

(2014) 08 RAJ CK 0008

In the Rajasthan High Court

Case No : Civil Writ Petition No. 19395/2013 and Stay Application No. 16543/2013, Civil Writ Petition No. 16144/2013 and Stay Application No. 13592/2013, Civil Writ Petition No. 16733/2013 and Stay Application No. 14145/2013, Civil Writ Petition

Anil Yadav and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 06-08-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 19

Citation : (2014) 08 RAJ CK 0008

Hon'ble Judges : Mohammad Rafiq, J.

Bench : Single Bench

Advocate : Giriraj Jat, Shanti Choudhary, Dhanraj Sandiwal, Om Prakash Siyag, Dharamveer Meena, Chitra Pareek, Asha Verma, Nakul Goyal, Permannad Mourya, Pankaj Gupta, Mukesh Kumari, Naveen Sanwariya, Nawab Khan, Dinesh Kumar, Ramesh Chand Choudhary, Himanshu Nirwan, Veer Singh Dukya, Sumati Jain, Pawan Kumar Khatri, Prabhu Arya, Karni Kripal Sharma, Sandeep Kumar Santoriya, Manoj Kumar Sharm, Vishnu Nagoria, Mahendar Swami, Khushbu Patodiya, Manish Kumar Sharma, Rahul Kumar Jaiman, Rajendra Kumar Verma, Love Kumar Heda, Kamlesh Kumar Sharma and Kailash Saini, for the Appellant; Gopal Bhardwaj, OIC and Party-in-Person, for the Respondent

Final Decision : Dismissed

Judgement

Mohammad Rafiq, J.?All these writ petitions seek to challenge selection made by respondents on the post of Informatics Assistant on various grounds.

2. In the writ petitions, it is prayed that result of second part of examination, which pertains to type-tests of Hindi and English both, being contrary to prescribed norms, be declared illegal, be quashed and set aside with direction to respondents to hold fresh examination. Further prayer is made for a direction to the respondents not to appoint any person on the post of Informatics Assistant pursuant to advertisement dated 25.04.2013. Prayer is also made that

respondents be restrained from making appointment of ineligible candidates and all those, who have not cleared the pretest. In some of writ petitions, alternative prayer is also made that the respondents be directed to operate the waiting list and if the waiting list is not operated, then the respondents be directed to conduct a fresh type test for the post of Informatics Assistant and to conduct the type test by providing the key board of Hindi as per the diagram mentioned in the guidelines.

3. Briefly stated the facts of the cases are that the respondent Information Technology and Communication Department of the State Government issued an advertisement on 25.04.2013 for recruitment to 6300 posts of Informatics Assistant. According to the petitioners, the Medical and Health (Group-2) Department sanctioned 3617 posts of Informatics Assistant for successful implementation of Point No. 41 announced by the then Chief Minister in the Budget of the Year 2012-13, presented to the Rajasthan Legislative Assembly on 05.02.2013. Likewise, the Medical and health (Group-2) Department, on 04.03.2013, sanctioned 1848 posts of Informatics Assistant under the Scheme of Chief Minister Free Diagnostic Scheme. It further sanctioned 835 posts of Informatics Assistant for various departments of the State Government. Thus total 6300 posts were sanctioned.

4. As per the scheme of examination, the examination was to take place in two phases. In first phase, the candidates were required to clear the online test and in the second phase, the successful candidates were required to appear for type test on computers. The admit cards were issued to the candidates. Centers were allotted within the State of Rajasthan and also outside the State. On-line written examination took place on 06.07.2013. Petitioners cleared the on-line written examination and thereafter their type test took place on different dates. Candidates three times the vacancies were called for type test, which included name of petitioners. Petitioners eventually did not find their names in the select list.

5. Petitioners contend that the Medical Department withdrew/reduced 1600 posts of Informatics Assistant on 16.07.2013 and that total posts were thus reduced to only 4771. Had the respondents filled in all the advertised posts of Informatics Assistant, the petitioners would have been appointed, and, therefore, the respondents ought to operate the waiting list. Total 1800 posts out of 6300 advertised posts, were meant for Medical and Health Department. A news item was published on 23.08.2013 in daily newspaper that Medical Department has sanctioned 1848 posts of Informatics Assistant under the Chief Minister Free Diagnostic Scheme. There was no reason therefore to withdraw such advertised posts from the process of selection.

