

IN THE HIGH COURT OF JUDICATURE FOR
RAJASTHAN
BENCH AT JAI PUR.

O R D E R

S. B. CIVIL WRIT PETITION No. 2189/2007.

Raj Kumar Jain

Vs.

Rajasthan Public Service Commission

Date of Order: - August 31, 2009.

HON'BLE MR. JUSTICE MOHAMMAD RAFIQ

Shri Road Mal Jain for the petitioner.

Shri S. N. Kumawat, Addl. Advocate General for RPSC.

Reportable

BY THE COURT: -

This writ petition has been filed by petitioner Raj Kumar Jain who applied for appointment on the post of Teacher Gr. III in response to the advertisement issued by the respondents on 31/10/2006. Last date for submitting application form was 15/12/2006 which should be sent by post as well as in person.

2) Contention of the petitioner is that he sent the application to the department vide registered post on 7/12/2006 through post office in District Bundi. It is contended that this was the last year of petitioner's eligibility because as

per clause 9 of the provisions, such of the candidates, who have crossed the age of eligibility after 1/1/1999 would be treated eligible upto 23/5/2007. 25/2/2007 was the date of examination and when petitioner did not receive admission card, he telephonically contacted the officials of RPSC at Ajmer then he was asked to come to Ajmer and make application. Learned counsel submitted that special arrangements for such candidates were made by the RPSC because large number of candidates faced such difficulties. He invited attention of the court towards the news item published in Dainik Jagran wherein it is reported that special arrangements were made allowing candidates to take examination on their application subject to their application form being found correct. When he approached the RPSC office on 24/2/2007, petitioner submitted his application which was registered at Sr. No. 3. That application was submitted along with affidavit on judicial stamp of Rs. 10/- stating that he had sent the application by registered post through post office on 7/12/2006. However, officials of the RPSC refused to grant him permission to appear in the examination on 25/2/2007. Petitioner was left with no option to approach this Court on 25/2/2007 because that was a

holiday. He however submitted an application to the Post Master of Post Office Indergarh on 28/2/2007 requesting that he be provided proof of delivery of letter to the RPSC. His application was examined and finally he received a letter from the Post Master on 15/3/2007 conveying that aforesaid registered letter bearing No. 4698 dated 7/12/2006 was delivered on 9/12/2006 to the addressee. Learned counsel submitted that petitioner had appeared in the earlier examination also in which he secured 61% marks whereas cut off marks in general category in the selection was only 52%. It is therefore prayed that respondent-RPSC be directed to consider case of the petitioner and be further directed to hold special examination and grant him appointment with reference to the selection held in the year 2006-07.

3) Shri S. N. Kumawat, learned counsel for RPSC has opposed the writ petition and submitted that application of the petitioner could not be scanned by the computer inasmuch as, it is submitted that his application could not be traced. It is submitted that 288633 applications were received till the last date and recruitment examination was conducted on 25/2/2007 and result was declared on 16/3/2007. Petitioner at best can

be entitled to claim age relaxation but for such large number of applications received, if some of the applications are not traced, action of the respondents cannot be said to suffer from any deliberate negligent act.

4) Having heard learned counsel for the parties and perused the material forming part of the record, I find that petitioner has amply demonstrated before this court having obtained the proof of delivery from the post office which Post Master, Head Post Office has provided in his letter dated 15/3/2007 in due discharge of duties that registered letter No. 2698 dated 7/12/2006 which originated from Post Office Indergarh was delivered to the addressee on 9/3/2006. It is thus clear that the application of the petitioner reached the office of RPSC within time. Petitioner has also shown his merit in the previous recruitment examination conducted by the RPSC. Moreover hardship of the petitioner is that it was his last chance and in any selection, that might be held in future, he would be treated ineligible being overage. RPSC or any other body has no authority to deprive any candidate of his right to take examination and participate in the selection process although at the same time, it cannot be

said that the action of the RPSC was suffered from any ulterior motive or negligent act. But in any case, petitioner has lost his last chance in competing for appointment and securing government employment. Division Bench in such like cases in **Ashok Kumar Purohit Vs. State of Rajasthan WLC (Raj.) UC 2006 154** directed the respondents to consider case of the petitioner for appointment. It is informed that process for recruitment to the post of Teacher Gr. III is going on in a fresh selection process and the examinations therefore are going to be held shortly.

5) Having regard to the facts of this case, I therefore deem it appropriate to allow this writ petition with the following directions: -

(a) that the respondent-RPSC shall on the basis of application earlier made by the petitioner shall allow him to appear in ensuing recruitment examination to be held for appointment on the post of Teacher Gr. III, as and when such examination takes place,

(b) that the petitioner is being allowed to participate in the ensuing examination on the basis of his application in the selection process that was initiated

pursuant to the advertisement dated 31/10/2006, therefore petitioner shall not be treated as over age or in other words, restrictions, if any, in regard to age in his case shall be ignored,

(c) that if eventually, petitioner is selected securing more marks than cut off marks in general category of this recruitment examination which is going to be held by the RPSC now, his appointment shall be related back to the selection initiated pursuant to advertisement dated 31/10/2006,

(d) that he shall be appointed with effect from the date last candidate in general category was appointed in the selection of 2006 but he would only get notional benefits for the intervening period,

(e) that he would be entitled to get bottom seniority with reference to the date of appointment granted to the last person appointed in general category as referred to in (d) above.

There shall be no order as to costs.

ani I (MOHAMMAD RAFIQ) J.