



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

S.B. Civil Writ Petition No. 7212 / 2017

Pritam Kunwar D/o Shri Rajendra Singh, Aged About 27 Years, R/o
VPO Ghanoda, Tehsil Garhi, District Banswara, Rajasthan.

----Petitioner

Versus

1. State of Rajasthan Through the Secretary, Department of
Revenue, Government of Rajasthan, Secretariat, Jaipur.

2. The Registrar, Board of Revenue, Rajasthan, Ajmer, Rajasthan.

3. The Secretary, Rajasthan Public Service Commission, Ajmer.

----Respondents

For Petitioner(s) : Mr. Kailash Jangid

For Respondent(s) : Mr. Rajesh Punia

JUSTICE DINESH MEHTA

Judgment

REPORTABLE

04/08/2017

The petitioner has preferred the present writ petition with the prayer that petitioner's candidature for appointment on the post of Junior Accountant be treated in the category of 'Tribal Sub Plan Area - General Women', in place of 'General Women' as had been indicated by her in the application form.

The facts giving rise to the present writ petition are that pursuant to an advertisement dated 18.09.2013, issued by the respondents - Rajasthan Public Service Commission, inviting applications for the appointment on the post of Junior Accountant and Tehsil Revenue Accountant, the petitioner submitted online application showing her category as 'General Women'. It is



undisputed fact that a press note dated 25.08.2015 came to be released by the Respondents, notifying that if a candidate wanted to change his preference, an application to this effect, alongwith requisite fee of Rs.300/- be submitted before 07.09.2015, whereafter no such request would be entertained.

Pursuant to the petitioner's application, an admit card was issued, permitting her to appear in the written examination to be held on 04.10.2016. The Respondents had granted yet another indulgence, while issuing the admit card and the candidates were provided an other chance for getting change in their particulars, such as name, date of birth and category etc., but however with a stipulation that such request be made prior to the date of examination.

The result of such examination was declared on 07.11.2016, wherein the petitioner had secured marks 384.15 marks, having competed as a General Category Woman. For the completion of the facts, it may be noted that the said result stood revised on 16.05.2017, wherein petitioner's marks stood increased to 387.82. The petitioner, thereafter submitted a representation on 23.05.2017 to the Secretary, RPSC and requested to change her category from 'General Women' to 'TSP - General Women', as she belongs to Tribal Sub Plan Area. As the respondents have not done the needful pursuant to petitioner's request, the petitioner has approached this Court, with the prayer aforesaid.

Mr. Kailash Jangid, learned counsel for the petitioner contended that though the petitioner had mentioned her category as 'General Women' at the time of filling her application form,



however, before the process was over, she had made a representation on 23.05.2017 and requested the respondents to treat her candidature under the Category of 'TSP - General Women'. He submitted that until and unless the process is over, the candidate is entitled to change his/her category.

In support of his contention, Mr. Kailash Jangid placed reliance upon a Division Bench judgment dated 04.05.2017 rendered by this Court in ***D.B. Civil Writ Petition No.692/2017 titled as "Neetu Harsh Vs. The State of Rajasthan & Ors."*** and submitted that petitioner's case is squarely covered by the law laid by the Division Bench in the aforesaid judgment.

On the other hand, Mr. Rajesh Punia, learned counsel appearing for the respondents submitted that the candidature or the category of an incumbent has to be reckoned as has been mentioned or claimed by him/her in the application form. If the examination conducting authority has granted any liberty for such correction, the same has to be done within the stipulated time or stage. He contended that in the advertisement dated 18.09.2013 itself and so also in the corrigendum dated 31.10.2014, (condition No.4), it was clearly stated that if any candidate belonging to TSP area, wants to change his/her category, the same can be done by furnishing application with requisite fee within the stipulated time. For the sake of convenience, said condition No.4 of the corrigendum advertisement dated 31.10.2014 is reproduced hereunder:-

"4. जिन आवेदकों ने पूर्व में आवेदन किया हुआ है उन्हें पुनः आवेदन करने की आवश्यकता नहीं है किन्तु ऐसे अभ्यर्थियों को



