

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR.

SURENDRA KUMAR.

V. THE STATE OF
RAJASTHAN AND OTHERS.

S.B.CIVIL WRIT PETITION NO.2749/2004,
under Article 226 of the Constitution of
India.

DATE OF ORDER: 23.9.2005

PRESENT.

HON'BLE MR. JUSTICE R.P.VYAS

Mr.Himanshu Shrimali, for Petitioner.
Mr.S.N.Tiwari, Deputy Government Advocate,
for Respondents.

BY THE COURT:

REPORTABLE

This writ petition has been filed by the petitioner, praying therein that by an appropriate writ, order or direction, respondents may be directed to call the petitioner for interview and if he stands in merit, his candidature be considered for appointment on the post of Physical Education Teacher Grade III.

Brief facts, giving rise to the instant petition, are that on 21.2.2003, an advertisement, in the form of public notice, inviting applications from the eligible candidates for the post of Physical Education Teacher Grade III, was issued by the respondents. In response to the advertisement, the petitioner, being eligible for the post, applied and also submitted required

mark sheets and certificates. His mark sheets and certificates were considered and he was found eligible, so his name was included in the tentative merit list prepared by the respondents and a call letter dated 25.3.2004 (Annexure 1) was issued by the Office of the District Education Officer, Secondary I, Alwar , in which it was stated that the petitioner should remain present for interview on 29.3.2004, at 10.00 a.m., along with all the original documents and attested copies thereof. It is further averred by the petitioner in the instant petition that to the utmost surprise of the petitioner, the call letter reached the petitioner on the date of interview, i.e., 29.3.2004, at 4.00 p.m. Therefore, in such peculiar circumstances, it was not possible for the petitioner to reach for interview in time. Thereafter, the petitioner immediately approached the Post Master stating that he has been delivered the post at belated stage, then, after inquiry, the Post Master gave a receipt dated 29.3.2004 (Annexure 2) mentioning therein that the call letter dated 25.3.2004 was received in his Office on 29.3.2004 at 2.30 p.m. and the same was delivered at the postal address of the petitioner at 4.00 p.m. Thus, it is averred that the petitioner received the delayed call letter, only due to fault of the Respondents. It is also averred in the instant petition that on 29.3.2004, a telegram (Annexure 3) was also given by the respondents, calling the petitioner for the interview on 29.3.2004 .However, the petitioner immediately, after delayed

communication, rushed to the interview place, but till then, the interview has been accomplished. Then, immediately, the petitioner approached the District Education Officer and submitted his representation dated 29.3.2004 (Annexure 4), mentioning the grievance that he received the call letter after completion of interview, i.e., at 4.00 p.m., therefore, he should be permitted to appear in the interview now. On the next day also, i.e., 30.3.2004, the petitioner submitted a detailed representation (Annexure 5) ventilating his grievance that due to respondents fault, call letter was communicated to him after completion of interview, therefore, he should be called for interview on any date fixed by the respondents. Since no reply was received by the petitioner from the respondents, the petitioner approached this Court, by way of writ petition, under its extraordinary supervisory jurisdiction under Article 226 of the Constitution of India.

It is submitted by the learned counsel for the petitioner that since the petitioner was eligible and qualified, therefore, his name was included in the final merit list prepared by the respondents and a call letter was also issued, but, due to fault on the part of the respondents, the call letter was communicated to him after completion of the interview. Then the petitioner immediately approached the District Education Officer, but his candidature was not considered.

It is further submitted by the learned counsel for the petitioner that after receiving the call letter, the petitioner submitted a representation to the respondents, but no reply was given to the petitioner.

It is also submitted by the learned counsel for the petitioner that it was the bounden duty of the respondents to consider the candidature of the petitioner, as there was no fault on his part, but he has been deprived of his legitimate right to be considered for appointment, and by not doing so, the respondents have acted illegally, unfairly and mala fide and without application of mind.

