

(2020) 07 RAJ CK 0175

In the Rajasthan High Court

Case No : Spl. Appl. Writ No. 1533, 1534, 1536, 1537, Of 2019, 5, 30, 42, 70, 173, 176, 221 Of 2020

Bhagvat Singh And Ors

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 20-07-2020

Acts Referred:

University Of Rajasthan Act, 1946 — Section 13(4)
Rajasthan Medical and Health Subordinate Service Rules, 1965 — Rule 19

Citation : (2020) 07 RAJ CK 0175

Hon'ble Judges : Sangeet Lodha, J;Rameshwar Vyas, J

Bench : Division Bench

Advocate : Mahaveer Bishnoi, Dr. Nupur Bhati, Vikram Singh Bhati, VLS
Rajpurohit, Kailash Jangid, M.S. Singhvi, K.S. Lodha, K.S. Rajpurohit, Rajat Arora

Final Decision : Dismissed

Judgement

1. These intra-court appeals are directed against orders dated 12.12.19, 14.12.19, 19.12.19, 3.1.2020, 4.1.2020, 20.1.2020, 28.1.2020 & 24.2.2020 passed by the learned Single Judge of this Court, whereby the writ petitions preferred by the petitioners seeking directions to provide reservation admissible to Economically Weaker Sections (EWS) pursuant to the notification dated 19.2.19 issued by the State Government, in the selection process initiated for appointment to the post of Nurse Gr.II vide advertisement dated 30.5.18, have been dismissed in light of a coordinate Bench decision of Jaipur Bench of this Court dated 6.12.19 rendered in S.B. Civil Writ Petition No.13208/2019 : Surendra Singh Rathore Vs. State of Rajasthan & Others and other connected petitions.

2. The facts relevant are that vide advertisement dated 30.5.18 issued by the Director, Medical and Health Services, Rajasthan, the applications were invited for recruitment to the post of Nurse Gr.II under the Rajasthan Medical and Health Subordinate Service Rules, 1965 (for short "the Rules of 1965"). The appellants

herein, eligible for appointment to the post of Nurse Gr.II submitted their online application forms. During the pendency of the recruitment process in exercise of the power conferred by the proviso to Article 309 of the Constitution of India, the Governor of the Rajasthan, vide Rajasthan Various Service (Amendment) Rules, 2019 ('the Rules of 2019') amended the Service Rules mentioned in the Schedule appended thereto which includes the Rules of 1965, whereby the reservation of vacancies was provided for EWS. As per Rule 2 of the Rules of 2019, inserted in each of the Service Rules, the reservation of the vacancies for EWS shall be 10% in direct recruitment in addition to the existing reservation. It is further provided that in the event of non-availability of eligible and suitable candidate amongst EWS in a particular year, the vacancies so reserved for them shall be filled in accordance with the normal procedure.

3. Prior to issuance of the aforesaid notification dated 19.2.19, providing reservation to EWS, the Governor of Rajasthan, vide notification dated 13.2.19, inter alia increased the reservation for appointments and posts in the services under the State for the More Backward Classes (MBC), from existing 1% to 5%.

4. The State Government, to give effect to the reservation provided to MBC and EWS vide notifications dated 13.2.19 and 19.2.19 respectively, issued Circular dated 23.6.19. As per the directions issued, the benefit of enhanced reservation to the MBC was directed to be extended to all the recruitment under process. It was provided that lest there should not be any loss of seats to the different categories on account of enhanced reservation being extended to MBC, additional posts shall be created. The benefit of notifications dated 13.2.19 and 19.2.19, providing for enhanced reservation to MBC and EWS was directed to be extended to all undergoing recruitment wherein the examinations at any level, were not conducted.

