



[2024:RJ-JD:9157-DB]

HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

D.B. Civil Writ Petition No. 6761/2023

Sangeeta Joshi D/o Shri Babulal Joshi, W/o Late Shri Narendra Sharma, Aged About 34 Years, Resident Of 26-27 Shailash Nagar, Near Jhalamand Chouraha, Jhalamand, Jodhpur.

----Petitioner

Versus

The Rajasthan High Court At Jodhpur, Through Its Registrar General.

The Registrar General, Rajasthan High Court, Jodhpur.

3. The Registrar (Examination), Rajasthan High Court, Jodhpur.

----Respondents

For Petitioner(s)	:	Mr. Khet Singh Rajpurohit
For Respondent(s)	:	Dr. Sachin Acharya, Sr. Adv. Assisted by Mr. Chayan Bothra

HON'BLE DR. JUSTICE PUSHPENDRA SINGH BHATI
HON'BLE MR. JUSTICE MADAN GOPAL VYAS

Order**22/02/2024**

1. This writ petition has been preferred under Article 226 of the Constitution of India, claiming the following reliefs:

"It is, therefore, most humbly and respectfully prayed on behalf of petitioner that this writ petition may kindly be allowed and record of the case may kindly be called for and.

a) By an appropriate writ, order or direction, any rejection made on the application dated 13.04.2023 (although no communicated in writing) may kindly be quashed and set aside.

b) By an appropriate writ, order or direction, the respondents may kindly to add the further category of petitioner as General Widow Women in pursuance to her application dated 13.04.2023.



c) *By an appropriate writ, order or direction, the respondents may kindly be directed to consider the candidature of the petitioner under General Widow Women Category and consequently, if the petitioner falling in the cut-off of General Widow women Category, she may be permitted to participate in further recruitment process under General Women Widow Category.*

d) *By an appropriate writ, order or direction, the respondents may kindly be directed to give appointment to the petitioner under General Widow Women Category, if she is found otherwise eligible and meritorious in pursuance to the selection process under advertisement dated 05.08.2022 with all consequential benefits.*

e) *Any other appropriate writ, order or direction, which this Hon'ble court considers just and proper in the facts and circumstances of this case, may kindly be passed in favour of the petitioner.*

f) *Costs of the writ petition may kindly be awarded to the petitioner."*

2. Brief facts of this case, as placed before this Court by Mr.Khet Singh Rajpurohit, learned counsel for the petitioner, are that the petitioner was married to one Sh. Narendra Sharma on 23.11.2005. The petitioner being an educated and qualified person, for participating in the recruitment process for the posts of Junior Judicial Assistant, Judicial Assistant and Clerk Grade-II in the year 2020, submitted his online application form in the EWS Category, in pursuance of the advertisement issued by the respondent. The said recruitment process was initiated for filling up the vacancies (the above-mentioned posts) under the establishment of the Rajasthan High Court as well as the District Courts and the Legal Services Authority.



2.1. The initial advertisement was withdrawn and fresh advertisement came to be issued with the same number of vacancies on 05.08.2022, in which the petitioner stood as an aspiring candidate in the General (Women) Category as she was not having VS certificate at that time. The last date for filling the application form was 22.09.2022. The petitioner appeared in the written examination on 12.03.2023. In the meanwhile, the husband of the petitioner unfortunately expired on 22.03.2023 while being under treatment at Ahmedabad. The death certificate dated 24.03.2023 is placed on record as Annexure-7 of the petition.

2.2. The petitioner immediately moved an application on 13.04.2023 after performing the last rites and rituals of her late husband, submitting therewith the death certificate before the respondent so that she could be treated in the category of Widow for the purpose of recruitment process in question. Such submission was done away with before the Phase-I of the recruitment, that is before declaration of the results, however, the petitioner was informed, via telephonic call, that her category could not be changed. Meanwhile, the results were declared for the Phase-I and the cut off marks for General (Women) Category were 196.3451 marks, whereas the cut off marks for General (Widow) Category were 135.0103 marks (for non-TSP area posts). The petitioner secured 147.5228 marks in the Phase-I, which made her fall within the domain of successful candidate in General (Widow) Category.

3. Learned counsel for the petitioner, in support of the above factual matrix, relied upon the judgment rendered by this Court in

D.B. Civil Special Appeal (Writ) No.82/2013 (State of



Rajasthan & Ors. Vs. Ms. Jamna Rajpurohit, decided on 30.08.2013); operative portion whereof is reproduced as hereunder:-

"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 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:-

"(1) आवेदन पत्र प्रस्तुत करने की अन्तिम दिनांक 02.04.2012 रात्रि 12.00 बजे तक आनलाईन आवेदन पत्र स्वीकार किये जायेंगे। तत्पश्चात उक्त वेबसाईट पर उपलब्ध आनलाईन सिस्टम स्वतः ही बन्द हो जायेगा। आनलाईन आवेदन की समस्त प्रविष्टियां पूर्ण एवं सही नहीं होने पर आवेदन पत्र अस्वीकृत कर दिया जावेगा। आनलाईन आवेदन पत्र में दी गई जानकारी के लिए





जिम्मेदारी आवेदक की होगी। आवेदन पत्र में की गई प्रविष्टियों में अन्तिम दिनांक के बाद किसी भी प्रकार के परिवर्तन की अनुमति नहीं दी जायेगी और ना ही इस बाबत प्रस्तुत किसी प्रार्थना पत्र पर विचार किया जायेगा।”

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 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 their respective husbands.