निर्देशित किया जाता है कि टी.एस.पी. क्षेत्र के अन्तर्गत आने वाले अ.जा/अ.ज.जा वर्ग के अतिरिक्त अनारक्षित वर्ग के पुरुष एवं महिला अभ्यर्थी जो टी.एस.पी. क्षेत्र के हैं वे आयोग की वेब-साईट rpsconline.rajasthan.gov.in पर उपलब्ध लिंक का चयन कर उपलब्ध प्रपत्र में ऑनलाईन आवेदन करें, ताकि ऐसे अभ्यर्थियों को टी.एस.पी. क्षेत्र का मानते हुए नियमानुसार कार्यवाही की जा सके। ऑनलाईन सूचना दिनांक 21.11.2014 तक ही दी जा सकती है। उक्त दिनांक के पश्चात् किसी भी प्रकार के पत्राचार पर विचार नहीं किया जाएगा। टी.एस.पी. क्षेत्र हेतु नियमानुसार आरक्षित पदों के 5 प्रतिशत पद टी.एस.पी. (एस.सी.), 45 प्रतिशत पद टी.एस.पी. (एस.टी) एवं शेष 50 प्रतिशत पद अनारक्षित वर्ग हेतु रखे जाने का प्रावधान है।”

Learned counsel for the respondents further drawn attention of this Court towards condition No.4 given on the admit card, which too stipulated that if any change in name, age or category is required to be done, such request should be made prior to appearing in the examination. He contended that the examinations were conducted on 04.10.2016; as such, if the petitioner really wanted to change her category, she ought to have applied on or before the date of examination. Mr. Punia further submitted that the petitioner woke up from her slumber on 23.05.2017, when even the revised result has been declared by the respondents.

He pointed out that as per the first result, petitioner's marks (384.15) were well below the cut off marks for both the categories 'General Women' (539.56) and 'TSP - General Women' (479.36). It was only after the revised result, which was declared on 16.5.2017, she fell in the zone of consideration. Petitioner came



out of hibernation, realizing that if her candidature is considered under 'TSP – General Women', she would fall in merit, as the cut off of 'TSP – General Women' had fallen down to 361.31, after the revision of result.

He submitted that if the petitioner had any concern, she ought to have made necessary request before appearing in the examination and that the time-line and eligibility criteria of appearing in the examination should be strictly adhered to and the petitioner cannot be granted the indulgence as prayed for, at such a belated stage.

In rejoinder, learned counsel for the petitioner submitted that the cause of making such request did not occur to the petitioner at the time of declaration of first result on 07.11.2016, inasmuch as, she did not fall in the merit list and occasion to ask for such change in the category has arisen to her only on 16.05.2017, when she fell in the merit list, after declaration of revised result. If her case is considered as a candidate belonging from 'TSP - Women General Category, she is bound to be selected.

Having heard learned counsel for the parties and perused the material available on record, this Court is of the considered opinion that the petitioner is not entitled for the indulgence as she had asked for. The reasons are not far to seek.

The advertisement dated 18.09.2013, followed by the corrigendum dated 31.10.2014, was very clear and categoric, requiring the candidates to apply for change in their category on or before appearing in the examination. The petitioner having submitted her online form on 18.10.2013, ought to have applied

