

(1997) 01 GAU CK 0008
In the Gauhati High Court
Case No : Civil Rule No. 723 of 1996

All Manipur Science Graduate Two-Years Degree Course
Association

APPELLANT

Vs

Commissioner (Health) and Others

RESPONDENT

Date of Decision : 22-01-1997

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 16(1), 16(2), 309

Citation : (1997) 3 GLR 360

Hon'ble Judges : P.K. Sarkar, J

Bench : Single Bench

Advocate : R.K. Sanajaoba Singh, for the Appellant; Ashok Potsangbam, A.G. and N. Kotishwor Singh, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Sarkar, J.—This Writ Petition has been filed by All Manipur Science Graduate Two years Degree Course Association. The Petitioners' Association has got 36 (thirtysix) members who are all Science Graduates in Two-Years Degree Course. The Director of Health Service, Respondent No. 3, and the Employment Exchange of Imphal, Respondent No. 4, issued an advertisement inviting applications for filling up of 61 (sixtyone) posts of Health Supervisors (Microscopist) as per qualifications notified by the Government on 10th June, 1996 (Annexure-A/6). All the members of the Petitioners' Association applied for the posts though the members of the Petitioners association are not Science Graduate Three Years B.Sc. or Two-years B.Sc (Hons) Course. It is submitted that Two-years Degree Course in B.Sc. has been replaced by three-years Degree Course for all purposes except for prosecution of higher studies in M.Sc. Course. Consequently, it is submitted that the members of the Petitioners association are also eligible for the posts of Health Supervisors (Microscopist). It is further alleged by the Petitioners that prior to 10th June, 1996 there was another Recruitment Rules for the posts of Microscopist and the qualification prescribed in the aforesaid Recruitment

Rules (RRs) was Matriculate or HSLC or Equivalent trained in Malariology.

2. It is contended that there is no reason for the Govt. to change the earlier Recruitment Rules seeking a higher qualification for the same post and now Rules of 1996 cannot be applied in the case of present recruitment for 61 (sixtyone) posts of Health Supervisor (Microscopist). The Govt. issued a notification on 20th August, 1996 and in that notification it was stated that Admit Cards shall not be issued to the candidates who are not eligible as per Recruitment Rules of 1996. The Petitioners sought a direction that the aforesaid notification dated 20th August, 1996 (Annexure-A/7) should be quashed.

3. It is further alleged that the Recruitment Rules (Annexure-A/7) should also be quashed being unreasonable and violative of Articles 14 and 16 of the Constitution of India.

4. The Respondents 1, 2 and 3 filed a counter affidavit wherein they have denied the allegations made by the Petitioners association. It is stated in the counter that earlier there were posts of Microscopist. It is further, stated that the Govt. has made fresh duty chart for the Health Supervisor (Microscopist) and according to the new job chart the holders of the aforesaid post are required to discharge more responsible duties and the nature of the job requires specialisation on subjects, like Botany/Zoology/Chemistry. Considering the higher duties and responsibilities to be discharged by the Health Supervisor (Microscopist), the government has redesignated the post of Microscopist to Health Supervisor (Microscopist) and prescribed higher educational qualification for the aforesaid post; and considering the higher responsibilities of the holder of the aforesaid post, the Government has also increased the pay scale for the post of Health Supervisor (Microscopist). Accordingly, the Government has cancelled the earlier Recruitment Rules by an order dated 24.10.94 (Annexure-R/2).

5. The Government has created 67 (sixtyseven) posts of Health Supervisor (Microscopist) in the year 1995 and it has been proposed by the Govt. that the aforesaid posts will be filled up with more qualified persons so as to enable them to discharge higher duties and responsibilities. Accordingly, the new set of Recruitment Rules have been framed by the Govt. which was published by a notification dated 10th June, 1996, the new set of Recruitment Rules have been framed by the Govt. which was published by a notification dated 10th June, 1996. It is, further, stated that the Petitioners should not have any grievance, because the Government is competent to prescribe the minimum education qualification for a particular post or service having regard to the duties and responsibilities to be discharged by the holder of the post.

6. It is, further, stated that the present job of the Health Supervisor (Microscopist) cannot be discharged by a person who has not passed B.Sc. with Honours in Botany/Zoology/Chemistry; or by a person who has not passed Three-Years Degree Course in Science with Botany/Zoology/Chemistry. It is, therefore, contended that the Government can prescribe reasonable qualifications for any

particular post and such reasonable qualification is not violative of Articles 14 and 16 of the Constitution of India; and therefore, the Petitioners who are simple Science Graduate in Two-Years Degree Course are not eligible for being considered for the post of Health Supervisor (Microscopist) as they do not satisfy the minimum educational qualification as per RRs of 1996. It is, therefore, submitted that the Writ Petition be dismissed having no merit.

