
(2000) 09 RAJ CK 0013

In the Rajasthan High Court

Case No : Civil Writ Petition No. 6789 of 1994 and 5380 of 1996

Dr. Avinash Bishnoi and Another

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 22-09-2000

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2000) 4 RLW 216 : (2001) 4 WLC 383 : (2007) 3 WLN 47

Hon'ble Judges : J.C. Verma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

J.C. Verma, J.—Dr. Avinash Bishnoi in Civil Writ petition No. 6789/1994 was appointed as Civil Assistant Surgeon (Dentistry) on 16.10.1980. His date of birth was 8.8.1954. In response to the advertisement dated 29.11.1992 for a short term post of Assistant Professor in various subjects of Medical Science were advertised. The maximum age was 35 years as prescribed on 1.1.1993. The petitioner had applied for the said post. Though he was interviewed, but he was not appointed. He sent many representations. But later on came to know that as per Rajasthan Medical Service (Collegiate Branch) Rules; 1962 (here-in-after referred to as the rules), he was held to be over age. Even though the case of the petitioner was that even for an urgent temporary appointment, the relaxation is to be given to the employees who were in service upto 40 years and he was of the age of 38 years at that time, as such he was within age limit. No relief was given to him. He filed a civil writ petition No. 2178/1993 which was decided by the Division Bench of this Court.

2. Similarly, Dr. Suresh Chand Gupta had also approached the High Court in Civil Writ Petition No. 189/1993 for the same relief as Dr. Avinash Bishnoi. The Division Bench of this Court consisting of M.R. Calla and Y.R. Meena, JJ. had decided five connected matters including the writ petition of Suresh Chand and Avinash Bishnoi. The validity of part of the proviso (iv) to Rule 11 (2) of the rules

was challenged. The petitioners at that time had crossed the age of 35 years, but were within the age 40 years. They had challenged their rejection for the purpose of selection through the Central Selection Committee for urgent temporary appointment Under Rule 30 of the rules on the ground that the upper age limit in case of the persons serving in connection with the affairs of the State in substantive capacity i.e. 40 years, for direct recruitment, to the posts to be filled in by competitive examination or in the case of posts filled in through the Commission by interview. It was the contention that they were not being considered because of age for the purpose of urgent temporary appointment, but they were eligible for regular recruitment upto the age of 40 years.

3. Rule 11(2)(vi) provided that in case of persons serving in connection with the affairs of the State in substantive capacity, the upper age limit shall be 40 years for direct recruitment to posts filled in by Competitive Examinations or in case of posts filled in through the Commission by interview. This relaxation was not to apply to urgent temporary appointments. The last part of the rule "this relaxation shall not apply to urgent temporary appointments" was challenged. Both the petitioners had applied for the post of Assistant Professor to be filled on urgent temporary basis. The Division Bench had allowed the writ petitions and had held that equality clause has been violated and thus Article 14 of the Constitution of India is infringed and a direction was given to the State Government to the effect that Suresh Chand Gupta be also given appointment as Assistant Professor in the speciality of Radiodiagnosis from the same date from which persons obtaining lesser marks have been appointed and that Dr. Suresh Chand Gupta would be entitled to all consequential benefits.

4. Similar direction was given in Civil Writ Petition No. 2178/1993 in the case of Avinash Bishnoi that he be appointed as Assistant Professor in the speciality of Dentistry from the date other selected candidates have been appointed on the basis of their selection by CSC and they would be entitled to all the consequential benefits. (The facts have been taken from the earlier Writ Petition No. 2178/1993 and 1891/1993 decided on 22.2.1994, copy of which has been attached with the present writ petitions filed by the petitioners.)

5. In pursuance of the orders passed by the Division Bench, both the writ petitioners were given the appointment on 1.9.1994 w.e.f. 27.2.1993 vide Annex. 2 attached with the writ petition as Assistant Professors in the respective department with the result that the petitioner was holding the post of Assistant Professor from 27.2.1993.

6. In the case of Avinash Bishnoi, an advertisement was issued on 23.8.1994 as published in the Rajasthan Patrika on 3.9.1994, inviting applications for the post of Assistant Processor (Dentistry) on regular basis to be selected by the Public Service Commission. The petitioner Bishnoi had applied in response to such advertisement, but his application was rejected vide Annex. 4 on the ground of being age barred. A notice was given vide Annex. 5 and ultimately a writ petition has been filed.