6. Contention of respondents that such posts have been converted in the posts of Clinical Record Assistants and separate advertisement was issued therefor on 10.07.2013, is wholly misleading. Once the posts were created with the designation of Informatics Assistant, they could not be converted into or re-

designated as Clinical Record Assistants, because grade pay of both the posts is different. The grade pay of the post of Informatics Assistant is Rs. 2400/-, whereas that of the post of Clinical Record Assistant is Rs. 1900/-. Method of recruitment to two posts is also different. While the recruitment to the post of Informatics Assistant is based on on-line written examination and skill test, recruitment to the post of Clinical Record Assistant is to be made on the basis of bonus marks, and the same was done only with a view to regularizing the services of contractual/ad-hoc employees of the department concerned, who were working as computer operators with machine through service providers. Those persons do not have requisite qualification as per the norms of the State Government. If the respondents are permitted to go ahead with the process of selection on the post of Clinical Record Assistant on the basis of advertisement dated 10.07.2013, the petitioners, who are placed in the waiting list, would be deprived of their appointment. The petitioners have acquired the qualification of computer from the Universities/Institutions, which are included in the list issued by the Distance Education Council, whereas the persons, who are working on contract basis with Chief Minister Free Diagnostic Scheme, do not possess such qualification. The respondents have cancelled selection of 18 candidates on account of their not having requisite qualification and of seven other candidates for other reasons. Selection of many other candidates has been cancelled for various reasons. Respondents ought to therefore operate waiting list to give appointment to the petitioners. Reliance in this regard is placed on the Circular dated 19.07.2001 issued by the Department of personnel, Government of Rajasthan, whereunder guidelines have been issued as to the manner in which the waiting list should be operated. Since the posts are still lying vacant, the respondents ought to give them appointment. Number of vacancies cannot be reduced without operating the merit list. Action of the respondents in doing so is violative of Articles 14, 16 and 19 of the Constitution. Petitioners have also submitted that as per the progress representation of the department for the financial year 2013-14, only 1763 Informatics Assistants are working against 4014 sanctioned posts, which clearly shows that 2251 posts are still lying vacant. Respondents should therefore be required to operate the waiting list.

7. Petitioners have also contended that the respondents issued guidelines for type test, wherein it was mentioned that the candidate shall be required to perform the type test of Hindi and English languages on the Computer. In the said guidelines, the diagram of the key board for Hindi type was also mentioned, according to which the petitioners made preparation for the type test, but the key board, which was supplied to them at the time of examination was different and the Hindi words were not appearing in the key board and that the keys were also different and for that reason the petitioners could not perform perfectly in the type test. Petitioners made a complaint regarding this to the Instructor/Invigilator at the time of type test but no action was taken by them to solve the problem. The example of the case of Sushil Kumar Jindal (petitioner in Writ Petition No. 19194/2013) has been given, who has been awarded zero mark in

the type test, which cannot be accepted because he performed the type test very well.

8. Petitioners, in support of their cases, have relied on judgment of the Supreme Court in *K. Manjusree Vs. State of A.P. and Another*, wherein it was held that selection criteria has to be prescribed in advance. Rules of game cannot be changed in the midst of process of selection.

9. Shri Gopal Bhardwaj, OIC for respondents, submitted that all the petitioners have failed to secure place in the select list and reason for this was that they could not clear the type test. It is submitted that the respondents had very clearly mentioned in the guidelines issued that the example of diagram given in the guidelines was tentative and that they were required to check the keys as per Devlys010 font and that some keys may be differ in Devlys010 from the example diagram given in the guidelines. Such guidelines were uploaded on the website. The respondents have produced on record copy of the guidelines containing aforesaid key board, and the proof showing that it was uploaded.

10. It is contended that for practice of the candidates, a mock test was also provided on the website and a press note was also issued in this regard. There are three types of key boards in Hindi type, namely, Remington, Inscript and Phonetics. Remington layout is most popular in Hindi type. Therefore, petitioners cannot blame if they are not able to perform perfectly. It is further contended that the department clearly mentioned in the guidelines regarding key board font, evaluation criteria, definition of correct word and direction for using typing software. In point No. 30 of the issued guideline, it was also mentioned that if any candidate finds any problem during exam, he/she can immediately notify by use of bell provided in the examination software, to the invigilator. In pursuance of the order dated 31.07.2013 of the department, a committee was constituted in the chairmanship of Shri A.M. Deshpandey, Technical Director, to examine and inspect the software provided by the selected agency for type speed test to be held in the second phase of the Informatics Assistant Recruitment Examination - 2013. On examining the typing application, the Committee found total eight errors and the said eight errors were rectified by the agency holding the examination. Thereafter, on receiving such complaints, another departmental committee consisting of one Technical Director and two System Analyst, was constituted, which has again examined the typing application and found the application commensurate with the instructions of the respondent Department.