7. Mr. R.K. Sanajaoba Singh, learned Sr. Advocate appearing on behalf of the Petitioners submits firstly that the present vacancy has arisen when the old recruitment rules were in force. Therefore, the minimum educational qualification prescribed in the RRs of 1996 cannot be applied in the case of recruitment of (sixtyone) post of Health Supervisors (Microscopist). The learned Counsel further, submits that 67 (sixty seven) posts of Health Supervisors (Microscopist) have been created by the Government by an order dated 28th June, 1995 (Annexure-R/3). The new RRs prescribing higher qualification have been framed and notified by the Government on 10th June, 1996. Consequently, the learned Counsel submitted that since the vacancies arose prior to coming into force of 1996 RRs, these 61 (sixty one) posts as advertised by the Respondents 2 and 3 should be filled up according to the qualification prescribed in the earlier recruitment rules. According to the earlier Recruitment Rules, the educational qualification prescribed for the post of Microscopist which has been redesignated to the post of Health Supervisor (Microscopist) was Matriculation or HSLC or Equivalent trained in Malarialogy.

8. Mr. R.K. Sanajaoba Singh, learned Counsel for the Petitioners, has further submitted (hat the members of the Petitioners association are Science Graduates in Two-Years Degree Course; and therefore, they are eligible for the post according to the old Recruitment Rules. The learned Counsel in support of his submission referred the Case Law reported in (1994)(1) GLR 164. In the aforesaid case, decided by the Full Bench of this Court, it appears that the Government of Tripura Administration framed Recruitment Rules for the post of Inspector of Police in 1962 and thereafter the aforesaid rules were replaced by a new set of rules in 1981. Some Inspectors of Police filed some cases for their retrospective promotion which has been ultimately decided by the Full Bench of this Court. The Full Bench held that 1981 rules were not given retrospective operation. Therefore, while considering the promotion of the Sub-Inspector of Police by Court judgment in the vacancies occurred prior to 1981 would be governed by the Recruitment Rules of 1962.

9. In the present case, the situation is different. It appears from Annexure-R/3 of the counter affidavit filed by the Government that the Govt. has created 67 (sixtyseven) posts of Health Supervisor (Microscopist) by an order dated 28th June, 1995; and it, further appears from Annexure-R/2 of the counter affidavit of the Government that the Government by an order dated 24th October, 1994 redesignated the post of Microscopist as Health Supervisor (Microscopist) and increased the pay scale for the said post. In the aforesaid order dated 24th

October, 1994 (Annexure-R/2), it has been, further, ordered that with the redesignation and increase of pay the existing Recruitment Rules for the post of Microscopist shall become inoperative with immediate effect, Therefore, it is obvious when the post of 67 (sixtyseven) Health Supervisors (Microscopist) were created on 28th June, 1995 (Annexure-R/3), there was no Recruitment Rules for the aforesaid posts as the earlier RRs have already been cancelled by the Government by an order dated 24th October, 1994 (Annexure-R/2). Consequently, it is apparent that when 67(sixtyseven) posts of Health Supervisor (Microscopist) were created, there was no Recruitment Rules for the aforesaid post; and therefore, the Case Law referred by the learned Counsel for the Petitioners cannot be applied in the present case. The learned Counsel also referred the Case reported in 1983 SC 852 and judgment in the C.R. 537 of 1990 and 569 of 1990 decided by this Court on 01.01.1992. I have gone through the aforesaid Cases, but the aforesaid Cases cannot be applied in the present case in view of the fact that on the date of creation of the posts, there was no Recruitment Rules for the aforesaid posts. The 61 (sixtyone) posts advertised by the Government are from the 67 (sixtyseven) posts created by the Government on 28th June, 1995 (Annexure-R/3). Since the earlier Recruitment Rules were not in force on the date of creation of the posts for which the present advertisement had been issued, I am of the clear opinion that the Recruitment Rules which have been cancelled by the Government cannot be applied in the case of recruitment of present 61 (sixtyone) posts by the Government. Consequently, I am of the clear view that there is no force in the arguments of Mr. R.K. Sanajaoba Singh, learned Sr. Advocate appearing on behalf of the writ Petitioners that old RRs will apply in filling up the present 61 (sixtyone) posts of the Health Supervisor (Microscopist).

