

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



S.B. Civil Writ Petition No. 4176/1998

Ashish Arora S/o Late Shri Brij Ballabh Arora, aged about 20 years, R/o M-28, Ram Nagar, Sodala, Jaipur.

----Petitioner

Versus

Rajasthan State Electricity Board, through its Chairman, Vidyut Bhawan, Jyoti Nagar, Jaipur.

----Respondent

Connected With

S.B. Civil Writ Petition No. 3349/2004

Dipendra Singh Mehta S/o Late Shri Bhupal Singh, R/o Plot No.81, Moti Nagar, Jaipur.

----Petitioner

Versus

The Chairman, Jaipur Vidyut Vitaran Nigam Limited, Vidyut Bhawan, Jyoti Nagar, Jaipur.

----Respondent

For Petitioner(s) : Mr. Punit Singhvi

For Respondent(s) : Mr. Aveesh Mourya for
Mr. H.C. Mourya

HON'BLE MR. JUSTICE ANOOP KUMAR DHAND

Reserved on : 04/4/2023
Pronounced on : 26/04/2023

Reportable

Judgment

(1) Both these petitions involve common question of law and facts, hence with the consent of all the parties, arguments have been heard together to decide these petitions by this common order.

(2) The issue involved in these petitions is "whether the respondent can make gender discrimination on the basis of being male or female?".

(3) By way of filing these petitions, the petitioners are challenging validity of the order dated 17.10.1996 issued by Rajasthan State Electricity Board (for short "RSEB"), which reads as under:-

"According to the provisions of order No.RSEB/AS/Rectt./F.407/D.823 dated 23.8.95 the persons possessing qualification of high school or above are being appointed on preferential basis to the post of LDC or any other equivalent post. Looking to the large number of persons already working in clerical side, the matter was reconsidered by the M.I.M's in their meeting held on 19.8.96 and it was decided that :-

- a) The persons (Male) possessing qualification of high school and above but below graduation be appointed as Helper-I and posted at 33 KV Sub-Station and line works etc. Only Graduate persons (Male) be appointed as C.C.C. (Consumer Complaint Clerk).
- b) The persons (Female) possessing qualification of high school and above will continue to be appointed as LDC."

(4) Counsel for the petitioners submitted that petitioner Ashish Arora was appointed on compassionate ground, on account of his father's death while in service, and petitioner Dipendra Singh Mehta was appointed in place of his mother, who quit job under the "Golden Hand-shake Scheme". Counsel submitted that the petitioners were having the requisite qualification (i.e. Secondary School Examination pass) for getting appointment on the post of Lower Division Clerk (for short "LDC") as per Rule 10.1(A)(2) of the Rajasthan State Electricity Board Ministerial Staff Regulations, 1962 (for short "Regulations 1962"), but even then, they were given appointment on the post of Helper Gr.I on the basis of the order dated 17.10.1996, while similarly situated female candidates were given appointment on the post of LDC.

Counsel submitted that reason of causing discrimination was the large number of male candidates in comparison to female candidates. Counsel submitted that no discrimination can be done on the basis of sex, and such action of the respondent has violated the fundamental rights of the petitioners contained under Article 14 of the Constitution of India. Counsel submitted that during pendency of these petitions, the petitioners were given appointment on the post of LDC in the year 2006 through regular selection process, hence the respondent be directed to provide the benefits of the post of LDC to the petitioners with effect from their initial date of appointment.

(5) Per contra, the counsel for respondent opposed the arguments raised by the counsel for petitioners and submitted that looking to large number of male candidates, appointment was given to them on the post of Helper Gr.I and looking to less number of female candidates, appointment was given to them on the post of LDC. He further submitted that these petitions have become infructuous because appointment has already been given to the petitioners on the post of LDC during pendency of these petitions, hence interference of this court is not warranted.

(6) Heard and considered the submissions made at the Bar.
(7) This fact is not in dispute that Regulation 10 of the Regulations 1962 deals with Academic Qualification for the post of LDC and the same is read as under :-

"2. A candidate for direct recruitment to the Lower Division Clerks post must have passed Secondary Examination of the Rajasthan University or Education Board or a corresponding Examination of the same or any other University or any other examination recognized as equivalent by the Board for the purpose of these Regulations and must possess a working knowledge of Hindi written in Devnagri Script.

That he must know Hindi or English Type-writing having a speed of 30 w.p.m. in Hindi or 40 w.p.m. in English, respectively.

Note:-"The type test speed limit for LDCs or equivalent appointed on compassionate grounds shall be 20 words per minute in Hindi and 25 words per minute in English at par with the type limits fixed by the Language Department, GoR."

(8) Perusal of Regulation 10.2 indicates that a candidate for direct recruitment to the post of LDC must have passed Secondary School Examination. This Regulation/Rule nowhere makes a discrimination between male and female candidates.

(9) Article 14 of the Constitution of India prohibits the State from denying any person equality before the law or equal protection of the laws. Article 16 is of application as a general Rule of equality as laid down in Article 14, with special reference to opportunity for appointment and employment under the State. Article 15(1) prohibits discrimination on the ground of religion, race, caste, sex or place of birth. It is an extension of Article 14, which expresses application of principle of equality. Therefore, no citizen shall be discriminated on the grounds of religion, race, caste, sex or place of birth. Article 16 takes its root from Article 14 and ensures equality of opportunity in the matters of employment under the State. Therefore, the fundamental right to equality means that persons in like situations, under like circumstances, should be treated alike.

