

A THE STATE OF RAJASTHAN & ANR.

v.

ANJU RINI SAINI

(Civil Appeal No. 872 of 2022)

B FEBRUARY 02, 2022

[K. M. JOSEPH AND HRISHIKESH ROY, JJ.]

- Service Law – Rajasthan Panchayati Raj Rules, 1996 – r.266-A – Rajasthan Educational Subordinate Service Rules, 1971 – r.11 – Applications were invited for filling up vacancies of Lower Division Clerk (LDC), reservation was provided in the category of women and certain number of posts were set apart for widows among women – Respondent (a widow) not holding required qualification Rajasthan State Certificate in Information Technology (RSCIT), her application was rejected – Writ petition filed, allowed by Single Judge relying on r.266-A – Decision confirmed by Division Bench – On appeal, held: Respondent applied pursuant to the advertisement issued in 2013 – She did not possess the essential qualification, RSCIT – She acquired the qualification only in the year 2014, well beyond the stipulated time – Thus, in view of not possessing the essential qualification on the last date of application or till the extended date, respondent was not eligible to be considered when notification was issued in the year 2017, which was not a fresh notification but a notification in continuation of the earlier notification – Further, on facts there is no justification to have extended r.266-A to the respondent – First essential requirement for the application for r.266-A is that the widow/divorcee must have been appointed – However, respondent was never appointed to the post in question to clothe her with a right u/r.266-A – Also, the post concerned in the present case is that of LDC (Vidyalay Sahayak) which is different from the post indicated in r.266-A – r.266A does not deal with the qualification of RSCIT either – Respondent was not eligible to be considered for appointment – Impugned judgment set aside – Constitution of India – Article 136.*

Allowing the appeal, the Court

- HELD:** 1.1 Rule 11 of the Rajasthan Educational Subordinate Service Rules, 1971 provides that candidate should

possess the qualifications as provided thereunder besides A possessing the experience provided. Rule 266-A is the very premise in the judgment of both the Division Bench and the learned Single Judge. The respondent applied pursuant to the advertisement which is issued in the year 2013 for the appointment of Clerk. The respondent did not possess one of the essential qualifications viz., RSCIT. This qualification could not be acquired by her by the stipulated last date for filing of the applications. She could not, what is more, acquire the qualification even within the extended period and her candidature could not be processed further in terms of the advertisement. The later development which took place is that she acquired qualification in the year 2014, well beyond the stipulated time. Undoubtedly, B the advertisement was issued in the year 2017. From the advertisement, it could be gathered that it is not a fresh advertisement. Had it been a fresh advertisement calling for applications and stipulating for a new date, which in the absence C of any date being prescribed in the advertisement could have been taken as the date by which the application be made pursuant thereto in the light of the decision rendered by this Court, the matter would have been different. But what was contemplated D under the advertisement issued in 2017 was to taking the recruitment of 2013 forward with respect to those who had E acquired eligibility in terms of the earlier advertisement issued in the year 2013. This meant that those candidates who possessed F the qualification on the last date which was stipulated or at least within the extended period, were alone to be considered. The respondent filed an application. She therein does not dispute the fact she did not possess the qualification of RSCIT in the year 2013. Treating it apparently as fresh advertisement, she makes G the application. This application is rejected by the Committee noticing that she did not possess the qualification provided. One more aspect which is noticed at this stage is the minutes of the committee which did contemplate that there could be persons who have been given appointment. [Paras 8 and 10][906-F-H; 908-B-G]

1.2 As far as Rule 266-A itself is concerned, what is contemplated was that a widow/divorcee women who had been given appointment in the post of teacher after giving relaxation H

