

Dhirendra Sharma Vs. State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Aug-18-1993

Reported in : AIR1994Raj161

Judge : V.S. Dave and; Mohini Kapur, JJ.

Acts : [Constitution of India](#) - Articles 12 and 14

Appeal No. : Civil Writ Petn. No. 5574 of 1992

Appellant : Dhirendra Sharma

Respondent : State of Rajasthan and ors.

Advocate for Pet/Ap. : B.L. Samdariya, Adv.

Disposition : Petition dismissed

Judgement :

Kapur, J.

1. In this writ petition under Articles 226 and 227 of the [Constitution of India](#), the validity of Sub-clause (3) of Rule 10 of the Rules governing admission of candidates to Teachers Training Institutes has been challenged on the ground that it is unconstitutional and ultra vires of the [Constitution of India](#).

2. For the purposes of admission to District Education and Training Institutions for STC training, certain rules have been framed. Rule 9 lays down educational qualifications for the purposes of admission, while Rule 10 prescribes - the quota for various categories of candidates. Sub-clause (3) of Rule 10 reads as under: --

10- dksV_k fu/kkZ_j.k&&

1- x x x x

2- x x x x

3-,sls ^jkT; deZpkjh** ftudh e`R;q ^jkT; Isok** esa jgrs gq;s gqbZ gks mudsvkfJrksa esa ls dksbZ iRuhAiq=A vfookfgr iq=h ,oa fo/kok o rykdd'kqnkefgykvksa ds fy, fu/kkZfjr ;ksX;rk okys ftrus vkosnd vk'kkFkhZ izos'k ;ksX; gksrks mrus gh LFkku vfrfjDr ekus tkosaxsa A

3. This Rule provides for reservation of certain percentage for women, members of the SC/ST, Political sufferers, ex-defence personnel, physically handicapped and dependents of those employees of the State Government who died in service. The quota referred for the last category is said to be discriminatory in so far as it makes reference only to dependents of those Government Servants who died during the course of their service to the exclusion of dependents, relatives of the other State employees such as Rajasthan State Electricity Board and other Corporations.

4. The petitioner's father was a Lower Division Clerk in the Rajasthan State Electricity Board and he died on 9th June, 1987 while in service. The petitioner, being his dependent wanted to take the benefit of the quota reserved for the dependents of the deceased Government Servant who died during the service and the respondent No. 3 even called him for interview but he sought a clarification from the respondent No. 2 as to whether reservation would be applicable to dependents of employees of the Rajasthan State Electricity Board who died during the service. The clarification was given in the negative.

5. The petitioner first filed a writ petition and by virtue of an interim order, he was given admission to the STC Course but his writ petition was dismissed. Now, this second petition has been filed in which the vires of Rule 10 has been challenged

as this was not challenged in the earlier writ petition.

6. The learned counsel for the petitioner has contended (i) that the Rajasthan State Electricity Board is an authority within the meaning of Article 12 of the [Constitution of India](#); (ii) that the right of education is a fundamental right and there can be no discrimination in the matter of admission to educational institutions; (iii) fundamental rights as guaranteed by the Constitution cannot be taken away by employing the device of establishing Corporations by Acts of Parliament or Legislature; and (iv) that employees of the State Government or Corporation or Board are similarly situated and Rules cannot be framed in a manner by which a distinction is made between them. If they are treated differently then Articles 14 and 21 of the Constitution would be hit.

7. We have considered the arguments raised by the learned counsel for the petitioner and will deal with the same in the order referred to above.

(i) There is no dispute about the first contention of the learned counsel for the petitioner as Article 12 of the Constitution itself says that 'the State' includes the Government, and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India. Rajasthan State Electricity Board falls within the category of other authorities under the control of the Government and is, therefore, a State within the meaning of Article 12 of the Constitution. It has been so held in *Rajasthan State Electricity Board, Jaipur v. Mohan Lal* AIR 1967 SC 1857.

(ii) This question will also does not detain us as recently it has been held in *Unni Krishnan J.P. v. State of Andhra Pradesh* 1993 (1) JT 474 : (AIR 1993 SC 2178) that citizens of this country have a fundamental right to education and this right flows from Article 21 of the [Constitution of India](#). It has been further held that this right is not an absolute right but its contents and parameters have to be determined in the light of Arts, 45 and 41 of the Constitution. In the famous capitation fee case of *Mohini Jain v. State of Karnataka*, 1992 (4) JT 292 : (AIR 1992 SC 1858) the right of education is held to be concomitant to the fundamental rights enshrined under Part III of the Constitution. It has been laid down that the

educational institutions must function to the best advantage of the citizens. Opportunity to acquire education cannot be confined to the richer section of the society. This point also does not need any elaboration and the question of discrimination or distinction shall be considered under the other heads.

(iii) This assertion appears to be misconceived. Establishment of Corporations and such other bodies by Acts of Parliament or Legislature is not done with the intention of curbing the rights of the individuals or citizens but for the proper running of the undertakings and discharge of functions. This argument is only an attempt to confuse the issue. It is beyond the imagination that a Corporation would be established to defeat the rights of its employees. In fact the Corporations have their own set of rules governing their employees and there are separate Rules governing the employees of the State Government. If there is difference in the rules governing the two sets of employees then it cannot be said that the distinction has been made to cause loss to some employees. It is preposterous to say that the creation of the Electricity Board is an attempt to deprive the dependents of the employees of the Rajasthan State Electricity Board from getting admission in the educational institutions for which there is no basis.

8. The main question is whether Rule 10(3) of the instructions contained in the brochure of Rules for admission to the STC training course can be said to be discriminatory. This rule has been quoted above. Article 14 of the Constitution provides that the State shall not deny to any person equality before the law or equal protection of the laws within the territory of India. This concept of equality does not lead to absolute equality and does not forbid classification or differentiation which rest upon reasonable grounds of distinction. Had this rule of equality been without limitations then there could have been no exceptions to it by reserving seats for different categories of candidates. The second clause of Article 14 about the equal protection of laws does not mean that all laws must be general in character and universal in application. There can be a distinction or classification between persons but this classification cannot be arbitrary. Whether a particular legislation or rule is discriminatory would depend on whether it treats persons situated similarly in a different manner. If for purposes of reservation of seats for the dependents for Government Servants who died during service and

the dependents of employees of other Corporation can be said to be similarly situated then it would require that all the laws governing the employees of the State and other Corporations should necessarily be the same. But in actual practice it is not so. The Corporations no doubt are included in the definition of 'State' under Article 12 of the Constitution but, the rules governing the employees of the State and the employees of the Corporations are very much different and it cannot be said that they are similarly situated and there can be no distinction in the matter of rules for the purpose of admission of the dependents of the two sets of employees. If the term 'State Government Employee' can be said to include the employees of the Rajasthan State Electricity Board then why not include the employees of the other Corporations or Boards or Local Bodies such as Municipal Board or Panchayats. All these services are not included in the State Services and this does not amount to discrimination so as to say that the persons similarly situated have not been given the equal treatment. As far as the inclusion of employees of RSEB in the term 'employees of State' is concerned, the writ petition has already been dismissed and as far as the validity of Rule 10(3) is concerned, it cannot be said that the rule makes a distinction between persons similarly situated.

9. We are unable to hold that the reservation for dependents of deceased Government Servants who died during the course of employment is in any manner violative of Article 14 of the [Constitution of India](#) merely because the same facility has not been given to the employees of the Rajasthan State Electricity Board and other Corporations which fall within the definition of 'State' for purposes of Article 12 of the Constitution. We find no force in this writ petition and it is accordingly, dismissed.