

Jasraj Java and anr Vs. State (Local Self) and ors

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Court : Rajasthan Jodhpur

Decided On : Sep-17-2013

Appellant : Jasraj Java and anr

Respondent : State (Local Self) and ors

Judgement :

1 IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

ORDER

Jasraj Java & anr.

versus State of Raj.& ORS.D.B.CIVIL WRIT PETITION NO.7983/2012 UNDER ARTICLE226OF THE CONSTITUTION OF INDIA.

Date of Order: Sept.17, 2013 P R E S E N T HON'BLE THE CHIEF JUSTICE MR.AMITAVA ROY HON'BLE MR.JUSTICE ARUN BHANSALI Mr.Nishant Motsara, for the petitioneRs.Dr.Pratishtha Dave Mr.R.S.Saluja Mr.Yashwant Mehta) for the respondents.

BY THE COURT : (PER HON.MR.AMITAVA ROY,CJ.Apart from questioning the vires of Rule 12 of the Rajasthan Municipalities (Safai Employee Service) Rules, 2012 (for short hereinafter referred-to as the Rules of 2012.).the petitioners seek an appropriate writ or direction to permit them to participate in the selection process initiated for appointment to the post of Sweeper vide advertisement dated

25.5.2012.

A direction to the respondents for relaxation of their age as mentioned in the advertisement has also been sought for.

We have heard Mr.Nishant Motsara, learned 2 counsel for the petitioners and Dr.Pratishtha Dave, Mr.R.S.Saluja & Mr.Yashwant Mehta, learned counsel appearing for the respondents.

The pleaded case of the petitioners in short is that the petitioners have studied upto Class X, belong to the Scheduled Caste community and have the necessary experience as a Sweeper.

By the aforementioned advertisement, the Department of Local Self Government, Govt.

of Rajasthan, did launch a process for recruitment to the post of Sweeper in the Municipalities of the State.

In terms of the advertisement, the age limits, as a condition of eligibility, were prescribed to be 18 years and 35 years respectively.

Relaxation of five years for members of the S.C./S.T.Community and upper age limit of 50 years for Ex Servicemen was prescribed.

According to the petitioners.the last recruitment process for appointment to the post of Sweeper had been conducted in the year 1996 and thereafter many vacancies though had remained unfilled, no exercise was undertaken for reasons unknown.

By Notification No.F.7(6) DOP/A-II/2008 dt.23.9.2008, the following incorporation was made in the Service Rules as detailed in the Schedule thereto: If a candidate would have been entitled in respect of his/her age for direct recruitment in any year in which no such recruitment was held, he/she shall be deemed to be eligible in the next following recruitment if he/she is not overage by more than 3 years.3 In the Schedule of this Notification, as adverted to hereinabove, none of the Rules mentioned therein did deal with either the process of recruitment to the post of

Sweeper in the Municipalities or their service conditions.

By Notification No.8 (Ga)/Rules/DLB/2012/2848 dt.18.4.2012, the Rajasthan Municipalities (Safai Employees Service) Rules, 2012 were notified having been framed in exercise of the powers under Section 337 read with Section 335 of the Rajasthan Municipalities Act, 2009 (for short hereinafter referred-to as the Act.).Rule 6 and Rule 12 of the Rules of 2012 read as under: 6.

Eligibility and age.-(1) Persons having two yearRs.working experience of Safai in any Municipality of the State of Rajasthan shall be eligible for the post.

The widow and divorcee woman may be given preference.

(2) For direct recruitment a candidate must have attained age of 18 years and must not have attained the age of 35 years on the last date of submission of the application for direct recruitment: Provided that the candidates of Scheduled Caste and Scheduled Tribe shall be given five years age relaxation in the upper age limit.

Provided further that the upper age limit for Ex-serviceman candidate shall be fifty yearRs.12.

Regularization of the irregular employee.- The persons irregularly appointed on duly sanctioned posts and completed ten years service on 10.4.2006 and continuously working as such on the date of commencement of these rules, shall be screened by a committee consisting of- (i) Chairperson of the Municipality Chairperson (ii) Deputy Director (Regional) Member (iii)Chief Municipal Officer of the Municipality Member Secretary 4 Provided they were eligible for appointment, as per rules on the date of their initial regular appointment and vacancy is available at the time of screening.

