



HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

S.B. Civil Writ Petition No. 16610/2023

1. Kanika Sikhwal D/o Satyanarayan, Aged About 29 Years, R/o Sikhwalo Ki Gali, Tehsil- Merta City, District- Nagaur.
2. Shayana Bano D/o Shri Rafiq Mohammad, Aged About 36 Years, R/o Near Imam Bada, Ward No. 04, Kishangarh, District-Ajmer.
3. Nisha Suthar D/o Shri Arjun Lal Suthar, Aged About 27 Years, R/o H. No. 201, Behind Agrasen Bhawan, Near Church, Azad Nagar, District- Bhilwara.
4. Usha Kumari Suthar D/o Shri Bheru Lal Suthar, Aged About 29 Years, R/o Village Bhingarh, Tehsil-Rashmi, District- Chittorgarh.
5. Paras Kumari Gehlot D/o Shri Kiran Singh, Aged About 33 Years, R/o Keriya, Tehsil-Mandal, District- Bhilwara.
6. Sita Dairu D/o Shri Jagdish Prasad Dairu, Aged About 25 Years, R/o Plot No. 42, Mahadev Nagar Second, Hathol Kalwar Road, District- Jaipur.
7. Sandhya Yadvendu D/o Shri Lekhraj Yadvendu, Aged About 35 Years, R/o Village And Post Golana, Tehsil- Khanpur, District-Jhalawar.
8. Poonima Kanwar Chouhan D/o Shri Prithvi Singh Chouhan, Aged About 33 Years, R/o Near Post Office, Jaitaran, District-Pali.
9. Nandu Kumari Soni D/o Shri Tara Chand Soni, Aged About 39 Years, R/o Opposite Khoja Bavri, Sindhi Colony, District-Tonk.
10. Babeeta Kumari D/o Shri Rajendra Singh, Aged About 37 Years, R/o Piloyan Ki Dhahar, Vilage-Tarpura, Post-Tarpura, Tehsil-Piparli, District- Sikar.
11. Shimla Kumari Lauhar D/o Shri Gopal Lal Lauhar, Aged About 34 Years, R/o Chosla Colony, Sawar Ajmer, District-Ajmer.
12. Poonam Chayal D/o Shri Bhaga Ram, Aged About 32 Years, R/o Gorkhnath Goshala Ke Pass, Ward No. 3, Rawatsar, District-Hanumangarh.
13. Usha Kumari D/o Shri Gokul Singh, Aged About 35 Years, R/o Ward No. 3, Chak 25 Kyd Po 61 Head Khajuwala, District-Bikaner.
14. Shaheen Banu Sorgar D/o Shri Gulam Rashul Sorgar, Aged About 26 Years, R/o Jhajpur Road, Kotri, District Bhilwara.
15. Kanta Teli D/o Shri Shravan Lal Teli, Aged About 21 Years, R/o Kaliyas, Tehsil-Asind, District-Bhilwara.
16. Neetu Singh Rajput D/o Shri Indar Singh Rajput, Aged About 33 Years, R/o Hospital Road, Mahua, District- Dausa.
17. Sanju Bhati D/o Shri Ratan Singh Bhati, Aged About 30 Years, R/o Sarpanch Mohalla, Baniyana, District- Dausa.
18. Anjana Bhati D/o Shri Ratan Singh Bhati, Aged About