11. It is contended that originally although number of advertised posts were 6300 but eventually the number was reduced to 4771 and reason for this was that the Medical and Health Department, which had earlier sanctioned 1848 posts, had withdrawn the requisition and thus number of posts was reduced. This was clearly indicated in the advertisement that number of posts can be increased and decreased, and thus recruitment could be made on the reduced number of posts. Respondents did not receive any order of creation of 1800 additional posts of Informatics Assistant, as alleged in the writ petition. Only 4402 candidates

were selected as per the criteria and their result was declared. Most of the petitioners have found place in the waiting list. Some of the petitioners cleared the English type test but others could not. The candidates were in the first place permitted to appear in the examination and the scrutiny of the eligibility at the time of application was not made. The eligibility and other qualification were to be confirmed upon final result by way of verification of documents and therefore even some of the candidates, who were not eligible, were permitted to participate in the examination and that by itself would not confer upon them any right to appointment. It is contended that qualifying the type test was mandatory. The respondents have issued the list of selected candidates after verification and thereafter the appointment orders were issued to only those candidates whose verification has been done by the respondent Department. Roll numbers of some candidates were entered due to typographical error and, therefore, revised list was uploaded on the website.

12. It is contended that the evaluation of typing test was got done through software. Typing copies were evaluated by the service provider Detha Info-Media Private Limited and private Firm (BIPS) through software. The department, on receiving such complaints, also constituted a higher level committee to verify both evaluated result. The department also prepared software to cross-check the result using same data and the committee concluded that candidate-wise statistics through the software of Detha Info-media Limited, BIPS and software of DoIT&C matched exactly with each other. The said committee consisted of Senior Project Manager, Joint Director and Technical Director. The respondents also uploaded copies of all the candidates on website. In speed test, copies uploaded by the department, mentioned line-wise total typed words, total wrongly typed words, total overly typed words and total correctly typed words by the candidates. Respondents have also produced for perusal of the court, copies of some of the candidates.

13. It is contended by the respondents that there was no power failure in any of the exam test centers during exam because exam was conducted on generators, and there was no report of generator break-down.

14. Petitioners have submitted a chart indicating that the cut-off marks of the selected candidates of the written examination in their category is much lesser than the marks secured by them in the written examination and therefore, if only on their answer-sheets of the type test in Hindi and English had been evaluated, they would have most certainly secured the appointment, and this would be evident from the charts in Schedule-I and Schedule-III given in Writ Petition No. 17096/2013 (Hemant Kumar Sharma and Others v. State of Rajasthan and Others):--

SCHEDULE-I

SCHEDULE-III

15. On considering rival submission and perusing the material on record, I find

that the principal grievance of the petitioners is as to reduction of the posts. While initially 6300 posts were advertised, eventually the number was reduced to 4771. The respondents have clarified this by contending that Medical and Health Department had withdrawn the requisition of posts as it has converted the same into the posts of Clinical Record Assistants and separate advertisement was therefore issued on 10.07.2013. Such of the petitioners, who were eligible to compete the post of Informatics Assistant, could have competed for the same as there was no restriction for them not to apply against such vacancies, compete for the same and secure appointment. Reduction of number of posts cannot be faulted as it is always open to the recruiting agency/department to increase or decrease the advertised posts. In fact Clause 5(b) of the advertisement dated 25.04.2013, clearly gave out that number of advertised posts can be decreased/increased by the department after issuance of the advertisement and in that event recruitment shall be made for such decreased/increased posts.

16. As regards the contention that some of the candidates, who are not eligible, have been selected, cannot be accepted as the petitioners have not substantiated their case by giving any particular instance or details of such candidates with reference to the institution from where they secured qualification, which, according to them, was not recognized yet they were selected for appointment.

17. Contention that the key board of Hindi language that was actually found on the computers, was different than the one indicated in the guidelines, also cannot be accepted because the respondents have categorically clarified in the guidelines issued that the example of diagram given in the guidelines was tentative and that they were required to check the keys as per Devlys010 font and that some keys may be differ in Devlys010 from the example diagram given in the guidelines. Such guidelines were uploaded on the website. For practice of the candidates, a mock test was also provided on the website and a press note was also issued in this regard. The department clearly mentioned in the guidelines regarding key board font, evaluation criteria, definition of correct word and direction for using typing software.

18. The respondents also constituted a committee under the chairmanship of Shri A.M. Deshpandey, Technical Director, to examine and inspect the software provided by the selected agency for type speed test to be held in the second phase of the Informatics Assistant Recruitment Examination - 2013. On examining the typing application, the Committee found total eight errors and the said eight errors were rectified by the selected agency. The respondents, on receiving complaints, also constituted another departmental committee consisting of one Technical Director and two System Analyst, which has again examined the typing application and found the application in consonance with the instructions of the respondent Department.

19. It is settled proposition of law that mere selection does not confer any right and therefore when even those, who are placed in main select list, do not possess right, the right of those who are placed in waiting list, is of much weaker

nature. They cannot insist on operating waiting list and grant them appointment unless the respondents have requirement and decide to operate the waiting list.

20. The writ petitions are therefore liable to be dismissed and the same are accordingly dismissed. This also disposes of stay applications.