

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Civil Writ Petition No. 3742/2019

Sunita Dhawan W/o Late Sh. Ashok Lakwal, Aged About 45 Years, Resident Of Plot No. 752, Pragati Nagar, Kotra, Pushkar Awasiya Yojna, Pushkar Road, Ajmer.

----Petitioner

Versus

1. State Of Rajasthan, Through Its Secretary, Department Of Secondary Education, State Secretariat, Jaipur.
2. Rajasthan Public Service Commission, Through Its Secretary, Jaipur Road, Ajmer.

----Respondents

For Petitioner(s)	:	Mr.Sunil Samdaria with Mr.Arihant Samdaria
For Respondent(s)	:	Mr.Avinash Choudhary with Mr.Rahul Gupta Mr.Aditya Raj Dhaka for Mr.B.S. Chhaba, AAG Mr.Amit Lubhaya

HON'BLE MR. JUSTICE SAMEER JAIN

Judgment

Reserved on :: 13/01/2025

Pronounced on :: 24/01/2025

1. The present petition is filed assailing the letter dated 11.12.2018 whereby, respondents have declared the candidature of the petitioner as ineligible, for the reason that she has more than two surviving children on or after 01.06.2002 and following prayers have been made: -

“(i) To issue an appropriate writ/order/direction quashing and setting

aside the letter/order dated 11.12.2018 (Annexure – 15) whereby petitioner widow has been declared ineligible for post of School Lecturer.

(ii) To issue an appropriate writ/order/direction directing the Respondents to appoint petitioner-widow as School Lecturer forthwith with all consequential benefits with interest @ 18% p.a.”

2. Shorn of the unnecessary details, the essential material facts and particulars for adjudication of the controversy are that the petitioner, a women candidate, in pursuance of the advertisement dated 16.10.2015, published by Rajasthan Public Service Commission (for short, 'RPSC') inviting applications from eligible candidates, for appointment on the post of School Lecturer; submitted her application under SC- Widow category. The petitioner duly qualified the examination securing merit.

3. Thereafter, successful candidates were required to submit an application form, furnishing necessary details, in order to determine eligibility. Consequently, on scrutiny of the application form of the petitioner, the RPSC, declared her candidature as ineligible vide letter dated 11.12.2018; for having more than two surviving children on or after 01.06.2002 stating that as per terms and conditions, specifically stipulated in the advertisement, rendering such a candidate ineligible for appointments.

4. Learned counsel for the petitioner fairly admitted the fact that the petitioner is mother to four children, one of whom is disabled. However, the petitioner challenged the validity of letter

dated 11.12.2018 contending that the said letter contravenes the Notification dated 28.02.2011. It was further submitted that, pursuant to the powers conferred under Article 309 of the Constitution of India, the Government introduced a proviso in the said notification stipulating that while determining the number of children of a candidate, a child born from an earlier delivery and having a disability shall not be included in the count.

5. Furthermore, it was submitted that the respondents have acted in a discriminatory manner by refusing to consider the petitioner's candidature under the widow category. It was contended that while widows applying under the Compassionate Appointment framework were granted relaxation from the two-children norm, the petitioner, despite securing merit in the widow category, is arbitrarily denied similar relaxation, amounting to unequal and discriminatory treatment. Additionally, it was submitted that the widows seeking regular appointment were not extended the same relaxation, thereby highlighting discriminatory application of the governing Rules and statutes.

6. Further, it was submitted that widows seeking regular appointment on merit, stood on a better footing than widow seeking Compassionate Appointment, therefore, the petitioner should not be discriminated against while granting relaxation qua two child norm.

7. Additionally, during the currency of litigation, Government amended various provisions of service rule vide Rajasthan Various Service (Amendment) Rules, 2023 (for short "Rules of 2023") dated 16.03.2023, whereby relaxation which was

restricted to widows covered under compassionate appointment, has been extended to all widows including the divorcee women.

8. *Per contra*, learned counsel for the respondents had submitted that interpretation of the Rule 21(4) of the Rules of 1970 and allied amended provisions, clearly implies that candidate having more than two surviving children on or after 01.06.2002, shall be declared ineligible for the appointment.

9. It was further submitted that even if one of the petitioner's children were to be declared disabled and excluded from the calculation of total children, the number of children would still not decrease to two, as the total number of children would remain three.

10. It was further submitted that the respondents had acted within the confines of the relevant rules and conditions as stipulated in the advertisement and had rightly rejected the candidature of the petitioner in accordance with the then-existing recruitment rules.

11. Lastly, it was submitted that the recruitment exercise and selection process qua the said post is concluded.

12. Heard and considered.

13. Considering the arguments advanced by the learned counsel for the parties; upon assiduously scanning the material available on record, this Court has noted the following material facts: -

13.1 That the petitioner has secured requisite merit under Widow (SC) category.

13.2 That the candidature of the petitioner is rejected on account of having more than two surviving children on or after 01.06.2002.

13.3 That amendment introduced vide notification dated 16.03.2023 is a beneficial amendment and hence has to be liberally and beneficially interpreted.

13.4 That petitioner approached the Court *sans* any delay invoking the writ jurisdiction as enshrined under the provisions of Article 226 of the Constitution of India.

Observation: -

14. This Court upon observing the above-stated material facts, is of the opinion that the said amendment reflects a progressive and inclusive approach. By removing the earlier restriction that was limited to compassionate appointments under specific rules, the amendment provides a broader and more equitable interpretation, aligning with the welfare objectives of such provisions. Judicial bodies in various circumstances, have sought to make the object of such enactments effective and ensure that the intended benefits reach those who are in need.