- 31 Years, R/o Sarpanch Mohalla, Baniyana, District-Dausa.
19. Lalita Devi Swami D/o Shri Suwa Lal Swami, Aged About 37 Years, R/o Janki Vihar Colony, Phulera Road, District- Jaipur.
20. Rinku Devi D/o Shri Norat Mal, Aged About 28 Years, R/o Village-Lordi, Post-Doulatpur-I, Tehsil-Bijainagar, District-Ajmer.
21. Samta Sharma D/o Shri Radhey Shyam Sharma, Aged About 28 Years, R/o 05, Kumharo Ka Mohalla, Kaliyaas, District-Bhilwara.
22. Vinita D/o Shri Jagdish Gupta, Aged About 28 Years, R/o Ward No. 16, Mohalla Kajiwada Tijara, District- Alwar.
23. Sunita Kumari D/o Shri Amar Singh, Aged About 32 Years, R/o Gayatri Colony, Near Railway Line, Ward No. 13, Nadbai, District-Bharatpur.
24. Tara Kumawat D/o Shri Ramniwas Kumawat, Aged About 31 Years, R/o Minda, District-Nagaur.
25. Rehana Sultana D/o Shri Babu Khan Rangrej, Aged About 31 Years, R/o Gali No. 5, Dehali Gate, Chhipa Mohalla, District Chittorgarh.
26. Yogita Kumari D/o Shri Bhagwati Prasad, Aged About 31 Years, R/o 272 Vpo Novi, Tehsil- Sumerpur, District-Pali.
27. Pinki Garg D/o Shri Jagmohan Garg, Aged About 35 Years, R/o 1-T-, Krishna Nagar, Housing Board, District Bharatpur.

-----Petitioners

Versus

1. State Of Rajasthan, Through The Director, Elementary Education, Government Of Rajasthan, Bikaner.
2. The Secretary, Staff Selection Board, Durgapura, Jaipur.

-----Respondents

For Petitioner(s) : Mr. Jai Kishan Rankawat.
For Respondent(s) : Mr. Priyanshu Gopa for
Mr. Vinit Sanadhya.
Mr. Deepak Chandak, AGC.

HON'BLE MR. JUSTICE ARUN MONGA
Order

08/02/2024

1. The petitioners herein contest the final result dated 31.08.2023 declared by respondent No.2. Initially called for document verification based on their marks surpassing the cut-off,



they were subsequently excluded from the final result on the grounds of their marks being below the revised cut-off.

2. Succinctly summarizing the pertinent facts, devoid of extraneous details:

2.1. Respondent No.2 issued an advertisement dated 16.12.2022, inviting applications for the post of Primary Teacher (General) Level-I. Of the 21,000 advertised positions, 17,563 were allocated for primary teachers in the general category for Non-TSP area, the category to which the petitioners belong. According to sub-clause-5 of the advertisement, 2% of the posts were reserved for divorcee category candidates. If an adequate number of widow category candidates were not available, the remaining vacancies would be filled by divorcee category candidates. The petitioners, meeting the eligibility criteria, submitted their applications under the divorcee category for Non-TSP area.

2.2. On 26.05.2023, the results were announced. The petitioners, scoring considerably higher marks than the cut-off, were summoned for document verification. However, in the final result declared on 31.08.2023, their names were conspicuously absent, attributed to a subsequent increase in the cut-off for the OBC divorcee category to 150.5214 and the EWS divorcee category to 146.0726.

2.3. On 04.08.2023, some petitioners approached respondent No.1 regarding this matter. However, they later discovered that respondent No.2 had already recommended the names of selected candidates to respondent No.1, prompting the filing of the present petition.



3. From the aforementioned factual background, the crux of the controversy at hand revolves around a concise question: Whether, in the event of an insufficient number of candidates in the widow category, a divorcee can be permitted to switch her category to widow, and vice versa?

4. Having heard the arguments presented by both learned counsels and on perusal of the case file the answer to the above question seems to be in affirmative. Let us see how.

5. Learned counsel for the petitioners at the outset cites a precedent set forth in my earlier judgment in a similar case i.e. Nikhat Amin v. State of Rajasthan & Ors.: S.B. Civil Writ Petition No.15924/2023, decided on 15.01.2024, asserting that the petitioners' case herein is squarely covered with it.

6. Per contra, learned counsel for the respondents contends that the aforementioned judgment cannot be applied in the case in hand, since the Department is still deliberating on its applicability and intending to challenge it.

7. Be that as it may, it so appears that petitioners' case is indeed covered by my views expressed in the aforesaid judgment, relevant part of which, being apposite, is extracted here in below:

"5. It transpires that the controversy raised herein lies in a very narrow compass, i.e.,

(A) Whether the posts advertised in the category of Divorcee and/ or Widow are interchangeable in the event of either the non- availability of enough number of divorcees or vice versa, in case an adequate number of widows are not available?