5. The recruitment to the post of Nurse Gr.II pursuant to advertisement dated 30.5.18, as per Rule 19 of the Rules of 1965, was to be made on the basis of the marks obtained in qualifying academic examination or professional examination as specified in the Schedule appended to the Rules of 1965 and such bonus marks as may be specified by the State Government having regard to length of experience of similar work under the Government, National Rural Health Mission and Medicare Relief Society. Suffice it to say that for recruitment to the post of Nurse Gr.II, no written examination and/or interview were required to be conducted.

6. The process for recruitment to the post of Nurse Gr.II pursuant to advertisement dated 30.5.18 was undertaken by the respondents and on 17.6.19, the list containing the names of the eligible candidates two times of the vacancies as per the roster, was published and they were called for verification of documents. The respondents continued with the process of selection to the post of Nurse Gr.II pursuant to the notification dated 30.5.18, however, keeping in view the directions issued vide Circular dated 23.6.19, the selection process in respect of other recruitments including the recruitment to the post of Pharmacist

under the Rules of 1965, the directions were issued to publish amended advertisement so as to extend the benefit of 10% reservation to EWS and the enhanced reservation of 5% provided for MBC.

7. Aggrieved by the action of the respondents in continuing with the recruitment process pursuant to advertisement dated 30.5.18, some of the aggrieved persons preferred writ petitions before the Jaipur Bench of this Court, which have been decided by the learned Single Judge vide judgment dated 6.12.19 rendered in Surendra Singh Rathore's case (supra). The learned Single Judge while considering the arguments raised in respect of the recruitment to the post of Nurse Gr.II, observed:

"44. In so far as the arguments relating to posts of Nurse Gr.II are concerned, where there is no examination and the selections are made on the basis of merit list, the claim of the EWS category candidates would not be made out as the posts were advertised prior to coming into force of the notification dated 19/02/2019 since the posts are determined for each year under the Rajasthan Medical and Health Subordinate Service Rules. The claim of the EWS reservation is not found to be made out. The same argument would, however, not apply to MBC reservation as the State has provided for creation of additional 4% posts for EWS category.

45. In view of the aforesaid settled law, the classification and categorization of the candidates who fall under the MBC category and those who fell under the EWS category the State Government while applying reservation in the pending recruitments being conducted by the recruiting agencies independently through their letter dated 23/06/2019 cannot be said to be discriminatory or arbitrary or violative of Article 14 of the Constitution of India and the same is accordingly upheld.

46. The claim of the EWS category candidates for reservation is also found to be without basis in view of the posts having been advertised before coming into force of the notification dated 19/02/2019."

8. The writ petitions preferred by the appellants assailing the action of the respondents in denying the benefit of reservation provided for EWS to the candidates aspiring for recruitment to the post of Nurse Gr.II pursuant to advertisement dated 30.5.18, have been dismissed by the learned Single Judge in light of the decision of a coordinate Bench at Jaipur in Surendra Singh Rathore's case (supra). Hence, these appeals.

9. Mr. Mahaveer Bishnoi, learned counsel appearing for the appellants contended that in the recruitment process where written examinations were to be conducted, the State Government has withdrawn the advertisement issued earlier so as to extend the benefit of reservation to EWS in compliance of the notification dated 19.2.19 and thus, the action of the State in denying similar treatment to the candidates aspiring for appointment to the post of Nurse Gr.II solely on the ground that no written examination is envisaged under the Rules of

1965 for recruitment to the said post, is absolutely illegal, arbitrary and discriminatory. Learned counsel submitted that before issuing the Circular dated 23.6.19 providing reservation for EWS, the respondents had issued only a communication dated 17.6.19 whereby the list of the candidates two times the advertised vacancies was published for verification of documents. Learned counsel submitted that neither the documents were verified prior to 23.6.19 nor the final merit list was prepared. Learned counsel submitted that the respondents extended the benefit of enhanced percentage of reservation for MBC even in respect of the recruitment where the examinations were conducted but the similar benefit has not been extended in respect of EWS, which is also illegal, arbitrary and falls foul of Article 14 & 16 of the Constitution of India. Learned counsel submitted that keeping in view the notifications dated 13.2.19 and 19.2.19 when the pending recruitments under the various Service Rules were postponed, then there was no occasion for the respondents to continue with the recruitment process of Nurse Gr.II so as to deny the benefits of reservation provided to EWS vide notification dated 19.2.19. Learned counsel submitted that only on account of the list of the eligible candidates being issued for document verification, no right is created in favour of the candidates whose names were included in the said list and thus, the candidates appearing for selection to the post of Nurse Gr.II pursuant to the advertisement dated 30.5.18 cannot be differently treated.

