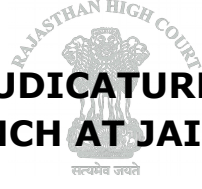




**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Civil Writ Petition No. 2346/2015

Shivam Sharma s/o Dr. Mukesh Sharma, aged 22 years, R/o
455-A, Sanjay Nagar – D, Joshi Marg, Kalwar Road, Jhotwara,
Jaipur

----Petitioner

Versus

1. Rajasthan Rajya Vidyut Prasaran Nigam Ltd., Jyoti Nagar, Jan Path, Jaipur through its Chairman & Managing Director.
2. Secretary (Admn.), Rajasthan Rajya Vidyut Prasaran Nigam Ltd., Jyoti Nagar, Jan Path, Jaipur.
3. The State of Rajasthan through its Principal Secretary, Department of Personnel, Govt. of Rajasthan Secretariat, Jaipur.
4. The Additional Chief Secretary (Home), Govt. of Rajasthan, Secretariat, Jaipur.

---Respondent(s)

For Petitioner(s) : Mr. Vigyan Shah
Mr. Kamlesh Sharma
Mr. Akshit Gupta
Mr. Pukhraj Chawla
Mr. Harendra Neel
Mr. Yash Joshi
Ms. Sarah Sharma
Ms. Pragya Seth
Ms. Keshika Jain
Mr. Pulkit Bharadwaj

For Respondent(s) : Mr. Anuroop Singhi
Mr. Tarun Kumar
Mr. Satyendra Meena for
Mr. K.S. Chandel

HON'BLE MR. JUSTICE ANOOP KUMAR DHAND

Reserved on : 09/05/2023
Pronounced on : 17/05/2023

Judgment / Order

1. Instant petition has been filed by the petitioner with the following prayer:



“In these circumstances, it is, therefore, prayed that this Hon’ble Court may be pleased to accept this writ petition and

i) the impugned final result dated 05.02.2015 and impugned action of the respondents in not selecting and giving appointment to humble petitioner on the post of Junior Engineer (Electrical) in TSP (General) category for not providing Special TSP Certificate as per circular dated 19.07.2013 may kindly declared illegal and arbitrary and therefore same may kindly be quashed and set aside on this ground alone.

ii) By an writ of mandamus, order or direction in the nature thereof, respondents may kindly be directed to give appointment to the petitioner on the post of Jr. Engineer (Electrical) with all consequential benefits;

iii) in the alternative impugned circular dated 19.07.2013 wherein cap of 25 years have been provided for Special TSP certificate, may kindly be declared illegal & arbitrary and therefore, same may kindly be quashed and set aside;

iv) Any other appropriate order or direction which this Hon’ble Court deems just and proper in the facts and circumstances of this case may kindly also be passed in favour of the petitioner.”

2. Counsel for the petitioner submits that pursuant to the advertisement (Annexure-1), the petitioner submitted an application for participation in the selection process for appointment on the post of Junior Engineer-I (Electrical). Counsel submits that the petitioner was in possession of the required Tribal Sub-Plan Area (for short “TSP Area”) Certificate and on the basis of the said Certificate, he participated in the selection process and he was selected. Counsel submits that without any justified reason, respondents withheld the appointment of petitioner without passing any order of cancellation of his candidature. Counsel submits that subsequently the respondents were of the



view that the petitioner was not in possession of the required Certificate. Counsel submits that there were several candidates, like Mr. Gaurav Pandya and Mr. Mayank Patidar, who were also not having the requisite Certificate and even then their candidature was considered and they were given appointment on the above post. Counsel submits that the Competent Authority issued the Special TSP Certificate to the petitioner on 07.10.2015. Counsel submits that the respondents were not having any authority to withhold appointment of the petitioner on the technical reason that the Special TSP Certificate was not produced by him at the time of submitting the Application Form. Counsel submits that no such condition was mentioned in Clause 10 of the Advertisement that the candidate must possess Special TSP Certificate at the time of submission of the Application Form. Counsel submits that as per the prevailing circulars, the petitioner was in possession of the TSP Certificate and on the basis of the same, he along with other similarly situated persons participated in the selection process, but making discrimination with the petitioner, the other similarly situated persons, namely Mr. Gaurav Pandya and Mr. Mayank Patidar have been given appointment. Counsel submits that the petitioner approached this Court in the year 2015 and now the respondents cannot be allowed to take this plea that the entire selection process has been completed and the vacancies have been filled. Counsel submits that when the petitioner approached this Court well within time, then the respondents are supposed to accord appointment to the petitioner and give similar treatment to the petitioner which have been given to similarly





situated persons. In support of his contentions, he has placed reliance upon the following judgments of Hon'ble Apex Court :-

1. **Dinesh Kumar Kashyap and Ors. vs. South East Central Railway and Ors.** reported in 2019 (12) SCC 798.
2. **Ramjit Singh Kardam and Ors. vs. Sanjeev Kumar and Ors.** reported in 2020 (20) SCC 209.
3. **Purushottam vs. Chairman, MSEB and Anr.** reported in 1999 (6) SCC 49.
4. **Krishna Rai (Dead) through Legal Representatives and Ors. vs. Banaras Hindu University through Registrar and Ors.** reported in 2022 (8) SCC 713.
5. **Bharat Sanchar Nigam Limited and Anr. vs. Sandeep Choudhary and Ors.** reported in 2022(11) SCC 779.
6. **Sadhana Singh Dangi and Ors. vs. Pinki Asati and Ors.** reported in 2022 (12) SCC 401.
7. **Aarav Jain vs. Bihar Public Service Commission and Ors.** reported in 2022 SC OnLine SC 686.

