

(1992) 03 RAJ CK 0005
In the Rajasthan High Court
Case No : Civil Special Appeal No. 155 of 1990

The State of Rajasthan and Another

APPELLANT

Vs

Smt. Vasumati

RESPONDENT

Date of Decision : 11-03-1992

Acts Referred:

Rajasthan High Court Ordinance, 1949 — Section 18

Citation : (1992) WLN 545

Hon'ble Judges : V.K. Singhal, J; Milap Chand Jain, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Milap Chandra Jain, J.—This appeal has been filed u/s 18, Rajasthan High Court Ordinance, 1949 against the order of the learned Single Judge dated March 14, 1990 by which he has allowed the writ petition of the petitioner-respondent and directed the appellants to consider the case of the petitioner for appointment on the post of Surveyor. The facts of the case giving rise to this appeal may be summarised thus.

2. Sri Ramanand Saraswat was Senior Research Assistant in the Oriental Research Institute, Government of Rajasthan, Jodhpur and he died in the year 1981 while in service. The petitioner was his youngest daughter. Immediately after his death, she applied for a suitable post under the Rajasthan Recruitment of Dependants of Government Servants (Dying while in Service) Rules, 1975 (hereinafter referred to as "the Rules"). At that time, she had passed B.A. On August 19, 1981, she was appointed on the post of Preservation Assistant. In the year 1983, she did M.A. in History. Thereafter, she claimed that she should be appointed on the post of Surveyor as her father was a Gazetted Officer. Despite several representations, she was not appointed on the post of Surveyor. She then filed a writ petition. The respondent-appellants averred in their reply that the petitioner was not possessing the requisite qualification for being appointed as a Surveyor as she did not have Hindi or History or Persian or Arabic as one of her

optional subjects in the Three Years Degree Course and she was also not having two years experience in literary or historical research or literary work dealing with manuscripts or old documents. The amendments made in Rule 5 of the Rules are prospective in nature. Under the Amendment Rules also, she is not entitled to get appointment on the post of Surveyor. Writ petition has been filed after about 9 years of her said appointment. She had appeared before the Selection Committee held for selecting a suitable candidate for the post of Surveyor and was not found suitable. After having accepted the appointment on the post of Preservation Assistant, she cannot claim the higher post of Surveyor.

3. After hearing the learned Counsel for the parties, the learned Single Judge allowed the writ petition by his impugned order holding that the petitioner did not possess the requisite qualification for the post of Surveyor when she applied for appointment on a suitable post after the death of her father in the year 1981, but after passing M.A. in History in 1983, she became eligible for the post of Surveyor under the Amended Rules, relying upon *Vivek Goswami v. State of Rajasthan* 1989 (1) RLR 620 .

4. It has been contended by the learned Additional Advocate General that the learned Single Judge has seriously erred to hold that the petitioner-respondent became eligible after passing M.A. in History in the year 1983 for being appointed on the post of Surveyor under the amended Rules. He further contended that the Rules do not provide subsequent appointment or promotion on the higher post on acquiring minimum qualification for the higher post after having accepted a lower post. He also contended that the petitioner-respondent herself appeared before the Selection Committee constituted for selecting a suitable candidate for the post of Surveyor and she was not found suitable. He further contended that the facts of the case in *Vivek Goswami v. State of Rajasthan* 1989 (1) RLR 620 are quite different and distinguishable. He lastly contended that when the writ petition was filed the petitioner was already married and as such she ceased to be a member of the family of said late Ramanand Saraswat.

5. In reply, it has been contended by the learned Counsel for the petitioner-respondent that the petitioner was possessing minimum qualification for the post of Surveyor even in the year 1981 as she had done B.A. with Hindi, she should have been given appointment on the post of Surveyor even at that time, she had to accept the post of Preservation Assistant as there was none to support the family of her late father and there was no alternative but to accept the said inferior post. He also contended that the learned Single Judge has rightly directed the respondent-appellants to give appointment on the post of Surveyor relying upon *Vivek Goswami*'s case and it is fully applicable. He lastly contended that the petitioner remains the daughter of late Ramanand Saraswat even after her marriage.

6. In reply to the aforesaid contentions of the learned Counsel for the petitioner-respondent, the learned Additional Advocate General contended that admittedly

the petitioner did not do her B.A. with Hindi as an optional subject, Hindi was a compulsory subject and she was also not having two years" experience in literary or historical research or literary work dealing with manuscripts or old documents as laid down in Government order dated January 5, 1963 (Annexure 7).

7. Admittedly, Sri Ramanand Saraswat died in the year 1981 while he was in the Government service on the post of Senior Research Assistant, the petitioner was B.A. at that time vide her application Annexure 1, she applied for appointment on a suitable post under the Rules and she was appointed as preservation Assistant in August, 1981. The first question for consideration in this appeal is whether she was possessing the minimum qualification required for the post of Surveyor in the year 1981 when she was given appointment under the Rules. Government Order No. F.2(19) Edu (IV)/61 dated 5th January, 1963 (Annexure 7) prescribed the qualification for the post of Surveyor. It runs as under:

(i) B.A. (Sanskrit or Hindi or Persian or Arabic or History).