10. Dr. Nupur Bhati, learned counsel appearing for the appellants contended that the respondents having taken a stand to extend the benefit of reservation in the ongoing selection process and accordingly, the benefits of reservation having extended to the candidates belonging to MBC category for recruitment to the post of Nurse Gr.II pursuant to the advertisement dated 30.5.18, there was no occasion for the respondents not to extend the same benefit to the candidate belonging to the category of EWS. Learned counsel submitted that in respect of the other recruitments such as, recruitment to the post of Pharmacist under the Rules of 1965, the State Government has issued an amended advertisement dated 5.12.19 inviting fresh applications from the eligible candidates so as to extend the benefit of reservation provided for the MBC and EWS vide notification dated 13.2.19/19.2.19. Learned counsel reiterated that the process of selection initiated vide advertisement dated 30.5.18 was not completed prior to issuance of Circular dated 23.6.19 and only a list of eligible candidates was issued for verification of the documents. It is submitted that as a matter of fact, the select list containing the names of the successful candidates for appointment to the post of Nurse Gr.II was issued by the competent authority on 24.1.20 and not prior to it. Learned counsel submitted that when the selection process was not completed prior to issuance of Circular dated 23.6.19 and thus, there is no reason why the appellants and their likes aspiring for recruitment to the post of Nurse Gr.II by availing the benefit of reservation provided for EWS should be treated differently vis-a-vis the candidates appearing for recruitment to the various posts wherein the written examinations were not conducted. Learned

counsel submitted that as a matter of fact, the action of the respondents in denying the benefit of reservation provided for EWS in ongoing recruitment for the post of Nurse Gr.II amount to conscious discrimination, which is violative of Article 14 of the Constitution of India. Relying upon a Bench decision of this Court in *Kamla Godara vs. State of Rajasthan & Anr.*: AIR 2000 Raj. 130, learned counsel submitted that once the decision was taken by the State Government to enhance the reservation provided for MBC category as also to provide reservation to EWS category, the same has to be given effect forthwith and therefore, the applicability thereof to ongoing recruitments is automatic and even in the cases where the examinations are conducted and the results are declared, no indefeasible right can be said to have been created in favour of the successful candidates and thus, viewed from any angle, the appellants and their likes cannot be denied the benefits of EWS reservation solely on the basis of the stage of the recruitment process at the relevant time.

11. On the other hand, Mr. M.S.Singhvi, learned Advocate General submitted that in the instant case, the appellants are seeking directions for providing benefit of the reservation to the candidates belonging to EWS category in the selection for the post of Nurse Gr.II pursuant to advertisement dated 30.5.18, which cannot be claimed as a matter of right. Learned AG submitted that no mandamus can be issued to the State Government by this Court to grant reservation from a date anterior to the date fixed by the State Government. In support of the contention, learned AG relied upon the decisions of Supreme Court in *K.V.Rajalakshmiah Setty & Anr. vs. State of Mysore & Anr.*: AIR 1967 SC 993, *Ajit Singh & Ors. vs. State of Punjab & Ors.*: (1997) 7 SCC 209 and *TMA Pai Foundation vs. State of Karnataka*: (2002) 8 SCC 481. Learned AG submitted that the recruitment where the written examinations are to be conducted and the recruitment wherein no written examinations are conducted and the merit is prepared solely on the basis of marks obtained in qualifying examination and the bonus marks admissible, cannot be treated at par. Learned AG submitted that where the examinations were conducted, the benefit of the reservation as provided for EWS has not been given effect to and thus, for the parity of reasons where the further process was initiated and the list of the eligible candidates two times the advertised vacancies prepared on the basis of the merit had already been issued for verification of the documents, a right was created in favour of the candidates whose names find mention in the list published and thus, the decision of the State Government in not implementing EWS reservation to the recruitment where the merit list of the candidates was published prior to issuance of the Circular dated 23.6.19, was absolutely justified. Learned AG submitted that as a matter of fact, in two sets of the writ petitions, different stand has been taken by the appellants therein; in one set of the petition, it is claimed that the benefit of EWS reservation shall be extended to the ongoing recruitment to the post of Nurse Gr.II whereas, in another set of petition, it is prayed that the advertisement issued for the recruitment should be cancelled and the fresh advertisement should be issued for recruitment in question extending the benefit of reservation of EWS as well.

