
(2003) 05 RAJ CK 0070
In the Rajasthan High Court
Case No : Civil Writ Petition No. 4403 of 1997

Vinod Kumari

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 02-05-2003

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 16(2)

Citation : (2003) 3 RLW 1955 : (2003) 3 WLC 579

Hon'ble Judges : Sunil Kumar Garg, J

Bench : Single Bench

Advocate : M.S. Singhvi, for the Appellant; R.P. Vyas, A.A.G., for the Respondent

Final Decision : Allowed

Judgement

Garg, J. 1. This writ petition under Article 226 of the Constitution of India has been filed by the petitioner on 27.11.1997 against the respondents with the prayer that by an appropriate writ, order or direction, the respondent No. 2 the District Establishment Committee, Zila Parishad, Churu be directed to allot the petitioner to any Panchayat Samiti within its jurisdiction (Churu (District) for appointment to the post of Teacher Gr. III and the respondents be further directed to appoint the petitioner on the post of Teacher Gr. III on and from the date persons lower in merit list to the petitioner have been appointed, with all consequential benefits.

2. The case of the petitioner as put forward by her in this writ petition is as follows :-

The petitioner passed her Secondary School Examination from the Board of Secondary Education, Ajmer in the year 1987, a copy of the mark-sheet is marked as Annex. 1. Thereafter, the petitioner passed her Higher Secondary School Examination from the Board of Secondary Education, Ajmer in the year 1989, a copy of the mark-sheet is marked as Annex. 2.

Thereafter, the petitioner passed her S.T.C. Examination conducted by the

Education Department of Government of Rajasthan in the year 1993 and a copy of the mark-sheet is marked as Annex. 3.

The further case of the petitioner is that she is a resident of village Lohasana Chota, Tehsil and District Churu. A copy of the certificate of residence issued by the Gram Panchayat, Lohasana Bada is marked as Annex. 4.

According to the petitioner, she was married to Vijaypal, who is resident of Jhunjhunu district, in the year 1995. However, on account of some disputes, the petitioner is still residing with her father in the village Lohasana Chota.

The further case of the petitioner is that an advertisement No. 11-/1997 was issued by the respondent No. 2 District Establishment Committee, Zila Parishad, Churu inviting applications for selection to the post of Teacher Gr. III in the Panchayat Samities situated in the jurisdiction of the respondent No. 2 and in pursuance of the said advertisement, the petitioner applied for the post of Teacher Gr. III and she was called for interview vide letter dated 27.5.1997, a copy of which is marked as Annex. 5.

The further case of the petitioner is that she appeared in the interview on 5.6.1997 and a certificate to this effect was issued from the office of the respondent No. 2 District Establishment Committee and a copy of which is marked as Annex. 6.

The further case of the petitioner is that her name was placed at serial No. 70 in the merit list (Annex. 8), but the persons junior to her have been appointed on the post of Teacher Gr. III and the petitioner has been denied such appointment. According to the petitioner, in all persons upto 128 in the merit list have been given appointment, but the petitioner has not been given appointment.

The further case of the petitioner is that she was not being given appointment because at the time when the advertisement was issued, she was not resident of Churu District as she had married to Vijaypal, who is resident of District Jhunjhunu.

The further case of the petitioner is that even after her marriage with Vijaypal, she is residing with her father as there were some disputes between her and her husband Vijaypal and furthermore, the marriage does not change her residence of District. Therefore, denial of appointment to the petitioner on the ground that she was not resident of Churu District, but was resident of Jhunjhunu District because of her marriage with Vijaypal, who is resident of Jhunjhunu District, is violative of Articles 14 & 16 of the Constitution of India. Hence, this writ petition with the prayers as stated above.

A reply to the merit petition was filed by the respondents and they have made preliminary objection and other following submissions :-

i. That the term of select list prepared in pursuance of the advertisement No. 11/97 had already expired, therefore, the petitioner is not entitled to claim

appointment to the post of Teacher Gr. III in pursuance of the said advertisement No. 11/97.

ii. That after the marriage of the petitioner with Vijaypal, who is resident of Jhunjhunu District, she became the resident of Jhunjhunu District and she is not the resident of Churu District and therefore, she was rightly denied appointment.

