
(2001) 05 RAJ CK 0097
In the Rajasthan High Court
Case No : Civil Writ Petition No. 2813 of 2000

Sumitra Singh	Vs	APPELLANT
State of Rajasthan and Others		RESPONDENT

Date of Decision : 07-05-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2002) 1 RLW 163 : (2002) 2 WLC 205 : (2001) 4 WLN 478

Hon'ble Judges : J.C. Verma, J

Bench : Single Bench

Advocate : D.S. Poonia, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

Verma, J.

(1). The petitioner is aggrieved against the action of the impugned order dated 18.5.2000 (Annex.4), rejecting her candidature for the training course to Auxiliary Nurse Midwife (ANM) on the ground that at the time of counseling, she had a child of less than 3 years of age and submits that any such condition imposed by the respondents in regard to age of child is arbitrary and hit by Article 14 & 16 of the Constitution of India.

(2). Vide notification dated 4.9.99 the applications were invited for selection on the post of ANM; The petitioner was fulfilling the qualification, however in the notification, a clause has been inserted that the candidates should have no child of the age of less than 3 years and they are not eligible for making application. The counseling was held on 5.9.2000 at Jhotwara. It was found at the time of counseling that the petitioner had a infant child of less than 3 years of age. Even though, the petitioner tried to convince the members that she had a child of more than 3 years of age. It is submitted that the petitioner was in dire necessity of the job and may be for that reasons she might have told wrong facts at the lime of counseling about the age of child, but the fact remains that the

candidature of the petitioner had been rejected only on the ground that she had a child of the age of less than 3 years.

(3). The question arises for determination in the present case is that whether the candidate who had a child less than 3 years of age, her candidature can be rejected and the candidate having child of more than 3 years can be accepted for the post of ANM.

(4). In my opinion such discrimination cannot be allowed. If a candidate is found, eligible and suitable otherwise, her candidature because of existence of a child less than three years cannot be rejected. It is upto such candidate to make arrangement for the child, if at all such candidate is selected. The respondents ought to have considered that the work should not have suffered and if it is found by the department that because of the child the candidate is not doing her/his duties properly, in such situation, action can be taken independently on the fact.

(5). Counsel for petitioner relies on the judgment of Apex Court in case of Air India v. Nergesh Meerza and Ors. (I).

(6). In the case of Air India (supra) the Apex court had set aside the impugned order of termination observing that the Regulation does not prohibit marriage after four years and if an air Hostess after having fulfilled the first condition becomes pregnant, there is no reason why pregnancy should stand in the way of her continuing in service. The termination of the service of an Air Hostess under such circumstances is not only a callous and cruel act but an open insult to Indian Womanhood, the most sacrosanct and cherished institution; such a course of action is extremely detestable and abhorrent to the notions of civilised society. Such a provision, therefore, was not only manifestly unreasonable and arbitrary but contains the quality of unfairness and exhibits naked despotism and is, therefore, clearly violative of Article 14 of the Constitution of India.

(7). Despite service, no one has appeared on behalf of respondents, nor any appearance has been made even today, with the result I have no option to accept the pleadings of petitioner. At the time of admission of writ petition one vacancy of the post of ANM had been kept reserved for the petitioner.

(8). For the reason mentioned above, the impugned order 18.5.2000 (Annex.4) is set aside. The respondents are directed to allow the petitioner to join on the post of ANM, which has been kept reserved for petitioner.

(9). With the above observations, the writ petition is allowed. No order as to costs.