HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

D.B. Civil Writ Petition No. 10672/2021

Ganga Kumari D/o Bhika Ram, Aged About 29 Years, Khari, Tehsil Raniwada, District Jalore

----Petitioner

Versus

1. State Of Rajasthan, Through The Chief Secretary, Government Of Rajasthan, Jaipur.
2. Secretary, Department Of Home, Government Of Rajasthan, Jaipur.
3. Secretary, Department O Personnel, Government Of Rajasthan, Jaipur
4. Secretary, Rajasthan Public Service Commission, Ajmer
5. The Director General Of Police, Police Head Quarter, Rajasthan, Jaipur.

----Respondents

For Petitioner(s) : Mr. Rituraj Singh Rathore.
For Respondent(s) : Mr. Manish Vyas, AAG.
Mr. D.D. Chitlangi.

HON'BLE MR. JUSTICE MANINDRA MOHAN SHRIVASTAVA
HON'BLE MR. JUSTICE MADAN GOPAL VYAS

Order

14/02/2022

Heard.

This petition has been filed by the petitioner seeking issuance of directions in the matter of providing proper and effective reservation to the transgenders in terms of the mandate of the Supreme Court in the case of **National Legal Services Authority Vs. Union of India & Ors. [(2014) 5 SCC 438].**

Learned counsel for the petitioner would argue that the Supreme Court in the case of National Legal Services Authority

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(supra) had examined the rights of the transgenders in the matter of appointment to public services, as also admission to educational institutions. According to him, despite there being detailed directions issued by the Supreme Court, the State, so far, has not implemented those directions.

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On the other hand, learned counsel for the State would submit that as far as prescription relating to reservation is concerned, it is a matter of prerogative of the State as to the manner and the extent to which reservations have to be provided. According to the respondent-State, the petitioner cannot seek that the reservations in a particular manner or to the extent should be provided to her.

Having heard learned counsel for the parties, we are of the view that in view of the aforesaid pronouncement in the case of National Legal Services Authority (supra), the State is left with no option but to implement the directives, which have been issued by the Supreme Court.

To remind all the authorities of their obligations to comply with the mandate of the Supreme Court in the aforesaid decision, we reiterate the directives, which have been issued by the Supreme Court, which are as below:

> *"135.1. Hijras, Eunuchs, apart from binary gender, be treated as "third gender" for the purpose of safeguarding their rights under Part III of our Constitution and the laws made by the Parliament and the State Legislature.*
>
> *135.2. Transgender persons' right to decide their self-identified gender is also upheld and the Centre and State Governments are directed to grant legal recognition of their gender identity such as male, female or as third gender.*
>
> *135.3. We direct the Centre and the State Governments to take steps to treat them as socially and educationally*

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backward classes of citizens and extend all kinds of reservation in cases of admission in educational institutions and for public appointments.

135.4 The Centre and State Governments are directed to operate separate HIV Sero-surveillance Centres since Hijras/Transgenders face several sexual health issues.

135.5. The Centre and State Governments should seriously address the problems being faced by Hijras/Transgenders such as fear, shame, gender dysphoria, social pressure, depression, suicidal tendencies, social stigma, etc. and any insistence for SRS for declaring one's gender is immoral and illegal.

135.6. The Centre and State Governments should take proper measures to provide medical care to TGs in the hospitals and also provide them separate public toilets and other facilities.

135.7. The Centre and State Governments should also take steps for framing various social welfare schemes for their betterment.

135.8. The Centre and State Governments should take steps to create public awareness so that TGs will feel that they are also part and parcel of the social life and be not treated as untouchables.

135.9. The Centre and the State Governments should also take measures to regain their respect and place in the society which once they enjoyed in our cultural and social life."

Amongst various directions, which have been issued by the Supreme Court, in paragraph 135.3, it has been categorically directed to the Central Government as well as State Government to take steps to treat transgenders as socially and educationally backward classes of citizens and extend all kinds of reservations in cases of admission in educational institutions and for public appointments.

Such a direction clearly casts an obligation on the part of the State to work out reservation in such manner and to such extent as it may decide on the basis of relevant data available. Much time has lapsed since the directions were issued by the Supreme

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Court in the case of National Legal Services Authority (supra) and the State should have come out with proper rules, regulations and legislations to provide special treatment as directed by the Supreme Court.

Taking into consideration the nature of exercise required to be undertaken by the State, we hereby direct the State to complete the exercise expeditiously and we grant maximum period of four months to do the needful.

As far as present selection process is concerned, we would only say that presently the petitioner would be allowed to participate in the process of selection and her candidature shall not be rejected only on the ground that she is third gender.

Subject to the directions as stated hereinabove, this petition is finally disposed off granting relief to the petitioner in the manner and to the extent as indicated above.

This petition is partly allowed.

(MADAN GOPAL VYAS),J **(MANINDRA MOHAN SHRIVASTAVA),J**

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