



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

S.B. Civil Writ Petition No. 17396/2023

Ms. Shubhra Panwar D/o Shri Ashok Kumar Panwar, Aged About 40 Years, R/o Behind Geetanjali School, Mahamandir, Jodhpur (Obc/w/divorced).

----Petitioner

Versus

1. The State Of Rajasthan, Through The Principal Secretary, Department Of Public Health And Engineering Secretariat, Jaipur (Raj.).
2. The Commissioner (Inquiry), Department Of Personal (Dop) And Training, Secretariat, Jaipur (Raj.).
3. The Union Of India, Ministry Of Home Affairs Through Its Director, Major Dhyan Chand National Stadium, India Gate, New Delhi.
4. The Deputy Secretary To The Government, Department Of Personal (K-3/inquiry), Secretariat, Jaipur.

----Respondents

For Petitioner(s)	:	Ms. Tuli Tanya Raman Ekta
For Respondent(s)	:	Mr. Nitesh Mathur Ms. Nidhi Singhvi Mr. Brijesh Bhintal for Mr. Kirta Ram Meghwal (Union of India)

HON'BLE DR. JUSTICE NUPUR BHATI
Order

05/05/2026

1. The instant writ petition has been filed by the petitioner with the following reliefs:-

"1. That the impugned charge sheet dt. 08.07.2021 (annexure-20) issued by the respondent no.2 may kindly be quashed and set aside.

II. That the respondent no.1 may be directed to procure the eligibility certificate from MHA or it may be issued by the respondent department itself.

III. That the services of the petitioner on the post of assistant engineer may kindly be confirmed and she may be given a permanent status in the services by extending all the service benefits including arrear of regular pay scale. annual grade increments, leave and medical benefits, fixation of pay by revising the same under the provisions of revised pay scale rules amended from time to time. All the arrears of pay and monetary benefits may be granted with 12% interest p.a.

IV. That the petitioner may be consider for granting the benefit of further promotion on the post of executive engineer in case in DPC is convened during pendency of the writ petition.

V. That the respondent no.3 may be directed to registered the petitioner as a citizen of India by way of renunciation of the citizenship of Kenya.

VI. That the writ petition may be allowed with all consequential reliefs which is favorable to the petitioner under facts and circumstances of the case.

V. Any other appropriate order of direction which this Hon'ble Court deems just and proper in the facts and circumstances of the present case, may kindly be passed in favour of the petitioner."

2. Brief facts of the case are that the petitioner, a native of Jodhpur, Rajasthan, acquired her educational qualifications, including Secondary, Senior Secondary, B.E. (Civil), and M.E., from Jodhpur. She was married on 31.01.2009 to Shri Chirag Tak, who was working in Nairobi, Kenya, and thereafter shifted to Kenya, where, upon her husband's request, she renounced her Indian citizenship and acquired citizenship of Kenya on 08.11.2012. Due to marital discord involving ill-treatment and harassment, she returned to India and obtained a decree of divorce on 07.03.2013. Being an OCI card holder and otherwise fully qualified, she applied for the post of Assistant Engineer (Civil) pursuant to the advertisement dated 07.03.2013 issued by RPSC, and under Rule 8 of the Rajasthan Service of Engineers and Allied Post (Public Health Branch) Rules of 1968, a Kenyan citizen who has migrated to India is eligible to apply. After duly disclosing all credentials, she was found eligible, selected, and appointed vide order dated 11.10.2017. Meanwhile, after returning to India, she applied for grant of Indian citizenship, but no decision, either acception or rejection, has been taken on her applications for the past several years. Subsequently, the respondent department issued a show

cause notice dated 22.04.2021 and sought submission of an eligibility certificate, though as per the Ministry of Home Affairs (hereinafter referred to as 'MHA') memorandum dated 10.05.1978, the same is to be obtained by the department itself. Thereafter, an impugned charge sheet dated 08.07.2021 was issued, initiating disciplinary proceedings against the petitioner without any authority of law, giving rise to the present petition.

3. Learned counsel for the petitioner submits that the petitioner was holding citizenship of Kenya and renounced her Indian citizenship; in this regard, a Certificate of Renunciation dated 17.02.2010 (Annex-2) has been issued in her favour. As per Rule 8 of the Rajasthan Service of Engineers and Allied Post (Public Health Branch) Rules of 1968 (hereinafter referred to as "Rules of 1968"), a Kenyan citizen who has migrated to India is eligible to apply for the post of Assistant Engineer (Civil).

4. Learned counsel for the petitioner further submits that the petitioner had applied for appointment to the post of Assistant Engineer pursuant to the recruitment process initiated by the respondents, and was duly appointed however, the respondents subsequently issued a charge-sheet alleging that the petitioner had failed to submit a certificate of eligibility with regard to her nationality. Learned counsel for the petitioner, drawing the attention of the Court to the Office Memorandum dated 10.05.1978 (Annex-8) issued by the MHA submits that the onus to procure the certificate of eligibility lies solely with the respondent department, as clearly stipulated therein and the respondent while ignoring the said Office Memorandum, have wrongly issued the charge-sheet to the petitioner. She further submits that, on

account of the issuance of the charge-sheet, the respondents have neither regularized nor extended the petitioner's regular pay scale, and she continues to remain on probation. Additionally, it is submitted that Rule 8-A of the Rules of 1968 clearly provides that the instructions and conditions issued by the Government of India shall apply *mutatis mutandis* to persons migrated from other countries to India, notwithstanding the conditions relating to nationality, age-limit and fee or other concessions contained in the Rules.

