

(2021) 01 SHI CK 0165

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 1866, 1981, 2589 Of 2020

Anmol Kapoor & Another

APPELLANT

Vs

H.P. Staff Selection Commission, Hamirpur Through Its
Secretary & Others

RESPONDENT

Date of Decision : 07-01-2021

Acts Referred:

Himachal Pradesh, Department Of Health And Family Welfare, Radiographer, Class-III
(Non-Gazetted) Recruitment And Promotion Rules, 2016 — Rule 1(2)

Citation : (2021) 01 SHI CK 0165

Hon'ble Judges : Ajay Mohan Geol, J

Bench : Single Bench

Advocate : Mohit Thakur, Narender Sharma, Ajay Sharma, Amit Jamwal,
Sanjeev Kumar Motta, Ajay Vaidya, Dalip K. Sharma, Yogesh Kumar Chandel

Final Decision : Disposed Of

Judgement

Ajay Mohan Goel, J

1. These three writ petitions are being disposed of by a common judgment as similar facts and issues are involved.

2. Respondent/HP Staff Selection Commission, Hamirpur vide advertisement No. 33-2/2017 (Annexure P-3) annexed with CWP No. 1866 of 2020,

inter alia, invited applications for the posts of Radiographer on contract basis for the Health & Family Welfare Department, total 154 in number. It is

pertinent to mention that subsequently the number of posts advertised were reduced but the same, as the Court stands informed, have been restored

by a decision of the Hon'ble Division Bench of this Court in CWP No. 3371 of 2019, titled Robin Singh Mehta & others vs. State of H.P. &

others, decided on 12.11.2020.

3. The online applications for the post in issue were to be submitted from 16.09.2017 to 15.10.2017. It was mentioned in the advertisement that the date for determining the eligibility of all candidates in respect of essential qualifications and experience, if any, shall be the prescribed closing date for submission of online recruitment application i.e. 15.10.2017. The Court stands informed that this date was later on extended up to 31.10.2017. The eligibility criteria as laid down in the advertisement for the purpose of filling up the posts of Radiographers was as under:

â??a)

i) 10+2 in Science from a recognized Board of School Education/University.

ii) Diploma in Radiology from an Institution recognized by the Central/H.P. Government.

OR

B.Sc. Degree in Radiology from a recognized University.

b) Must be registered with H.P. Para Medical Council, Shimla.â??

4. Petitioners who duly applied for being considered for appointment to the posts in question, are aggrieved by the factum of their candidature having

being rejected by respondent No. 1/Commission on the ground that they did not fulfill the eligibility criteria laid down in the advertisement i.e. â??Must

be registered with H.P. Para Medical Council, Shimlaâ?. Two of the petitioners were initially selected also but subsequently their candidature was

rejected.

5. I have heard learned counsel for the parties and have also gone through the record of the case.

6. In terms of the direction issued by this Court on 6th January, 2021, Sh. Jitender Kanwar, Secretary, HP Staff Service Commission, Hamirpur

alongwith Sh. Ajay Kumar, Law Officer is present with whom the Court has had a meaningful discussion on the issue.

7. The recruitment to the posts of Radiographer was governed by the Himachal Pradesh, Department of Health & Family Welfare, Radiographer

Class III (Non-Gazetted), Recruitment and Promotion, Rules, 2011 (hereinafter referred to as the â??R&P Rules of 2011â?) which Rules stood

notified vide notification dated 3rd November, 2011. These Rules are on record as Annexure R-1 appended with the rejoinder filed by the petitioner to

the response filed by respondent No. 1/Commission. In terms of the said Rules the minimum educational and other qualifications required for direct

recruitment to the post of Radiographer were as under:

7. Minimum educational and other qualifications required for direct recruits. -

(a) Essential Qualification. - (i) 10+2 in Science or its equivalent from a recognized University/Board.

(ii) One year Diploma in Radiology from an Institution recognized by State Government.

OR

B.Sc. Degree in Radiology from Himachal Pradesh University or equivalent.

Preference will be given to person holding graduate degree in Radiology.

(b) Desirable Qualifications.- Knowledge of customs, manners and dialects of Himachal Pradesh and suitability for appointment in the peculiar

conditions prevailing in the Pradesh.

8. These R & P Rules of 2011 were repealed vide notification dated 15th November, 2016 issued by the Health & Family Welfare Department,

whereby fresh Rules i.e. the Himachal Pradesh, Department of Health and Family Welfare, Radiographer, Class-III (Non-Gazetted) Recruitment and

Promotion Rules, 2016 (hereinafter referred to as the R & P Rules of 2016) were brought into force. Copy of these Rules is appended with the

said rejoinder as Annexure R-2. The minimum educational and other qualifications required for direct recruitment for the post of Radiographer were

as under:

7. Minimum educational and other qualifications required for direct recruit(s).

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(a) Essential Qualifications. - (i) 10+2 in Science from a recognized Board of School Education/University.

