
(2016) 02 RAJ CK 0022

In the Rajasthan High Court

Case No : Civil Writ Petition Nos. 13268, 13416, 13990, 14063, 14118, 14122, 14129, 14130, 14131, 14134, 14138, 14140, 14142, 14145, 14148, 14150, 14152, 14155, 14156, 14159, 14161, 14163, 14166, 14168, 14170, 14172, 14173, 14176, 14177, 14178, 14181, 14183, 1

Sharmila Yadav and Others

APPELLANT

Vs

State (Education Department) and Others

RESPONDENT

Date of Decision : 11-02-2016

Acts Referred:

Citation : (2016) 02 RAJ CK 0022

Hon'ble Judges : Ajay Rastogi and J.K. Ranka, JJ.

Bench : Division Bench

Advocate : H.V. Nandwana, Pradeep Kalwania, Rakesh Kumar Saini, Ajay Rajawat, Manish, Akshat Choudhary, Amit Singh Shekhawat, Anshuman Saxena, Vishram, Anupama Chaturvedi, Ashiwini Jaiman, Basant Bahar, Bharat Saini, C.P. Sharma, D.K. Bhardwaj, D.S. Dhariwal, Dharme

Final Decision : Disposed off

Judgement

1. Instant batch of petitions has been filed assailing validity of R.16(1) read with Schedule-I appended to the Rajasthan Vidyalaya Sahayak Subordinate Service Rules, 2015 ("Rules, 2015"), by the petitioners who are either widow/divorcee women for whom reservation has been provided of 8% & 2% respectively u/R.10 of the Rules, 2015.

2. The post of Vidyalaya Sahayak is included in the Schedule appended to the Rules, 2015 and the selection process came to be initiated by the respondent pursuant to advertisement dt. 21-7-2015 and as regards reservation of vacancies for women is concerned, R.10 of the Rules, 2015 envisages that reservation of vacancies for women candidates shall be 30% category wise; in direct recruitment out of which 8% shall be for widow and 2% for divorcee women candidates and in the event of non-availability of the eligible and suitable widow and divorcee women candidates in a particular year, the vacancies so reserved

for widow and divorcee women candidates shall be filled by other women candidates and in the event of non-availability of eligible and suitable women candidates, the vacancies so reserved for them shall be filled by male candidates.

3. The candidate who intends to participate in the selection process has to fulfill the requirement of holding academic & technical qualification & experience in terms of R.16 of Rules, 2015 read with Schedule-I appended thereto and experience is one of the condition of eligibility and we consider it appropriate to quote the requisite qualification & experience for direct recruitment for the post of Vidyalaya Sahayak as being indicated in Schedule-I appended to R.16 which reads ad infra:--

"R.16. Academic and technical qualifications and experience:-- A candidate for direct recruitment to the post enumerated in the Schedule-I shall possess:--

- (i) the qualifications and experience given in column 4 of the Schedule-I; and
- (ii) working knowledge of Hindi written Devnagri script and knowledge of Rajasthani culture.

4. Counsel for petitioners submits that the experience which has been considered to be one of the essential condition for holding eligibility to participate in the selection process has no nexus with the object sought to be achieved particularly in the case of divorcee/widow woman to whom reservation has been provided u/ R 10 of the Rules and to take note of divorcee/woman candidate as well, out of 30% reservation for women candidate, the rule making authority was of the view that the widow/divorcee woman should also be considered to participate in the process of selection and in the event of non-availability of eligible & suitable divorcee/widow candidate the same shall be filled by other women candidates and in the event of non-availability of eligible and suitable women candidates, the vacancies so reserved for them shall be filled by male candidates.

5. However, while providing public employment, an impediment has been made that apart from holding requisite qualification one has to possess experience as well in addition thereto for the divorcee/widow candidate as well, to whom reservation has been provided u/R 10 of the Rules and submits that the experience which has been considered to be one of the condition of eligibility for a widow/divorcee candidate with a pragmatic approach if taken note of by this Court large number of widow/divorcee candidate with one year experience as required of various government agencies may not be available and that being so the reservation so provided will remain a complete farce except being available under the Scheme of Rules and practically such available posts reserved for them may not be filled.

6. Counsel further submits that as regards the divorcee/widow woman candidate is concerned, vide amendment notification dt. 30-5-2011 a proviso has been added to R.11 of the Rajasthan Educational Subordinate Service Rules, 1971, which prescribes apart from academic qualification with STC/B.Ed. as one of the

essential qualification for the post of teacher but in regard to widows/divorcees women candidates, relaxation has been provided for STC/B.Ed which they have to obtain within three years of appointment and the rule making authority further considered it appropriate to grant them study leave soon after they are appointed for acquiring the qualification of STC/B.Ed.

