
(2015) 09 RAJ CK 0088

In the Rajasthan High Court

Case No : Civil Writ Petition No. 9500 of 2014

Sarita Chaudhary

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 11-09-2015

Acts Referred:

Citation : (2015) LabIC 4536

Hon'ble Judges : Sandeep Mehta, J.

Bench : Single Bench

Advocate : M.A. Siddiqui, for the Appellant; H.S. Choudhary and Ajeet Singh Shekhawat, for the Respondent

Final Decision : Allowed

Judgement

Sandeep Mehta, J.—Facts in brief are that the petitioner, having acquired the requisite qualifications for appointment as a Lecturer in Mechanical Engineering in the Government Institutions applied for selection in pursuance of a notification Annexure-3 dated 28.6.2011 issued by the R.P.S.C. for recruitment on the post of Lecturer, Mechanical Engineering in the Technical Education Department. The petitioner appeared in the selection process and after being declared successful, was invited for interview vide letter Annexure-4 dated 7.11.2013. Pursuant to the holding of interviews, the R.P.S.C. issued a merit list of 46 successful candidates. Out of 46 posts advertised, six were reserved for woman (5-General Woman + 1-Widow) in the Mechanical Engineering Branch. The petitioner's name was not reflected in the merit list. However, 20 names were reportedly kept in reserve wherein the petitioner's name finds place at S. No. 6. Five persons above the petitioner in the reserve list Annexure-5 dated 29.11.2013 are all male candidates. The petitioner, thereafter sought information under the Right to Information Act as to the position of the five posts reserved for women candidates. She was communicated by a letter dated 30.10.2014 issued by the Technical Education Department, Government of Rajasthan, Jodhpur that five candidates had been appointed against the five reserved seats for General

Women out of which one Miss Anupama who had been appointed at the Government Polytechnic College, Karoli, Camp Alwar did not join. The candidate placed at S. No. 5 Lajwanti Parnami joined duty on 24.9.2014. Thus, the petitioner developed a genuine and legitimate expectation of claiming appointment on the post left vacant by non-joining of Miss Anupama. Aggrieved of the action of the respondents in not offering her appointment against the vacant post, the petitioner has approached this Court by way of the instant writ petition. While entertaining the writ petition, this Court vide interim order dated 5.1.2015 directed the respondents to keep one post of Lecturer (Mechanical Engineering) vacant for the petitioner.

2. Separate replies have been filed to the writ petition by the State of Rajasthan and the Rajasthan Public Service Commission. In both the replies, the petitioner's contention that her name finds place as the most meritorious woman candidate in the reserve list, is not disputed. It is also not disputed that one of the five seats reserved for women candidates remained vacant as Miss Anupama did not join the post. Reference is given in the reply filed by the State of Rajasthan as well as the Commission to Rule 25 of the Rajasthan Technical Education (Engineering) Service Rules, 2010 (hereinafter referred to as the Rules of 2010) and it is contended that the reserve list remains operative for six months only. It is submitted on behalf of the Commission that as it did not receive any requisition by the Government for recommending any name from reserve list and since the period of six months expired on 30.6.2014, the reserve list expired and thereafter the petitioner has no right to be recommended for the post. By order dated 8.5.2015, this Court directed the learned A.G.C. to specifically apprise the Court regarding the length of joining time which was provided to all the candidates selected in the main list. An additional affidavit has been filed in reply to the said query. It is stated in the additional affidavit that the recommendation of the names of candidates selected in the main list dated 1.1.2014 was received by the State from the Rajasthan Public Service Commission on 8.1.2014. It is further stated in para No. 4 of the additional affidavit that as per the circular issued by the Department of Personnel dated 19.7.2011 the select list forwarded by the R.P.S.C. has to be operated within six months from the date of recommendation. The department, upon receiving the select list, after character verification, police verification and document verification, issued appointment orders of 32 candidates on 21.3.2014. The second list of appointment orders was issued on 8.5.2014 for 12 persons. One candidate named Harnarayan Meena whose police verification and document verification was completed in the month of May, 2014 was issued an appointment order dated 14.7.2014. Some of the selected candidates filed applications seeking extension of joining time. A candidate named Lajwanti Parnami was allowed extension in joining time. One Mr. Mohit Kumar did not submit the requisite documents within time. Finally, his documents were received on 20.5.2014 whereafter police verification was conducted and the appointment order was issued to him on 22.8.2014. The action of the authorities in issuing the

belated appointment orders is justified stating that the applications preferred by the candidates seeking extension of joining time were accepted for valid reasons.

