

(2025) 03 RAJ CK 0678

In the Rajasthan High Court, Jodhpur Bench

Case No : Civil Writ Petition No. 2595 Of 2022

Dr. Saroj Kumari Meena

APPELLANT

Vs

State Of Rajasthan

RESPONDENT

Date of Decision : 05-03-2025

Acts Referred:

Indian Penal Code, 1860 — Section 323, 325, 498-A

Code of Criminal Procedure, 1973 — Section 173, 161, 190, 204, 216, 319

Citation : (2025) 03 RAJ CK 0678

Hon'ble Judges : Farjand Ali, J

Bench : Single Bench

Advocate : NK Gurjar, Y.S. Charan, VS Rajpurohit, Ravindra, Suresh Kumbhat, Sheetal Kumbhat

Final Decision : Disposed of

Judgement

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Arun Monga, J

1. Petitioner herein, aspirant to become an Assistant Professor (Microbiology), inter alia, seeks issuance of an appropriate writ, order and/or direction commanding the respondents to accord her appointment on the said post pursuant to advertisement dated 17.01.2020(Annex.8).

2. Brief facts first. The petitioner has been serving as a Senior Demonstrator (Microbiology) at Dr. S.N. Medical College, Jodhpur, since 18.10.2017. On 17.01.2020, the Rajasthan Public Service Commission (RPSC) advertised vacancies for Assistant Professors and Senior Demonstrators, including eight positions for Assistant Professor (Microbiology), with one reserved for the ST category. The petitioner participated in the selection process, and was placed at Sr. No.5 on the reserved-list dated 16.03.2021. Dr. Harinandan Meena, an ST-category candidate, was selected at S.No.8 in merit-list, but did not join, leading to the cancellation of his appointment. Similarly, Neha Jain's appointment was

also canceled after she did not join.

2.1 After Neha Jain's appointment cancellation, Dr. Neha Agrawal, the first candidate on the reserved list, was appointed on 08.11.2021. However, after Dr. Harinandan Meena's appointment cancellation, the petitioner, despite being the only remaining ST-category candidate on the waiting list, was not appointed. Petitioner submitted various requests to the authorities, including the Principal of Dr. S.N. Medical College and the Medical Education Department, but no action was taken. Notwithstanding, other similarly situated candidates were appointed in November 2021. Hence, the instant petition.

3. In the aforesaid backdrop, I have heard the rival contentions and gone through the case record.

4. Vide an interim order dated 18.02.2022, following interim protection was granted to the petitioner by a Coordinate Bench of this Court, said order being relevant is reproduced hereinbelow :-

"It is submitted by learned counsel for the petitioner that the petitioner, a ST candidate, was in the reserved list and that one of the selected candidate of ST category, did not join and his appointment order was cancelled. However, though in similar circumstances, wherein one Neha Jain, a general category candidate, did not join, another general category candidate Neha Agarwal was accorded appointment, the petitioner has not been accorded appointment, which is not justified.

A copy of the petition has been served on Mr. Manish Vyas, AAG, who is directed to accept notice on behalf of the respondents No.1 and 3 to 5.

There is no requirement to serve notice on respondent No.2. Response, if any, be filed by learned counsel for the

respondents by the next date. List the petition on 5.3.2022.

In the meanwhile and till further orders, the respondents are restrained from re-advertising one post of Assistant Professor, Micro Biology in ST category.

Office is directed to reflect the name of Mr. Manish Vyas, AAG, as counsel appearing for the respondents in the cause list."

5. What emerges from the pleadings of the parties and after hearing the counsel for the petitioner and perusal of the respective annexures appended with the petition, is a conceded position that indeed the post in question fell vacant on the last day of the expiry of the 6 months during which the waiting list was valid. The said vacancy existed due to the selected candidate having not joined on the post despite being issued an appointment letter.

6. In this context, reference may be had to Clause-11 of the Department of Personnel (DoP) Circular dated 05.04.2021 (Annex.R/2-2), which is stated to be the reason of not according the benefit to the petitioner of being appointed,

despite her being otherwise meritorious and eligible.

7. Pertinent it is to note here that neither the petitioner's eligibility is under dispute nor her performance, owing to which she was put on No.1 at the waiting list. Reverting to the DoP Circular *ibid*, the translated version of relevant Clause-11, reads as under :-

"11. As per the department's circular dated 19.07.2001, the waiting list remains in force for six months from the date of issuance of the main list. After the expiry of this six-month period, neither can the department request names from the waiting list nor can the commission recommend names. Before recommending names/lists from the waiting list, several administrative procedures must be completed at the level of the commission/board. Therefore, it is essential that the commission and board receive the department's request well before the expiry of the six-month period. In the future, all administrative departments must ensure that information regarding candidates from the main list who do not assume charge is received in a timely manner, and the commission and board are informed of the department's request for recommendations from the waiting list at least 45 days before the expiry of the six-month period from the issuance of the main list."

Perusal of the petition clearly reveals that as long as the post remained vacant during the subsistence of the waiting list, the benefit of the same ought to have been given to the selected candidate as per merit. It is rather a highly lopsided approach adopted by the respondents in not declaring the post vacant despite the fact that the appointment letter to the selected candidate was issued on 22.05.2021, according him 15 days to join. Ordinarily, unless an extension would have been sought for, after the joining period the post should have been treated vacant on expiry 15 days itself.

8. However, it transpires that initially, an extension of one month, followed by another two months, was given to the selected candidates. At any rate, on expiry of the extended period, the post became vacant. To that extent, the shoe is completely on the other foot, as the respondents are at fault in not inviting the petitioner. Merely because they delayed in declaring the post vacant and waited until the last date of the expiry of waiting list would not make their wrong as a right.

9. In any case, even if the post is assumed to be vacant on the last day of expiry of waiting list, even then, as per Clause-11, the benefit has to be given during the subsistence of the waiting list. Merely because steps are to be taken 45 days prior to the expiry of the waiting list to send the requisition to RPSC does not mean that the validity of the waiting list shall be curtailed from 6 months to less than 6 months (180-45 days) as that is not in accordance with the intent of Clause-11 at all.

10. As an upshot, the petition is allowed. The respondents are directed to issue an appointment letter to the petitioner within a period of 30 days from the date

she approaches the respondents with a web print of the instant order, provided, of course, she is otherwise found eligible/meritorious in all other aspects.

11. Pending application(s), if any, stand disposed of.