- A of the required educational qualification of B.S.T.C/ B.Ed. under the erstwhile proviso to Rule 266 would be regularised from the date on which they acquired the requisite educational qualification. The first essential requirement for the application for Rule 266-A is that the widow/divorcee must have been appointed. It is, in this context, it is noticed that even in regard to the advertisement issued later on, it was contemplated that there could be persons who may have been appointed. Even proceeding on the basis that Rule 266-A is otherwise applicable in the cases of posts other than teacher, the fact is that here is the case where the Rule will not apply for the reason that the respondent was never appointed to the post in question to clothe her with a right under Rule 266-A. One may further notice that what Rule 266-A further contemplated is appointment being given to teacher after relaxing the required educational qualification of B.S.T.C/ B.Ed. under the erstwhile proviso to Rule 266. The qualification with which this Court is concerned in this case is RSCIT. Rule 266A does not deal with the qualification of RSCIT. The qualifications, in other words, which are the subject matter have been expressly set out in the Rule and which are different from the qualification in question. The post with which the Court is concerned is different from the post indicated in Rule 266-A. Learned counsel for the respondent would, in fact, submit that Rule 266-A is also applicable to the post of LDC. Even if that be so, the indispensable ingredient of the Rule is clearly not fulfilled in the facts of the case by the respondent as the respondent was not appointed. [Para 11][908-G-H; 909-A-E]
- F 1.3 As far as the judgment of the Division Bench dated 11.02.2016 is concerned, the Court therein was actually dealing with a challenge to Rule 16. The Court proceeded to agree with the coordinate Bench which had upheld the validity of Rule 16. All that it did was, it directed the petitioners therein to represent their grievances before the Government for grant of relaxation of one year of experience to the widow/ divorcee candidate and the Court expected the Government to consider it sympathetically by exercising power under Rule 41 of the Rules of 2015. No reliance could have been placed on it for granting the relief which
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respondent sought. There is no justification to have extended Rule 266-A to the respondent. In other words, the respondent in view of not possessing an essential qualification (RSCIT) on the last date of application or till the extended date, was not eligible to be considered when notification was issued in the year 2017, which was not a fresh notification but a notification in continuation of the earlier notification. It is not the case where the respondent was appointed in the interregnum. Therefore, it is not a case where the foundation for the impugned judgment can be supported. Resultantly, the appellants have made out a case for interference with the impugned judgment. [Para 12][909-E-H; 910-A-B]

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1.4 It is undoubtedly true that Article 136 is a special and extraordinary jurisdiction but that is a far cry from holding when a clear case of respondent not holding the required qualification is made out, the Court can still direct appointment. It will be palpably illegal and unconstitutional. Even with all the sympathy that this Court has undoubtedly for the respondent, however, it cannot result in public employment being made except in terms of the law governing the appointment. It is a clear case where the respondent was not eligible to be considered for appointment. The foundation for directing her to be considered appears to be very fragile and insupportable. It is, in fact, the duty of the constitutional Court in such cases to uphold the action of the authorities which are in strict conformity with the rules of the game in question. The impugned judgment set aside. The writ petition is dismissed. [Paras 13 and 14][910-C-E]

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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 872 of 2022.

From the Judgment and Order dated 07.01.2021 of the High Court of Judicature for Rajasthan Bench at Jaipur in D.B. Special Appeal (Writ) No.796 of 2020.

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Ashish Kumar, Addl. AG, Sushil Kumar Singh, Milind Kumar, Advs. for the Appellants.

Prakash Kumar Singh, Adv. for the Respondent.

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A The Judgment of the Court was delivered by
K. M. JOSEPH, J.

Leave granted.

- (1) By advertisement dated 15.02.2013, applications were invited
- B for filling up vacancies of Lower Division Clerk (LDC). The requirement was *inter alia* that the applicant must possess the qualification of Rajasthan State Certificate in Information Technology (RSCIT) by the last date of submission of application notified as 22.03.2013. Reservation was contemplated in the category of women and certain number of posts were set apart for category of widows among women. Respondent
- C being a widow applied for the post of LDC on 15.04.2013. As on the last date prescribed for submission of application, the respondent did not possess the qualification of RSCIT. Request from applicants generally led to the authority taking the decision to extend the period for production till the date when the documents were to be verified or before the
- D preparation of the select list. The respondent did not produce the RSCIT within the extended period which is 07.05.2013. This led to the rejection of her application in the meeting of District Establishment Committee which took place on 28.06.2013. Thereafter, on 10.11.2014, the respondent admittedly obtained the qualification of RSCIT. Thereafter, it would appear that there was some litigation which stalled the recruitment process.

(2) Later on, in the year 2017, an advertisement came to be issued on 21.08.2017 by which it was decided to proceed with the selection. We deem it appropriate to advert to it:

F “**ADVERTISEMENT**

- G In compliance of Letter No. F37(0)P.R.D./Pr.-2/L.D.C. Direct Recruitment 2013/17/3263 Jaipur dated 17.08.2017 of the Government Secretary and Commissioner, Rural Development and Panchayati Raj Department in compliance of various judicial decisions, eligible candidates as per amended merit list of L.D.C. Recruitment 2013, as per meritwise issued earlier and candidates coming in final cutoff of marks obtained categorywise (as per mentioned below) shall remain personally present on 24.08.2017 morning at 09.00AM at Office of Jila Parishad, Dausa by fulfilling detailed application form and attaching their detailed application form, certified copies of their Educational and professional

qualification certificates and other necessary certificates and photocopy of online application form along with original documents. In case of being absent it will be assumed that you are not interested in this recruitment. It is the final opportunity, after this no opportunity will be granted for verification of documents. Categorywise cutoff list of marks for L.D.C. Recruitment 2013 is as follows: -