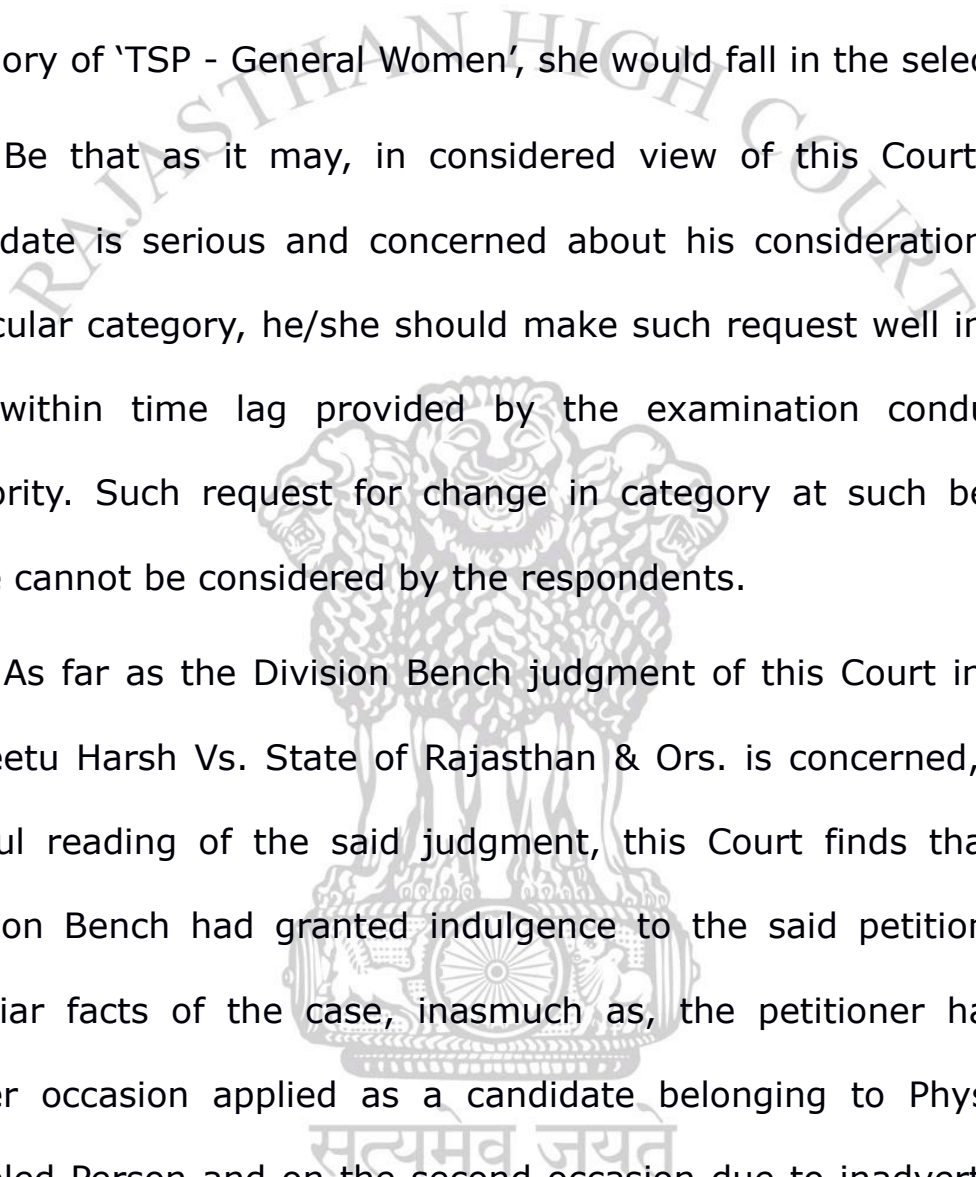


for correction in her category, on publication of corrigendum notification. Be that as it may, on receipt of the admit card, the petitioner again got an opportunity to apply for change of her category, which admittedly, she did not do. She did not do the same even at the time of declaration of the result on 07.11.2016. The petitioner made such request only on 23.05.2017, when she realized that if her candidature were considered under the category of 'TSP - General Women', she would fall in the select list.

Be that as it may, in considered view of this Court, if a candidate is serious and concerned about his consideration in a particular category, he/she should make such request well in time and within time lag provided by the examination conducting authority. Such request for change in category at such belated stage cannot be considered by the respondents.

As far as the Division Bench judgment of this Court in case of Neetu Harsh Vs. State of Rajasthan & Ors. is concerned, on a careful reading of the said judgment, this Court finds that the Division Bench had granted indulgence to the said petitioner in peculiar facts of the case, inasmuch as, the petitioner had on earlier occasion applied as a candidate belonging to Physically Disabled Person and on the second occasion due to inadvertence, such category could not be filled; coupled with a fact that the seat reserved for physically disabled category remained unfilled.

Apart from this, the Court had granted indulgence to the petitioner, with a view to ensure the spirit of the Persons with Disabilities (Equal Opportunities Protection of Rights and Full Participation) Act 1995, which is a beneficial legislation and special





enactment. In the opinion of this Court, the Division Bench judgment dated 04.05.2017 has been passed in peculiar facts of the case and the same is not applicable in the facts, obtaining in the present case.

Counsel for the respondents has placed reliance upon the judgment dated 01.08.2016 rendered by Division Bench of this Court in DB special Appeal (Writ) No.85/2016 (SAC 85/2015) and submitted that the issue at hand has been finally decided by the Division Bench while allowing the appeal against the judgment dated 28.09.2015 passed by learned Single Judge of this Court, has held that change of category after filling of the form is not permissible. It would be worthwhile to reproduce operative part of the said judgment, which reads as under :-

"9. Once it is an admitted position that the respondent had specifically mentioned in the application form that he belongs to the non-TSP category, the discussion with regard to his ineligibility as a TSP Category candidate has to end.

10. We are therefore unable to uphold the order under appeal or the view taken in ***Datar Singh Vs. State of Rajasthan & Anr. (supra) and Savita Budania Vs. State of Rajasthan & Ors. (supra)***.

