
(2011) 05 RAJ CK 0146
In the Rajasthan High Court
Case No : Civil Writ Petition No.4324 of 2011

Shambhu Dayal

APPELLANT

Vs

State of Raj. and Others

RESPONDENT

Date of Decision : 20-05-2011

Acts Referred:

Rajasthan Forest Subordinate Service (Amendment) Rules 2010 — Rule 22A
Rajasthan Forest Subordinate Service Rules, 1963 — Rule 13, 13(2)

Citation : (2011) 4 RLW 3051

Hon'ble Judges : Gopal Krishan Vyas, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hon"ble Gopal Krishan Vyas, J.—In this writ petition, the petitioner has prayed for quashing Annex.-P/8 dated 25.04.2011 and prayed that the respondents may be directed to provide appointment to the petitioner on the post of Forest Guard with all consequential benefits. Further, it is prayed that appointment order Annex.-9 passed in favour of respondent No.5 in the category of Scheduled Tribe may be quashed and, in his place, the petitioner may be provided appointment.

2. As per facts of the case, in pursuance of advertisement issued by the respondent Forest Department for recruitment on the posts of Forest Guard, an application was filed by the petitioner. The petitioner obtained 65.70 marks in all the three steps of the selection process but he was declared unfit on the ground that he is not having minimum height which is 163 cm. Contention of the petitioner is that appointment has been provided to respondent No.5 in Scheduled Tribe category who secured 64.45 marks whereas the petitioner secured 65.70 marks in all the three steps; but, only for the reason that the petitioner is not possessing the minimum height of 163 cm he has been denied appointment.

3. As per pleadings of the writ petition, height of 163 cm prescribed by the respondents in the advertisement is, illegal because no such requirement of

height is prescribed in the rules after amendment whereby new Rule 22 A was inserted by way of amendment dated 26.06.2010 in the Rajasthan Forest Subordinate Service (Amendment) Rules 2010. Therefore, as per the petitioner, the denial of appointment solely on the ground that the petitioner is not having the height of 163 cm is totally illegal and in contravention of the rules.

4. Learned counsel for the petitioner vehemently argued that recruitment on the post of Forest Guard is to be made in accordance with the procedure laid down in the Rajasthan Forest Subordinate Service Rules, 1963, in which, new rule which is Rule 22A was inserted by way of amendment prior to the issuance of the advertisement and, in that amendment, there is no requirement to have the height of 163 cm and denial of appointment solely on the ground that petitioner is not having 163 cm height is contrary to rules, therefore, a direction may be issued to the respondents to consider the case of the petitioner for appointment on the post of Forest Guard ignoring the requirement of height prescribed in the advertisement which is 163 cm.

5. After hearing learned counsel for the petitioner, I have perused the entire record of the case, so also, Rule 13 of the Rajasthan Forest Subordinate Service Rules, 1963 and amendment dated 21.06.2010 by which procedure for direct recruitment was prescribed while inserting Rule 22A of the Rules.

6. First of all, it is one of the important aspects of the matter that without raising any objection to the condition of possessing eligibility height of 163 cm the petitioner applied and in the event of non-selection, now, after completion of process the petitioner is challenging the validity of eligibility requirement of height which is 163 cm. In my opinion, no candidate can be permitted to raise voice against terms and conditions of advertisement, in pursuance of which, he has participated in the selection process without protest and raised voice only upon his failure in the selection process.

7. With regard to contention of learned counsel for the petitioner that by amendment dated 21.06.2010 a new rule which is Rule 22A was inserted for the purpose of direct recruitment on the posts of Forest Guard, in which, there is no condition mentioned for possessing minimum height of 163 cm. In my opinion, in the newly inserted Rule 22A, of course, there is no express eligibility for possessing 163 cm height for appointment on the post of Forest Guard but, at the same time, there is Rule 13, in which, physical fitness of the candidate is provided which cannot be ignored. Rule 13 of the Rules of 1963 runs as under:

13. Physical Fitness.-(1) A candidate for direct recruitment to the Service, must be in good mental or bodily health and free from any mental or physical defect likely to interfere with the efficient performance of his duties as a member of Service and if selected must produce a certificate to that effect from a Medical Authority notified by the Government for the purpose. The Appointing Authority may dispense with production of such certificate in the case of candidate promoted in the regular line of promotion, or who is already serving in

connection with the affairs of the State if he has already been medically examined for the previous appointment and the essential standards of medical examination of the two posts held by him are to be comparable for efficient performance of duties of the new post and his age has not reduced his efficiency of the purpose.

(2) The Government may issue instructions separately prescribing standards of physical fitness and for conducting examination therefor of a candidate for direct recruitment to the Service.

8. Upon perusal of the above Rule 13(2), it is abundantly clear that there is power left with the Government to issue instructions separately prescribing standard of physical fitness and for conducting the examination for direct recruitment to the service. In this case, while exercising such power, the State Government has prescribed the standard of possessing 163 cm height. Therefore, in my opinion, contention of the petitioner is totally lacking ground for interference because Rule 22A prescribes the procedure for recruitment whereas there is separate provision in the rules with regard to assessing physical fitness of the candidate whereby the State Government has been authorized to prescribe standards for physical fitness and, once, the State Government has provided the condition for possessing minimum height of 163 cm which is made applicable to all candidates, then, the petitioner cannot be permitted to say that there is no specific provision in the rules to prescribe condition of possessing 163 cm height. Admittedly, as per medical examination, in which, the petitioner was granted opportunity to appear petitioner's height is 162 cm only which is admitted position of the case.

9. In this view of the matter, no case is made out for interference and to hold that condition for having height of 163 cm prescribed by the State Government is arbitrary or illegal. Hence, there is no force in this writ petition.

10. The writ petition is accordingly dismissed.