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Class	General	General Female	Widow	Abandoned	Ex-Service men	Excellent Player	H.I.	L.D.C.P.	B.L.
General	69.431	66.616	38.662	45.231	26.170	44.046	43.508	66.616	50.292
Other Backward Class	67.040	62.620	26.277	-					
Special Backward Class	66.077	62.000	-	-					
Schedule Caste	64.160	60.800	-	39.954					
Schedule Tribe	65.108	62.416	31.016	40.000					

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Note: -

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1. Those candidates who have acquired their professional qualification from any other State/Private University/ Deemed University except RSCIT. They will have to submit affidavit of Rs.100 in prescribed format as per instructions of Department.

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2. Such candidates whose appointment orders have been issued earlier but due to some reasons they could not took work charge. In compliance of Departmental Letter No. 3263 dated 17.08.2017, after re-inspection of their documents and eligibility, final opportunity for taking work charge is given.”

(3) Thereupon, the respondent filed an application on 27.08.2017: G

“To,

The Chief Executive Officer,

Jila Parishad, Dausa (Raj.)

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- A Subject: - For including in Document verification for LDC Recruitment 2013.

Sir,

- B It is kindly requested that I got document verification in LDC Recruitment 2013 done by Panchayat Raj Department in year 2013 but due to not having RSCIT Certificate, my selection could not be done. But at present, again LDC recruitment is started wherein I am within cutoff as per merit and my RSCIT Certificate is also available which I have qualified on 10 November 2014. So, it is kindly requested to you that my selection has been done in 'Widow' Category. Kindly favour me by granting benefit.
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27/8/17"

- D (4) This application was disapproved in the meeting of the District Establishment Committee which took place on 01.09.2017, the relevant portion of which reads as follows:

"Proposal 10

- E Following candidates earlier even after rejection of eligibility by the District Establishment Committee have requested again for appointment while filing application.

	S. No.	Name	Father's name/Husband name	Reason for earlier rejection	Remarks
F	4.	Anju Rini Saini	Surya Narayan Saini	Not approved as Computer Certificate is not valid	Computer Certificate is liable to be rejected being issued later than prescribed date

According to the remarks, approval of said list is done unanimously.

- G (5) This occasioned the filing of the writ petition which has led to the present appeal. The learned Single Judge allowed the writ petition filed by the respondent. In doing so, the learned Single Judge drew support from the judgment of Division Bench of the High Court dated 11.02.2016. What is more, the learned Single Judge sought to rest the decision on the provisions of Rule 266-A of the Rajasthan Panchayati Raj Rules, 1996
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(hereinafter referred to as ‘1996 Rules’ for brevity). The appellants appealed before the Division Bench. By the impugned judgment, the Division Bench has confirmed the decision of the learned Single Judge.

(6) We have heard Shri Sushil Kumar Singh, learned counsel on behalf of the appellants and Mr. Prakash Kumar Singh, learned counsel appearing on behalf of the respondent.

The case of the appellants would appear to be that the respondent did not possess the stipulated qualification (RSCIT) by the last date fixed for making the application and even by the extended date. Therefore she was not considered eligible for being appointed. The fact that she acquired the qualification in question later in the year 2014 cannot advance her case. What happened was there was some litigation which prevented the recruitment being made. In other words, the recruitment process set in motion by advertisement in the year 2013 was resumed in the year 2017. He would further submit that this is not a case where the respondent was appointed to attract the provisions of Rule 266-A. He further pointed out that the judgment of the Division Bench which is relied upon may not be relevant and will not advance the case of the respondent.

Per contra, learned counsel for the respondent would submit that the issuance of the advertisement in the year 2017 clothed the respondent with the right. He stressed upon the fact that this Court is a Constitutional Court. The respondent’s right flows from Article 15 of the Constitution. He would contend that the respondent is a widow who has been suffering since the year 2013. This is not a case for interference in the special jurisdiction under Article 136. The respondent did acquire the qualification by the time the advertisement was issued in 2017. In other words, when the recruitment took place after 2017, the respondent was possessing the requisite qualification. He further pointed out that the respondent was in possession of marks which was more than the cut off prescribed for the category. He would commend for our acceptance the view taken by the Division Bench and in this regard, he also drew support from the judgment of the Division Bench dated 11.02.2016.

(7) The post with which this Court is concerned in this case is the post of LDC(Vidyalay Sahayak). The learned Single Judge had directed by an interim order to consider the respondent’s candidature as a widow.