15. The petitioner, as the sole bread-earner of her family, shoulders the responsibility of supporting and upbringing of four children, including one with a disability. Her status as a member of the Scheduled Caste (SC) community further highlights the systemic barriers she faces, warranting judicial intervention to address her unique hardship. The petitioner's circumstances exemplify the need for equitable and inclusive consideration in public employment opportunities.

16. Exercising its powers under Article 226 of the Constitution of India, this Court considers it imperative to depart from rigid procedural adherence in the interest of justice. Article 16 of the Constitution of India guarantees equality of opportunity in public employment and prohibits discrimination on various grounds, including caste and sex. The petitioner's exclusion based on procedural requirements, despite her significant socio-economic challenges, undermines these constitutional guarantees and necessitates judicial redress. Additionally, Hon'ble Apex Court in **Common Cause v. Union of India** reported in **AIR 2018 SUPREME COURT 1665**, has held that under Article 226 of the Constitution, the High Court is inherited with the power and jurisdiction to issue appropriate writs in the nature of mandamus, certiorari, prohibition, quo warranto, and habeas corpus for the enforcement of fundamental rights or for any other purposes. Thus, the High Court has jurisdiction not only to grant relief for the enforcement of fundamental rights but also for 'any other purpose,' which would include the enforcement of public duties by public bodies. This observation emphasizes the broad scope of the High Court's powers under Article 226, enabling it to address not only violations of fundamental rights but also to ensure that public authorities fulfill their duties.

17. The rejection of the petitioner's candidature on the sole ground of having more than two children is contrary to Articles 14 and 16 of the Constitution of India, which ensure equality and non-discrimination. The petitioner's marginalized status and meritorious standing under the widow category demand equal

treatment under the law. Denying her claim disregards the principles of fairness and perpetuates systemic inequities, especially for women from vulnerable communities.

18. The petitioner's role as the sole caregiver to a disabled child further underscores her entitlement to special consideration. The principles of substantive equality require the state to recognize and accommodate the unique challenges faced by individuals in disadvantaged positions. Article 39 of the Directive Principles of State Policy obligates the state to promote justice and welfare, especially for women and children, reinforcing the petitioner's claim to equitable treatment.

19. While the petitioner did not apply under the specific framework of compassionate appointment, her exclusion from the widow category due to the proviso restricting exceptions to those under compassionate appointments must be scrutinized for its reasonableness. The purpose of appointment and akin welfare-oriented provisions is to address systemic inequities and ensure substantive equality. Excluding widows facing significant socio-economic hardships, such as the petitioner, undermines the broader welfare objectives of such provisions.

20. A restrictive interpretation of the proviso, limiting its benefits only to widows applying under the compassionate appointment framework, is unjustified and fails to account for the broader principles of equity and inclusivity enshrined in the Constitution. Welfare measures must be interpreted to achieve their intended objective of alleviating hardship and promoting social justice. The petitioner's exclusion, despite her evident need

and merit, perpetuates indirect discrimination and goes against the spirit of the Constitution.

Conclusion: -

21. In summation of the forgoing facts and circumstances and the observations made, this Court deems it appropriate to acknowledge the fact that the instant matter is ideal for this Court to invoke its inherent jurisdiction under the provisions of Article 226 of the Constitution of India; nevertheless the preamble of our Constitution explicitly clarifies the ideology of our State i.e. Socialist, thence it is the duty of the State to act as a guardian for its citizen and to safeguard their lives and ensure sufficient means of earning.

22. Withal, the recent amendment made in the Rules of 2023 leaves no scope of discrimination among widow, divorcee, alike persons, applying for appointment.

23. Consecutively, taking note of the fact that the petitioner herein belongs to an underprivileged community (SC), is the sole bread-earner who is responsible for upbringing and nourishment of four children – two daughters and two sons (wherein one of the male child is specially abled) and acknowledging the fact that the petitioner had approached the concerned authorities/ this Court pronto, without any delay with clean hands, this Court adopting a sympathetic approach towards the petitioner and her novice children and upon making a cumulative understanding of the duties entrusted by the Constitution of India, deems it appropriate to allow the instant petition.

24. This Court while interpreting the black letters of law, is also guided by its conscience and a sense of justice, and considering that there is no evidence on record to suggest that the petitioner is financially stable, and in fact, it appears that petitioner has no other relative and she is on her own, and has no other means to earn a livelihood, this Court is taking a merciful approach and sympathetic approach, recognizing that if the Court does not act a guardian to the petitioner, a poor lady along with her children shall be forced to be hand to mouth. Nevertheless, the petitioners' financial instability would lead to irreparable hardship, and thus, exercising its discretion, ensuring that justice is not only done but also seen to be done, and the petitioners' vulnerable condition is alleviated.

25. This Court as representative of the Sovereign as *parens patriae* has adopted the same standard that a reasonable and responsible parent would do. In many cases, various High Court's have exercised their jurisdiction under Article 226 of Constitution of India and granted relief, one of the case is **Adil Sajeer Ansari vs University of Delhi; (2021) 2 HCC Del 272**, wherein Delhi High Court has exercised its jurisdiction and granted relief to the petitioner therein.

26. Accordingly, the respondents are directed to consider the application of the petitioner and grant appointment to her on the said post under her respective category without further ado, and benefits qua the said appointment shall not accrue retrospectively. Notwithstanding anything above, it is made clear that the instant judgment is passed considering the peculiar facts



and circumstances of the instant matter and henceforth, ought not to be treated as a precedent. No orders are made as to cost. Pending applications, if any, shall stand disposed of.

(SAMEER JAIN),J

Preeti Asopa