
(2013) 12 RAJ CK 0052

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 1087 of 2013

The State of Rajasthan and Others

APPELLANT

Vs

Manju and Another

RESPONDENT

Date of Decision : 11-12-2013

Acts Referred:

Citation : (2014) LabIC 797

Hon'ble Judges : Amitava Roy, C.J;P.K. Lohra, J

Bench : Division Bench

Advocate : S.S. Ladreacha and Kuldeep Mathur, for the Appellant;

Final Decision : Dismissed

Judgement

1. In challenge is the judgment and order dated 20.9.2013 deciding analogously S.B. Civil Writ Petition No. 10461/2013 (Laxmi Narayan & another v. State of Rajasthan & others), S.B. Civil Writ Petition No. 10462/2013 (Manju & another v. State of Rajasthan & others), S.B. Civil Writ Petition No. 10391/2013 (Renu v. State of Rajasthan & another) and S.B. Civil Writ Petition No. 11912/2013 (Santosh & others v. State of Rajasthan & others) allowing the same. The IA No. 5018/2013 in appeal No. 958/2013 has been registered on the application by persons, who claim to have been selected for the post of Safai Karmchari in terms of the Rajasthan Municipalities (Safai Employees Service) Rules, 2012 (for short, hereafter referred to as "the Rules").

2. We have heard Mr. S.S. Ladreacha and Mr. Kuldeep Mathur, learned counsel for the appellants.

2A. The respondents-writ petitioners approached this Court being aggrieved by the methodology of lottery being adopted by the Municipal Corporation, Bikaner for the purpose of making selection for such recruitment In short, they averred that after the initiation of the selection process vide advertisement dated 25.5.2012, they participated therein along with others by submitting their applications as required within the due date. From time to time, thereafter,

guidelines were issued vis-?-vis the" constitution of the selection committee and other modalities contemplating to assess the suitability of the candidates to be recruited by the process of interview as well as the work efficiency relating to safai work. While the matter rested at that, according to the respondents-writ-petitioners, the Municipal Corporation, Bikaner resorted to the method of lottery to short list the candidates for recruitment and on 11.8.2013 published a provisional merit list on its website. Follow up steps for verification of the documents for the purpose of eventual appointment were also taken. It was at that stage the respondents-writ petitioners invoked the writ jurisdiction of this Court contending inter alia that the adoption of the method of lottery system for the purpose of selecting the candidates for recruitment was in violation of the Rules apart from disregarding the rules of reservation as provided thereby.

3. The Municipal Corporation, Bikaner in its reply in substance while endorsing the lottery system as adopted, pleaded that the respondents-writ petitioners having participated in the process they are estopped from turning around and questioning the validity thereof. The Municipal Corporation averred that in terms of the communication dated 24.6.2013 of the State Government making it open for the local bodies either to adopt the method of personal interview or of drawing lottery, it was decided to take recourse to the latter methodology. It contended as well that considering the huge number of applications received, the procedure adopted was permissible having regard to the letter and spirit of the relevant provisions of the Rules.

4. The learned single Judge with reference to Rule 9 of the Rules in particular returned the finding that it not being permissible thereunder to adopt the method of lottery to make selection for recruitment, the process was vitiated thereby and thus, interfered with the public notice dated 11.8.2013 purportedly releasing the provisional merit list of candidates sought to be appointed.

5. To reiterate, the IA No. 5018/2013 in appeal No. 958/2013 is by the persons, who figure in the provisional merit list, but had not been impleaded as party respondents in S.B. Civil Writ Petition No. 10391/2013. Being aggrieved by the annulment of the provisional merit list, they seek leave to file appeal against the judgment and order dated 20.9.2013.

6. The learned counsel for the appellants have insistently argued that as the Rules do not debar lottery mechanism to be a method of selecting candidates for recruitment as Safai Karamchari there under, the determination to the contrary made by the learned single Judge is untenable in law and on facts. Further, as the respondents-writ-petitioners having participated in the process without any demur being fully aware that the norms of lottery would be eventually applied for the purpose of short listing the candidates for appointment, they are estopped from impeaching the validity of the exercise.

7. We have heard the learned counsel for the appellants and have also considered the pleaded facts and the documents to the extent necessary.

8. There is no dissension at the Bar that the recruitment process at all relevant times was governed by the provisions of the Rules. Rules 7 and 9 which are of decisive significance are quoted below for ready reference:--

7. Reservation.--Reservation of vacancies for Scheduled Caste, Scheduled Tribe, Backward classes, Special Backward Classes and Economic Backward Classes shall be in accordance with the provisions of law in force at the time of recruitment.

9. Procedure for direct recruitment.--The Chief Municipal Officer shall invite applications for direct recruitment through advertisement in the two State level daily newspapers and shall make appointment on the basis of either conducting written examination/interview/merit/experience or on the basis of one or more criteria as mentioned above.

9. As would be evident from the quoted texts, whereas Rule 7 provides for reservation of vacancies for Scheduled Caste, Scheduled Tribe, Backward Classes, Special Backward Classes and Economic Backward Classes in accordance with the provisions of law in force at the time of recruitment, Rule 9 in unambiguous terms outline the procedure for direct recruitment. Thereby the Chief Municipal Officer would invite applications for direct recruitment through advertisement in the two State level daily newspapers and would make appointment on the basis of either written examination/interview/merit/experience or on the basis of one or more of such criteria. In other words, as ordained by Rule 9, appointment to the post of Safai Karamchari has to be essentially on the basis of either written examination or interview or merit or experience or on the basis of one or more of these criteria.

10. It has been emphatically contended before us that the persons having two years" working experience of Safai in any Municipality of the State of Rajasthan were considered to be eligible for the post in terms of Rule 6 of the Rules and thus, lottery system was a permissible and pragmatic method of short listing the candidates out of huge number of applications.

11. We do not feel persuaded to sustain this contention. Having regard to the norms legislatively contemplated to form the basis of selection, by no means the process of lottery overwhelmingly guided by chance could have been either a substitute or supplement thereof. The plea that this method was adopted to tackle the huge number of applications is to be mentioned only to be rejected. Though it might have been open for the concerned authorities to supplement Rule 9 by appropriate administrative guidelines in consonance with and consolidation of the prescriptions thereof as the criteria for selection, in our opinion, lottery system so adopted, by no means can be approved. The process admittedly is a public participatory one and proclaimed to be governed by the Rules and thus, no departure from the procedure prescribed thereby was permissible. The convenience of the selecting authority cannot in any view of the matter receive judicial imprimatur to supplant the otherwise apparent legislative

intendment as engrafted in Rule 9 of the Rules.

12. The learned single Judge, as the impugned judgment and order would reveal, not only did rightly refer to the observations of the Hon"ble Apex Court in Secretary, State of Karnataka and Others Vs. Umadevi and Others, , but also mentioned about the circular dated 3.5.2012 of the State Government to the effect that all recruitments ought to be made as per the criteria laid down therein and not by drawing lottery. As the procedure of lottery is clearly not envisaged by the Rules, the plea of estoppel also does not weigh with us. In the above view of the matter, we do not find any persuasive or weighty reason to interfere with the impugned judgment and order. The appeals and IA No. 5018/2013 stand dismissed. A copy of this judgment be placed in all the files.