Further, it appears from the case laws referred by Mr. R.K. Sanajaoba Singh that in those cases a right was accrued to the Petitioners of those cases as per old RRs for promotion to next higher post. Therefore, the Hon'ble Supreme Court and this Court directed to apply old RRs in the matter of promotion of the Petitioners of those cases. But in the present case no such right has been accrued to the Petitioners. Consequently, I am of the opinion that those case has got no manner of application in the present case.

10. Secondly, Mr. R.K. Sanajaoba Singh, learned Counsel for the Petitioners submits that the new Recruitment Rules of 1996 should be quashed as unreasonable. Mr. R.K. Sanajaoba Singh has submitted that earlier in the Health Department, there were Posts Microscopist and the aforesaid post has been redesignated as Health Supervisor (Microscopist). The educational qualification for Microscopist was Matriculate or HSLC or its equivalent with training in Malariology. The learned Counsel has also submitted that the Microscopist appointed by the Government are still discharging their duties in the redesignated post of Health Supervisor (Microscopist). Consequently, the learned Counsel has submitted that there is no reason for the Government to prescribe higher educational qualification, like B.Sc. (Hons) for the same post of Health

Supervisor (Microscopist). The learned Counsel for the Petitioners, R.K. Sanajaoba Singh has further argued that the Government has illegally prescribed the higher qualification in the 1996 Recruitment Rules only to deprive the members of the Petitioners association. The learned Counsel consequently submits that if the Health Supervisor (Microscopist) having educational qualification of Matriculate/HSLC with training in Malariology can discharge the powers and functions of the post held by them, it is unreasonable to seek candidates with higher educational qualification, like B.Sc. (Hons) for discharging the same duties. The learned Counsel has therefore, submitted that there is no reason to prescribe higher educational qualification like Three Years Science Graduate or B.Sc. with Honours for the post of Health Supervisor (Microscopist) and such higher qualification being unreasonable for the post of Health Supervisor (Microscopist) should be quashed.

11. The learned Advocate General, Mr. Ashok Potsangbam argued that the earlier Microscopists now redesignated as Health Supervisor (Microscopist) were recruited according to the educational qualification of the earlier Recruitment Rules and they cannot discharge the duties and responsibilities of the present day Health Supervisor (Microscopist). In the present situation, duties and responsibilities of a Microscopist has become more difficult and they are discharging more specialised and supervisory works than the technical aspect of his duty. The Advocate General has, further, stated that considering the higher duties and responsibilities of the Health Supervisor (Microscopist), the Govt. has created 67 (sixty seven) new posts; and having regard to the duties and responsibilities to be discharged by the holders of the aforesaid posts, the Govt. has prescribed the educational qualification of the candidates in the 1996 Recruitment Rules. The learned Advocate General has further submitted that these specialised job of the Health Supervisor (Microscopist) cannot be discharged by a person who has not done their specialised course of studies in Science stream. The Advocate General has, further, submitted that the present day duty of the Health Supervisor (Microscopist) cannot be discharged by a person unless he is thoroughly conversant in the subjects, like Botany/Zoology/Chemistry. It is further submitted that the present day duty of the Health Supervisor (Microscopist) can only be discharged by a person who is a Science Graduate with Honours in any of the aforesaid subjects in Two-Years Degree Course or who has passed B.Sc. in Three-Years Degree Course with any one of the aforesaid subjects.

12. The learned Advocate General draws to my attention to paragraph 3 of the counter affidavit filed by the Govt. In para-3 of the counter affidavit, the duties and responsibilities to be discharged by the Health Supervisor (Microscopist) have been stated. It appears from the job chart of the Health Supervisor (Microscopist) that the Health Supervisor (Microscopist) are to discharge the following duties and functions:

a) At Malaria Clinic, the Malaria Microscopist will collect blood smears from all

fever cases reporting at the Clinic, examine them immediately and administer antimalarial. He will, if necessary, recall the patient on subsequent days for completing full radical treatment.

b) He will collect blood smears from fever cases reporting to him or referred to him by the Medical Officers and maintain their records in MF-2.

c) He will receive all blood smears along with MF-2 sent by the peripheral staff of the PHC.

d) He will stain the blood smears with JSR Stain.

e) He will examine microscopically 100 fields of thick smear of the stained blood slide which takes about 5 minutes before the slide is declared positive or negative. Examination of 100 fields is technically essential for identification of species and stage (s) of malaria parasite.

f) In his report, he will indicate the stages of malaria parasite found in the blood along with the species.

g) He will maintain the records in MF-7, 8 and 9 registers.

