
(2020) 11 RAJ CK 0088
In the Rajasthan High Court
Case No : Civil Writ Petition No. 4465 Of 2020

Suman Inaniyan	Vs	APPELLANT
State Of Rajasthan And Ors		RESPONDENT

Date of Decision : 25-11-2020

Acts Referred:

Citation : (2020) 11 RAJ CK 0088

Hon'ble Judges : Dinesh Mehta, J

Bench : Single Bench

Advocate : YP Khileree, Shreyansh Mehta

Final Decision : Allowed

Judgement

1. The petitioner has to knock at the doors of this Court, twice, over a small error which according to the petitioner, the person manning E-Mitra had committed while uploading her application form.
2. The respondents had invited applications for 6035 posts of Nurse Grade-II in the non-TSP area vide advertisement dated 30.05.2018.
3. Petitioner submitted her application form on 25.06.2018 as a candidate of OBC-NCL category. However, while uploading marks of her GNM course, due to inadvertence, instead of 1582 marks out of 1900, 1290 marks were uploaded.
4. When the result was declared, petitioner did not find her name in the merit list and upon enquiry into the matter she realised with a shock that due to some inadvertence, proper marks were not uploaded, while filling up the application form.
5. The petitioner thus, approached this Court by way of filing a writ petition (bearing no. 1018/2020), which was disposed of by this Court on

10.02.2020, with a direction to the respondents to consider her candidature sympathetically, having regard to the inadvertent error.

6. While issuing such directions, this Court had clearly required the respondents to consider her case, if the seats were still lying vacant and rights of other candidates were not likely to be affected due to petitioner's inclusion.

7. Relevant part of the order dated 10.02.2020 reads thus:

2. According to the petitioner, due to inadvertence, while furnishing the application form, the petitioner had shown her marks in GNM professional degree course as '1290' instead of '1582'.

3. Learned counsel for the petitioner submitted that the petitioner indisputably secured 1582 marks in GNM course and it was the error on the part of the person working in E-Mitra, who has furnished incorrect particulars of petitioner's educational qualification.

4. He argued that the petitioner is otherwise meritorious and should not be deprived of appointment for the fault of the person manning E-Mitra.

5. Learned counsel further urged that many posts are still lying vacant and, thus, a direction be issued to the respondents to accord appointment to the petitioner, who is otherwise meritorious, if her actual marks in professional course i.e. GNM are taken into consideration.

6. In view of the extant facts and circumstances, the present writ petition is disposed of with the direction to the petitioner to move a representation before the respondent to consider her candidature sympathetically for the error on the part of the person working in E- Mitra.

7. In case a representation is filed within two weeks, the respondent shall consider the same in accordance with law, in case seats are still lying vacant and right of other candidates are not adversely affected due to petitioner's inclusion.

8. It is made clear that aforesaid direction to decide the representation has been issued only with a view to ensure expeditious redressal of petitioner's grievance. The same may not be construed to be an order to decide the representation in a particular manner.

9. The stay application also stands disposed of accordingly.

8. The petitioner moved a representation which came to be rejected by respondent No.2 in a rather shoddy manner. Respondent No.2 in his order dated 31.03.2020 observed that if petitioner's representation is considered after

declaration of result, then she would be given benefits of her own

negligence. It was also observed that petitioner's inclusion would oust a candidate having secured place in merit list. Operative portion of the impugned order dated 31.03.2020, passed by respondent No. 2 reads thus:

2018 24.01.2020

,

20.02.2020

20.02.2020

9. The petitioner was, thus, constrained to approach this Court again.

10. Learned counsel argued that having regard to the inadvertent error on part of the E-Mitra operator, in the earlier round of litigation, this Court had

directed the respondent to consider petitioner's case sympathetically, (of course if any seats were lying vacant and any other person's rights were not

affected); whereas the respondent No.2 has rejected petitioner's representation, as if a crime has been committed by the petitioner.

