
(2018) 05 RAJ CK 0085

In the Rajasthan High Court

Case No : Civil Writ Petition No. 11593 of 2016

Sushila Kumari @APPELLANT@Hash State of Rajasthan & Ors.

Date of Decision : 05-05-2018

Acts Referred:

Citation : (2018) 05 RAJ CK 0085

Hon'ble Judges : DR. PUSHPENDRA SINGH BHATI, J

Bench : Single Bench

Advocate : KR Saharan, Khet Singh, BL Bhati

Final Decision : Allowed

Judgement

1. This writ petition has been preferred with the following prayers:

1. By an appropriate writ, order or direction, the respondents are directed to consider the candidature of petitioner under widow category for

her husband having expired during the selection process and the petitioner accorded the appointment on the post of Hindi Lecturer, if she is found

otherwise eligible.

2. By an appropriate writ order or direction, the respondents may kindly be directed to consider the case of the petitioner in light of judgment passed by

Hon'ble this Court in D.B. Civil Special Appeal Petition No.82/2013 State of Rajasthan Vs. Jamna Rajpurohit dated 31.08.2013 (Annex.-8)

3. Any other appropriate writ, order or direction which this Hon'ble Court deems just and proper may kindly be passed in favour of the

petitioner.

2. Brief facts of this case, as noticed by this Court, are that petitioner participated in the recruitment process, which was initiated vide advertisement

dated 16.10.2015 for the appointment on the post of Lecturer in Hindi subject for School Education pursuant where to the petitioner applied for the said

post in the General Female Category. During the said selection process, the petitioner's husband expired on 31.03.2016. The examination was

conducted by the respondents in the first paper on 17.07.2016 and second paper on 24.07.2016. The petitioner submitted the second representation to

the respondent on 27.08.2016, which is Annexure-6 of the writ petition.

3. Learned counsel for the petitioner Shri KR Saharan has stated that the controversy has already been settled by the Division Bench of this

Honorable Court in the matter of State of Rajasthan & Ors. Vs. Ms. Jamna Rajpurohit passed in D.B. Civil Special Appeal No.82/2013, decided

on 30.08.2013. The relevant portion of this judgment reads as under :-

"We have given anxious consideration to the submissions made on behalf of the appellants and having perused the material placed on record.

We may, at once, observe that the contention as urged on behalf of the appellants, against a part of the observations occurring in the impugned order

dated 29.08.2012, cannot be considered to be wholly without substance where the learned Single Judge has proceeded to draw an analogy to the event

of SC/ST/OBC category 7 DBSAW No.82/2013 With 3 connected appeals candidates being switched over to general category on the basis of their

merit. True it is that, ordinarily, if a reserved category candidate gets selected on the basis of merit, he cannot be treated as a reserved category

candidate and is not deprived of the right to be considered as a general category candidate. However, this event is not that of change of category as

such. Without much dilatation on this aspect, suffice would be to observe for the present purpose that the questioned observations occurring in the

order impugned could be left out of consideration and need not be approved. However, we are clearly of the view that other observations and findings

in the orders impugned cannot be said to be unjustified; and we are satisfied that the ultimate relief, as granted to the respondents (writ- petitioners),

remain justified from every point of view and does not call for any interference.

The appellants have repeatedly harped on the stipulations of the nature as contained in clause 19 (1) of the advertisement dated 27.02.2012 which

reads as under:-

"¼½ vkosnu i= izLrqr djus dh vfUre fnukad 2-04-2012 jkf= 12-00 cts rd vkuykbZu vkosnu i= Lohdkj fd;s tk;saxsA rRi'pkr mDr osclkbZV ij

miyC/k vkuykbZu fILVe Lor% gh cUn gks tk;sxkA vkuykbZu vkosnu dh leLr

izfof""B;ka iw.kZ ,oa lgh ugha gksus ij vkosnu i= vLohd`r dj fn;k

tkosxkA vkuykbZu vkosnu i= esa nh xbZ tkudkjh ds fy, ftEesnkjh vkosnd dh gksxhA vkosnu i= esa dh xbZ izfof""B;ksa esa vfUre fnukad ds ckn fdlh

Hkh izdkj ds ifjorZu dh vuqefr ugha nh tk;sxh vkSj uk gh bl ckcr izLrqr fdlh izkFkZuk i= ij fopkj fd;k tk;sxkAâ??