3. Learned counsel for the petitioner, while reiterating the averments made in the writ petition relied upon the decisions rendered in *Ghanshyam v. State of Rajasthan & Ors.* reported in 2009 (3) WLC (Raj.)-196 and *Dr. Rakesh Mani Vs. State of Rajasthan and Another*, in support of his argument that in the peculiar circumstances of the case and the delay caused by the authorities in issuing appointment orders to the selected candidates as per the main list, the reserve list was required to be operated even beyond the period of six months. As per him, since the petitioner is the most meritorious candidate amongst the General Woman reserve list candidates, she has a right to be appointed against the vacancy occurring on account of non joining of Ms. Anupama.

4. Learned counsel for the respondents, while opposing the submissions advanced by the learned counsel for the petitioner relied upon the decision rendered by the Hon"ble Supreme Court in *Gujarat State Dy. Executive Engineers" Association Vs. State of Gujarat and Others*, and the decision of this Court in *Nand Ram v. State of Rajasthan* reported in 2004 1 RLW-435 : (2004 Lab IC 440 (Raj)) and vehemently contended that once the period of six months lapses, the reserve list existing cannot be operated as per the rules and thus the petitioner has no right to seek appointment on the vacancy created on account of non joining of Ms. Anupama. They also relied upon Rule 25 of the Rules and the circular dated 19.7.2001 issued by the Department of Personnel to controvert the petitioner's claim.

5. I have considered the arguments advanced by learned counsel for the parties and have gone through the material available on record.

6. The specific case set up by the respondents to controvert the petitioner's case is based on Rule 25 of the Rules and the circular dated 19.7.2001 issued by the Department of Personnel. The language of the Rule & the relevant portion of the circular are reproduced hereinbelow for the sake of ready reference:--

"SUBJECT: Direct Recruitment through the Rajasthan Public Service Commission- Operation of the Reserve List.

The various Service Rules provide for preparation of a reserve list by the Rajasthan Public Service Commission in respect of the various competitive examinations conducted by the Commission. Several Departments have sought clarifications regarding the operation of the reserve list and its period of validity. The matter has been examined in consultation with the Law Department and the following clarifications are hereby issued for the guidance of all Appointing Authorities.

Hon"ble Supreme Court of India has clearly held that the nature of the reserve list, the period of its validity and how it should operate are governed by the relevant Service Rules. Therefore, the matter has to be viewed in the context of

the provisions in the various Service Rules in the State. Normally, the provision for reserve list in the various Service Rules in the State is as follows:--

Recommendations of the Commission:-The Commission shall prepare a list of the candidates whom they consider suitable for appointment to the posts concerned arranged in the order of merit and forward the same to Government.

Provided that the Commission may to the extent of 50% of the advertised vacancies, keep names of suitable candidates on the reserve list. The names of such candidates may on requisition, be recommended in the order of merit to Government within 6 months from the date on which the original list is forwarded by the Commission to Government."

7. It is quite evident from a perusal of the provision in the Service Rules that the reserve list can be forwarded by the Commission to the State Government within six months from the date on which the original list was forwarded by the Commission to the State Government. The limitation of six months is with regard to the forwarding of the reserve list by the Commission. It is not enough that the concerned Department should have sent the requisition to the Commission within six months from the date on which the original list was forwarded by the Commission. Notwithstanding the fact that the concerned Department may have sent the requisition to the Commission within the prescribed period, if the Commission is unable for any reasons to forward the reserve list to the concerned Department within the prescribed period of six months, the Commission is debarred from recommending any names from the reserve list.

8. Rule 25 provides as below:--

"25. Recommendations of the Commission:-The Commission shall prepare a list of the candidates whom they consider suitable for appointment to the post(s) concerned and arrange in the order of merit. The commission shall forward the list to the Government.

Provided that the Commission may, to the extent to 50% of the advertised vacancies, keep names of suitable candidates on the reserve list. The names of such candidates may, on requisition, be recommended in the order of merit to the Government within six months from the date on which the original list is forwarded by the Commission to the Government."

9. A reserve list is obviously prepared to meet such contingencies when the selected candidates do not join or the advertised posts cannot be filled for any reason whatsoever. Obviously requirement to summon the names from the reserve list within the stipulated period of six months would only perpetrate, if the Government completes the process of issuing appointment orders from the main list within the said period of six months. If the Government itself delays the process of issuing appointment orders beyond the period of six months, then opportunity would not arise to operate the reserve list within the stipulated time frame, thereby virtually frustrating the very purpose of preparing the reserve list.

