



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR**

D.B. Special Appeal Writ No. 949/2023

CNR: RJHC010719662023 | URN: SAW / 1885U / 2023



1. State Of Rajasthan, Through Secretary Department Education Government Of Rajasthan, Secretariat, Jaipur.
2. The Secretary, Panchayati Raj Department, Government Of Rajasthan, Secretariat, Jaipur.
3. Director, Directorate Of Primary Education, Bikaner, Rajasthan.
4. The Coordinator, Directorate Elementary Education, Bikaner, Rajasthan.
5. Secretary, Department Of Personnel, Secretariat, Jaipur.
6. Zila Parishad, Through The Chief Executive Officer, Zila Parishad Udaipur.

-----Appellants

Versus

Sheetal Ameta W/o Hitesh Ameta, Aged About 26 Years, 655 Kurabad, Tehsil Girwa, District Udaipur, Rajasthan.

-----Respondent

For Appellant(s)	:	Mr. Deepak Chandak for Mr. B. L. Bhati, AAG
For Respondent(s)	:	Mr. V.L.S. Rajpurohit Mr. V. R. Choudhary

**HON'BLE MR. JUSTICE VINIT KUMAR MATHUR
HON'BLE MR. JUSTICE CHANDRA SHEKHAR SHARMA**

Order

27/10/2026

1. Heard learned counsel for the parties.
2. The present Special Appeal has been filed by the appellant State challenging the order dated 23.01.2023 passed by learned



Single Bench in a batch of writ petitions led by **S.B.Civil Writ Petition No.8888/2020 (Chetna Tripathi V/s State of Rajasthan & Ors.)** whereby the writ petition filed by the respondent-petitioner was allowed.

3. Brief facts necessary for proper adjudication of the present appeal are that the Directorate of Primary Education, State of Rajasthan, Bikaner issued two notifications/advertisements i.e. notification No.5/2018 and 6/2018 both dated 31.07.2018 for filling up certain posts of Teacher Grade-III, Level II in Science and Mathematics subject in Non-TSP & TSP Area. The respondent-petitioner being married to a person residing in the TSP area filled in her application form for appointment to the post of Teacher Grade-III Level II (Science and Mathematics) declaring herself to be a candidate of Non-TSP area pursuant to the advertisement No.5/2018. The respondent-petitioner did not fill in her application for the TSP area for appointment to the post of Teacher Grade III Level II (Science and Mathematics)pursuant to Advertisement No.6/2018 as at the relevant point of time there was no notification of the State Government to the effect that those women candidates, who are married to persons residing in the TSP area will be having the status of TSP area candidates and therefore, the respondent-petitioner applied in the non TSP area for appointment to the said post. However, during the selection process, the State Government issued a notification dated 21.10.2019, wherein it was mentioned that the special domicile status of a woman married to a person, who is permanent resident of TSP area shall also be considered as a candidate belonging to the TSP area. Since, this notification was issued after



the application forms were filled-in by the candidates, considering them to be Non-TSP candidates, there was no question of considering their candidature qua advertisement No.6/2018 as TSP area candidates. The respondent-petitioner approached the appellant State with a prayer to consider her application form for appointment to the post of Teacher Grade-III, Level II (Science and Mathematics) against the vacancies earmarked for the TSP area candidates also pursuant to the Advertisement No.6/2018 too. However, the request made by the respondent-petitioner was not acceded to and considered favorably by the appellant State and therefore, the respondent-petitioner approached this Court by way of filing a writ petition before the learned Single Bench of this Court.

4. Learned Single Bench after hearing learned counsel for the parties allowed the writ petition filed by the respondent-petitioner along with the bunch of writ petitions led by S.B.Civil Writ Petition No.8888/2020 (Chetna Tripathi V/s State of Rajasthan & Ors.) vide order dated 23.01.2023 directing the appellant State to treat the respondent-petitioner as the resident of TSP area and grant her the requisite benefits for selection on the post of Teacher Grade-III, Level II (Science and Mathematics) available to the candidates belonging to the TSP area.

