

(2019) 01 RAJ CK 0341

In the Rajasthan High Court

Case No : Civil Writ Petition No. 24168 Of 2017

Savita Manohar Wankhede

APPELLANT

Vs

Union of India And Ors

RESPONDENT

Date of Decision : 15-01-2019

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2019) 01 RAJ CK 0341

Hon'ble Judges : Mohammad Rafiq, J;Goverdhan Bardhar, J

Bench : Division Bench

Advocate : Mahendra Shah, P.C. Sharma

Final Decision : Dismissed

Judgement

This writ petition seeks to challenge order dated 03.12.2014 passed by the Central Administrative Tribunal, Jaipur Bench, Jaipur (for short 'the Tribunal') whereby the original application filed by the petitioner has been dismissed.

The petitioner applied for appointment on the post of Porter in pursuance of advertise/employment notice dated 02/2010 and appeared in the written examination held on 06.05.2012. According to the petitioner, she also passed physical efficiency test and thereafter appeared for documents verification on 16.01.2013. However, it was revealed that caste certificate submitted along with the application form of the petitioner was not her own caste certificate and it was of her grandfather. The petitioner sought to produce her own caste certificate at the time of interview, but the respondents-authorities did not accept the same. The Tribunal has dismissed the original application filed by the petitioner relying on the judgment of the Supreme Court in *Bedanga Talukdar Vs. Saifudaullah Khan & Others*, (2011) 12 SCC 85.

Mr. Mahendra Shah, learned counsel for the petitioner argued that the Tribunal has taken a hyper technical view of the matter inasmuch as the petitioner produced her own caste certificate at the time of interview which pertained to the

period anterior to the advertisement. It was owing to the inadvertent mistake on the part of the petitioner that she submitted caste certificate of her grandfather, who was also a member of Scheduled Caste and therefore the petitioner would also carry the same caste. It is therefore prayed that this writ petition as also original application be allowed, particularly when the cut off marks for appointment under SC category on the aforesaid post were 57.97% and the petitioner secured 61.05% marks.

Mr. P. C. Sharma, learned counsel for the respondents opposed the writ petition and submitted that there was no provision in the advertisement whereby relaxation could be granted to a candidate for filing caste certificate at a later stage. Learned counsel referred to Clauses 8.9, 8.10(ii); 8.10(vi); 8.10(ix); 8.11(viii) and 10.7 of the advertisement. He also referred to the form of caste certificate for SC/ST candidates appended with the advertisement as Annexure-1. He argued that the selection in question pertains to the year 2010 and equities would have no place in such matters where the candidates were required to strictly follow the instructions given in the advertisement and furnish the required documents as per the performa enclosed therewith. Failure of the candidate in doing so would result in rejection of the application summarily and therefore action of the respondents cannot be faulted with.

We have heard learned counsel for the petitioner, learned counsel for the respondents and carefully perused the material on record.

Relevant clauses of the advertisement namely Clause 8.9, 8.10(ii); 8.10(vi); 8.10(ix); 8.11(viii) and 10.7 are reproduced as under:

"8.9 ANDAMAN, NICOBAR & LAKSHADWEEP CANDIDATES: For candidates belonging to Andaman, Nicobar & Lakshadweep Islands, closing date would be 02.03.2011, Time Upto- 17.00 hrs. Such candidates should enclose a certificate of domicile in Andaman, Nicobar & Lakshadweep Islands from an appropriate authority of the Andaman & Nicobar/Lakshadweep Islands administration or a certificate from a school or college last attended in Andaman, Nicobar & Lakshadweep certifying that the candidate has passed his examination from the School/College situated in Andaman Nicobar/Lakshadweep.

8.10 ENCLOSURES:

(i) xxxx

(ii) In case of SC/ST/OBC candidates, a certificate of the appropriate authority, of their belonging to SC/ST/OBC categories should be submitted. Draft format for SC/ST is enclosed as Annexure-I, OBC is enclosed as Annexure-II.

xxxxxxxxx

(iii) xxxxxx

(iv) xxxxxx

(v) xxxxxx

(vi) Application received without above enclosures or with extra enclosures shall be rejected summarily.

(vii) xxxxxx

(viii) xxxxxxxx

(ix) Any certificate, photograph etc. received separately, subsequent to the receipt of application will not be entertained.

8.11 INVALID APPLICATIONS:

(i) xxxxx

(ii) xxxxx

(viii) Without proper certificates, in respect of SC/ST/OBC and/or Physically Handicapped.

(ix) xxxxxx

10. Instruction to the Candidates:

10.1 xxxxx

10.2 xxxxx

10.7 Before applying for any post, the candidate should ensure that he/she fulfils the eligibility and other criteria. The RRC-NWR shall reject applications not fulfilling the requisite criteria, at any stage of recruitment, and if erroneously appointed, such candidates shall be liable to be summarily removed from service."

The Supreme Court in the case of Bedanga Talukdar (supra), which has been relied by the Tribunal, has categorically held as under:

"Selection process has to be conducted strictly in accordance with stipulated selection procedure which needs to be scrupulously maintained. There cannot be any relaxation in terms and conditions of advertisement unless such power is specifically reserved in relevant rules and/or in advertisement. Even where power of relaxation is or is not provided in relevant rules it must be mentioned in advertisement. Such power, if exercised should be given due publicity to ensure that those candidates who become eligible due to relaxation are afforded equal opportunity to apply and compete. Relaxation of any condition in advertisement without due publication is contrary to mandate of equality in Articles 14 and 16 of the Constitution."

According to view taken by the Supreme Court, selection process has to be conducted strictly in accordance with stipulated selection procedure which needs to be scrupulously maintained. There cannot be any relaxation in terms and

conditions of advertisement unless such power is specifically reserved in relevant rules and/or in advertisement. Even where power of relaxation is or is not provided in relevant rules it must be mentioned in advertisement. Such power, if exercised should be given due publicity to ensure that those candidates who become eligible due to relaxation are afforded equal opportunity to apply and compete. Relaxation of any condition in advertisement without due publication is contrary to mandate of equality in Articles 14 and 16 of the Constitution.

In the present case, Clause 8.10(ii) of the advertisement clearly provided that in case of SC/ST/OBC candidates, a certificate of the appropriate authority, of their belonging to SC/ST/OBC categories should be submitted in accordance with the draft format for SC/ST enclosed as Annexure I and for OBC as Annexure-II with the advertisement. Admittedly, the petitioner failed to submit the required SC certificate in the provided format with her application form. Clause 8.10(vi) provided that application received without above enclosure or with extra enclosures shall be rejected summarily. Clause 8.10(ix) also provided that any certificate, photograph etc. received separately, subsequent to the receipt of application will not be entertained. Clause 8.11(viii) also provided that the application without proper certificates, in respect of SC/ST/OBC and/or Physically Handicapped will be summarily rejected. Clause 10.7 further provided that before applying for any post, the candidate should ensure that he/she fulfills the eligibility and other criteria. The RRC-NWR shall reject applications not fulfilling the requisite criteria, at any stage of recruitment, and if erroneously appointed, such candidates shall be liable to be summarily removed from service. In view of the aforesaid emphatic conditions provided in the advertisement, there should be no place for the candidates, who are not vigilant about their own rights. We do not find any infirmity in the order passed by the Tribunal, particularly when the selection process pertains to the year 2010 and a long period of 8 years has been lapsed.

There is no merit in this writ petition, which is accordingly dismissed.