The Appointing Authority shall issue appointment order of the person, who is adjudged suitable by the Screening Committee and appointment shall be effective from the date of issue of such appointment order.

Provided further that the inter-se seniority of the persons screened under this rule shall be determined on the basis of their length of such continuous service in the

Municipality after their regular appointment.

These persons shall rank junior to the persons appointed regularly before commencement of these rules.

As will appear from Rule 6 of the Rules of 2012, as extracted hereinabove, the insertion made by the Notification dated 18.4.2012 was not integrated therein and, as such, for direct recruitment of a candidate in terms of the Rules of 2012, the lower and upper age limit stood as 18 years and 35 years respectively.

In terms of the proviso however, the candidates of Scheduled Caste and Scheduled Tribe community were entitled to age relaxation of five years in the upper age limit.

Further, the upper age limit for the Ex- serviceman was fixed as fifty years. Rule 12 provided for regularization of irregular employee subject to conditions as enumerated therein.

The respondents No.1 and 2 in their reply in substance, while questioning the maintainability of the writ petition, stated that during the pendency of the writ petition, the State Government by order dated 3.5.2013 had issued fresh directions in the matter of recruitment of Sweeper, thus, rendering the challenge to the advertisement dated 25.5.2012 infructuous.

The respondent No.3 averred that as the petitioners had not offered their candidature in response to the advertisement dt.25.5.2012 seeking relaxation of their age, they should not be construed to be persons aggrieved and that in absence of any cause of action, writ petition ought to be rejected in limine.

According to the answering respondents, no cause has been made out for impeaching the validity of Rule 12 of the Rules of 2012 and the same even otherwise does not concern them in any manner.

Learned counsel for the petitioners have reiterated the above.

We have considered the rival pleadings as well as the arguments advanced.

Significantly, on the date of issuance of the Notification dated 23.9.2008, the Rules of 2012 were not in existence.

Be that as it may, non- incorporation of the provision for relaxation of age in these Rules, would not render the notification dated 23.9.2008 invalid at this distant point of time, more particularly in absence of challenge thereto in between 6 on this ground by them.

Non-incorporation of such a provision under the Rules of 2012 also, ipso facto, would not render Rule 6 thereof null and void having regard to the nature of posts as well as service and the exigencies incidental thereto.

Rule 12 of the Rules of 2012 which deals with the regularization of irregular employees, prima facie ensures that persons contemplated are those, who were eligible for appointment to the posts concerned on the date of their initial induction and had completed ten years of service on 10.4.2006 and had been continuously working on the date of commencement of the Rules of 2012.

The regularization in terms of the said provision is to be preceded by a screening by a committee provided therein to adjudge the suitability of a candidate concerned and subject as well to the availability of the vacancy.

Not only the appointment so made, would be effective from the date of issue of such appointment order, the inter-se seniority of persons, so regularized, would be reckoned on the basis of their length of continuous service after such appointment, subject however to the condition that they would rank junior to the persons appointed regularly before the commencement of the Rules of 2012.

The Scheme of these Rules, amongst otheRs.demonstrates that at the initial constitution of the service contemplated thereby, all persons appointed substantively to the post of 7 Safaiwala under the Rajasthan Municipalities (Class IV) Service Rules, 1964 in a Municipality and working on the date of commencement of the Rules of 2012, would be deemed to be existing members of the service of that Municipality.

The Rules do provide as well for the procedure for direct recruitment thereunder and also for probation and confirmation in terms of the provisions with regard thereto.

Rule 12 of the Rules of 2012 understandably has been envisaged to regularize the services of irregular employees appointed on exigencies of institutional needs and who had completed ten years service on 10.4.2006, subject to the conditions enumerated therein and referred-to hereinabove.

Having regard to the framework of the Rules of 2012, we do not feel persuaded to entertain the challenge to the validity of Rule 12 at the instance of the petitioners. The impugnement made, besides being vague, also lacks in substance.

The averment of the respondents No.1 and 2 that meanwhile, the State Government by its order dated 3.5.2013 has issued fresh direction for recruitment of Sweepers in the different Municipalities of the State, thereby rendering the earlier advertisement dated 25.5.2012 otiose, cannot be lightly disregarded.

8 On a cumulative consideration of all above, we are of the view that no case has been made out for interference of this court.

The petition is, thus, dismissed.

(ARUN BHANSALI).J.

(AMITAVA ROY).CJ RANKAWAT JK, PS

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