5. Aggrieved by this judgment and order dated 23.01.2023, the present appeal has been filed by the appellant State.

6. The learned counsel for the appellant State vehemently submits that the learned Single Bench has committed an error while allowing the writ petition filed by the respondent-petitioner as she never applied pursuant to the Advertisement No.6/2018



which was issued for the vacancies of the TSP area category candidates.

7. The learned counsel further submits that since no application form was submitted by the respondent-petitioner for consideration of her candidature towards TSP area vacancies, therefore, the appellants rightly did not consider her candidature towards the TSP area vacancies. He submits that the respondent-petitioner has approached this Court after a gross delay of two years and during that period, the selection process was already near to completion and therefore, if any order for her appointment is issued in her favour, the appellants will have to adjust the same by creating a supernumerary post.

8. Learned counsel submits that at this stage, the respondent-petitioner cannot be granted any relief. He further submits that the case of the respondent-petitioner cannot be said to be on the similar footing to the case of **Manish Kumar Nagda and Ors.** decided on 23.07.2018 as the petitioners in that case approached the Court while the selection process was in currency and in that case, since the Central Government had declared the TSP areas subsequently, therefore, those persons who were though residents of those areas which were not notified as TSP areas, their forms were not filled in **as TSP area candidates**, the benefit in that case, has rightly been extended to those candidates on account of those area having been included in TSP Areas but the facts and circumstances of the present case are altogether different.

9. Learned counsel for the appellant further submits that migration of a candidate belonging to the non TSP area cannot be made to TSP area candidates as the respondent-petitioner in the



present case has not even filled in her form as a TSP area candidate and therefore, the learned Single Bench has committed an error while allowing the writ petition of the petitioner-respondent. He further submits that it will open a Pandora box at this stage because those candidates, who did not fill in their application forms in pursuance of the subsequent Advertisement No.6/2018 for TSP area will also approach the appellants for the grant of the same relief. He, therefore, prays that the present Special Appeal may be allowed and the order passed by the learned Single Bench may be quashed and set aside.

10. Per contra, the learned counsel for the respondent-petitioner vehemently opposed the submissions made by learned counsel for the appellant-respondent. He submits that at the time of filling the application forms, there was no notification entitling the petitioner-respondent to have the status of TSP candidate therefore, the petitioner-respondent rightly filled in the application form considering herself to be a Non TSP area candidate and therefore, there was no occasion for her to fill in the application form in pursuance of subsequent Advertisement No.6/2018.

11. Learned counsel further submits that in the light of the judgment rendered by this Court in **Smt. Twarita Gehlot Vs. State of Rajasthan & Ors. (SBCW No.15540/2017)** decided on 14.12.2017, the State Government has issued a notification dated 21.10.2019 whereby those women candidates who were married to the persons residing in the TSP area, their status was mandated to be considered as TSP candidates. This notification was made applicable retrospectively from 16.06.2013, therefore, for all intents and purposes, their status is required to be



considered as TSP area candidates and therefore, the candidature of such candidates is required to be considered towards the notification of advertisement No.6/2018 for TSP area also. The learned counsel for the respondent-petitioner submits that the learned Single Bench has rightly decided the writ petition in her favour relying upon the judgment of **Smt. Twarita Gehlot (supra)** wherein this controversy was settled. He further submits that in the identical facts, the migration to TSP Area from non-TSP area was permitted by the learned Single Bench in the case of **Manish Kumar Nagda & Ors. v/s State of Rajasthan & Ors. (SBCW No.8529/2018)** decided on 23.07.2018. By the said order, the candidates of non TSP area to TSP area in two different advertisements were directed to be considered. He further submits that the appeal filed against the order dated 23.07.2018 has also been dismissed by the Division Bench as having become infructuous.