It is strenuously argued by the learned counsel for the petitioner that the telegram issued by the respondent was communicated to the petitioner on 30.3.2004 at 3.40 p.m., which clearly shows the mala fide on the part of the respondents, as the telegram was sent by the respondent at such a belated stage, so the petitioner could not appear in the interview in time.

In support of his contentions, learned counsel for the petitioner has placed reliance on the case of Smt.Kanchan Kumari v. The State of Rajasthan and Another (S.B.Civil Writ

Petition No.1283/2001) decided by the learned Single Judge of this Court on August 26, 2004, in which the learned Single Judge held that the denial of admission mainly on the ground that the petitioner did not appear on 26.3.2001, despite the fact that the letter dated 24.3.2001 by which she was directed to appear on 26.3.2001, was received by the petitioner on 27.3.2001, would amount to infringement of her legal right which has accrued in her favour.

On the other hand, it is submitted by Shri S.N.Tiwari, learned Deputy Government Advocate, appearing on behalf of the respondents that it is clear from Annexure 1 that the petitioner was informed well in time to appear for interview on 29.3.2004. Apart from that, a telegram was also sent to the petitioner calling him to appear in the interview, but he did not appear in the interview.

It is further submitted by the learned counsel for the respondents that so far as sending the letter dated 25.3.2004 is concerned, it was sent to the petitioner through Speed Post and the Speed Post was dispatched from the Post Office on 26.3.2004. Thus, the petitioner ought to have appeared for the interview on 29.3.2004, because, according to the learned counsel, he has been informed well in time. Not only this, but also the date of the interview was also published in the

newspaper 'Dainik Bhaskar', so the petitioner could have appeared in the interview on 29.3.2004.

It is also submitted by the learned counsel for the respondents that although the Registered letter dated 25.3.2004 was sent through Speed Post which was dispatched from the Post Office on 26.3.2004, but as a precautionary measure, a telegram was also sent to the petitioner, but despite that, the petitioner did not appear in the interview held on 29.3.2004. Thus, in view of above situation, according to the learned counsel, the action of the respondents cannot be said to be arbitrary, unjust, unfair or violative of Articles 14 and 16 of the Constitution of India.

Heard learned counsel for the parties and perused the documents available on record.

It is admitted position that the petitioner was eligible candidate and in view of eligibility, his candidature was required to be considered in the interview held on 29.3.2004. It is evident from Annexure 2 that the call letter was received by the Chanana Post Office on 29.3.2004 at 2.30 p.m., which was delivered at the postal address of the petitioner, on the same day, at 4.00 p.m. Thus, it is amply clear that the petitioner received the delayed call letter on account of no fault on his part,

but delay as well as fault was on the part of the respondents. It is also evident from Annexure 3 – the telegram, sent by the District Education Officer, Secondary – I, Alwar, whereby the petitioner was required to appear for interview on 29.3.2004, that it was delivered to the petitioner on 30.3.2004, at 3.40 p.m., on account delay and fault on the part of the respondents, whereas the interview had taken place on 29.3.2004. So far as the publication of the date of interview in the newspaper 'Dainik Bhaskar' is concerned, no date has been given by the respondents as to on which date, the information with regard to the date of interview, was published in the newspaper. The petitioner immediately submitted representations (Annexures 4 and 5 respectively), ventilating his grievances that on account of the fault on the part of the respondents, call letter was communicated to him after completion of the interview, but his representations were not considered by the respondents. Thus, in this view of the matter, the respondents have denied the legitimate claim of the petitioner and violated the principles of natural justice.

Taking an overall view of the matter and keeping in view the peculiar facts and circumstances of the instant case, in the interest of justice, I deem it just and proper, to direct the respondents to call the petitioner for interview and if he stands in merit, then his candidature be considered for appointment on the post of Physical Education Teacher Grade II. Ordered

accordingly.

This writ petition stands allowed as indicated above. There will be no order as to costs.

(R.P.VYAS) ,J.

scd.