

(2015) 01 RAJ CK 0223
In the Rajasthan High Court
Case No : Civil Writ Petition No. 4514 of 2013

Ajay Kumar Sharma and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 20-01-2015

Acts Referred:

Citation : (2015) 01 RAJ CK 0223

Hon'ble Judges : Veerender Singh Siradhana, J

Bench : Single Bench

Advocate : Sunil Kumar Singodiya, for the Appellant

Final Decision : Dismissed

Judgement

Veerender Singh Siradhana, J.—The petitioners after having participated in the recruitment process in response to the advertisement dated 26th February, 2013, for appointment to the post of Nurse Grade-II, have approached this Court praying for the following relief(s):--

"i) The Respondents be directed to consider the candidature of the petitioners for appointment on the post of Nurse Gr. II in pursuance of the advertisement dated 26.12.2013 at par the candidates who got appointment under NRHM Scheme on the post of GNM in the year 2008 and further the respondents be directed to award 30 bonus marks to the petitioners against the experience under NRHM Scheme;

ii) The respondents be directed to give appointment to the petitioners on the post of Nurse Gr. II with all consequential benefits;

iii) Any other order which this Hon"ble Court deems fit in the facts and circumstances of the case may also be passed in favour of the Petitioner."

2. Briefly, the skeletal material facts necessary for appreciation of the controversy raised in the instant writ application needs to be first noticed. The petitioners submitted their application for consideration of their consideration for

appointment on the post of General Nurse Male (GNM) under the Rajasthan Medical and Health Subordinate Service Rules, 2008, in response to the advertisement dated 26th April, 2013. Referring to Clause-8 of the advertisement, the petitioners have staked their claim for grant of 30 bonus marks. According to the learned counsel for the petitioners, in S.B. Civil Writ Petition Number 4298 of 2008 (Manoj Kumar Sharma and Ors. versus State of Rajasthan and Ors.), a Coordinate Bench of this Court, issued a direction to the State-respondents, to accord appointment to the candidates in case the petitioners were found place in the merit list dated 28th February, 2009, of GNM with a further direction to make room for meritorious candidates instead of those who were lower in merit. Learned counsel though admits that the petitioners did not approach this Court in the year 2008, but submits that, had the State-respondents complied with the directions issued in case of Manoj Kumar Sharma and Ors. (supra), in letter and spirit, the petitioner would have been selected, and in consequence would have acquired the required experience while working on contract basis, and thus, would have become entitled for award of 30 bonus marks, which is the relief prayed for in the instant writ application.

3. I have heard the learned counsel for the petitioners, and with his assistance, perused the materials available on record.

4. At the very outset, the learned counsel admitted the fact that in the year 2008, the petitioners did not approach this Court for the reason that the Coordinate Bench of this Court had already passed an order in the case of Manoj Kumar Sharma and Ors. (supra), which reads thus:--

"However, there are chances that the name of the petitioner(s), may appear in the State merit list, therefore, all the writ petition except Sharmila Paneri are disposed of with a direction to the respondents that in case the name of the petitioner(s) stand in the State merit list dated 28.02.2009 of G.N.M. and the advertised vacancies are available then they may be given appointment as per their merit even if the less meritorious persons are continuing, then they have to make room for the petitioner(s) whose name stands higher on merit in State merit list."

5. On the basis of the direction aforesaid, learned counsel would further submit that since the State-respondents did not comply with the directions in letter and spirit, which deprived the petitioners of their appointment on contractual basis, resulting into loss of employment on contractual basis. Appointment on contract basis, as a consequence, would have entitled them for award of 30 bonus marks, resulting into enhanced percentage of marks, ensuring their selection in response to the advertisement dated 26th February, 2013.

6. Learned counsel has not disputed the fact that in the case of State of Rajasthan and Others Vs. Archana and Another, (2013) 4 WLN 450 ; the Division Bench of this Court at Principal Seat, after a detailed consideration of the matter has restricted the award of bonus marks to the extent of 15% only. The

judgment of the Division Bench was subject matter of Special Leave Petition before the Hon''ble Supreme Court, preferred by the State-respondents. However, the Special Leave Petition has been withdrawn, and therefore, the claim of the petitioners to the extent of 15% bonus marks is valid.

7. Indisputably, the petitioners were never appointed on contractual basis either in NRHM or Medical Relief Society. It is on the basis of an imaginary situation, in the backdrop of the direction issued by the Coordinate Bench of this Court in the case of Manoj Kumar Sharma and Ors. (supra), which would have entitled the petitioners for employment on contractual basis, and had the State-respondents complied with the direction in letter and spirit while according appointment on contractual basis, strictly in accordance with the merit; the petitioners would have been eligible for award of bonus marks.

8. A glance at the factual matrix wherein admittedly the petitioners never worked on contractual basis; the claim for award of bonus marks, is absolutely misconceived. The petitioners having raised no grievance with reference to the recruitment process, which was initiated and concluded in the year 2008, cannot claim any right whatsoever. Further, the claim with reference to the recruitment process of 2008, suffers with the vice of delay and laches. Moreover, the petitioners after having participated in the recruitment process in response to the advertisement dated 26th February, 2013, cannot question the criteria of selection having been unsuccessful.

9. It needs no reiteration that a candidate having been unsuccessful in the selection process, is precluded from challenging the selection process or the criterion. The law declared by the Hon''ble Supreme Court in this reference had been reiterated time and again in a catena of judgments relying upon the verdict in the case of Dhananjay Malik and Others Vs. State of Uttaranchal and Others, AIR 2008 SC 1913 : (2008) 1 CLT 753 : (2008) 3 JT 611 : (2008) 3 SCALE 425 : (2008) 4 SCC 171 : (2008) 1 SCC(L&S) 1005 : (2008) AIRSCW 2158 : (2008) 2 Supreme 328 ; wherein the Hon''ble Supreme Court observed thus:

"7. It is not disputed that the writ petitioners-respondents herein participated in the process of selection knowing fully well that the educational qualification was clearly indicated in the advertisement itself as B.P.E. or graduate with diploma in physical education. Having unsuccessfully participated in the process of selection without any demur they are estopped from challenging the selection criterion inter alia that the advertisement and selection with regard to requisite educational qualifications were contrary to the Rules.

8. In Madan Lal and Others Vs. State of Jammu and Kashmir and Others, AIR 1995 SC 1088 : (1995) 2 JT 291 : (1995) LabIC 1575 : (1995) 1 SCALE 494 : (1995) 3 SCC 486 : (1995) 1 SCR 908 : (1995) 2 SLJ 161 : (1995) 2 UJ 817 , this Court pointed out that when the petitioners appeared at the oral interview conducted by the Members concerned of the Commission who interviewed the petitioners as well as the contesting respondents concerned, the petitioners took

a chance to get themselves selected at the said oral interview. Therefore, only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed writ petitions. This Court further pointed out that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted. In the present case, as already pointed out, the writ petitioners- respondents herein participated in the selection process without any demur; they are estopped from complaining that the selection process was not in accordance with the Rules. If they think that the advertisement and selection process were not in accordance with the Rules they could have challenged the advertisement and selection process without participating in the selection process. This has not been done."

10. For the reasons and discussions herein above, the writ petition is devoid of any substance, and lacks in merit, and therefore, deserves to be dismissed.

11. Ordered accordingly.

12. In view of the final adjudication on the writ application, the stay application stands closed.

13. However, in the facts and circumstances of the case, there shall be no order as to costs.