7. Similarly under the Rajasthan Panchayati Raj Rules, 1996 an amendment has been made vide notification dt. 21-5-2009 inserting R.266-A which also provides relaxation to the widow/divorcee women candidates who are considered eligible for appointment on the post of teacher, by relaxing the qualification of S.T.C./ B.Ed. under the erstwhile proviso to R.266 but shall be regularized from the date one acquires the requisite qualification of STC/B.Ed on the post of Teacher which is included in the Schedule appended to the Rules, 1996 and further submits that if this Court comes to the conclusion that R.16 & the experience in particular which is one of the condition of eligibility for holding the post of Vidyalaya Sahayak, is essential qualification such experience has no nexus with the object sought to be achieved and that can certainly in the given exigencies be relaxed by the appointing authority while exercising its power u/R 41 in regard to the divorcee/widow to whom relaxation in STC/B.Ed. has been provided while being considered for appointment on the post of teacher under the Scheme of Rules, 1971 or 1996 respectively and if this Court may consider appropriate at least liberty may be granted to the petitioners of making representation to the State Government for examining the case of widow/divorcee for grant of relaxation in experience in exercise of power R.41 of 2015.

8. Counsel for respondent submits that as regards validity of R.16 of the Rules, 2015 is concerned the Division Bench of this Court at the Principal Seat, Jodhpur in D.B. Civil Writ Petition No. 11603 of 2015 & other connected petitions, has upheld the validity of R.16 of the Rules, 2015 vide judgment dt. 28-1-2016.

9. As regards the submission made by petitioners' counsel in relation to requisite qualification of which they have made reference of certain similar like provisions of R.11 of the Rajasthan Educational Subordinate Service Rules, 1971 & the amendment made & also R.266-A of the Rajasthan Panchayati Raj. Rules, 1996, we consider it appropriate to quote as under:--

"R. 11 of the Rajasthan Educational Subordinate Service Rules, 1971

11. Academic and Technical qualification and Experience-A candidate for direct recruitment to the posts enumerated in the Schedule shall in addition to such experience as is required, possess-

(i) the qualification given in column 4 of the Schedule, and

(ii) working knowledge of Hindi written in Devnagri script and knowledge of Rajasthani culture.]

[Provided that the Widows and Divorced Women will be given relaxation in qualification of STC or B.Ed. as the case may be for appointment to the post of

Teacher or Senior Teacher they are otherwise eligible and furnish an undertaking to the effect that the qualification of STC or B.Ed. as may be relevant shall be obtained within a period of three years. They shall also be eligible for grant of Study Leave soon after their appointment for acquiring the qualification of STC or B.Ed.

Amendment of Rule 11.--The existing proviso to rule 11 of the Rajasthan Educational Subordinate Service Rules, 1971, shall be substituted by the following namely:--

"Provided that the widows/divorced women who have been given appointment on the post of Teacher or Senior Teacher after relaxing the required qualification of B.S.T.C. or B.Ed. shall be regularized from the date they acquire the required qualification of B.S.T.C. or B.Ed., as the case may be. They shall also be eligible for grant of study leave for acquiring the qualification of B.S.T.C. or B.Ed."

R.266-A of the Rajasthan Panchayati Raj. Rules, 1996

[R.266-A:--Notwithstanding anything contained in these Rules, the widow/divorcee women, who have been given appointment on the post of teacher after relaxing required educational qualification of B.S.T.C./B.Ed. under the erstwhile proviso to rule 266 shall be regularised from the date they acquire the requisite educational qualification.]"

10. In the instant batch of petitions, Rule 16(1) of the Rules, 2015 of which validity is being assailed has been examined & upheld by the Division Bench of this Court at Principal Seat, Jodhpur in the judgment referred to supra and observed ad infra:--

"The Rules of 2015 are meant to regulate recruitment and other service conditions of Vidyalaya Sahayaks and Assistant Vidyalaya Sahayaks. The experience for recruitment as per the Rules of 2015 is desirable looking to the nature of service. The widows who are having such experience can very well avail the benefit of reservation given under Rule 10. Merely on the count that there may be certain widows who may not be having such experience, the rule cannot be treated ultra vires to the provisions of Part-III of the Constitution of India. It is also pertinent to mention that the Rules of 2015 are not meant to extend socio economic benefits but to have an efficient service. In such public service the rule making authority considered it appropriate to have experience, then that cannot be treated irrational, unjustified or arbitrary merely on the ground that some widows may not be there in zone of consideration being lacking experience. On minute examination of the provision, we do not find any wrong in the requirement of experience prescribed under Rule 16 of the Rules of 2015, which is having universal application irrespective of any category including the categories said to be educationally and socially backward."

11. Taking note of the submissions made by counsel for the parties & the judgment (supra), as regards validity of R.16 is concerned, we do not find any

justification to examine the issue & it is no more res integra in light of the judgment (supra) but as regards the later submission made by petitioners' counsel for grant of relaxation in experience for widow/divorcee women candidates and for participating in the selection process held for the post of Vidyalaya Sahayak included in the Schedule appended to the Rules, 2015 & seeking liberty to make representation in light thereof, we find reasonable justification and consider it appropriate to grant liberty prayed for.

12. Accordingly, while upholding validity of R.16 of the Rules, 2015, which is impugned before us, we consider it appropriate to grant liberty to the petitioners of making representation to the State Government/appointing authority for grant of relaxation in one year of experience to the widow/divorcee candidates in holding/acquiring the requisite qualification in terms of R.16 pursuant to advertisement dt. 21-7-2015 & if such representation is made, it is expected from the State Government/appointing authority to consider it sympathetically while exercising its power u/R 41 of the Rules, 2015 and may be decided as early as possible.

13. With these directions/observations, the writ petition stands disposed of.