(ii) Diploma in Radiology from an Institution recognized by the Central/H.P. Government.

OR

B.Sc. Degree in Radiology from a recognized University.

(b) Must be registered with H.P. Para Medical Council, Shimla.

(c) Desirable Qualification(s).- Knowledge of customs, manners and dialects of Himachal Pradesh and suitability for appointment in the peculiar

conditions prevailing in the Pradesh.â??

9. Sub-Rule (2) of Rule 1 of the R&P Rules of 2016 provided that the said Rules shall come into force from the date of publication in the Rajpatra,

Himachal Pradesh. It is not in dispute that the R&P Rules of 2016 were published on 29th November, 2017. Thus in terms of the provisions of sub-

Rule (2) of Rule 1 of the R&P Rules of 2016 these Rules came into force w.e.f. 29th November, 2017 and occupied the field earlier occupied by the

R&P Rules of 2011.

10. It appears that when the advertisement was issued by respondent No. 1/ Commission (Annexure P-3) inviting applications for the post of

Radiographer, the eligibility conditions as stood incorporated were one which were envisaged in the R&P Rules of 2016, which had not yet come into

force when the advertisement was issued and which incidentally had not come into force even on the last date envisaged in the advertisement (which

was subsequently extended) for determining the eligibility of the candidates. Yet on account of the superfluous condition contained in the said

advertisement that the candidate must be registered with the H.P. Para Medical Council, Shimla, the candidature of the present petitioners for the post

of Radiographer has been cancelled.

11. Having heard learned counsel for the parties at length including learned Senior Additional Advocate General for the State, this Court is of the view

that the rejection of the candidature of the petitioners on the ground that they were not registered with the H.P. Para Medical Council, Shimla is not

sustainable in law. It is settled law that ordinarily recruitment to a post has to be made in terms of the Recruitment and Promotion Rules which govern

the field at the time when the advertisement inviting applications for appointment to the said post is issued. In the present case, the Recruitment &

Promotion Rules governing the field were the one promulgated in the year 2011 in which there was no condition that the candidate must be registered

with the H.P. Para Medical Council, Shimla. This condition was added in the R & P Rules of 2016 which incidentally came into force only on 29th

November, 2017. Thus the act of respondent No. 1-Commission holding the petitioners ineligible for the posts of Radiographer, despite the fact that

they were duly eligible in terms of the R & P Rules of 2011 which occupied the field at the relevant time is arbitrary and not sustainable in law.

12. Accordingly, these petitions are allowed by holding the petitioners eligible for being considered for appointment to the post of Radiographer in

terms of the R & P Rules of 2011 which were in force and occupying the field when the advertisement to fill 154 posts of Radiographers was issued

and decision to the contrary of respondent No. 1, of holding such petitioners to be ineligible is thus bad in law and the same is quashed and set aside.

13. Mandamus is accordingly issued to the respondent/ HP Staff Selection Commission to treat the petitioners to be eligible for being considered for

appointment to the post of Radiographer by further holding the condition mentioned in advertisement (Annexure P-3) of the candidate being registered

with the H.P. Para Medical Council to be bad in law. The process which has been undertaken by respondent No. 1 for appointment to the posts in

issue be taken to its logical conclusion by treating the petitioners to be eligible candidates. It is made clear that this Court has only given mandamus to

the extent that the petitioners are eligible to participate in the selection process in terms of the R&P Rules of 2011 and thereafter, of course, their

selection shall depend upon the criteria to be followed by respondent No. 1/ Commission for making appointment to the post in issue.

14. At this stage, it is relevant to take note of the contention raised on behalf of respondent No. 1/Commission that inadvertence in issuance of

advertisement is not attributable to respondent No. 1 because they acted in terms of the Recruitment & Promotion Rules provided to them alongwith

the requisition by the employer department. All that this Court can observe is that the employer as well as respondent No. 1/Commission, in future, be

cautious in this regard and it be ensured that the advertisement is issued strictly in consonance with the Recruitment & Promotion Rules governing the

field at the time when the advertisement is issued. Learned Senior Additional Advocate General has assured the Court that necessary instructions in

this regard shall be issued to all the departments.

Petitions stand disposed of accordingly, so also the pending applications, if any. No order as to cost.