



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

S.B. Civil Writ Petition No. 10748/2018

Gomi D/o Harkha Ram W/o Danaram, Aged About 27 Years,
Resident of Phulasar Chokhla, Tehsil-Baytu, District-Barmer
(Raj.).

-----Petitioner

Versus

1. The State of Rajasthan, through the Secretary, Medical and Health Department, Secretariat, Jaipur (Rajasthan).
2. The Director, Directorate Medical and Health Services, Tilak Marg, Swasthya Bhawan, Jaipur.
3. The Additional Director (Administration), Medical and Health Services, Tilak Marg, Swasthya Bhawan, Jaipur.
4. Board of Secondary Education, Ajmer, through its Secretary.

-----Respondents

For Petitioner(s) : Mr. Vivek Firoda
Mr. Jayram Saran.
For Respondent(s) : Mr. Narendra Singh Rajpurohit, AAG
assisted by Mr. Sher Singh &
Ms. Anita Rajpurohit.

HON'BLE MR. JUSTICE VINIT KUMAR MATHUR

Order

06/08/2024

1. Heard learned counsel for the parties.
2. The present writ petition is being heard and decided in light of the directions issued by the Hon'ble Supreme Court on 14.02.2024 in a bunch of Civil Appeals led by **Civil Appeal No.6559/2023 (State of Rajasthan & Ors. Vs. Gomi)**.
3. Briefly noted the facts in the present writ petition are that the petitioner belongs to OBC Non-Creamy Layer category and in pursuance of the advertisement issued by the respondents on



18.06.2018, the petitioner holding the requisite qualification, applied for the post of Heath Worker (Female) (Non-TSP). Thereafter, the respondents conducted State Level Examination and declared the result of successful candidates. However, the result of the petitioner was withheld on account of the fact that she is having the qualification of 'Adeeb' obtained from Jamia Urdu, Aligarh. Being aggrieved, the petitioner had earlier preferred the instant writ petition (bearing No.10748/2018) which came to be dismissed by a Coordinate Bench of this Court vide order dated 20.08.2018.

4. Aggrieved against the order dated 20.08.2018 passed by the Coordinate Bench of this Court in S.B. Civil Writ Petition No.10748/2018, the petitioner preferred D.B. Civil Special Appeal (Writ) No.940/2019. The Division Bench of this Court vide its judgment dated 02.02.2022 relying upon the judgment rendered in the case of **State of Rajasthan & Ors. Vs. Miss. Firdos Tarannum (D.B. Special Appeal (W) No.534/2005)**, dismissed the said appeal.

5. Dissatisfied by the judgment dated 02.02.2022 rendered by the Division Bench of this Court in D.B. Civil Special Appeal (Writ) No.940/2019, the petitioner preferred a Civil Appeal bearing **Civil Appeal No.6559/2023 (State of Rajasthan & Ors. Vs. Gomi)** before the Hon'ble Supreme Court.

6. The Hon'ble Apex Court vide order dated 15.05.2023, issued notices of the appeal only to the limited extent in the following terms:-

"Delay condoned.





Mr. Saurabh Ajay Gupta, learned counsel appears for the institution-Jamia Urdu Aligarh. The institution is impleaded as respondent No.3 in the special leave petition.

Notice is issued limited to the question whether the other benefits of appointment with retrospective effect can also be granted to the respondents or not.

In other words, notice is not issued with respect to the first portion of the impugned order where there is a direction to the petitioners to consider the case of the respondent for appointment."

7. Thereafter, Hon'ble the Supreme Court while partly allowing the appeal vide judgment dated 14.02.2024, remanded the matter back to this High Court in the following terms:-

"7. In the absence of any adjudication made both by the learned Single Judge and the Division Bench, we have no option but to remand the writ petition to the learned Single Judge. The reason is that for the first time in this appeal, we cannot make an adjudication on several factual aspects. The other reason is that if there is a proper adjudication made by the learned Single Judge, a remedy of appeal before the Division Bench will be available to the aggrieved parties.

8. We, therefore, set aside both the impugned orders dated 02.02.2022 and 20.07.2018 and restore the S.B.C.W.P. No. 10748 of 2018 before the learned Single Judge of the High Court of Rajasthan at Jodhpur.

9. We direct the Registrar (Judicial) of the said High Court to place the said writ petition before the roster Bench on 04.03.2024 at 10:30 a.m. in the morning. We also direct the parties to this appeal to remain present before the learned Single Judge on that day so that the learned Single Judge can fix a schedule for the final hearing of the writ petition.





10. Considering the issue is of the grant of employment, we request the learned Single Judge to give the necessary priority to the hearing of the writ petition.

11. The appeal is partly allowed on the above terms.

12. However, we make it clear that all issues are left open to be decided by the learned Single Judge of the High Court.

13. If there are vacant seats in the posts to which the respondent intended to apply, we hope and trust that the State will not be in a hurry to fill in those seats. Even if the State makes any appointment notwithstanding the observations made above, while issuing an order of appointment, the State Government will make it very clear that the appointment will be subject to the outcome of the pending writ petitions, which are remitted back to the High Court."

8. In pursuance of the directions given by the Hon'ble Supreme Court vide judgment dated 14.02.2024, the present writ petition has been restored to its original number and has been listed before this Court for final adjudication.

9. Learned counsel for the petitioner submits that the petitioner is possessing the qualification of Adeeb from Jamia Urdu, Aligarh which is equivalent to the qualification of Secondary Examination (10th Class) conducted by the Board of Secondary Education, Ajmer and therefore, the petitioner fulfils all the requisite qualifications for holding the post of Health Worker (Female) (Non-TSP).

