

(2019) 08 RAJ CK 0316

In the Rajasthan High Court

Case No : Civil Writ Petition No. 7276, 7487, 7488, 7489 Of 2018

Shiv Lal And Ors

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 14-08-2019

Acts Referred:

Haryana Panchayati Raj Act, 1994 — Section 175(1)(q), 177(1)
Rajasthan Municipalities (Safai Employees Service) Rules, 2012 — Rule 6

Citation : (2019) 08 RAJ CK 0316

Hon'ble Judges : Vinit Kumar Mathur, J

Bench : Single Bench

Advocate : Chaitanya Gahlot, Monark Gahlot, Vaishali Parihar, Rekha Borana

Final Decision : Disposed Of

Judgement

For the reasons mentioned in the applications for taking documents on record, the same are allowed. The documents are ordered to be taken on record.

With the consent of the parties, the matter is heard finally. The present writ petitions have been filed praying for a direction to consider the cases of the petitioners for appointment on the post of Safai Karamchari in pursuance of the select list prepared by the respondents on 26.2.2014 (annex.1).

Counsel for the petitioners submits that the name of the petitioners figured in the select list of 34 candidates prepared by respondent No.2 for the post of Safai Karamchari after drawing of lottery. He submits that all the petitioners are fulfilling the requisite qualifications and are eligible for appointment on the post of Safai Karamchari. The respondents are not issuing the appointment orders despite the petitioners having been selected. He urged that petitioners cases are squarely covered by the ratio of the judgment rendered by the Co-ordinate Bench of this Court in the case of Smt. Pinki Devi Vs. The State of Rajasthan & anr. (S.B. Civil Writ Petition No.7316/2017) decided on 17.04.2018. It was decided in the following terms:-

"Learned counsel for the petitioner submits that the Hon'ble Division Bench of this Court has already decided the issue in D.B. Civil Special Appeal (Writ) No.703/2016 (State of Rajasthan & Anr. Vs. Smt. Indira Devi) decided on 25.10.2016, wherein the Hon'ble Division Bench has held that the candidate cannot be denied his appointment on the ground of having more than two children after 01.06.2002. The judgment reads as under:

"The present appeal assails order dated 05.11.2015 allowing S.B.Civil Writ Petition No.2703/2015. The learned Single Judge held that the stipulation in the advertisement that those who had a third child born after 01.06.2002 would be considered ineligible for appointment was beyond the conditions of eligibility prescribed in Rule 6 of Rajasthan Municipalities (Safai Employees Service) Rules, 2012 (hereinafter called, 'the Rules').

Learned counsel for the Appellants submits that the writ petition came to be disposed without a counter affidavit. The Respondent had not challenged the conditions in the advertisement with regard to the ineligibility. There was no dispute on facts from her own affidavit that her third child was born after 01.06.2002. If the Respondent had inadvertently been called for consideration contrary to the stipulation in the advertisement, no benefit can flow to her because the stipulation for ineligibility was inconsonance with the National Policy for Controlling Population Growth. Reliance was placed on 2003 (8) SCC 369 (Javed Vs. State of Haryana).

Conversely, counsel for the Respondent submitted that she was selected on 17.12.2013 and letter of appointment issued. Joining was denied because complaints had been received. It was alleged that her mother-in-law had already been selected as a Safai Employee. The complaint was examined and found to be incorrect. She represented afresh after an order in S.B.Civil Writ Petition No.7196 of 2014. Thereafter the Appellants have taken a fresh ground with regard to her ineligibility restricting the operation of Rule 6 without any amendment of the Rules.

We have considered the submissions on behalf of the parties.

The advertisement was never placed before the learned Single Judge by the parties. Despite more than one adjournment no counter affidavit was filed by the Appellants. A copy of the advertisement has however been placed before us in appeal.

Rule 6 prescribes the eligibility, qualifications fulfillment of which entitles a candidate to be considered. There is no statutory incorporation in Rule 6 with regard to any ineligibility of a candidate if a third child had been born after 01.06.2002. If the eligibility is prescribed in statutory Rules, those who do not fulfill the same are ineligible. If a candidate fulfills the eligibility requirements in Rule 6, she cannot be declared ineligible by incorporation of any clause in the advertisement beyond the statutory requirement of Rule 6. There is no error in the finding of the learned Single Judge that such a condition could not be

incorporated in the advertisement beyond statutory provisions. It is not the case of the Appellants that even any executive order had been issued to that effect before the ineligibility clause was incorporated in the advertisement. It is not open for the Appellants to urge that any condition incorporated in the advertisement contrary to the statutory requirement, would still bind the applicant unless there was a challenge to the advertisement. The fact that the candidate may have applied notwithstanding the stipulations in the advertisement cannot confer legality on the condition prescribed beyond the Rules.

We therefore find no infirmity in the order of learned Single Judge. The Respondent is now required to be considered for appointment in accordance with the offer dated 17.12.2013.

Reliance on Javed (supra) is misconceived as the challenge related to the vires of the provisions of Sections 175(1)(q) and 177(1) of the Haryana Panchayati Raj Act, 1994 incorporating a statutory requirement with regard to those having more than two children and which is not the case presently.

The appeal is dismissed."

This Court, in light of the aforementioned position of law, disposes of the present writ petition with the direction to the respondents to consider the case of the petitioner for appointment on the post of Safai Karamchari while not considering third child after 01.06.2002 as a disqualification. Such consideration shall be made within a period of 30 days from today in accordance with these directions as well as in consonance with the precedent law laid down by the Division Bench of this Hon'ble Court in the matter of State of Rajasthan & Anr. Vs. Smt. Indira Devi (supra). However, the petitioner shall be at liberty to approach this Court again, in case need arises."

He further submits that petitioners are on similar footings to that of Smt. Pinki Devi as she has already been extended the benefit of grant of appointment on the post of Safai Karamchari in pursuance to the directions issued by this Court.

While opposing the contentions made by the learned counsel for the petitioners, although learned counsel for the respondents was unable to distinguish the case of Smt. Pinky Devi vis.a.vis the present petitioners. However, she submits that since the selection was of the year 2014 and appointments have already been made in pursuance of the select list prepared, it is not possible to grant appointment to the petitioners due to the paucity of the vacancies.

I have considered the submissions made at the bar.

This Court is of the view that in the identical case arising out of the same select list, Smt. Pinki Devi (supra) had been appointed pursuant to the directions issued by this Court, there is no reason to distinguish the case of petitioners from Smt. Pinki Devi. The cases of the petitioners are required to be considered by the respondents in the same fashion. Therefore, respondents are directed to consider

the cases of the petitioners for appointment on the post of Safai Karamchari in the light of the decision rendered in Smt. Pinki Devi (supra). However, it is made clear that while considering the cases of the petitioners, the respondents will be free to reject their candidature on the ground of non-availability of the vacancies for the post of Safai Karamchari.

With the above observations, the writ petitions are disposed of accordingly.