11. The appeal is allowed."

It is noteworthy that another Division Bench of this Court in its judgment dated 09.09.2016 rendered in DB Civil Special Appeal (Writ) No.611/2016 in the matter of State of Rajasthan & Ors. Vs. Jagdish Prasad & Ors., has itself held the Division Bench judgment in case of State of Raj. & Ors., Vs. Ms. Jamna Rajpurohit



to be per incurium. The relevant portion of the said judgment is reproduced hereunder :-

"In (1994) 2 SCC 723 U.P. Public Service Commission, U.P. v. Alpana) the respondent acquired the eligibility qualification after the last date for submission of applications as the results of the examination was published thereafter. The High Court directed her to be called for interview. Disapproving of the same it was observed :-

"6.....This approach of the High Court cannot be supported on any rule or prevalent practice nor can it be supported on equitable considerations. In fact there was no occasion for the High Court to interfere with the refusal of the Public Service Commission to interview her in the absence of any specific rule in that behalf. We find it difficult to give recognition to such an approach of the High Court as that would open up a flood of litigation. Many candidates superior to the respondent in merit may not have applied as the result of the examination was not declared before the last date for receipt of applications. If once such an approach is recognised there would be several applications received from such candidates not eligible to apply and that would not only increase avoidable work of the selecting authorities but would also increase the pressure on such authorities to withhold interviews till the results are declared, thereby causing avoidable administrative difficulties. This would also leave vacancies unfilled for long spells of time. We, therefore, find it difficult to uphold the view of the High Court impugned in this appeal."

In Jamna Rajpurohit (supra) significantly the Division Bench itself observed that permitting change of category after the last date for submission of applications would make the selections an unending





process and yet proceeded to direct it to be done on basis of sympathy. Jamna Rajpurohit (supra) has therefore to be held as per incuriam. The order under appeal based upon the same is also held to be 8 unsustainable.

Delay of 86 days in preferring the appeal is condoned. The appeal is allowed.”

Similar view had been taken by another Division Bench of this Court vide judgment dated 12.5.2014 rendered in DB Civil Writ Petition No.3331/2014 (Sunil Bhanwariya Vs. Registrar, Examination Cell, Rajasthan High Court, Jodhpur & Anr.) wherein also the judgment dated 11.09.2012 in Datar Singh Vs. State of Rajasthan & Ors. (SB Civil Writ Petition No.9170/2012) and so also the Division Bench judgment dated 31.07.2013, in the appeals arising therefrom has been considered and it has been held that the respondents were justified in rejecting candidate's request for changing his category from OBC/SBC Creamy layer to OBC/SBC non-creamy layer. The relevant part of the said judgment is also reproduced hereunder :-

“In our estimate, not only the facts as obtain in the instant proceedings are distinctly different from those in Datar Singh (supra), to reiterate, the posts and the services involved are also incomparable. A candidate vying for recruitment to a post of the Civil Judge (JD)-cum-Judicial Magistrate First Class in the Service is expected to be essentially attentive, careful, precise and focused more particularly in view of the repeated caveats in the advertisement emphasizing on the inflexible requirement of furnishing complete and correct informations bearing





on the candidature and also the inevitable consequences of the rejection thereof otherwise. That no mistake or omission was to be allowed to be corrected or furnished was also mentioned in clear terms.

On a cumulative consideration of all aspects, we are thus of the firm view that the impugned decision is valid and wholly attuned to the solemnity and certainty of a public participatory process of the kind as involved. We do not see any cogent reason to interfere in the exercise of this Court's writ jurisdiction.

The writ petition lacks in merit and is dismissed. The stay application is also dismissed."

Similar view has been taken by another Division Bench of this Court in the judgment dated 21.07.2016 in DB Civil Writ Petition No.7410/2016 (Akram Khan Vs. Rajasthan High Court, Jodhpur & Anr.), wherein the action of the respondent – High Court in rejecting the request for change of category has been upheld.

Wading through the aforesaid judgments, this Court is of the considered opinion that change in category is not permissible once the process has commenced and more particularly, written examinations are over. In the present case, not only the examinations were over, even the selection process is over. Any indulgence, if granted to the petitioner, at this stage, would be inequitable to other candidates, vying for the recruitment.

Going through the above referred judgments, it is clear that it has been consistent view of this Court that change of category,



after submitting the application form is not permissible.

The petitioner having applied for the post of Junior Accountant cannot claim herself to be not aware about the seriousness and implications of the details furnished by her. While exercising the equitable or discretionary jurisdiction, this Court cannot afford to be oblivious of the nature of post, for which a candidate has competed. Such purported inadvertence or error cannot be accepted or tolerated for a candidate, who has applied for the post of Junior Accountant.

In view of above discussions, this Court neither finds any legal right of the petitioner for getting her category changed nor does it find it to be a case, warranting sympathetic considerations.

The petition is thus dismissed summarily.

(DINESH MEHTA), J

Upendra/27/Arun, PS



सत्यमेव जयते