Let us examine the reasoning of the learned Single Judge in a little more detail. It appears to have been the contention of the respondent

- A that under the said Rule 266-A, the qualification could be acquired even after the appointment. Thereafter, the learned Single Judge drew support from the judgment of the High Court in DBCWP No. 13268/2015 and connected matters decided on 11.02.2016. Thereafter, the Court found that as the respondent was found to have acquired all the qualifications as per the Rules and also as per the advertisement merely because she did not possess the RSCIT certificate on the last date of examination, she cannot be denied consideration under the widow category.

The application moved by the appellants under Article 226(3) of the Constitution of India was dismissed on the above reasoning and the interim order was made absolute.

- C Thereafter, noting that no other point was to be adjudicated in the case, the learned Single Judge proceeded to find that the respondent was entitled to be considered for appointment as per merit and educational qualification including RSCIT which was acquired even later on in terms of Rule 266-A of the 1996 Rules under the OBC (Widow) quota, if she is found otherwise suitable. The writ petition itself came to be allowed.

The Division Bench, by the impugned judgment, also elaborately adverted to the judgment of the other Division Bench in D.B. Civil Writ Petition No. 13268/2015 dated 11.02.2016. After quoting certain passages, the Division Bench proceeds to find that placing reliance on the said decision the learned Single Judge rightly held that relaxation was liable to be granted to the respondent in regard to RSCIT Certificate.

(8) We must notice the rules in question.

- F Rule 11 of the Rajasthan Educational Subordinate Service Rules, 1971 provides that candidate should possess the qualifications as provided thereunder besides possessing the experience provided.

(9) Rule 266-A of the 1996 Rules reads as follows:

- G “266A. Notwithstanding anything contained in these rules, the widow/ divorcée women, who have been given appointment on the post of teacher after relaxing required educational qualification of B.S.T.C/ B.Ed. under the erstwhile proviso to rule 266 shall be regularized from the date they acquire the requisite educational qualification.”

- H It is this Rule which is the very premise in the judgment of both the Division Bench and the learned Single Judge. Since reliance is also

placed on the judgment of the Division Bench dated 11.02.2016 noted above, we may briefly refer to the issue which arose in the said case and the order which was actually passed by the said Division Bench. The Court was dealing with the validity of Rule 16(1) of the Rajasthan Vidhyalay Sahayak Subordinate Service Rules, 2015. The petitioners therein were either widows /divorcees for whom there was reservation. The complaint which was apparently raised before the Court was as regards the experience which was stipulated as one of the conditions of eligibility for a widow /divorcee candidate. It was their contention *inter alia* that reservation provided would remain a complete farce inasmuch as to insist upon experience from divorcee/widows would render the provision of reservation a dead letter. Therein, the Court referred to Rule 11 of the Rajasthan Educational Subordinate Service Rules, 1971. An amendment was carried out therein. Thereafter, the Court further referred to Rule 266-A of 1996 Rules.

Rule 16, it was noticed by the Division Bench was upheld by a coordinate Bench. Thereafter, the Court proceeded to take the following view:

“Taking note of the submissions made by counsel for the parties & the judgment (supra), as regards validity of R.16 is concerned, we do not find any justification to examine the issue & it is no more res integra in light of the judgment (supra) but as regards the later submission made by the petitioners’ counsel for grant of relaxation in experience for widow/divorcee women candidates and for participating in the selection process held for the post of Vidhyalay Sahayak included in the Schedule appended to the Rules, 2015 & seeking liberty to make representation in light thereof, we find reasonable justification and consider it appropriate to grant liberty prayed for.

Accordingly, while upholding validity of R.16 of the Rules, 2015, which is impugned before us, we consider it appropriate to grant liberty to the petitioners of making representation to the State Government/ appointing authority for grant of relaxation in one year of experience to the widow/divorcee candidates in holding/ acquiring the requisite qualification in terms of R.16 pursuant to advertisement dt.21-7-2015 & if such representation is made, it is expected from the State Government/appointing authority to consider it sympathetically while exercising its power u/R. 41 of

A the Rules, 2015 and may be decided as early as possible.

With these directions/observations, the writ petition stands disposed of."