12. Learned counsel for the respondent-petitioner further submits that when the respondent-petitioner approached this Court by way of filing a writ petition, an interim order was passed in her favour by the learned Single Bench on 13.08.2020 and therefore, the appellant-State is not right in contending that no vacancies were available at the time when the respondent-petitioner approached this Court by way of filing a writ petition. He, therefore, prays that the appeal filed by the appellate State may be dismissed.

13. We have considered the submissions made at bar and gone through the relevant record of the case.



14. The undisputed facts in the present case disclose that the respondent-petitioner is a woman category candidate and at the time of filling in the application form, her status was not changed from a non TSP candidate to TSP candidate because after the marriage of the respondent-petitioner, the State Government issued a Notification dated 21.10.2019, whereby it was notified that a women candidate who though belongs to non TSP area but her marriage has been solemnized to a person residing in TSP area will be considered as a TSP area candidate. The application form, therefore, was rightly filled in by the respondent-petitioner considering herself to be a non TSP Area candidate for appointment to the post of Teacher Grade III Level II (Science and Mathematics) pursuant to the Advertisement No.5/2018 dated 31.07.2018. After the issuance of the notification dated 21.10.2019, when the respondent-petitioner approached the State authorities for her migration from Non TSP area candidate to TSP area candidate for considering her case pursuant to the advertisement No.6/2018 dated 31.07.2018, her request was not acceded to and therefore, the writ petition was filed. During the pendency of the writ petition, the selection process was initiated by the appellants, however, interim order was passed by the Single Bench directing to keep her name in the selection list of category of TSP area. Learned counsel for the appellant State submits that in pursuance of the interim orders issued by learned Single Bench, the names of such candidates were kept in the selection list of the TSP area (pursuant to the selections held for advertisement No.6/2018 dated 31.07.2018).



15. The prayer of the respondent-petitioner for consideration of her name from non TSP area category to TSP area category in normal circumstances, would not have been entertained by this Court as no application form for the TSP area as per the advertisement No.6/2018 dated 31.07.2018 was filled in by such candidates, however, in the similar circumstances this Court in the case of **Manish Kumar Nagda** (supra) has dealt with the controversy in detail and has ultimately held as under:-

" 31. This Court further makes it clear that after receiving such requests from the existing petitioners, who have filled their application forms under the advertisement 01/2018 dated 12.04.2018, the same shall be processed by the respondents alongwith all other candidates, who are being processed under the advertisement No.02/2018 dated 12.04.2018, and the petitioners shall thereafter be considered as per their otherwise eligibility and merits, and such appropriate consideration shall be made alongwith all other candidates, who are already in the pipeline of the advertisement No.02/2018. The selection in pursuance of the advertisement No.02/2018 dated 12.04.2018 for the post in question shall not be finalized until the aforesaid exercise is completed. The petitioners shall be treated at par, for the purpose of being considered as TSP Area candidates, while switching them over in the right spirit of the notification dated 19.05.2018 from advertisement No.01/2018 to the advertisement No.02/2018 for the post of Teacher Grade III Level I Classes I to V, as the last date for filling such forms was 07.05.2018, whereas the notification dated 19.05.2018 came about 12 days ahead and the selection process is still going on. It shall be open for the respondents to increase the posts in the Advertisement No.02/2018, if so required."

16. We are informed that the view taken by the learned Single Bench in the order passed in **Manish Kumar Nagda (supra)** was assailed before the learned Division Bench and the appeal filed against that order passed in the above case was also dismissed as having become infructuous.



17. In this view of the matter, we are of the view that the candidature of the respondent-petitioner is required to be considered as a TSP area candidate (advertisement No.6/2018 dated 31.07.2018) for appointment to the post of Teacher Gr.III Level-II (Science and Mathematics) and, therefore, the appellant State is directed to consider the candidature of respondent petitioner as a TSP Area candidate.

18. In view of the discussion made above, there is no force in the appeal and the same is dismissed.

19. The stay applications and other pending applications, if any, also stand disposed of.

(CHANDRA SHEKHAR SHARMA),J (VINIT KUMAR MATHUR),J

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Nidhi Rai