Such a stipulation appears to be logical to some extent and the appellants appear to be right in their assertion that in an ordinary case, the particulars

stated in the application cannot be permitted to 8 DBSAW No.82/2013 With 3 connected appeals be altered, lest it becomes an unending process.

However, the appellants, representing a welfare State, appear totally perfunctory in their approach when suggesting that even the categorization of a

married woman to a widow upon happening of an unfortunate event, i.e., demise of her husband after filing of the application, could also be considered

hit by the stipulation aforesaid. The stipulation as occurring in clause 19(1), obviously, operates in the case where the candidate has filled up the

application form stating his/her category and after the last date, seeks change of the category or any other particular stated in the application. The said

stipulation directly relates to an attempt by the candidate to seek alteration of the particulars in the application form on his/her own volition. The prayer

for such nature alteration can, of course, be denied under the said stipulation but then, the same cannot be considered operating in the case of present

nature where the woman candidate is neither seeking alteration of any particulars stated in the application nor seeking change of category of her own

accord or on account of any of her mistake. The prayer herein had been for consideration of the case of the individual writ-petitioner in widow

category because of an unfortunate event, and because of a peculiar reason, that she was rendered a widow after filling up the application form upon

demise of her husband.

It remains a matter of hard reality and of fact that each of the writ-petitioners was a married woman with her husband very much alive at the time of

her filling up the application form. They had submitted the form and filled in the category as applicable. It had been an unfortunate aspect that after

filling up of the forms, they lost 9 DBSAW No.82/2013 With 3 connected appeals their respective husbands. The cases of the writ-petitioners could

not have been considered as that of seeking any â??permissionâ?? to change the

category. In fact, their category got changed for vis major over which, they had no control; rather they would have never wished it to happen. Vis major i.e., act of God, refers to an occurrence taking place exclusively due to natural causes, and being of external nature, and further being the one which cannot be anticipated or provided against. Sudden demise of a person remains essentially a matter beyond the control and anticipation of human beings. Such an unfortunate event could nevertheless happen, as has happened in the present cases. The appellants cannot be considered justified in suggesting that such an unfortunate event can also be ignored by them with a perfunctory reference to the stipulation like the one referred above. It remains trite that the law does not envisage nor countenance an absurdity or impossibility. The propositions of the appellants, running against the very fundamentals of law, are required to be rejected.

We are further of the view that when the appellants have provided for a special reservation to a category of persons requiring help and support of the State i.e., the women suffering widowhood, any provision in that relation ought to be applied with a practical approach and with due respect to the ground realities. The very object behind reservation for widow category would be defeated, if not rendered illusory, if the peculiar facts and circumstances of the case of a woman suffering widowhood after filling up of the application form but before completion of recruitment process, are

10 DBSAW No.82/2013 With 3 connected appeals ignored and she is not considered for appointment in widow category. We are at one that the observations in the orders impugned that in these cases, the concerned authorities were rather under an obligation to consider the candidature of the writ-petitioners in widow category.

In view of the above, these appeals stand dismissed summarily, subject, of course, to the observations foregoing.Â

4. Learned counsel for the respondent is not in a position to refute the submissions made on behalf of the petitioner on the ground that the Division Bench judgment passed in Jamna Rajpurohitâ??s case (supra) is holding the field. It is also contended that the representation submitted by the petitioner was received belatedly.

5. After hearing counsel for the parties and perusing the record of the case, this Court is of the opinion that the issue is covered by the aforequoted

judgment of Ms. Jamna Rajpurohit (Supra). This Court also finds that the ad interim order dated 07.10.2016 whereby one post of School Lecturer in

Hindi subject was kept vacant for the petitioner is operating.

6. This Court has also taken note of the fact that the advertisement was issued on 16.10.2015 for appointment on the post of School Lecturer in Hindi

Subject and the petitioner who participated as General women candidate herein became widow on demise of her husband on 31.03.2016 and the

respondents have conducted examination on 17.07.2016 and 24.06.2017.

7. In view of the aforementioned observations and in light of the aforequoted precedent law, the present writ petition is allowed and the respondents

are directed to give appointment to the petitioner on the post of School Lecturer in Hindi Subject in her own category in pursuance of the

advertisement dated 16.10.2015. Such appointment shall be given to the petitioner treating her to be Widow General category candidate as per her

own merit within a period of 30 days from today.