

(2024) 03 TEL CK 0003

High Court For The State Of Telangana:: At Hyderabad

Case No: Writ Petition No. 13570 Of 2023

M.Sunitha

APPELLANT

Vs

State Of Telangana

RESPONDENT

Date of Decision: March 18, 2024

Acts Referred:

- Telangana State And Subordinate Service Rules, 1996 - Rule 22, 22A

Hon'ble Judges: T.Madhavi Devi, J

Bench: Single Bench

Final Decision: Allowed

Judgement

1. In this writ petition, the petitioners are seeking a writ of mandamus declaring the action of the respondents in not implementing the Rule 6 of the Recruitment Rules and not considering the reservation for women in the selection to the post of Welfare Officer Trainee, E1 Grade (Internal), as arbitrary, unjust, discriminatory, contrary to law, unconstitutional and to set aside the same and consequently to direct the respondents to implement the Rule of reservation for women in the selection to the said post. Subsequently, the said prayer has been amended and the respondents have declared the selection list dated 03.06.2023 notified by the respondent No.4 selecting 11 candidates to the post of Welfare Officer Trainee, E1 Grade (Internal) without implementing the reservation for women as contained in Rule 6 of Recruitment Rules and rejecting the claim of the petitioners for selection against the reserved posts for women as unjust, arbitrary and in violation of Notification dated 29.01.2019 issued by the Ministry of Labour and Employment, Government of India and to set aside the same and consequently to direct the respondents to implement the Rule of reservation for women and consider selection of the petitioners against the Roster Points No.17, 18, 22 & 23 duly recasting the select list dated 03.06.2023 and deleting the respondents No.6 to 9 from the selection list and to pass such other order or orders in the interest of justice.

2. Brief facts leading the filing of the present writ petition are that the petitioners are all women candidates, who are working as Senior Assistants in various departments of the respondent organization and possessed the necessary qualification for the post of Welfare Officer Trainee, E1 Grade (Internal). The respondent No.4 has issued a circular dated 01.03.2023 inviting applications for filling up of vacancies of Executive Cadre Posts through internal candidates and one of the post notified was Welfare Officer Trainee, E1 Grade (Internal). The said Circular dated 01.03.2023 has enclosures of details of posts, terms & conditions and Condition No.3 thereof is general information and condition No.19 stated that Rule of Reservation and the spirit of Presidential order, 2018 (Combined Local & Non-local-5% & Local-95%) as approved by the Board of Directors will be applicable for the above posts. It is submitted that the petitioners were eligible to apply for the said post i.e., Welfare Officer Trainee, E1 Grade (Internal) and the petitioners have accordingly applied and have also passed in the written examination held on 21.05.2023 and all the petitioners have secured good marks and are confident that they have a fair chance of getting selected against the Roster Points 17, 18, 22 & 23, which are reserved for women. However, since the Rule of reservation has not been followed for the post of Welfare Officer Trainee, E1 Grade (Internal) and as the notification did not mention any reservation for the said post, the petitioners have made several representations to the respondents, but the respondents have rejected the same vide letter dated 01.06.2023 and therefore, the petitioners have challenged the selection list and also the rejection order in the present writ petition.

3. Learned counsel for the petitioners submitted that Singareni Collieries Limited being a Government undertaking is bound to follow statutory rules i.e., Telangana State & Subordinate Service Rules and that Rule 22 & 22 A of said Rule provides for reservation to women to which both men and women are equally suited. It is submitted that the respondents have however, not reserved the posts for women for the post of Welfare Officer Trainee, E1 Grade (Internal). It is submitted that the fact that the petitioners, being women, were also permitted to make application and also participate in the examination, itself proves that both men and women are equally suited for the said post and therefore, Rule of reservation has to be applied.