This would purely be on account of the failure of the Government authorities to complete the process of issuing appointment orders from the main select list within the period of six months. In the case at hand, the petitioner, though standing first amongst the woman candidates in the reserve list is being denied the opportunity of appointment despite one post remaining vacant on account of non-joining of Miss Anupama. The circular dated 19.7.2001 provides that the reserve list can only be operated within a period of six months from the date of forwarding of the original recommendations by the R.P.S.C. Further provision is made in the circular that where a fresh process has been initiated then the whole of the earlier selection process as well as the reserve list would lapse. In the case at hand the respondents themselves continued to operate the main merit list till September, 2014 i.e. more than nine months after receiving the list from the R.P.S.C. In this background, since the main list was continued to be operated beyond the period of six months and the delay was occasioned by the departmental officials, the above restriction regarding six months life of the reserve list cannot be utilized to stifle and frustrate the petitioner's claim for the seat which remained vacant on account of non joining of Miss Anupama.

10. In the case of *Dr. Rakesh Mani v. State of Rajasthan (supra)*, main list could not be operated owing to a Government ban on recruitments and the period of six months expired. The Court found that the recommendations were sent by the R.P.S.C. on 31.7.1989 and appointment could not be made till 24.1.1990 at least for six months on account of ban imposed by the State Government for administrative reasons. The Court held that but for the administrative ban, the appointment orders would have been issued and in the event of the two candidates from the original list not joining perhaps, the candidates out of the reserve list could have been recommended for appointment. It was held that if the period of ban is deducted then the list can be within the range of operation and it will not be stifled. The Court further held that the petitioner could not be penalized for the delay which was occasioned by the reasons beyond his control. The respondents were directed to operate the reserve list and give appointment to the petitioner therein.

11. The judgment rendered by the Hon''ble Apex court in the case of *Gujarat State Dy. Executive Engineers' Association v. State of Gujarat (supra)* relied upon by the learned counsel for the respondents has no application to the facts of the present case because facts of the said case are entirely distinguishable. The Hon''ble Supreme Court held that operation of waiting list should be confined to the vacancies notified for that examination and not for any vacancy arising in future unless a policy decision is taken by the Government to that effect. Thus, the judgment propounds that the waiting list cannot be operated against future vacancies which is not the situation in the case at hand.

12. The Hon''ble Supreme Court had the occasion to examine a controversy almost similar to the one involved in the present matter in the case of *State of Jammu & Kashmir and Others Vs. Sat Pal*, . The Hon''ble Court held that the

claim made for appointment of a candidate in wait list to a vacancy that arose due to non-joining of selected candidate cannot be rejected on the ground that wait list has expired. The Court observed as below:--

"9. The controversy in hand is yet another illustration of the denial of a legitimate claim, of an innocent citizen. Rather than appreciating the claim raised by the respondent before the High Court through SWP No. 1156 of 2009, to which the appellants failed to even file their response, the same was ordered to be closed by an order dated 5.4.2010. Thereupon appellants have chosen to pursue a course, which would sideline the main controversy. The course adopted would neither serve their own purpose, nor the purpose of the respondent Sat Pal.

10. It is not a matter of dispute, that the respondent Sat Pal participated in a process of selection for recruitment against the post of Junior Engineer (Civil) Grade-II. It is also not in dispute, that his name figured in the merit/select list of scheduled caste candidates. Trilok Nath, who had been offered appointment against the post of Junior Engineer (Civil) Grade-II on 22.4.2008, did not join, despite the said offer of appointment. The instant fact is fully substantiated from the order dated 5.5.2008 issued by the Chief Engineer (Rand B) Department, Jammu. Even though candidates who were higher in merit, were offered appointment to the post of Junior Engineer (Civil) Grade-II, for which recruitment was held, some of such posts remained vacant on account of the fact that persons higher in merit to the respondent Sat Pal had declined to join, despite having been offered appointment. At least one such vacancy offered to Trilok Nath never came to be filled up. In such a situation, the claim of the respondent Sat Pal whose name figured in the merit/select list, ought to have been offered appointment against the said post. The claim of respondent Sat Pal could not have been repudiated, specially on account of his assertion, that his name in the merit/select list amongst Scheduled Caste candidates immediately below the name of Trilok Nath, was not disputed even in the pleadings before this Court. It is not the case of the appellants before this Court, that any other candidate higher than Sat Pal in the merit/select list is available out of Scheduled Caste candidates, and can be offered the post against which Trilok Nath had not joined.