Learned AG submitted that the decision of the State Government on the facts and circumstances of the case, in not extending the benefit of EWS reservation in respect of the recruitment in question cannot be said to be illegal, arbitrary, irrational or discriminatory so as to warrant interference by this Court in exercise of extra ordinary jurisdiction under Article 226 of the Constitution of India. Learned AG submitted that the selection process for recruitment to the post of Nurse Gr.II has already been completed inasmuch as, pursuant to the select list issued on 24.1.20, the selected candidates have already joined and therefore, no order adversely affecting their rights can be passed by this Court in their absence. In support of the contention, learned AG relied upon the decisions of the Supreme Court in *Prabodh Verma vs. State of U.P.* : (1984) 4 SCC 251, *Tridip Kumar Dingal vs. State of West Bengal*: (2009) 1 SCC 768 and *State of Rajasthan vs. Ucchab Lal*: (2014) 1 SCC 144.

12. We have considered the rival submissions and perused the material on record.

13. At the outset, it would be appropriate to consider the preliminary objections raised on behalf of the respondents inter alia questioning the maintainability of the writ petition preferred by the appellants.

14. Precisely, the objection of the learned AG is that no mandamus can be issued to the State Government by this Court to grant reservation from a date anterior to the date fixed by the State Government. It is noticed that in the present writ proceedings, the writ petitioners had not sought the mandamus for providing reservation to EWS rather, they have questioned the action of the State in implementing the reservation provided to the various recruitments adopting different yardsticks. In the considered opinion of this Court, if the action of the State in implementing the reservation falls foul of Article 14 & 16 of the Constitution of India, this Court can always interfere in the writ proceedings and issue the appropriate writ, order or directions. Thus, the objection raised by the learned AG regarding maintainability of the writ petition for the relief claimed, deserves to be rejected.

15. Coming to the objection raised regarding non-joinder of necessary parties, it is not disputed before us that in furtherance of the process of recruitment to the post of Nurse Gr.II initiated vide advertisement dated 30.5.18, the select list was issued on 24.1.20 and pursuant thereto, many selected candidates who were accorded appointment, have already joined the service, however, none of them has been impleaded as party respondent in the present proceedings. But then, it is noticed that vide interim order dated 3.1.2020 passed by this Court in *D.B.Special Appeal (Writ) No.1533/2019*, the appointments, if any made are made subject to final outcome of the appeal and therefore, nothing turns on the question that the persons selected and accorded appointment have not been impleaded as party respondents.

16. This takes us to consider the contentions raised by the parties touching the merits of the case.

17. Indisputably, the advertisement for recruitment to the post of Nurse Gr.II was issued by the respondents under the provisions of the Rules of 1965 on 30.5.18. Adhering to the reservation provided for different categories under the Rules of 1965, the vacancies were advertised category-wise wherein out of total 6,035 vacancies advertised, 60 vacancies were reserved for MBC category. Admittedly, the notification dated 13.2.19 amending the Various Service Rules so as to enhance the percentage of reservation provided to MBC category and notification dated 19.2.19 providing 10% reservation in direct recruitment to EWS were issued during the period when the selection process for recruitment to the posts inter alia under the advertisement in question was in progress.