h) He will send back the copy of MF-2 the periphery within 48 hour of examination, if possible through MPW (Male), Voluntary Link Work or Health Supervisor with results of Microscopic examination for prompt radical treatment.

i) He will maintain sub-centre-wise and PHC-wise charts as prescribed under MPO.

j) He will clean old and new glass slides and supply replenishment to MPWs (Male and Female), FTDs and Voluntary Link Workers or any oilier passive or voluntary (i.e. NGO) bipod smear collecting agency.

k) He will maintain the stock register of antimalarial and also keep sufficient stock for replenishment to MPWs (Male and Female), FTDs, DDCs and Voluntary Link Workers.

l) He will keep stock of staining material and use them with care.

13. On perusal of the aforesaid job chart, it appears that the Health Supervisor (Microscopist) are to discharge some technical duties which may be helpful for a candidate who has done his specialisation in Botany/Zoology/Chemistry in the course of studies at B.Sc. level. The learned Advocate General has also submitted that considering the higher duties and responsibilities to be discharged by the present day Health Supervisor (Microscopist), the Government has increased the pay scale of the aforesaid post. It is also submitted that with a view to attract talented and qualified candidates for the post, the Government has prescribed the qualification in the Recruitment Rules of 1996.

14. I cannot agree with the submission of Mr. R.K. Sanajaoba Singh, learned Sr. Advocate appearing on behalf of the Petitioners, because it is not in dispute that the Government has framed the Recruitment Rules for the post of Health

Supervisor (Microscopist) by a notification dated 10th June, 1996 in exercise of the powers conferred on the Governor under Article 309 of the Constitution of India. It is also not in dispute that the statutory rules have been made prescribing Science Graduate of Three-Years Degree Course or B.Sc. (Hons) of Two-Years Degree Course as qualification for recruitment to the post of Health Supervisor (Microscopist). It is a settled law that the State has got power to prescribe qualification for recruitment to any particular service or post. The Govt. has cancelled the earlier Recruitment Rules prior to creation of the advertised posts, It is not a case of accrued right. The members of the Petitioners Association cannot claim that a right has been created in their favour under the old rules. It has already been observed that on the date of creation of the new posts, the old Recruitment Rules was not in force; and therefore, the members of the Petitioners Association do not acquire any right for consideration for the advertised posts. The Government has a right to proceed with the recruitment for the posts advertised as per qualification prescribed in the 1996 RRs. By prescribing higher educational qualification for the post in the Recruitment Rules of 1996, the equality of opportunity has not been violated. Equality of opportunity need not be confused with absolute equality as such. What is guaranteed is the equality of opportunity and nothing more. Article 16(1) or 16(2) does not bar a reasonable classification of employees or reasonable tests for their selection. The only test that is to be looked into is that there must be a reasonable relation of the prescribed test or qualification to the suitability of the candidate for the post or for employment to public service as such. The provisions of Article 14 or 16 do not exclude the laying down of selective tests nor do they preclude the Govt. from laying down qualifications for the posts in question. It is therefore not right to say that Govt. should not have prescribed higher qualification for the post of Health Supervisor (Microscopist).

Having regard to the duties and responsibilities to be discharged by the Health Supervisor (Microscopist), I am of the opinion that the higher qualification prescribed for the post is in consistent with the post, Consequently, I am of the opinion that there is no force in the submission of the learned Counsel for the Petitioner that the higher qualification prescribed in 1996 Recruitment Rules is violative of Article 14 or 16 of the Constitution.

15. It is clear that in exercise rule making power, the Governor or the authorised person is entitled to prescribe method of recruitment, qualifications- educational or technical for appointment or conditions of services of the post to any office or post under the State. The Recruitment Rules being a statutory cannot be impeached on the ground that the authority has prescribed the higher qualification to deprive certain individuals. It is a settled law that no motive can be attributed to a rule making authority in making the law.

16. Having regard to the submissions of the learned Counsel of both the parties, I am of the opinion that the Govt. is entitled to prescribe minimum qualification for a particular post and the Recruitment Rules of 1996 prescribing candidates

having B.Sc. (Hons) or B.Sc. in Three-Years Degree Course with Botany/Zoology/Chemistry as one of the subjects cannot be said to be unreasonable, having regard to the duties and responsibilities to be discharged by the holders of the post.