The cases of the writ-petitioners could not have been considered as that of seeking any 'permission' 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 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."





3.1. On the strength of the aforementioned judgment, learned counsel submits that the provision of law gives a safe-guard/protection/special status to a widow, whereby she has been provided with a special category so as to ensure that the misfortune visiting the widow by the God's act ought to be given certain preference in merit.

On the other hand, Dr. Sachin Acharya, learned Senior Counsel assisted by Mr. Chayan Bothra, appearing on behalf of the respondents, while opposing the aforesaid submissions made on behalf of the petitioner, submits that the judgment rendered in the case of **Jamna Rajpurohit (supra)** would not give any relief to the present petitioner, because the same has been declared to be *per incuriam* by the order of this Hon'ble Court passed in **DB Civil Special Appeal (Writ) No.611/2016 (State of Rajasthan & Anr. vs. Jagdish Prasad & Anr., decided on 09.09.2016)**; operative portion whereof is reproduced as hereunder:-

"The advertisement did not provide for any relaxation. In the circumstances any relaxation to the respondent alone would itself be violative of Article 14 of the Constitution suffering from the vice of arbitrariness and discrimination denying similar benefit to others who could also have made requests for change of category had they been made aware that it was so permissible even after the last date for submission of applications. An individual benefit to the respondent would make justice individualised which again would be anathema to the law and the Constitution.

In (1994) 2 SCC 723 U.P. Public Service Commission, U.P. v. Alpana) the respondent acquired the eligibility qualification after the last date for submission of applications as the results of the examination was published thereafter.



The High Court directed her to be called for interview. Disapproving of the same it was observed :-

"6.....This approach of the High Court cannot be supported on any rule or prevalent practice nor can it be supported on equitable considerations. In fact there was no occasion for the High Court to interfere with the refusal of the Public Service Commission to interview her in the absence of any specific rule in that behalf. We find it difficult to give recognition to such an approach of the High Court as that would open up a flood of litigation. Many candidates superior to the respondent in merit may not have applied as the result of the examination was not declared before the last date for receipt of applications. If once such an approach is recognised there would be several applications received from such candidates not eligible to apply and that would not only increase avoidable work of the selecting authorities but would also increase the pressure on such authorities to withhold interviews till the results are declared, thereby causing avoidable administrative difficulties. This would also leave vacancies unfilled for long spells of time. We, therefore, find it difficult to uphold the view of the High Court impugned in this appeal."

In *Jamna Rajpurohit (supra)* significantly the Division Bench itself observed that permitting change of category after the last date for submission of applications would make the selections an unending process and yet proceeded to direct it to be done on basis of sympathy. *Jamna Rajpurohit (supra)* has therefore to be held as per incuriam. The order under appeal based upon the same is also held to be unsustainable.

Delay of 86 days in preferring the appeal is condoned. The appeal is allowed."



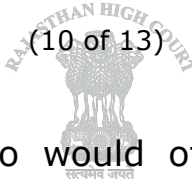
4.1. Learned Senior Counsel further submits that once a judgment has been rendered to be *per-incuriam*, then the same cannot be relied upon, so as to otherwise derive any benefit therefrom.

5. Heard learned counsel for the parties as well as perused the cord of the case, alongwith the judgments cited at the Bar.

The question that now arises for consideration by this Court is it simply, whether a category change can be permitted to the aspiring candidate in the ongoing selection process, in case the candidate has missed such category, while initiating submission of the application for the recruitment in question.

6.1. Rather, the question which falls for consideration is whether at the initial stage of the recruitment process i.e. after the last date of filling the application form, and even before holding of the examination and/or declaration of the results, if the unfortunate widowhood visits a lady, whether she can be permitted to have the benefit of such special legislation which has been carved out to give her protection and safe-guard her interests by giving her certain concession in the merits to be acquired in the recruitment process.

6.2. It is needless to say that the petitioner is fully eligible candidate and her sole case rests upon the fact that while the advertisement was issued on 05.08.2022 and she was participating as a General (Women) Category candidate, the misfortune of widowhood struck her and soon after her written examination on 12.03.2023, her husband expired on 22.03.2023. The result of the Phase-I examination was not announced and thus, admittedly the recruitment was at a very initial stage. It was subsequent to this that the undisputed fact arose which was that without changing the



category, the petitioner who would otherwise fall in the General (Women) Category, the cut off marks for which were 196.3451 for qualifying candidates, whereas cut off marks for General (Widow) Category were 135.0103 marks (for the non-TSP area), whereas the petitioner had secured about 147 marks, which would make her qualified in the General (Widow) Category, but not qualified in the General (Women) Category.

