women category being less in number, the Screening Test was not really required and the respondent should have been summoned for the interview for the post. That having not been done, the learned Single Judge was pleased to issue a direction to the R.P.S.C. to consider the case of the applicant Smt. Sangita Jain for appointment on the post of Assistant Agricultural Engineer and if found suitable, appoint her with effect from the date on which the candidates immediately below her in the merit list which is required to be prepared should be appointed. It has been laid down that she shall be entitled to only seniority and notional benefits of pay, increments etc. but shall not be entitled to the arrears of the salary for the intervening period as she has not yet been functioning on the post.

5. The appellant-R.P.S.C, feeling aggrieved with the aforesaid judgment and order, has preferred this appeal and learned Counsel for the R.P.S.C. Mr. S.N. Kumawat assailed the judgment of the learned Single Judge substantially on the ground that the respondent has not cleared the Screening Test and she had rightly not been summoned for the interview for appointment to the said post.

6. The respondent Smt. Sangita Jain had appeared in this Court by filing a caveat through her Advocate Mr. Anupam Agarwal who submitted that number of women candidates being less than 10 which were the posts earmarked for candidates of women category, the Screening Test was not at all required in her case specially when she was already functioning as a Junior Engineer in the Department of Agriculture. He further submitted that one Ms. Pragya Saxena, who although had cleared the Screening Test and had been called for the interview for selection, did not clear the interview as she was not included in the merit-list of the 48 candidates which had been prepared for selection. Ms. Pragya Saxena, therefore, filed a writ petition in this Court vide S.B.C.W.P. No. 2265/1998 (Pragya Saxena v. State of Rajasthan) wherein it was contended that the women applicants being less than the posts were advertised, she had a right of appointment on one post although she had not cleared the interview.

Thereafter the R.P.S.C. preferred an appeal before the Division Bench against the judgment and order passed in Ms. Pragya Saxena's case but the appeal stood dismissed. Two appeals against the judgment and order passed by the learned Single Judge was filed before the Division Bench; one appeal was filed by the State of Rajasthan and the other by the R.P.S.C. bearing D.B. Civil Special Appeal No. 104/1999 and D.B. Civil Special Appeal No. 104/1999 and D.B. Civil Special Appeal No. 105/1999 wherein the order of the learned Single Judge directing for appointment to Ms. Pragya Saxena was assailed. Both the appeals preferred at the instance of the State and the R.P.S.C. were dismissed. Thereafter the R.P.S.C. although did not file any SLP before the Supreme Court the State of Rajasthan filed a SLP in the Supreme Court vide SLP (Civil) No. 14074/2000 (State of Rajasthan v. Pragya Saxena and Anr.). The State obviously in the SLP contended before the Supreme Court that Ms. Pragya Saxena had no right of appointment on the post of Agricultural Engineer as she had not cleared the interview but this argument did not find favour with the Apex Court obviously for the reason that the number of applicants among the women category being less, the applicants who had sought appointments by virtue of their applications had a right to be appointed on the post of Agricultural Engineer. These orders passed by the S.B., D.B. and Supreme Court delivered in the matter of Pragya Saxena offered a plank to the respondent's Counsel to the effect that if a view has already been taken earlier in the matter of Pragya Saxena referred to hereinbefore that the number of applicants among the women category being less than the posts which were earmarked for the women candidates, the applicants were entitled to seek appointment on the post in reserved category of seats earmarked for women. He has therefore, contended that even though Smt. Jain had not qualified in the Screening Test, her case also stood on a similar footing as that of Ms. Pragya Saxena in the sense that she also had a claim along with other applications for one of the 10 posts which were earmarked for women candidates and moreso as she is already functioning as a Junior Engineer in the Department of Agriculture.

7. The Counsel for the R.P.S.C. Mr. Kumawat however, still endeavour to counter this part of the argument and submitted that if she had not even cleared the screening test and the interview, then he learned Single Judge is in error in issuing a direction that her case be considered for appointment.

8. Having tested the arguments and counterarguments advanced by the Counsel for the contesting parties in the appeal, it catches our attention that if the number of applicants among the women category were less in number than the 10 posts available which were 20% of the total which were advertised, then the appellant-R.P.S.C. cannot have any reason to disqualify her for the post as it is obvious that a screening test is held only to weed out candidates by way of preliminary selection meaning thereby that if there are large number of applicants and the posts available are much less, some method of screening is adopted by the appointing authorities and in that event, a screening test is justified. But in the instant matter when the posts available for the lady

candidates were only 10 in number and the lady applicants were only eight, we fail to understand as to why the respondent was not summoned for the interview, in fact the distinction drawn between the case of the respondent-Smt. Jain and Ms. Pragya Saxena who has been appointed, although she had not qualified in the interview is difficult to appreciate as the reason for appointing Ms. Pragya Saxena although she had not qualified in the interview, will apply to the case of the respondent Smt. Jain also in our view as she has also a claim within the 8 applicants who had applied for the post of Agricultural Engineers out of 10 posts which were earmarked for the women category.

9. In order to further explain the position, we reiterate that if Pragya Saxena could be appointed without having qualified in the interview on the ground that interview became inessential on account of lesser number of candidates for appointment in the women category, then the same yardstick or reasoning will govern the case of Smt. Jain also in our view and therefore, the learned Single Judge appears to be correct in his approach in directing the appellant-R.P.S.C. to consider her candidature for appointment to the post of Agricultural Engineer. We also think it just and appropriate to mention herein that the State of Rajasthan has not preferred any appeal against the judgment and order of the learned Single judge and rightly so as the State of Rajasthan has lost up to the Supreme Court. In the matter of Pragya Saxena wherein the views taken by the Division Bench and the Supreme Court lead to the obvious conclusion. In the existing facts and circumstances of the case that if the candidates are less in number in the reserved category, their selection by way of interview and screening test becomes wholly futile.

10. Thus relying upon the judgment and order in Pragya Saxena's case, we hold that reliance placed by the Counsel for the respondent on Pragya Saxena's matter definitely comes to the assistance of the respondent-Smt. Jain also. A question however might arise as to whether any candidate in the reserved category including woman category can be straightaway appointed without any interview or screening test. In this context, we may clarify that we should not be misunderstood to have taken a view that no interview or screening test is at all required under any circumstances as it is only under a situation where the applicant is less than the available posts and the fact that the applicant is also already working in the Department from before, that a pragmatic approach is required to be taken by the Department. Besides this, if the interview was held to be inessential in Pragya Saxena's case in the sense that she was appointed in spite of having not qualified in the interview, we fail to understand how a different yardstick could have been applied in the matter of the respondent-Smt. Jain as already indicated hereinbefore.

11. We are, therefore, of the view that the respondent who is already functioning in the Department of Agricultural and was eligible to be appointed against one of the available seats earmarked for the women category shall have a right of consideration for appointment on the post of Assistant Agricultural Engineer. We

thus find no substance in this appeal and hence, it is dismissed.