17. Thirdly, Mr. R.K. Sanajaoba, learned Counsel for the Petitioner has submitted that members of the Petitioners Association are eligible under both the Recruitment Rules. The learned Counsel for the Petitioners submits that Admit Cards were issued to the members of Petitioners Association and they were allowed by this Court to sit in the written examination. It is true that by an interim order of this Court the Petitioners were allowed to sit in the written examination, but for being considered for appointment to the post of Health Supervisor (Microscopist), they must satisfy the minimum educational qualification prescribed in the 1996 Recruitment Rules. Mr. R.K. Sanajaoba Singh, learned Counsel appearing on behalf of the Petitioners submitted that in the Three-Years Degree Course in B.Sc. the candidates who do not get Honours marks prescribed by the University but obtain pass marks are declared passed in B.Sc. and as per Recruitment Rules of 1996 Rules those candidates who have just passed the B.Sc. in Three-Years Degree Course are eligible for the post of Health Supervisor (Microscopist) as per provisions of the 1996 RRs. The learned Counsel, further, argued that Two Years B.Sc. Degree Course candidates who have opted for Honours Course but do not get Honours Marks should also be eligible for the post of Health Supervisor (Microscopist) as per provisions of the 1996 Recruitment Rules. Before deciding this issue, it is necessary to see the Degree awarded in Two- years B. Sc. Course and the Degree awarded in Three-Years B.Sc. Course. Under the Scheme of Three-Years Degree Course for Degree of Bachelor of Science, a student will have to study for 3 (three) years, In the first year, they and first class Honours is awarded to a student who gets 60% and above marks, There was no category (known as passed) in Two-Years B.Sc. (Hons) Course. Unless a student gets a minimum of 40% marks in the Honours Subject in Two-Years Degree Course, he was declared as failed in Honours Subject. Those students who undertake pass course in B.Sc. Course they are not required to take Honours Subjects and there is no specialisation in any science subject including Zoology/Botany/Chemistry. In Two-Years B.Sc. Course specialisation can be done in any subject, if a student takes Honours Course.

18. Therefore, a pass in Core Subject or Honours Subject in Three-Years B.Sc. Course cannot be equated with a unsuccessful student of Two-Years B.Sc. Course. Consequently, I am of the view that a candidate who has not secured honours marks in Two-Years B.Sc. Course is not eligible for the post of Health Supervisor (Microscopist) as per provisions of 1996 RRs.

19. Having regards to the facts and circumstances stated above, I cannot agree with the submissions made by the learned Counsel for the Petitioner. Since the members of the Petitioners Association are not B.Sc. (Hons) of Two-Years Degree Course, they are not eligible for the post of Health Supervisor (Microscopist).

Consequently, They cannot be considered for appointment to the post of Health Supervisor (Microscopist) even though they have appeared in the written test as per interim order of this Hon'ble Court, Since the members of the Petitioners Association do not satisfy the required minimum educational qualification of Two-Years B.Sc. (Hons) are to pass the foundation course. In the second year, they are to pass any elective subjects consisting of 3 (three) papers each having 300 marks. If they are passed in first and second year, then in third year they are to study Core Subject, i.e. in any science subject in other words, they are to take up Honours Course in the third year. Therefore, unless a student passed in Core Subject in Three-Years Degree Course he cannot be said to be eligible for the post of Health Supervisor (Microscopist). In Three-Years Degree Course leading to Bachelor of Science, successful candidates are divided in 4 (four) categories, namely: (a) Honours with Distinction (B.Sc.) 75% marks and above, (b) First Class Honours (B.Sc.) 60% marks and above but less than 75% marks, (c) Second Class Honours (B.Sc.) 45% marks and above but less than 60% marks and (d) passed B.Sc. 36% marks and above but less than 45% marks. Therefore, under the Three-Years Degree Course in Science, a student can not be declared passed even though having Second Class Honours Marks. Consequently a candidate of Three-Years Degree Course in Science who has just passed the B. Sc. in any of the subjects in Zoology/Botany/Chemistry is eligible for the post of Health Supervisor (Microscopist).

20. The Two-Years B. Sc. Honours Course do not contemplate a pass only in Honours Subject. In Two-Years Degree Course of bachelor of Science, there were two categories of courses. One is B.Sc. pass and the other is B.Sc. (Hons). The students who elects Honours Subject in Two-Years B.Sc. Course they get a Degree in B.Sc. (Hons), if they secured 40% and above marks, or Science Graduate of Three-Years Course, they cannot be considered for the post of Health Supervisor (Microscopist).

21. Considering the submissions of the learned Counsel of both the parties, I am of the clear view that there is no merit in the present petition and the petition is dismissed; but under the facts and circumstances, I do not make any order as to costs. Interim order, if any, is vacated.