11. In view of the factual position noticed hereinabove, the reason indicated by the appellants in declining the claim of the respondent Sat Pal for appointment out of the waiting list is clearly unjustified. A waiting list would start to operate only after the posts for which the recruitment is conducted, have been completed. A waiting list would commence to operate, when offers of appointment have been issued to those emerging on the top of the merit list. The existence of a waiting list, allows room to the appointing authority to fill up vacancies which arise during the subsistence of the waiting list. A waiting list commences to operate, after the vacancies for which the recruitment process has been conducted have been filled up. In the instant controversy the aforesaid situation for operating the waiting list had not arisen, because one of the posts of Junior Engineer (Civil) Grade-II for which the recruitment process was conducted

was actually never filled up. For the reason that Trilok Nath had not assumed charge, one of the posts for which the process of recruitment was conducted, had remained vacant. That apart, even if it is assumed for arguments sake, that all the posts for which the process of selection was conducted were duly filled up it cannot be disputed that Trilok Nath who had participated in the same selection process as the respondent herein, was offered appointment against the post of Junior Engineer (Civil) Grade-II on 22.4.2008. The aforesaid offer was made, consequent upon his selection in the said process of recruitment. The validity of the waiting list, in the facts of this case, has to be determined with reference to 22.4.2008, because the vacancy was offered to Trilok Nath on 22.4.2008. It is the said vacancy, for which the respondent had approached the High Court. As against the aforesaid, it is the acknowledged position recorded by the appellants in the impugned order dated 23.8.2011 (extracted above), that the waiting list was valid till May. 2008. If Trilok Nath was found eligible for appointment against the vacancy in question out of the same waiting list, the respondent herein would be equally eligible for appointment against the said vacancy. This would be the unquestionable legal position, insofar as the present controversy is concerned.

12. The date of filing of the representation by the parties concerned and/or the date on which the competent authority chooses to fill up the vacancy in question, is of no consequence whatsoever. The only relevant date is the date of arising of the vacancy. It would be a different legal proposition, if the appointing authority decides not to fill up an available vacancy, despite the availability of candidates on the waiting list. The offer made to Trilok Nath on 22.4.2008 by itself, leads to the inference that the vacancy under reference arose within the period of one year, i.e., during the period of validity of the waiting list postulated by the rules. The offer of the vacancy to Trilok Nath, negates the proposition posed above, i.e., the desire of the employer not to fill up the vacancy. Herein, the appellants wished to fill up the vacancy under reference. Moreover, this is not a case where the respondent was seeking appointment against a vacancy, over and above the posts for which the process of selection/recruitment was conducted. Based on the aforesaid inference, we have no hesitation in concluding that the appellants ought to have appointed the respondent Sat Pal, against the vacancy which was offered to Trilok Nath.

13. Tested on the touchstone of the ratio of the above judgment it is clear that the action of the respondents in denying appointment to the petitioner under the pretext of the alleged expiry of reserve list is totally illegal and arbitrary.

14. So far as the judgment rendered in *Nand Ram v. State of Rajasthan* (2004 Lab IC 440 (Raj)) (supra) is concerned, in the opinion of this Court the facts of the said case are totally distinguishable and the said judgment has no application to the present controversy whatsoever.

15. In the case at hand the reason for non operation of the reserve list was purely due to slackness of the respondent authorities. The respondent authorities after receiving recommendations from the R.P.S.C. continued to extend joining

time for few of the selected candidates who were allowed to join the posts much beyond the period of six months. Thus, this action of the respondent authorities virtually rendered impossible the operation of the reserve list (since it was to be operated within six months) thereby severely prejudicing the case of the petitioner. Had the authorities taken timely action and completed the required process for filling the seats as per the main list within the outer limit of six months, then the petitioner would have had a chance of getting appointment by operation of the reserve list. The department has not set up a case that the post which became vacant on account of non joining of the selected candidate i.e. Ms. Anupama (whose name was recommended in the main list) is not required to be filled at all. Since the respondents themselves were responsible for delay in completing the appointment procedure of the candidates selected as per the main list, they cannot be allowed to take a plea that the reserve list is deemed lapsed after the expiry of six months. It is also not the case of the respondents that any fresh process for recruitment on the post of Lecturer, Mechanical Engineering in the Technical Education Department has been initiated and that the post left vacant in the questioned selection recruitment has been consumed therein. Thus the petitioner is definitely entitled to stake her claim on the post left vacant on account of non-joining by Ms. Anupama.

16. Thus, the writ petition deserves to be and is hereby allowed. The State authorities shall forthwith requisition the petitioner's name from the R.P.S.C. and offer appointment to the petitioner (subject to document and character verification) on the post of Lecturer, Mechanical Engineering in the questioned selection process against the vacant post occurring on account of non-joining of Miss Anupama on her post. The stay application stands disposed of. No order as to costs.