18. A perusal of the Circular dated 23.6.19 issued by the State Government for implementing the reservation provided vide notifications dated 13.2.19 and 19.2.19, reveals that so far as the notification dated 13.2.19 providing for enhanced reservation for MBC category i.e. from 1% to 5% of the vacancies advertised has been implemented for all the undergoing recruitments irrespective of their stage whereas, the reservation provided for EWS category was made applicable only to those recruitments wherein the recruitment process was at the nascent stage and it was possible to issue fresh advertisements so as to extend an opportunity to eligible candidates to apply for recruitment against the posts to be reserved for EWS category pursuant to the notification dated 19.2.19. While giving effect to the enhanced percentage of reservation provided for MBC category vide notification dated 13.2.19 in the recruitments where the examination had already been conducted and the results were to be declared, lest the rights of the existing candidates competing for recruitment to the posts advertised may not be adversely affected, it was notified that to the extent of enhanced percentage of reservation provided for MBC category, new posts shall be created. Apparently, different criteria for implementation of the enhanced reservation provided for MBC category and the fresh reservation provided to EWS category was adopted by the State Government keeping in view that reservation for MBC category to the extent of 1% was already there and the candidates eligible to avail the benefits had already applied in the said category and therefore, on account of implementation of enhanced percentage of reservation for MBC category, no prejudice was likely to be caused to the aspirant for recruitment to the posts advertised whereas, the reservation for EWS was introduced for the first time and therefore, the candidates eligible to avail the benefit of the reservation, had no occasion to apply for the posts in EWS category. In this view of the matter, the action of the State in adopting different criteria for implementation of the enhanced percentage of the reservation provided to the MBC category and fresh reservation provided to EWS category in no manner can be said to be irrational, unreasonable, illegal and arbitrary so as to violative of Article 14 & 16 of the Constitution of India.

19. It is not in dispute that before the issuance of the Circular dated 23.6.19 implementing the reservation provided vide notifications dated 13.2.19 and 19.2.19, the recruitment to the post of Nurse Gr.II pursuant to advertisement

dated 30.5.18 was at the advance stage inasmuch as, after due consideration of the eligibility of the candidates applying for the recruitment on the said posts, a list of the eligible candidates two times the advertised vacancies had already been issued on 17.6.19 and the candidates were called upon for verification of the documents. It is pertinent to note that as per second proviso to Rule 19 of the Rules of 1965, in case of appointment to the posts other than Pharmacist, which are not in purview of Rajasthan Public Service Commission, the merit list is required to be prepared on the basis of marks obtained in qualifying academic examination or professional examination or both, as specified in the Schedule appended to the Rules of 1965 and such bonus marks as may be specified by the State Government having regard to length of experience on similar work under the Government National Rural Health Mission, Medi Care Relief Society, Chief Minister BPL Jeevan Raksha Kosh, AIDS Control Society, Revised National Tuberculosis Control Programme (RNTCP), Jhalawar Hospital and Medical College Society, Integrated Disease Surveillance Project or State Institute for Health and Family Welfare. It is not disputed that the list of candidates two times the advertised vacancies was prepared on the basis of the criteria laid down under Rule 19 of the Rules of 1965. Obviously, after verification of the documents, the final merit list was to be prepared out of the candidates included in the list published as aforesaid. In this view of the matter, taking into consideration the advance stage of the recruitment process, the action of the State Government in continuing with the recruitment in question and not extending the benefit of EWS reservation notified subsequently, is based on justifiable reasons and cannot be faulted with.

