



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



S.B. Civil Writ Petition No. 11280/2019

Miss Madhu D/o Shri Muldan, Aged About 22 Years, Resident Of
Village Gugdi, Gram Panchayat Aakadli Baksiram, Via Balotra,
Tehsil Pachpadra, District Barmer (Raj.).

-----Petitioner

Versus

1. State Of Rajasthan, Through Principal Secretary,
Department Of Women And Child Development,
Rajasthan, Jaipur.
2. Director, Women And Child Development Department,
Rajasthan, Jaipur.
3. Deputy Director, Women And Child Development
Department, Barmer.
4. The Child Development Project Officer, Women And Child
Development Department, Balotra-1St, Hq Pachpadra,
District Barmer.
5. Gram Panchayat Aakadli Baksiram, Tehsil Pachpadra,
District Barmer Through Its Sarpanch/gram Secretary.

-----Respondents

For Petitioner(s) : Mr. Yash Pal Khileree

For Respondent(s) : Mr. Anil Gaur, AAG

JUSTICE DINESH MEHTA

Judgment

Reportable

04/09/2023

1. Feeling aggrieved with a Condition in the Circular dated
09.11.2016, issued by the State Government which deals with



selection, appointment and dispensing with the engagement of Aanganwari Karyakarta, Mini Karyakarta and Helper, the petitioner has invoked the writ jurisdiction of this Court.

2. The petitioner has obtained a graduate's degree in Arts and a Computer Proficiency Certificate (RS-CIT), but is yet to marry.

3. The respondents issued an advertisement dated 28.06.2019 inviting eligible candidates to apply for the posts of Aanganwadi Karyakarta/Mini Aanganwadi Karyakarta/Aanganbadi Sahayika and Asha Sahyogini.

4. The petitioner, a resident of Village Gugdi, District Barmer desirous of working on the post of Aanganwadi Karyakarta for Aanganwadi Center Gugdi (in Tehsil Balotra) approached the respondent No.4 for submitting an application form.

5. As pleaded by the petitioner, the respondent No.4 verbally told her that as she was unmarried, she was not eligible to apply for the post of Aanganwadi Karyakarta in the face of Condition No.1 of the advertisement dated 28.06.2019. And when the respondent No.4 refused to accept her application form, she sent the same on 23.07.2019 by way of speed post.

6. Immediately thereafter, on 25.07.2019, the petitioner moved this Court by way of filing the present writ petition and on 29.07.2019, a Co-ordinate Bench passed the following interim order in the instant writ petition:-

"In the meanwhile and till further orders, the respondents are directed to consider the application filed by the petitioner for appointment on the post of Aanganwadi Karyakarta pursuant to the advertisement dated 28.06.2019 for Gram Panchayat-akadli, Aanganwadi Kendra – Gugdi. However, if she is selected for appointment, the order of appointment shall not be issued to her."





7. Mr. Khileree, learned counsel for the petitioner submitted that Condition No.1 of the advertisement dated 28.06.2019 so also the Condition No.2(A)(ii) of the Circular dated 09.11.2016 is absolutely irrational, discriminatory and violative of fundamental rights of the unmarried candidates.

8. He submitted that no purpose can be said to be achieved by the impugned condition, which requires a female candidate to be married for being eligible for appointment.

9. Mr. Gaur, learned Additional Advocate General submitted that as the petitioner had failed to submit her application form by the last date (13.07.2019), she is not entitled for any relief.

10. In relation to the basic grievance and ground for which the petitioner has approached this Court, Mr. Gaur had nothing much to offer except that the condition requiring candidate to be married given in the Circular and the advertisement has a rationale behind it - after being engaged as Aanganwadi Worker or Helper, if a candidate gets married and shifts to her marital home (located at different place), the working of the Center where she was appointed would get hampered.

11. Heard learned counsel for the parties.

12. The impugned Condition No.2(A)(ii) of the Circular dated 09.11.2016 and Condition No.1 of the advertisement dated 28.06.2019 read thus:-

- “2. (A) चयन हेतु वांछित पात्रता :-
(ii) वैवाहिक स्थिति – महिला का विवाहित होना आवश्यक है।”

“1. । तथा महिला का विवाहित होना आवश्यक है।”



13. Short, yet, question of seminal importance has come up in the case at hands- 'as to whether a candidate can be discriminated or denied public employment on the ground of his/her marital status?'

14. According to this Court the discrimination which is meted out to the unmarried women on account of the offending condition cannot be countenanced. The same is ex-facie illegal, arbitrary and against the very scheme of the Constitution of India, which guarantees equality.