OR

(ii) Acharya (Banaras or Jaipur) with two years experience in literary or historical research or literary work dealing with manuscripts or old documents in each case.

Admittedly, the petitioner did not offer Sanskrit or Persian or Arabic or Hindi in B.A. Her case is that she also had Hindi in B.A. It is not her case that Hindi was offered as an optional subject. She appeared in Hindi compulsory paper. The interpretation sought to be put to the minimum qualification of B.A. (Hindi) as equivalent to B.A. (Hindi compulsory) would be discriminatory to the candidates who offers Sanskrit or Persian or Arabic as these subjects are not compulsory but are also optional. It is not disputed that the syllabus prescribed for Hindi (compulsory) is easier than prescribed for Hindi (optional}. It cannot, therefore, be said that the was BJL (Hindi). She also did not possess two years" experience in literary historical research or literary work dealing with manuscripts or old documents. It is not correct to say that this two years" experience is for candidates holding Acharya Degree from Banaras of Jaipur. It is also for the candidates holding B~A. with any of the said optional subjects. The learned Single Judge has rightly held that the petitioner-respondent was not possessing minimum qualification for the post of Surveyor when she was given appointment on the post of Preservation Assistant in the year 1981.

8. The main question for consideration in this appeal is whether the petitioner is subsequently entitled to get appointment on the higher post of Surveyor under the Rules on acquiring minimum qualification for this post. Rule 5 of the Rules runs as under:

5. Recruitment of a member of the family of the deceased:

In case of "deceased Government servants" one member of his family who is not already employed under the Central/State Government or statutory Board/Organisations/Corporations owned or controlled by the Central/State

Government shall on making an application for the purpose, be given a suitable employment in Government service without delay only against an existing vacancy, which is not within the purview of the State Public Service Commission, in relaxation of the normal recruitment rules provided such member fulfils the educational qualifications prescribed for the post and is also otherwise qualified for Government service. In the event of non-availability of a vacancy or any of the members of the family, being unqualified or minor is not found suitable or eligible for immediate employment, then such cases should be considered immediately on the availability of the post or any of them becomes qualified or eligible for such employment under these Rules.

The following proviso was added to this Rule with effect from August 22, 1983:

Provided that recruitment may be made on posts which are within the purview of the Rajasthan Public Service Commission, except (sic) the major State Services mentioned in rule 3 where the Appointing Authority is satisfied in consultation with the Department of Personnel and the Rajasthan Public Service Commission that a dependent of a deceased Government servant is qualified and suitable for appointment to such post.

The applicants have admitted in their reply to the show cause notice that the post of Surveyor does not fall within the purview of the Rajasthan Public Service Commission. As such the above proviso is of no help to the petitioner.

9. There is no indication in the above quoted Rule 5 that a dependent can subsequently claim appointment on higher post on acquiring minimum qualification of the higher post after accepting the appointment on a lower post given according to his qualification possessed by him at that time. In other words, having once taken the benefit under Rule 5 of the Rules, the dependent is not entitled to claim second benefit by way of appointment on higher post on acquiring its minimum qualification. Similar view has been taken in *Shiv Raj Singh Rathore v. State of Rajasthan* and Ors. 1989 (2) RLR 428.

10. The facts of the case in *Vivek Goswami v. State of Rajasthan* 1989 (1) RLR 620 relied upon by the learned Single Judge are quite different and distinguishable. This is clear from the following observations made in para 5 of the order:

It may be stated that the petitioner was seeking employment on the post of junior employment officer. The application was primarily made for appointment on the post of Junior employment officer and he gave out these facts that although he has cleared the B. Com. Examination which is an essential qualification for the post of junior employment officer, the University is holding fresh examination in respect of boycotted paper so he has to clear that very paper. He made the prayer very categorically that even till the paper boycotted is not cleared by him although he has passed B.Com. examination and in case ad hoc appointment is not given immediately some suitable job can be provided and as soon as he is declared successful in the boycotted paper he may be appointed

on the post of junior employment officer. It is true that the petitioner was given employment on the post of L.D.C. but his application was kept pending and was ordered to be processed for the post of junior employment officer. As soon as the petitioner informed that he has cleared the boycotted paper, there was no impediment in the way of the petitioner for his appointment on the post of junior employment officer. The view which the government has taken vide Anx. 9 that if a person has been posted on a lower post under the rules, no employment can be given on the higher post. It may be stated that the matter has to be viewed in the light of the facts of the present case. The petitioner had initially sought employment on the post of junior employment officer and the petitioner's application remained under process for the very purpose. Rule 5 also makes it abundantly clear that if one becomes qualified his case can be considered for the post for which the person had applied.

In her application Annexure 1, the petitioner-respondent did not request for her appointment on the post of Surveyor. She. has simply prayed for giving suitable employment. The second application Annexure 2 does not give any date. Even in this application, she claimed for suitable post preferably Surveyor.

11. In view of these facts and circumstances, it is very difficult for us to agree with the view of the learned Single Judge that the case *Vivek Goswami v. State of Rajasthan* 1989 (1) RLR 620 is applicable in this case.

12. In the result, the special appeal is allowed and the order of the learned Single Judge is set aside. The writ petition is dismissed. No order as to costs.