20. In Kamla Godara's case (*supra*) relied upon by the counsel for the appellants, the question involved was relating to applicability of the enhanced reservation for Scheduled Castes ("SC") and Scheduled Tribes ("ST") and the new reservation provided to the candidates belonging to Other Backward Classes ("OBC") by the State Government for admission to Medical Colleges on the basis of Pre-Medical Test (PMT) and Pre- Veterinary Test (PVT). The Government of Rajasthan in a Cabinet Meeting held on 4.5.99 enhanced the quota of SC from 8% to 16% and of ST from 6% to 12%. That apart, a new reservation for OBC was provided as 21% of the seats. Pursuant to the decision of the State Government, the Vice-Chancellor of the University of Rajasthan ("the University") invoking the power under Section 13 (4) of the Rajasthan University Act, amended Ordinance 272 of the University on 27.5.99. Later on, Ordinance 272 was amended by a regular process. The PMT and PVT were held from 9.6.99 to 12.6.99. Inter-alia the contention was raised that the reservation provided by amending Ordinance 272 cannot be made applicable retrospectively after the examinations were over. A Bench of this Court, dealing with the issue raised, observed:

"32. What is undisputed is that the examinations were held in between 9th to 12th June, 1999. The Cabinet meeting was held on 4-5-1999. It took a decision to enhance the quota, By letter dated 5-5-1999 (Ex.P.1/2) the University was informed of the State Government decision for enhancing the reservation. The

Ordinance 272 was subsequently amended. The syndicate of the University of Rajasthan, in its meeting held on 30-6-1999, has approved the amendment in Ordinance 272.

33. The competence of the State Government to issue executive instructions under Article 15 of the Constitution to make a provision for reservation has not been questioned. The decision taken by the State Government on 4-5-1999 is also not challenged. What is challenged is the date of the enforcement of the amendment.

34. The State Government in its meeting held on 4-5-1999 made recommendations for the enhanced reservation. Article 162 of the Constitution recognises that where the State has the power to make laws it can issue executive instructions. Thus, the decision of the State Government taken in the meeting dated 4-5-1999 has the force of law. Once this proposition is saved by the constitutional provisions then what necessarily follows is that a law came into being providing for reservation to the tune of 16% to Scheduled Castes, 12% Scheduled Tribes and 21% to Other Backward Classes on 4-5- 1999 with the State Government's decisions. This happened before the holding of the examinations.

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37. With the Cabinet decision on 4-5-1999 enhancement became effective. The order was passed on 5-5-1999. On this count the arguments of the learned counsel for the petitioners fail and it is held that the State Government's decision taken in the Cabinet Meeting held on 4-5-1999 will govern the examination of 1999 whereby enhanced reservation was available to the classes specified in the order.

38. The case of the petitioners further falls on the ground that by mere filling up of the forms for taking up the examination no vested right can be said to have accrued to the petitioners. If there was no vested right accrued to the petitioners then they cannot ask this Court to exercise its extraordinary jurisdiction under Article 226 of the Constitution of India to interfere in a matter which falls short of creating any right in favour of the petitioners."

21. It is noticed that in Kamla Godara's case (supra), the Court arrived at a conclusion that the State Government was competent to issue the executive instructions and the decision of the State Government taken in the Cabinet Meeting dated 4.5.99 has the force of law and consequently, the reservation made was held to be effective on 4.5.99 and accordingly, the Court declined to interfere.

22. In the instant case, the State Government while implementing the reservation provided, vide Circular dated 23.6.19 excluded the recruitment process where the examinations were already concluded or the process for preparation of the merit list was at the verge of completion. It is not the case of

the appellants that the policy decision of the Government in implementing the reservation provided, was actuated by malafide and thus, the decision taken which is not otherwise unreasonable or irrational, cannot be interfered with by this Court in exercise of its extra-ordinary jurisdiction under Article 226 of the Constitution of India.

23. In view of the discussion above, this Court is not inclined to interfere with the view taken by the learned Single Judge.

24. In the result, the intra court appeals fail, the same are hereby dismissed. No order as to costs.