- (10) Coming to the facts of this case, the respondent applied pursuant to the advertisement which is issued in the year 2013 for the appointment of Clerk. The respondent did not possess one of the essential qualifications viz., RSCIT. This qualification could not be acquired by her by the stipulated last date for filing of the applications. She could not, what is more, acquire the qualification even within the extended period and her candidature could not be processed further in terms of the advertisement. The later development which took place is that she acquired qualification in the year 2014, well beyond the stipulated time. Undoubtedly, the advertisement was issued in the year 2017 as already noticed. From the advertisement, what we would gather is that it is not a fresh advertisement. Had it been a fresh advertisement calling for applications and stipulating for a new date, which in the absence of any date being prescribed in the advertisement could have been taken as the date by which the application be made pursuant thereto in the light of the decision rendered by this Court, the matter would have been different. But what was contemplated under the advertisement issued in 2017 was to taking the recruitment of 2013 forward with respect to those who had acquired eligibility in terms of the earlier advertisement issued in the year 2013. This meant that those candidates who possessed the qualification on the last date which was stipulated or at least within the extended period, were alone to be considered. The respondent filed an application as already noted. She therein does not dispute the fact she did not possess the qualification of RSCIT in the year 2013. Treating it apparently as fresh advertisement, she makes the application. This application is rejected by the Committee noticing that she did not possess the qualification provided. One more aspect which is noticed at this stage is the minutes of the committee which did contemplate that there could be persons who have been given appointment. Noticing this fact, we continue with the narrative.

(11) As far as Rule 266-A itself is concerned, the following is noticed:

- What is contemplated was that a widow/divorcee women who had been given appointment in the post of teacher after giving relaxation of the required educational qualification of B.S.T.C/ B.Ed. under the

erstwhile proviso to Rule 266 would be regularised from the date on which they acquired the requisite educational qualification. The first essential requirement for the application for Rule 266-A is that the widow/ divorcee must have been appointed. It is, in this context, that we notice that even in regard to the advertisement issued later on, it was contemplated that there could be persons who may have been appointed. Even proceeding on the basis that Rule 266-A is otherwise applicable in the cases of posts other than teacher, the fact is that here is the case where the Rule will not apply for the reason that the respondent was never appointed to the post in question to clothe her with a right under Rule 266-A. One may further notice that what Rule 266-A further contemplated is appointment being given to teacher after relaxing the required educational qualification of B.S.T.C/ B.Ed. under the erstwhile proviso to Rule 266. The qualification with which this Court is concerned in this case is RSCIT. Rule 266A does not deal with the qualification of RSCIT. The qualifications, in other words, which are the subject matter have been expressly set out in the Rule and which are different from the qualification in question. The post with which the Court is concerned is different from the post indicated in Rule 266-A. Learned counsel for the respondent would, in fact, submit that Rule 266-A is also applicable to the post of LDC. Even if that be so, the indispensable ingredient of the Rule is clearly not fulfilled in the facts of the case by the respondent as the respondent was not appointed.

(12) As far as the judgment of the Division Bench dated 11.02.2016 is concerned, the Court therein was actually dealing with a challenge to Rule 16. The Court proceeded to agree with the coordinate Bench which had upheld the validity of Rule 16. All that it did was, it directed the petitioners therein to represent their grievances before the Government for grant of relaxation of one year of experience to the widow/ diovorcee candidate and the Court expected the Government to consider it sympathetically by exercising power under Rule 41 of the Rules of 2015.

We are of the view that no reliance could have been placed on it for granting the relief which respondent sought. We also found there is no justification to have extended Rule 266-A to the respondent. In other words, the respondent in view of not possessing an essential qualification (RSCIT) on the last date of application or till the extended date, was not eligible to be considered when notification was issued in the year 2017, which was not a fresh notification but a notification in continuation of

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- A the earlier notification. It is not the case where the respondent was appointed in the interregnum. Therefore, it is not a case where the foundation for the impugned judgment can be supported. Resultantly, we find that the appellants have made out a case for interference with the impugned judgment.
- B (13) We are unable to accept the contentions of the respondent that being a Constitutional Court and since rights have been declared in Article 15 and being a widow warranting a sympathetic view to be taken, should culminate in our refusing to exercise our jurisdiction under Article 136. It is undoubtedly true that Article 136 is a special and extraordinary jurisdiction but that is a far cry from holding when a clear case of respondent not holding the required qualification is made out, the Court can still direct appointment. It will be palpably illegal and unconstitutional. Even with all the sympathy that this Court has undoubtedly for the respondent, however, it cannot result in public employment being made except in terms of the law governing the appointment. It is a clear case
- C where the respondent was not eligible to be considered for appointment. The foundation for directing her to be considered appears to us to be very fragile and insupportable. It is, in fact, the duty of the constitutional Court in such cases to uphold the action of the authorities which are in strict conformity with the rules of the game in question.
- D (14) We see no reason to not overturn the impugned judgment. Accordingly, the appeal is allowed. The impugned judgment will stand set aside. The writ petition stands dismissed.

There will be no orders as to costs.

Divya Pandey

Appeal allowed.