Counsel submits that under these circumstances, interference of this Court is warranted and appropriate orders be passed against the respondents directing them to appoint the petitioner on the post of Junior Engineer – I (Electrical).

3. Per contra, learned counsel for the respondents opposed the arguments raised by the counsel for petitioner and submitted that as per the Circular dated 09.09.2013 the petitioner was supposed to furnish Special TSP Certificate at the time of furnishing the Application Form. Counsel submits that Circular dated 09.09.2013 was issued much prior to issuance of the advertisement dated 01.10.2013. Counsel submits that even a format was attached to the Circular dated 09.09.2013 and admittedly the petitioner was not in possession of the such Certificate at the time of submission of the Application Form and at the time of verification of documents.. Counsel submits that



the instant matter pertains to recruitment of the year 2015 and advertised posts have been filled and subsequently advertisements have been issued in the years 2017-18, 2018-19 and 2021-22 and all posts have been filled. Hence, at this belated stage, the petitioner is not entitled to claim any indulgence of this Court. Counsel submits that the candidates, namely Mr. Gaurav Pandya and Mr. Mayank Patidar have not been impleaded as party respondents, hence the petitioner is not entitled to claim any parity with above said persons. In support of his contentions, he has placed reliance upon following two judgments passed by this Court :-

1. **Mithlesh Kumar vs. State of Rajasthan and Ors.** (SB Civil Writ Petition No.3994/2013) decided on 29.03.2022.

2. **Kamlesh Meena vs. The State of Rajasthan and Ors.** (SB Civil Writ Petition No.12668/2016) decided on 31.03.2022.

Counsel submits that in view of the arguments made herein above, interference of this Court is not warranted.

4. Heard and considered the submissions made by both the counsel for the parties and perused the record.

5. This fact is not in dispute that on 09.09.2013 the Government of Rajasthan issued a Circular indicating therein that the candidates seeking appointment in TSP Area are required to possess Special Bonafide Resident Certificate of TSP Area and a format of such Special Bonafide has been attached to the Circular. And as per Clause 10(vi) and (xii) of the advertisement (Annexure-1), the candidates must possess the Certificate of TSP, if he/she belongs to TSP Area and such TSP Certificate must be issued by the Competent Authority if such candidates are bonafide residents of any one of the notified TSP Areas of Rajasthan.





6. This fact is also not in dispute that though the petitioner was in possession of TSP Certificate at the time of submission of Application Form but he was not possessing Special TSP Certificate at the relevant time. The petitioner got this Special TSP Certificate on 07.10.2015. The petitioner has failed to submit his Special TSP Certificate even at the time of verification of the documents.

7. The contention of the counsel for petitioner is that two similarly situated persons, namely Mr. Gaurav Pandya and Mr. Mayank Patidar were also not having the requisite Special TSP Certificate at the time submitting the Application Form and at the time of verification of documents. They secured their Special Certificates on 25.02.2014 and 07.07.2014 i.e. much after the last date of verification of documents.

8. Perusal of the record indicates that the above two candidates were in possession of their Special TSP Certificates at the time of verification of documents and on the basis of these requisite Certificates, they were selected and appointed vide order dated 05.02.2015, while the petitioner has secured this Special TSP Certificate on 07.10.2015. The petitioner is claiming equality and parity with these two selected candidates, namely Mr. Gaurav Pandya and Mr. Mayank Patidar on the ground that they were in possession of their Special Certificates at the time of submission of Application Forms. Now the question before this court is "Whether the petitioner can claim negative parity with the above two persons?"



9. It is well settled proposition of law that no negative equality can be claimed as a matter of right under Article 14 of the Constitution of India, as the Hon'ble Apex Court in the case of R. Muthukumar & Ors v. The Chairman And Managing Director TANGEDCO & Ors 2022 SCC Online SC 151, has held in para 24 as under :-

28. A principle, axiomatic in this country's constitutional lore is that there is no negative equality. In other words, if there has been a benefit or advantage conferred on one or a set of people, without legal basis or justification, that benefit cannot multiply, or be relied upon as a principle of parity or equality.

(9.1) In Basawaraj and Anr. v. Special Land Acquisition Officer (2013) 14 SCC 81, the Hon'ble Apex Court has held in para 8 as under :-

"8. It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated."

(9.2) Similarly, in the case of The State of Odisha v. Anup Kumar Senapati 2019 SCC Online SC 1207, it has been held that :

"If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision."

(10) Meaning thereby, Article 14 of the Constitution of India is not meant to perpetuate illegality even by extending the wrong decisions made in other cases. If any wrong is committed by the



authorities in similar matters, it cannot be allowed to be perpetuated. Equality cannot be claimed in illegality and, therefore, cannot be enforced by a citizen or court in a negative manner.

(10.1) Moreover, the petitioner is trying to take benefit of the example of similarly situated persons like Mr. Gaurav Pandya and Mr. Mayank Patidar without impleading them as party to the writ petition.

(11) The petitioner has failed to produce the requisite Special TSP Certificate at the time of verification of documents. In absence of this Certificate, it cannot be said that the action of respondents in denying appointment to the petitioner is in any manner vitiated.

(12) In view of above, no case for interference is made out in this petition. Consequently, the same is dismissed.

(13) Stay application and all application(s), pending if any, also stands dismissed.

(ANOOP KUMAR DHAND), J.

KuD/db/