4. Learned Standing Counsel appearing for the respondents No.1 to 4, however, relied upon the averments made in the counter affidavit and submitted that the Singareni Collieries is a company with Government participation and is engaged in exploration, excavation, extraction and mining of coal and is having its own Recruitment Policy with framed guidelines duly approved by the Board of Directors. It is submitted that the company is taking up both external and internal recruitments from time to time as per the Recruitment Rules of the company and is implementing the Rule of reservations and local reservations as per the Presidential Order, 2018 as adopted by the Board of Directors. It is submitted that in view of hazardous working conditions in the Mines, women cannot be deployed for certain posts and hence the words 'wherever necessary' were included in Rule 6(a) of

Recruitment Rules and that women reservations cannot be implemented for all the posts. It is submitted that the respondent company is a labour intensive organization and employees work in most hazardous working conditions in underground mines and about 96% of the employees are male candidates. Further, as regards the post of Welfare Officer is concerned, it is stated that it is a statutory one and their duties involve attending mines at odd timings, to rush to the mine and spot in case of underground mine accidents, controlling the agitating workmen and mediating during strikes etc., apart from other statutory duties and hence the respondent company has categorized Welfare Officer Trainee as the post not equally suitable for both men and women. It is submitted that the respondent company has taken a policy decision regarding gender relaxation in all the recruitments of Executive cadre and NCWA cadre posts including to the posts which were previously earmarked for men only vide board minute No.557:5:27, dated 12.08.2021 and one of the resolution is to fill up the vacancies with male or female as per combined merit order duly following Rule of reservation without earmarking 33.33% reservation for the posts where men and women are equally not suited. It is submitted that accordingly, the respondent company has identified the posts which are equally suitable for both men and women and also the posts which are equally not suitable for men and women and as per the policy decision, the posts of Assistant Engineer (E&M), Junior Executive (E&M), Welfare Officer Trainee, Welder Trainee, Electrician Trainee notified in employment Circular dated 01.03.2023, come under posts categorized as not equally suitable for both men and women. It is submitted that in view of the above policy decision, women candidates were also allowed to apply for the post of Welfare Officer Trainee, E1 Grade (Internal), but the selections will be done to the posts as per the combined merit list without women reservation and that the marks obtained by the petitioners as claimed by them in the writ affidavit, are also confirmed by the respondents in their counter affidavit. The respondents have also filed the copies of the recruitment rules and procedure in support of their contentions.

5. The unofficial respondents No.5 to 9, who have been selected and whose selection list has been stayed by this Court, have also filed their respective counter affidavits which are in similar lines of the counter filed by the respondents No.1 to 4.

6. Having regard to the rival contentions and material on record, this Court finds that admittedly, the Rule of reservation as provided in Telangana State & Subordinate Service Rules are adopted by the Board of Directors of the respondents company. The respondents have submitted that due to the nature of the work, they have categorized certain posts equally as suited for men and women and equally not suited for men and women. When the posts are not suited equally for men and women, then according to the respondent company, the reservation in respect of women need not be met. However, this Court finds that the said contention of the respondents is not acceptable. If the posts are equally not suitable for men and women and the functions to be performed are hazardous and women should not be

deployed there under, then no women irrespective of the reservation should be appointed. After going through the nature of duties to be performed by the Welfare Officer Trainee, this Court finds that the women cannot be held to be not suitable for the said post. When the respondent company is allowing the women to participate in the examination and also is willing to appoint them within the combined merit list, then it is not understandable as to how Rule of reservation cannot be applied to the said post. Therefore, this Court is of the opinion that the Rule of reservation, unless and until, is held to be not suitable for women at all and is only suitable for men, the respondents cannot discriminate the women from appointment.

7. In view of the same, the respondents are directed to apply the Rule of reservation to the post of Welfare Officer Trainee and consider the petitioners herein in the order of their merit against the Roster Point Nos.17, 18, 22 & 23 respectively. The selection list dated 03.06.2023 is accordingly set aside and the respondents are directed to prepare the selection list of afresh by following the Rule of reservation under Rule 22 & 22A of the Telangana State & Subordinate Service Rules and re-draw the selection list in accordance there with.

8. Accordingly, this writ petition is allowed. There shall be no order as to costs.

9. Miscellaneous petitions, if any, pending in this writ petition, shall stand closed.