15. This Court is constrained to observe that an entirely new front of discrimination, which was not even envisaged or thought of by the framers of the Constitution has now been opened by the respondents by including the contentious condition in the Circular.

16. In the case of **Madhu Kishwar Vs. State of Bihar** reported in (1996) 5 SCC 125, Hon'ble the Supreme Court while expressing its anguish over the hard reality about women being discriminated against their male counterparts observed thus:-

"28..... Self-sacrifice and self-denial are their nobility and fortitude and yet they have been subjected to all inequities, indignities, inequality and discrimination."

17. Present case is a classic case wherein, the discrimination encountered by women has been given a new facet. An unmarried woman is discriminated against a married woman. The ostensible reason given to support the oppugned condition that an unmarried woman after marriage would migrate to her matrimonial house does not pass muster the test of reasonableness and prudence.



Mere fact that a candidate is unmarried cannot be a reason to disqualify her.

18. A host of questions can be posed to the policy makers of the State - What if, the candidate marries to a boy of the same village or vicinity? What if, a married woman after being engaged as Anganwadi Karyakarta moves to other place? What if, a woman's husband decides to live in woman's parental home? What if, a woman gets widowed or divorced and decides to move to a new place? and What if, a woman does not wish to marry at all !

19. These are a few situations which can emerge in some case or the other. The State can neither pre-empt any such situations nor can it prevent a woman from claiming job simply because she has not tied the nuptial knot.

20. In the opinion of this Court, depriving a women of public employment on the ground of her being unmarried, apart from being violative of fundamental rights guaranteed to a woman under Articles 14 and 16 of the Constitution of India impinges upon a woman's dignity.

21. Furthermore, marital status or the condition of a woman to be married to work in Aanganwadi hardly fulfills any object.

22. The apprehension that after marriage, a women will move on to her matrimonial house is firstly baseless and secondly, it cannot be a reason to justify or protect the offending condition. Even, otherwise, the Circular contains a condition which takes care of the concern expressed by the State. Said Condition reads thus:-

"2. (A) चयन हेतु वांछित पात्रता :-

(i) स्थानीय निवासी होना- ग्रामीण क्षेत्र में आवेदन करने वाली महिला जिस आंगनबाडी केन्द्र के लिए चयन हो रहा है उस राजस्व ग्राम की निवासी होनी चाहिए। शहरी क्षेत्र में आवेदन करने वाली महिला जिस



आंगनबाड़ी केन्द्र के लिए चयन हो रहा है उसी वार्ड की निवासी होनी चाहिए। आवेदनकर्ता महिला के घर में शौचालय होने एवं उसका नियमित उपयोग किये जाने संबंधी घोषणा आवेदन पत्र में की जाना अनिवार्य है। शहरी क्षेत्र में आंगनबाड़ी केन्द्र के लिए उसी वार्ड की महिला द्वारा आवेदन नहीं किये जाने की दशा में आंगनबाड़ी केन्द्र के निकटतम वार्ड की महिला के आवेदन पर भी विचार किया जा सकता है।”



23. Above condition which requires an applicant to be a resident of the area in which the Aanganwadi Center is situated is sufficient to ward off the apprehension of the State and further to ensure smooth functioning of the Aanganwadi Center.

24. The condition of a woman to be married being absolutely unconscionable and violative of women's right to apply and get public employment is liable to be declared arbitrary and unconstitutional.

25. The petition is, therefore, allowed. The impugned Condition No.(ii) of para No.2(A) of the Circular dated 09.11.2016 as well as the Condition No.1 of the advertisement dated 28.06.2019 are hereby quashed to the extent they require a woman to be unmarried. (महिला का विवाहित होना आवश्यक है।).

26. The State will however be free to take requisite undertaking from the unmarried woman candidates or amend the Circular so as to ensure that if a woman having been engaged on any post in any Aaganwadi Center migrates to a place other than the area covered by the Aanganwadi Center on account of marriage or otherwise, her engagement will be brought to an end.

27. The petitioner has already sent her application form and by virtue of the interim order dated 29.07.2019, her application form has been directed to be considered.



28. Hence, the concerned authorities namely, Gram Panchayat and the respondent No.4 are directed to process petitioner's application form within a period of four weeks from today in accordance with law. It will be obligatory upon the respondents to engage the petitioner as Aanganwadi Karyakarta, if she is otherwise meritorious and eligible.

29. The stay petition also stands disposed of accordingly.

(DINESH MEHTA),J

28-Arvind/-