7. Ordinarily, this Court would not go into the merits of the case once the precedent laws of co-equal strength are existing but in the given circumstances where the advertisement as well as the rules prescribed for a specific category for a widow woman and the widowhood which has visited the petitioner, subsequent to the cut off date but before the selection process came into an advance stage and such widowhood confers a special status for the petitioner in the selection process, which virtually qualifies her on merit then such status ought to have been granted to the present petitioner. This Court is conscious of the law for referring to the larger Bench settled by the Hon'ble Apex Court in the judgment rendered in the case of **Central Board of Dawoodi Bohra Community & Ors. Vs. State of Maharashtra & Ors. (2005) 2 SCC 673**; relevant portion whereof is reproduced as hereunder:-

"12. Having carefully considered the submissions made by the learned senior counsel for the parties and having examined the law laid down by the Constitution Benches in the abovesaid decisions, we would like to sum up the legal position in the following terms :-

(1) The law laid down by this Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or co-equal strength.





(2) A Bench of lesser quorum cannot doubt the correctness of the view of the law taken by a Bench of larger quorum. In case of doubt all that the Bench of lesser quorum can do is to invite the attention of the Chief Justice and request for the matter being placed for hearing before a Bench of larger quorum than the Bench whose decision has come up for consideration. It will be open only for a Bench of coequal strength to express an opinion doubting the correctness of the view taken by the earlier Bench of coequal strength, whereupon the matter may be placed for hearing before a Bench consisting of a quorum larger than the one which pronounced the decision laying down the law the correctness of which is doubted.

(3) The above rules are subject to two exceptions : (i) The abovesaid rules do not bind the discretion of the Chief Justice in whom vests the power of framing the roster and who can direct any particular matter to be placed for hearing before any particular Bench of any strength; and (ii) In spite of the rules laid down hereinabove, if the matter has already come up for hearing before a Bench of larger quorum and that Bench itself feels that the view of the law taken by a Bench of lesser quorum, which view is in doubt, needs correction or reconsideration then by way of exception (and not as a rule) and for reasons given by it, it may proceed to hear the case and examine the correctness of the previous decision in question dispensing with the need of a specific reference or the order of Chief Justice constituting the Bench and such listing. Such was the situation in *Raghubir Singh and Ors. and Hansoli Devi and Ors. (supra)*."

8. For the aforesaid reasons, the broad question of law falls for consideration, to the humble understanding of this Court, would be as follows:

Whether candidate(s) can be allowed to change their respective category to a special category subsequent to the





initiation of a recruitment process on count of subsequent widowhood, or subsequent disability or any misfortune, which can be caused by force majeure at any stage before final merit is declared, if such candidate(s) are otherwise eligible to participate in the recruitment process under the changed category?



1. It is however, made clear that such broad question is framed only with regard to participation of persons in the recruitment process, who fall under the widow and handicapped categories, because such incidents, including the one involved in the present case, is an Act of God, actual prediction or otherwise whereof, by any stretch of imagination, cannot be within the domain of an individual aspirant or an employer/recruiter and the same happened subsequent to the cut off date of recruitment process and before declaration of the final merit list.

9. Thus, in light of the precedent law of **Central Board of Dawoodi Bohra Community & Ors. (supra)** and while framing the aforesaid broad question of law, this Court is conscious of the fact that once it being a Bench of Co-equal strength and having an opinion that such categorical relaxation of permitting the petitioner to appear as a widow candidate in the recruitment in question is hit by the judgment rendered in the case of **Jagdish Prasad (supra)**, then in such circumstances, this Court deems it appropriate that the matter be placed before Hon'ble the Chief Justice for constitution of a Larger Bench or the Bench of quorum higher than us.



9.1. It is needless to say that the aforementioned precedent law itself makes it clear that such directions of this Court do not in any way bind the discretion of Hon'ble the Chief Justice in whom vests the power of framing the roster, in issuing appropriate orders/directions for listing of a particular matter for hearing before Bench of any particular quorum, as deemed appropriate to Hon'ble the Chief Justice; thus, according to the directions given by the Hon'ble Apex Court in the aforementioned precedent law and in view of the foregoing reasons, the office is directed to place the matter before Hon'ble the Chief Justice to exercise appropriate discretion in regard to constitution of a Larger Bench or any Bench of higher quorum.

10. It is also made clear that the selection process and question shall remain subject to final outcome of the writ petition and decision of the Larger Bench or any Bench of higher quorum, so constituted by Hon'ble the Chief Justice.

11. It shall also be open for the petitioner to make a prayer for an interim order, before the Larger Bench or any Bench of higher quorum to be so constituted.

(MADAN GOPAL VYAS),J

(DR.PUSHPENDRA SINGH BHATI),J

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