

(2018) 05 RAJ CK 0061
In the Rajasthan High Court
Case No : Civil Writ Petition No. 5857 of 2018

Vijay Kumar @APPELLANT@Hash State of Rajasthan & Ors.

Date of Decision : 03-05-2018

Acts Referred:

Rajasthan Municipalities (Safai Employees Service) Rules, 2012 — Rule 6

Citation : (2018) 05 RAJ CK 0061

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

Bench : Single Bench

Advocate : Shailesh Aggarwal, Pratistha Dave

Judgement

1. The petitioner has preferred this writ petition for the following reliefs :

â??a. by an appropriate writ, order or direction, the ineligibility criteria incorporated in the advertisement dated 13.04.2018 may kindly be quashed and set aside.

b. The respondents may kindly be directed to accept the application form of the petitioner pursuant to the advertisement dated 12.04.2018 (Annex.1)

c. The respondents may kindly be directed to allow the petitioner in selection process for appointment on the post of Safai Karamchari.

d. The respondents may kindly be directed to provide appointment to the petitioner on the post of Safai Karamchari, if otherwise found place in the merit.

e. Any other order or direction, which this Honâ??ble Court deemed just and proper be passed in favour of the petitioner.

f. Costs of this petition may kindly be allowed to the petitioner.â??

2. Counsel for the parties submit that the Honâ??ble Division Bench of this Court has already decided the controversy involved in this matter in State

of Rajasthan & Anr. Vs. Smt. Indira Devi (D.B. Civil Special Appeal (Writ)

No.703/2016, decided on 25.10.2016), wherein Honâ??ble Division

Bench has held that the candidate cannot be denied his/her right of appointment on the ground of having more than two children after 01.06.2002. The

judgment reads as under:

â??The present appeal assails order dated 05.11.2015 allowing S.B.Civil Writ Petition No.2703/2015. The learned Single Judge held that the

stipulation in the advertisement that those who had a third child born after 01.06.2002 would be considered ineligible for appointment was beyond the

conditions of eligibility prescribed in Rule 6 of Rajasthan Municipalities (Safai Employees Service) Rules, 2012 (hereinafter called, 'the Rules').

Learned counsel for the Appellants submits that the writ petition came to be disposed without a counter affidavit. The Respondent had not challenged

the conditions in the advertisement with regard to the ineligibility. There was no dispute on facts from her own affidavit that her third child was born

after 01.06.2002. If the Respondent had inadvertently been called for consideration contrary to the stipulation in the advertisement, no benefit can flow

to her because the stipulation for ineligibility was inconsonance with the National Policy for Controlling Population Growth. Reliance was placed on

2003 (8) SCC 369 (Javed Vs. State of Haryana).

Conversely, counsel for the Respondent submitted that she was selected on 17.12.2013 and letter of appointment issued. Joining was denied because

complaints had been received. It was alleged that her mother-in-law had already been selected as a Safai Employee. The complaint was examined

and found to be incorrect. She represented afresh after an order in S.B.Civil Writ Petition No.7196 of 2014. Thereafter the Appellants have taken a

fresh ground with regard to her ineligibility restricting the operation of Rule 6 without any amendment of the Rules.

We have considered the submissions on behalf of the parties.

The advertisement was never placed before the learned Single Judge by the parties. Despite more than one adjournment no counter affidavit was filed

by the Appellants. A copy of the advertisement has however been placed before us in appeal.

Rule 6 prescribes the eligibility, qualifications fulfillment of which entitles a candidate to be considered. There is no statutory incorporation in Rule 6

with regard to any ineligibility of a candidate if a third child had been born after

01.06.2002. If the eligibility is prescribed in statutory Rules, those who do not fulfill the same are ineligible. If a candidate fulfills the eligibility requirements in Rule 6, she cannot be declared ineligible by incorporation of any clause in the advertisement beyond the statutory requirement of Rule 6. There is no error in the finding of the learned Single Judge that such a condition could not be incorporated in the advertisement beyond statutory provisions. It is not the case of the Appellants that even any executive order had been issued to that effect before the ineligibility clause was incorporated in the advertisement. It is not open for the Appellants to urge that any condition incorporated in the advertisement contrary to the statutory requirement, would still bind the applicant unless there was a challenge to the advertisement. The fact that the candidate may have applied notwithstanding the stipulations in the advertisement cannot confer legality on the condition prescribed beyond the Rules.

We therefore find no infirmity in the order of learned Single Judge. The Respondent is now required to be considered for appointment in accordance with the offer dated 17.12.2013.

Reliance on Javed (*supra*) is misconceived as the challenge related to the vires of the provisions of Sections 175(1)(q) and 177(1) of the Haryana

Panchayati Raj Act, 1994 incorporating a statutory requirement with regard to those having more than two children and which is not the case

presently. The appeal is dismissed.â??

3. In light of aforementioned position of law, this Court deems it appropriate to dispose of this writ petition with a direction to the respondents to

consider application of petitioner forÂ appointment on the post of Safai Karamchari in pursuance of advertisement dated 13.04.2018 while not

considering third child born after 01.06.2002 as a disqualification, in accordance with the directions as well as in consonance with the precedent law

laid down by Division Bench of this Court in State of Rajasthan & Anr. Vs. Smt. Indira Devi (*supra*).