11. He argued that, upon inclusion of petitioner's name, no candidate would have gone out of the merit list, in as much as final list was not prepared by

31.03.2020 (when impugned order was passed) and the seats were still lying vacant.

12. Inviting Court's attention towards the additional affidavit, Mr. Khileree, learned counsel for the petitioner pointed out that as of today, about 246

posts are lying vacant and prayed that impugned order dated 31.03.2020 be set aside and a direction be issued to accord appointment to the petitioner.

13. Mr. Shreyansh Mehta, learned counsel for the respondents submitted that the petitioner cannot be given benefit of her own fault. He added that

the direction issued to the respondent No.2 was, to consider petitioner's representation in accordance with law, which he had done. Hence, no

interference can be made at this stage.

14. He argued that mere use of word 'sympathetically' does not confer any right in petitioner's favour. That apart, when the respondent No.2 found

that inclusion of petitioner's name would lead to exclusion of other candidate, he was justified in rejecting petitioner's representation and denying her

the appointment.

15. In relation to the factum of 246 seats lying vacant, it was asserted by Mr.

Mehta that those seats have been kept vacant in view of the interim orders passed by this Court in various writ petitions.

16. It was vehemently argued by Mr. Mehta that if the petitioner were given appointment, rights of another candidate would have been adversely affected. With equal vehemence was submitted, that the petitioner remained in slumber for two long years and has approached this Court only in the month of January, 2020, when the provisional select list was issued.

17. It was also contended by the respondents that petitioner ought to have approached this Court latest by June, 2019, when the candidates were called for document verification.

18. It was however not disputed that the select list/the first appointment order came to be issued by the respondents as late as on 28.04.2020.

19. Heard.

20. It is not in dispute that the advertisement contained a condition that the application form once submitted, will not be permitted to be altered/amended in any manner. This being the position, the petitioner had no recourse or remedy available to her, even after realising her mistake, if she wished to get necessary correction in the application form.

21. True it is, that ideally the petitioner ought to have approached this Court immediately, when she found her name missing in the list of candidates called for document verification. But in any case, the petitioner has approached this Court before publication of the final select list.

22. The fact that the petitioner had approached this Court prior to publication of final select list dated 24.01.2020, is evident from proceedings dated

23.01.2020 (in petitioner's earlier writ petition).

23. Hence, petitioner's rights are required to be seen, examined and determined on the date, when she had preferred her earlier writ petition (SB Civil Writ Petition No.1081/2020).

24. Instead of straightaway allowing petitioner's writ petition, the Court expected that respondents would show some reasonableness and thus, directed them to consider her representation in accordance with law.

25. This being the position, the respondent No.2 was required to consider petitioner's representation objectively, of course within the precincts of the directions given by this Court.

26. Coming to the adjudication made by respondent No.2, in relation to petitioner's representation, this Court finds that the petitioner's representation has been rejected mechanically. The manner in which the order impugned has been passed and its tenor shows that the respondent No. 2 was pre-determined to reject petitioner's representation.

27. The respondent No.2 has decided petitioner's representation apathetically, if not vindictively; diagonally contrary to what was expected by the Court - 'sympathetically'.

28. According to order dated 10.02.2020 passed in petitioner's writ petition, the respondent No.2 was not only required to consider petitioner's representation 'sympathetically', (on account of the inadvertent error). The fact, whether inclusion of petitioner's name would shunt out another person from the list, was not before the Court, hence, the petitioner's fate was left at the end of the respondents.

29. Concededly, on the date of deciding petitioner's representation, final select list was not published.

30. It is also undisputed that if petitioner's correct marks (1582) are taken into reckoning, she secures a berth in the select list.

31. May be it was a fault of the petitioner/E-Mitra operator, however, if the stand of the respondents is tested on the anvil of reasonableness and fairness, the order does not pass muster.

32. During the course of hearing, the Court posed a question to Mr. Mehta, as to, what would happen if the petitioner had filled in higher marks in the application form, than she had actually obtained? Would they show the petitioner higher in merit and give her appointment? The answer was an obvious, 'No'.