Furthermore, the respondents have placed reliance on condition No. 8.1 of the guidelines (Annex. 7) where it has been stated that married women would be treated as hailing from the District where their husbands live. Thus, from this point of view also, the petitioner was rightly denied appointment.

iii. That the submission of the petitioner that she is residing with her father and not with her husband has not been proved by the petitioner and thus, there is no material to prove that fact.

Hence, it was prayed that the writ petition filed by the petitioner be dismissed.

3. I have heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents and gone through the materials available on record.

4. There is no dispute in this case on the point that the petitioner is a bonafide resident of District Churu.

5. There is also no dispute on the point that the petitioner was married with Vijaypal, who is resident of Jhunjhunu District, in the year 1995.

6. There is also no dispute on the point that the petitioner was selected to the post of Teacher Gr. III and her name appeared at Sl.No. 70 in the merit list (Annex. 8).

7. There is also no dispute on the point that otherwise the petitioner is entitled to appointment on the post of Teacher Gr. III in pursuance of the advertisement No. 11/97, but because she was married to one Vijaypal, who is resident of Jhunjhunu District and she is not the resident of Churu District, she was not offered appointment.

8. The question for consideration is whether in the above facts and circumstances, denial of appointment to the petitioner to the post of Teacher Gr. III is violative of Articles 14 and 16 of Constitution of India or not.

9. In my considered opinion, residence in a State and District in the present case, cannot be a ground for discrimination in the matter of employment under the State and District in the present case. From this point of view, if there is any guideline contrary to that, it would be violative of Article 16(2) of the Constitution of India.

10. Apart from this in the present case, the petitioner is a bonafide resident of District Churu and merely because she had married to a person, who is resident of another District, she cannot be deprived benefit of her parent District i.e.

Churu in the present case. From this point of view also, denial of appointment to the petitioner on the ground that she is now resident of another District (Jhunjhunu) is violative of Articles 14 and 16 of the Constitution of India.

On point of select list

11. The Hon''ble Supreme Court in *Purushottam v. Chairman, M.S.E.B. and Anr.* (1), has held that duly selected candidate could not be denied appointment on the pretext that panel's term had expired and the post had been filled up by someone else. It was further observed by the Hon''ble Supreme Court that usurpation of the post by somebody else was not on account of any defect on the part of the appellant of that case, but on the erroneous decision of the employer himself and in that view of the matter, the appellant's right to be appointed to the post has been illegally taken away by the employer.

12. Thus, in view of the decision of the Hon''ble Supreme Court of India in the case of *Purushottam* (supra), the fact that the term of select list prepared in pursuance of the advertisement No. 11/97 had expired, would not affect the case of the petitioner, as denial of appointment to the petitioner on the ground that after her marriage with one Vijaypal, who is resident of Jhunjhunu District, she became resident of Jhunjhunu District and she is not resident of Churu District, as already stated above, was found to be violative of Articles 14 and 16 of the Constitution of India. Furthermore, usurpation of the post by somebody else was not on account of any defect on the part of the petitioner, but on the erroneous decision of the respondents themselves and in this view of the matter, the right of the petitioner to be appointed against the post to which she has been selected, was illegally taken away by the respondents.

13. In view of the above, the argument of the learned counsel for the respondents that since the period of select list had expired, therefore, the petitioner is not entitled to appointment now, stands rejected.

14. For the reasons stated above, since the action of the respondents in denying appointment to the petitioner on the post of Teacher Gr. III is violative of Articles 14 and 16 of the Constitution of India, therefore, she is entitled to relief under Article 226 of the Constitution of India and thus, this writ petition deserves to be allowed.

Accordingly, this writ petition filed by the petitioner is allowed and the respondents are directed to offer appointment to the petitioner as Teacher Gr. III in pursuance of her selection pursuant to advertisement No. 11/97 within a period of two months from today, subject to other eligibility criterion. On her appointment, the petitioner shall not be entitled for the emoluments of the post for the past, however, she will be entitled to claim seniority over the persons who were lower in merit but have been offered appointment prior to her.

No order as to costs.