

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT  
JODHPUR

**O R D E R**

Vidhyadhar **VS.** State of Raj. & Anr.

**S.B.CIVIL WRIT PETITION NO. 546/1992**  
under Article 226 of the  
Constitution of India.

Date of order : 23<sup>rd</sup> Nov., 2004

**PRESENT**

**HON'BLE MR. JUSTICE RAJESH BALIA**

Mr. P.P. Choudhary for the petitioner.  
Mr. Shyam Sundra for the respondents.

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**BY THE COURT:-**

The petitioner had applied for the post of Librarian, which is encadred under the Rajasthan Education Subordinate Services Rules, 1971, against the vacancies of 1986-87, which was advertised for recruitment. The petitioner was duly qualified for being considered for appointment to such post and he had also not crossed the maximum age limit for the post at the relevant time. He held the degree of Master in Commerce and Diploma in Library Science.

After the petitioner's application was entertained, he was called for interview. He was also registered as a person below the poverty line as member of the selected family under the I.R.D.P. having the income of less than Rs.3500/- at the relevant time. However, by order dated 8.9.1987 the interview which was scheduled to be held on 10.9.1987 was stayed by the District Education Officer in pursuance to the order of the Collector till further orders.

Prior to the aforesaid stage, the petitioner was informed by the letter dated 14.1.1985 that there were vacancies available of Librarian Gr.III under the District Education Officer, Churu requiring him to make an application by 25.1.1985, which application was duly filed by him. He appeared at the interview in pursuance of the call letter. According to the petitioner, in all there were 12 vacancies at that time and though his name was included in the merit, he was not offered appointment in 1985.

In the aforesaid circumstances, when the petitioner was not offered appointment in pursuance of his finding place in order of merit for vacancies for which recruitment was held in 1985 and subsequently

for the vacancies of 1986-87 notwithstanding that the petitioner made an application in time and was called for interview, the interview was not cancelled but it was kept in abeyance, again fresh advertisement was issued in 1992 for filling up 27 posts. The petitioner again applied in continuation of his pending application against the aforesaid vacancies of 1986-87. However, since by the time, he applied in 1992, the petitioner has become 35 years of age and crossed the maximum age limit required for recruitment in 1992 and his application was not considered. This led to filing of this writ petition.

By way of interim order, this Court in the first instance, directed on 28<sup>th</sup> Jan., 1992 that the petitioner may provisionally be called for interview for the post of Librarian in view of the advertisement Annex.P.6, if he is otherwise eligible. In pursuance of which interim directions, the petitioner entered in the selection process.

Vide another order dated 17.7.1992, another interim order was passed on second stay petition that if the petitioner has been selected in pursuance of interim order dated 28.1.1992 and persons lower in merit-list have been appointed then he may also be provisionally appointed. The respondents were left

free to move application for modification/vacation of the stay order after filing their reply. However, no such application has ever been moved.

The interim order passed on 28.1.1992 was confirmed by this Court on 9.7.1997.

In pursuance of these directions, the petitioner was given appointment vide order dated 30<sup>th</sup> March, 1995 as a Librarian Gr.III as person lower in order of merit than the petitioner was given appointment in pursuance of selection held in 1992.

In reply to the writ petition, all these facts have not been disputed. On the contrary, it has been clearly stated that while the selections were held in 1985 and the appointments were to be offered in pursuance of the said selection, for unexplained reasons, the respondents operated the select list of 1983 by giving appointment to left over candidates after two years. Consequently, amongst the vacancies advertised in 1985 only 3 vacancies remained which were filled up out of the select list prepared in 1985 and the remaining candidates were not given any appointment stating that since all the vacancies advertised were thus exhausted.

The fact when in 1986-87, 10 vacancies were there and the petitioner was fully eligible and was called for interview is not in dispute. No reason has been assigned why the interview was finally cancelled or continued to remain under suspension until the fresh advertisement in the year 1992 was issued in 1992. In ordinary course, the persons who applied in 1986-87 and whose applications have not been disposed of but kept in abeyance too ought to have been included for consideration by considering their eligibility as on the date the earlier advertisement was issued. If the qualified persons who had been required to appear in selection test, which did not conclude when they were eligible to be considered, were to be left high and dry for fortuitous circumstances attributable to the respondents' failure to complete the selection process in accordance with law without any discernible reasons makes the action of respondents highly unreasonable, arbitrary and unjust. It is also pertinent to notice that the Rajasthan Subordinates Services Rules, 1971 requires determination of vacancies year-wise on first of April every year and filling up of those vacancies as per the eligibility criteria.

It is also not explainable that when the petitioner was selected in 1985, why the select list

prepared in pursuance of fresh selection was not operated, instead the old and stale select list, which must have come to an end with next selection, was operated to deprive the selected candidates of their opportunity of employment? If the existing select list of 1983 was operated to extend justice to candidates selected in 1983, then why same justice was not meted out to petitioner by operating the un-exhausted select list of 1985 does not find an answer. Nor there is any justifiable reason for not completing an already commenced selection process, or at least to treat the pending applications of selection process kept in abeyance as due application for selection process which took place in 1992 protecting the eligibility of such applicants, by taking recourse to power of relaxation in age, if so required?

Be that as it may, in the aforesaid circumstances, when the petitioner has already been selected and given appointment in 1996 and is continuing on the post as per his order of merit in the select list and was otherwise eligible to be recruited and hold the post in the year the aforesaid vacancies related, the justice require that the appointment, as offered in pursuance of interim direction of this Court, which otherwise appears in consonance with the rules, be not disturbed.

Accordingly, the petition succeeds and is allowed. The petitioner shall be allowed to continue in service in pursuance of appointment order dated 30<sup>th</sup> March, 1995 as a regularly selected candidate.

No order as to costs.

[ RAJESH BALIA ], J.

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