33. As a matter of fact, the respondents themselves are/were required to determine a candidate's merit on the basis of the marks she/he has secured and that, precisely is the purpose of verification of the documents. It was equally a duty of the respondents to take into consideration correct marks, which the petitioner had secured and accordingly place her at appropriate place in the merit list, on the basis of her qualifying marks, which is the sole criteria for preparing the merit list.

34. A gainful insight into various judgments on the issue at hands would be relevant herein.

(i) In *Ajay Kumar Mishra Vs. Union of India* [W.P. (Civil) No. 11642/2016] decided on 23.12.2016 and *Arkshit Kapoor Vs. Union of India* [W.P.

(Civil) No. 3721/2017] decided on 31.07.2017, wherein the candidates had mentioned wrong Date of Birth, the Delhi high Court held that as a

consequence of such error, the candidates did not obtain advantage. Trivial omissions ought to have been rectified.

(ii) In *Dinesh Kumar Mahawar Vs. R P S C & Ors.* (SB CWP No. 7159/2017) decided on 11.10.2017, the petitioner was denied consideration as he

had opted only two option of services instead of three as mandated by RPSC; in *Sapana Kuamri Vs. State of Rajasthan & Ors.* (SB CWP No.

15654/2016) decided on 24.11.2016 petitioner inadvertently filled OBC (Male) instead of OBC (Female) category; in *Shimala Jat Vs. State of*

Rajasthan & Ors. (SB CWP No. 906/2017) decided on 27.01.2017, petitioner being a 'widow' filled her category as 'divorcee'.

35. In all these cases referred above, the view of Courts has been consistent - that mere human/inadvertent errors deserve to be ignored or ordered to

be corrected and the candidature should not have been rejected on such flimsy counts.

36. Facts involved in the enunciations aforesaid, bear resemblance with the facts at hands. The petitioner had mentioned marks lower than that she

actually obtained. The petitioner stood nothing to gain from such error. No sane person would ever venture to do so. The mistake, though was serious

but still a bonafide mistake.

37. When it comes to incorrect particulars, particularly in relation to marks obtained in qualifying examination, the respondents are in any case required

to examine and place a candidate on the basis of the marks he or she has secured. The respondents are neither obliged to, nor, as a matter of fact,

give merit position solely on the basis of declaration of marks given by a candidate.

38. So far as the arguments regarding condition of advertisement is concerned, true it is that in normal circumstances candidates should be careful

enough to fill in correct particulars, but one cannot forget: 'to err is human and to forgive is divine', this Court feels that when the State is dealing with

the fate of a citizen, more particularly unemployed youth, it should show large heartedness to ignore such inadvertent errors, especially when the

errors are bonafide and do not reflect upon a candidate's conduct.

39. Things may be slightly different when a candidate has given other incorrect/insufficient information such as category etc. to take perhaps to avail

chance in more than one category. But when it comes to marks obtained in qualifying exam or course, some liberal and pragmatic approach needs to

be adhered to.

40. No doubt, the petitioner was not careful enough to fill correct particulars, but then, a lesser meritorious candidate cannot thrive on her fault.

41. No right accrues to a candidate even if his/her name has been shown in the select list. In the present case, even final list was not issued and even

first appointment order came to be issued on 28.04.2020. Hence, bogy of other candidate's rights being affected cannot be countenanced by this

Court.

42. As an upshot of discussion aforesaid, the writ petition is allowed. The impugned order dated 31.03.2020 is quashed and set aside. Competent

authority is directed to call the petitioner for document verification in the second week of December, 2020 and verify the assertion of marks so made

by her.

43. In case, petitioner's assertion is correct that she had secured 1582 marks, she be placed at appropriate position in the select list and accorded

appointment within a period of 60 days from today, if she is otherwise eligible.

44. Stay application also stands disposed of.