(10) Article 14 of the Constitution of India ensures equality and its main object is to protect persons similarly placed against discriminatory treatment. The equality before law guaranteed under Articles 14, 15 and 16 of the Constitution of India is a constitutional admonition against both the legislative and executive organs of the State. Therefore, neither the legislature

nor the Rule making Authority can make a law or a Rule, issue any guidelines/circulars/administrative instructions, which would be in violation of Articles 14 and 15 of the Constitution of India.

(11) The issue in the case at hand does not concern a statute, but a guideline in the form of a policy; a policy in the form of a guideline, it is therefore, on a lower pedestal than that of a statute. If statutes are held to be violative of the tenets of Article 14 of the Constitution of India by the Constitutional Courts for the reason that it depicts discrimination resulting in gender bias, a guideline in the form of policy would pale into insignificance, if it portrays such discrimination, even to its remotest sense.

(12) The afore-analyzed factual expose and the legal exposition would lead to an unmistakable conclusion that the guideline portrays discrimination on the basis of gender and cannot be permitted to remain as a guideline. Therefore, the guidelines will fly on the face of the tenets of Articles 14, 15 and 16 of the Constitution of India. If any Rule/Policy/Guideline, which would be in violation of the Rule of equality, such Rule/Policy/Guideline can be obliterated, as being unconstitutional.

(13) In Air India Cabin Crew Assn. v. Yeshaswinee Merchant (2003) 6 SCC 277, the Hon'ble Supreme Court has held that discrimination only on the basis of sex is not permissible subject to one exception and observed as under:-

"41. In English law "but-for-sex" test has been developed to mean that no less favourable treatment is to be given to women on gender based criterion which would favour the opposite sex and women will not be deliberately selected for less favourable treatment because of their sex. It is on this "but-for-sex" test, it appears in Nergesh Meerza case the three-Judge Bench of this Court did not find the lower retirement age from flying duties of air hostesses as discrimination only based on sex. It found that the male and female members of crew are distinct cadres with different conditions of service. The service

regulation based on the agreements and settlement fixing lower retirement age of air hostesses was not struck down. The constitutional prohibition to the State not to discriminate citizens only on sex, however, does not prohibit a special treatment to the women in employment on their own demand.....”

(14) Further, the Hon'ble Supreme Court, in the case of Charu Khurana v. Union of India (2015) 1 SCC 192, while considering the question of gender justice, at paragraphs 33 and 41 observed as under:

"33. ... On a condign understanding of clause (e), it is clear as a cloudless sky that all practices derogatory to the dignity of women are to be renounced. Be it stated, dignity is the quintessential quality of a personality and a human frame always desires to live in the mansion of dignity, for it is a highly cherished value. Clause (j) has to be understood in the backdrop that India is a welfare State and, therefore, it is the duty of the State to promote justice, to provide equal opportunity to all citizens and see that they are not deprived of by reasons of economic disparity. It is also the duty of the State to frame policies so that men and women have the right to adequate means of livelihood. It is also the duty of the citizen to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement.

capacity to earn her livelihood which affects her individual dignity."

(15) In the matter of National Legal Services Authority v. Union of India (2014) 5 SCC 438, the Supreme Court recognized that gender identity is an integral part of sex within the meaning of Articles 15 and 16 of the Constitution of India and no citizen can be discriminated on the ground of gender. The Supreme Court observed as follows:

"We, therefore, conclude that discrimination on the basis of sexual orientation or gender identity includes any discrimination, exclusion, restriction or preference, which has the effect of nullifying or transposing equality by the law or the equal protection of laws guaranteed under our Constitution, and hence we are inclined to give various directions to safeguard the constitutional rights of the members of the TG community."

(16) The aforesaid pronouncement clearly spells out that there cannot be any discrimination solely on the ground of gender. Article 14 of the Constitution provides that the State shall not deny to any person equality before law or equal protection of law. Article 16(1) of the Constitution provides that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State and Article 16(2) of the Constitution further provides that no citizen shall on the grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them be ineligible for, or discriminated against in respect of any employment or office under the State. A reading of the aforesaid provisions of Articles 14 and 16 of the Constitution would show that in matters of recruitment to employment, the State will not discriminate

between men and women and that a citizen will not be ineligible for employment or office under the State on the ground of sex only.

(17) In the light of aforesaid decisions and constitutional provisions, exclusion of Male candidates for getting compassionate appointment on the post of LDC is based solely on gender discrimination and the same is also in violation of Clause 10.2 of the Regulations 1962. In other words, the classification is not based on any rational *interga* having reasonable nexus with the object sought to be achieved. The respondents cannot discriminate the petitioners to get appointment on the post of LDC merely because similar Female candidates were less in number in comparison to Male candidates.

(18) Thus, in view of the authoritative judgments of the Hon'ble Apex Court, the impugned order dated 17.10.1996 is held to be violative of Articles 14 and 16 of the Constitution of India and accordingly the same is hereby quashed and set aside.

(19) The writ petitions stand allowed. The respondent is directed to count the services of petitioners on the post of LDC with effect from their initial appointment on the post of Helper Gr.I and grant them all consequential benefits within a period of three weeks from the date of receipt of a certified copy of this judgment.

(20) Before parting with this judgment, it is directed that on account of quashing of the impugned order dated 17.10.1996, it would not provide a cause of action to any candidate in future and would apply to the cases which are pending before this court on the date of this judgment only.

(21) Stay application and other application(s), pending if any, also stands disposed of.

(ANOOP KUMAR DHAND), J.

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