(B) In the event the answer to the above is affirmative, whether a candidate who seeks the benefit of the other category can take advantage of a



lower merit list in that category, notwithstanding that in her original category she did not make the cut ?

6. As for the first question above, both the learned counsels agree that in the case of non-availability of suitable candidates in either the Widow or Divorcee category, it is very much permissible as per Clause 5 of the advertisement to interchange the category between widow and a divorcee. To that extent, since there is a consensus, the controversy stands adjudicated.

7. Before advertenting to the second question, it is apposite to note that a Coordinate Bench of this Court presided over by my learned brother Arun Bhansali, J., who was earlier seized of the matter, passed the following order dated 02.11.2023 which is reproduced as under:-

"1.Learned counsel for the respondents prays for time to make submissions that once 14 posts for widow and 01 post for divorcee were advertised, only 11 candidates in the widow category have been accorded appointment and rest posts have been kept vacant so far, which can be filled up by the divorcee candidates in terms of the provisions of the Rules and wherein in case, the said three posts are filled up by divorcee candidates, whether the petitioner would stand in merit in that category.

2. List the petition on 06.11.2023."

8. Apropos above order passed by this Court, it transpires that posts are indeed lying vacant in the Widow category. It is though not clear whether it is 2 or 3 posts. While on one hand, the learned counsel for the petitioner states that there are 3 posts lying vacant, on the other hand, the learned counsel for the respondents states that, as per his instructions, only 2 posts are lying vacant.

9. Be that as it may, reverting to the second question supra, once the categories are interchangeable as per the advertised Clause 5, it is mandatory on the part of the recruitment agency that, subject to the merit list maintained by them, the next eligible candidate, be it from Widow or Divorcee category, has to be offered the post unless all the posts stand exhausted. In other words, only in case, if a candidate is either not eligible and/or not



meritorious, being below the cut-off marks of the category to which she is being migrated because of non-availability of enough candidates in that category, she can then be declined her claim to be adjusted by changing her category.

10. There is no dispute in the present case that the petitioner has got more marks, i.e., 197, than the last selected candidate in the Widow category, who scored 110. To that extent, her merit is not in dispute. The only dispute is whether she could be considered in the category of Widow having obtained lower marks than the cut-off in the Divorcee category, which are stated to be 203.

11. In view of my discussion hereinabove, it becomes apparent that once the category of Divorcee has to be shifted to Widow by giving an advantage of the vacant post, her merit has to be considered as per the cut-off marks in the Widow category. I may hasten to add here that the same may result in an incongruent situation where the widows who may have, though, obtained lesser marks than the petitioner, but since competed in their own category, may be rendered junior her because in divorcee category the cut-off marks are much higher, as noted hereinabove. It is, therefore, made clear that in case the department is maintaining separate seniority lists for divorcee and widows, then the divorcee who has been given the advantage of lower cut-off marks in the category of widow shall be kept at the bottom of the seniority list of the widows.

12. At this stage, on a Court query, Mr. Pankaj Sharma, AAG, appearing for respondent No. 1 to 3, states that a common seniority list is being maintained after appointment for both categories of Widows and Divorcees. Being so, no prejudice would, therefore, be caused to the widows in case the petitioner, who is from the Divorcee category, is given the advantage of appointment in the Widow category.

13. As an upshot, the writ petition is allowed with the direction to the respondents to consider her candidature in the Widow category provided, of course, the same has to be in accordance with her merit. In case it is found that there are candidates in the divorcee category who have obtained more marks than her, first the offer of appointment shall be made to them, and in case no one joins, then only, the





petitioner shall be offered the appointment in the order of the merit list maintained by the Respondent No. 4.”

8. I see no reason why the benefit of the aforesaid judgment be not given to the petitioners herein.

9. It is accordingly so ordered.

10. The respondents are thus directed to consider the candidature of the petitioners subject to availability of vacancies and petitioners being found meritorious, further steps will be taken to offer them appointments, provided, that there is vacancy available, after changing their category from divorcee to widow.

(ARUN MONGA),J

13-Sumit/-

Whether Fit for Reporting: Yes / No