10. Learned counsel for the petitioner further submits that in the identical set of facts, a Coordinate Bench of this Court at Jaipur in a bunch of writ petitions led by **S.B. Civil Writ Petition**



**No.1457/2021 (Jahida Salma Vs. State of Rajasthan & Ors.**

allowed the writ petition on 10.02.2022 in the following terms:-

"It is undisputed that all the petitioners have obtained 'Adeeb' qualification from Jamia Urdu, Aligarh prior to year 2011. Thus, the aforesaid judgment applies with full vigour in the instant writ petitions.

There is another important aspect of the matter. The qualification provided for appointment on the post of Female Health Worker under the Rajasthan Medical & Health Subordinate Service Rules, 1965 (for brevity "the Rules of 1965"), is as under:

"Xth standard with Auxiliary Nurse Midwifery/ Health Worker Female Course passed and registered in Rajasthan Nursing Council as B Grade Nurse."

It nowhere provides that Xth standard must be passed from the Board of Secondary Education, Rajasthan, Ajmer or should be an equivalent qualification so declared by the Board of Secondary Education, Ajmer, in absence whereof, the question of recognition/equivalence, perhaps, does not arise.

Learned counsels for the respondents could not satisfy this Court as to requirement of recognition/equivalence by the Board of Secondary Education, Rajasthan, Ajmer in absence of any such stipulation in the Rules of 1965. Of course, the Board from which a candidate has passed Xth standard must be valid one, a situation obtaining in the present case.

Therefore, the judgment relied upon by the respondents in case of Karan Singh (supra) is of no assistance to them.

In view of the above, the writ petitions deserve to be allowed.

The writ petitions are allowed accordingly. The respondents are directed to consider candidature of the petitioners for appointment on the post of Health Worker (Female) and to accord them appointment if found suitable otherwise as per their respective merit position with all consequential benefits from the date persons less meritorious were given appointment barring actual monetary benefits.





The pending applications, if any, stand disposed of accordingly.”

11. Learned counsel, therefore, prays that the present writ petition may also be allowed in terms of the Coordinate Bench's decision rendered in the case of **Jahida Salma** (supra).

12. Learned counsel for the petitioner further submits that the appeal filed against the order dated 10.02.2022 passed in the case of Jahida Salma (supra) has also been dismissed by a Division Bench of this Court.

13. *Per contra*, learned Additional Advocate General vehemently opposed the submissions made by learned counsel for the petitioner and he submits that a Division Bench of this Court in **D.B. Special Appeal (Writ) No.537/2016 (Sarita Vs. State of Rajasthan & Ors.)**, decided on 05.10.2016 had held that the qualification acquired from Jamia Urdu, Aligarh is a qualification awarded by an institute which is not having any legal sanction behind it, and as such, the same cannot be held to be equivalent to the Secondary Examination. Learned Additional Advocate General further submits that the Division Bench has relied upon two notifications issued by the State Government at the relevant point of time. He, therefore, prays that the writ petition may be dismissed.

14. I have considered the submissions made at the bar and gone through the relevant record of the case.

15. The issue involved in the present writ petition is that while considering the eligibility criteria for the post of Heath Worker (Female) (Non-TSP) in pursuance of the advertisement dated 18.06.2018, the qualification of 'Adeeb' can be considered as





equivalent to Secondary Examination of the Board of Secondary Education, Ajmer, Rajasthan or not?

16. The Coordinate Bench at Jaipur in the case of **Jahida Salma** (supra) has dealt with the controversy in detail and has come to the conclusion that the educational qualification of 'Adeeb' is equivalent to Secondary Examination on the basis of Division Bench's judgments rendered in the case of **Altaf Bano Vs. State of Rajasthan & Ors. (D.B. Civil Special Appeal (Writ) No.258/2004)**, decided on 06.04.2005 and in the case of **State of Rajasthan & Ors. Vs. Miss. Firdos Tarannum & Anr. (D.B. Special Appeal (Writ) No.534/2005)**, decided on 12.01.2022. Apart from this, the Co-ordinate Bench at Jaipur in the case of **Jahida Salma** (supra) has also held that in Rajasthan Medical and Health Subordinate Rules, 1965, the qualification prescribed is 10th standard and it has nowhere been stated that the same should be equivalent qualification so declared by the Board of Secondary Education, Ajmer, Rajasthan.

17. In the considered opinion of this Court, there is no reason to take a different view than the one which has already been taken by the Coordinate Bench of this Court in the case of **Jahida Salma** (supra) as the selection process in question is for the same post and for the same notification.

18. It is further observed that the Hon'ble Supreme Court vide order dated 14.02.2024 has not issued notices with respect to the first portion of the impugned order where there is a direction to the petitioner to consider the case of the respondents for appointment while examining the correctness of the order dated





12.01.2022 passed in the case of **Miss. Firdos Tarannum** (supra).

19. In this view of the matter, the writ petition is allowed in terms of the order passed by the Coordinate Bench of this Court at Jaipur in the case of **Jahida Salma** (supra). The respondents are directed to undertake the process of appointment and appoint the petitioner on the post of Heath Worker (Female) (Non-TSP) considering the qualification of 'Adeeb' as equivalent to Secondary Examination from the Board of Secondary Education, Ajmer, Rajasthan, if she is otherwise eligible, within a period of eight weeks from today.

(VINIT KUMAR MATHUR),J

550-Shahenshah/-