5. Learned counsel for the respondents submits that the Office Memorandum dated 10.05.1978 (Annexure-8) lays the onus upon the administrative section of the department with reference to Clause 4 thereof. However, learned counsel for the respondents is unable to refute that Clause 7 of the said Memorandum explicitly lays the responsibility upon the concerned department. Learned counsel for the respondents further submits that on account of the disciplinary enquiry pending against the petitioner, her services have not been confirmed.

6. Heard learned counsel for the parties.

7. The principal issue in the present case is as to upon whom lies the responsibility to obtain the certificate of eligibility. There is no dispute that the petitioner fulfilled all the requisite qualifications and eligibility conditions prescribed by the respondents and was duly appointed to the post of Assistant Engineer. There is also no dispute with regard to her educational qualifications or her substantive eligibility for the post.

8. The plain reading of the Office Memorandum dated 10.05.1978 (Annexure-8) makes it abundantly clear that the

candidate is not required to approach the concerned department for issuance of the certificate of eligibility. Rather, it is the appointing authority which is required to approach the Ministry/Department, concerned for issuance of such certificate. The relevant part of said Office Memorandum is reproduced hereunder:-

"7.Under no circumstances should the candidate be required to approach this Department or the Ministry/Department concerned direct for the issue of certificate of eligibility. It is for the appointing authority concerned to approach the Ministry/Department, administratively concerned, for issue of the certificate. This supersedes the earlier instructions relating to the procedure for issue of certificates of eligibility."

9. Learned counsel for the petitioner has also referred to Rule 8 and Rule 8-A of the Rules of 1968 and perusal of the said rules makes the legal position clear. Rule 8 of Rules of 1968 identifies the nationality, categories eligible for appointment including persons of Indian origin migrated from specified foreign countries, subject to issuance of certificate of eligibility by the Government of India. Rule 8-A of the Rules of 1968, further provides that the eligibility requirements and allied conditions for such migrated persons shall be regulated in accordance with the orders and instructions issued by the State Government, which in turn, must confirm *mutatis mutandis* to the instructions issued by the Government of India. Thus, in the case of migrants from foreign countries who intend to settle permanently in India, their eligibility in respect of nationality, age and allied concessions is not rigidly governed by general rule, but by such executive instructions as the State Government may issue, which are broadly consistent,

with necessary modifications, with the policy laid down by the Union of India.” Rule 8 and Rule 8-A are reproduced hereunder:

“Rule 8 of the Rules of 1968:

“8. "Nationality":- A candidate for appointment to the service must be:-

- (a) a citizen of India, or
- (b) a subject of Nepal, or
- (c) a subject of Bhutan, or
- (d) a Tibetan refugee who came over to India before the 1st January. 1962 with the intention of permanently settling in India, or
- 1. (e) a person of Indian origin who has migrated from Pakistan, Burma, Sri Lanka and East African Countries of Kenya, Uganda and the United Republic of Tanzania (formerly Tanganyika and Zanzibar) +Zambia, Malawi, Zaire and Ethiopia with the intention of permanently settling in India:

Provided that a candidate belonging to categories (b) (c) (d) and (e) shall be a person in whose favour a certificate of eligibility has been issued by the Government of India.

A candidate in whose case a certificate of eligibility is necessary may be admitted to an examination or interview conducted by the Commission or other recruiting authority and he may also provisionally be appointed subject to the necessary certificate being given to him by the government.

Rule 8-A of the Rules of 1968:

"Conditions of eligibility of persons migrated from other countries to India":- Notwithstanding anything contained in these rules provisions regarding eligibility for recruitment to the Service with regard to nationality, age-limit and fee or other concessions to a person who may migrate from other countries to India with the intention of permanently settling in India shall be regulated by such orders or instructions as may be issued by the State Government from time to time and the same shall be regulated mutatis mutandis according to the instructions issued on the subject by the Government of India.”

10. The respondents have therefore clearly failed to comply with the binding instructions issued by the Ministry of Home Affairs, Government of India and have unjustifiably initiated disciplinary proceedings against the petitioner while issuing charge-sheet dated 08.07.2021 (Annex-20) under Rule 16 of Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958. The

contention of the respondents that the obligation did not lie on the department but the administrative side, is untenable. In view of the clause 7 of the office memorandum dated 10.05.1978, it is the appointing authority itself which is required to approach the ministry/department, administratively concerned for issuance of the eligibility certificate.

11. It is, thus, held that the action of the respondents in not taking the appropriate action for issuance of the certificate of the eligibility and charge-sheeting the petitioner for not producing the same, is unjust and improper.

12. As a result of the aforesaid discussion, the instant writ petition is hereby allowed. The charge-sheet dated 08.07.2021 (Annexure-20) is quashed and set aside. The respondents are directed to take necessary steps for issuance of the eligibility certificate within a period of 'four weeks' from today. The respondents shall also consider the case of the petitioner for confirmation in service and extend all consequential service benefits in accordance with law.

13. It is further directed that if the petitioner's application for grant of citizenship of India is pending before respondent No.3, the said authority shall decide the same strictly in accordance with law by passing a speaking order within a period of 'four weeks' from the date of receipt of certified copy of this order.

14. Stay application as well as all other pending applications, if any, also stand disposed of.

(DR.NUPUR BHATI),J