7. Similarly, in the case of Suresh Chand Gupta as well, advertisement was issued vide Annex. 3 on 5.8.1996 for the post of Assistant Professor (Radiodiagnosis). His application was also rejected vide Annex. 4 being age barred.

8. Both the writ petitioners had filed the present writ petitions being aggrieved against the order Annex. 2 primarily on the ground that in the earlier writ petitions filed by the petitioners, the petitioners were allowed to be appointed as Assistant Professor on urgent temporary post w.e.f. 27.2.1993 and they were continuing on the said post. As per Sub-rule (iv) of Rule 11(2) of the rules, the persons appointed temporarily shall be deemed to be within age limit has they been within the age limit when they were initially appointed even though they had crossed the age limit when they appeared finally before the Commission and shall be allowed upto two chances, had they been eligible as such at the time of their initial appointment which is the common ground in both the petitions. The main grounds being taken by the petitioners are that the vacancies were for the year 1992-93 in case of Bishnoi and, therefore, the age of 40 years is to be considered as on 1.1.1993 and similarly Dr. Suresh Chand Gupta says that the age is to be considered as on 1.1.1995.

9. The latter part of the age to be considered on 1.1.1993 or 1.1.1995 hardly needs any consideration for the reason that as per the rules, the age is to be taken into account as it should be on January next i.e. in the case of Dr. Bishnoi, the age is to be considered as on 1.1.1995 as the advertisement was issued in 1994 and similarly in the case of Dr. Gupta the age is to be considered as on 1.1.1997 for the reason that the advertisement was issued in 1996. However, under Sub-rule (iv) of Rule 11(2) of the rules, both the petitioners was considered to be within age limit at the time of their appointment against the post of urgent temporary and, therefore, the petitioners are entitled to avail two chances. Rule 11(2)(iv) of the rules reads as under:

That the persons appointed temporarily shall be deemed to be within the age limit had they been within the age limit when they were initially appointed even though they have crossed the age limit when they appear finally before the Commission and shall be allowed upto two chances had they been eligible as such at the time of their initial appointment.

10. Sub-rule (vi) of Rule 11(2) reads as under:

Notwithstanding anything contained contrary in these Rules, in the case of persons serving in connection with the affairs of the State in substantive capacity, the upper age limit shall be 40 years for direct recruitment to posts filled in by Competitive examinations or in case of posts filled in through the Commission by interview. This relaxation shall not apply to urgent temporary appointments.

11. For the said proposition, counsel for the petitioner relies on a Division Bench decision of this court in the Rajasthan Public Service Commission, Ajmer v. Dr.

B.D. Chatterjee and another 1998 WLC 336, where a difference of opinion had arisen between the Hon''ble M.G. Mukherjee, C.J. as his Lordship was and V.K. Singhal, J. and the reference was made to the Hon''ble third Judge and while interpreting Sub-rules (iv) and (vi) concurring with M.G. Mukherjee, C.J., it was held by the two Judges that in such circumstances Dr. Chatterjee was entitled to protection of Rule 11(2)(iv). Dr. B.D. Chatterjee in that case was serving in substantive capacity in CAS. He was not given the protection of 40 years under Sub-rule (vi) of Rule 11(2) i.e. age relaxation being appointed on urgent temporary basis. On the basis of the judgment of Suresh Chand Gupta, S.B. Civil Writ Petition No. 1891/1993 it was held that Dr. B.D. Chatterjee did fall within the age limit at the time of appointment to the said post i.e. Assistant professor or urgent temporary basis and if that is the position, the petitioner was eligible and entitled to consideration as if he was within age limit at the time of his application made to the Public Service Commission in September 1985. The contention of the Rajasthan Public Service Commission to the effect that he was over age in the similar circumstances as in the present cases was not accepted and was quashed. Dr. Chatterjee's judgment was challenged in SLP before the Hon''ble Supreme Court in Special Leave to Appeal No. 11286/1998 by the RPSC. The Hon''ble Supreme Court had confirmed the judgment on the point, of age by holding that so far as the question of eligibility on the ground of age of the respondent was concerned, the judgment passed by the High Court called no interference and the same was upheld.

12. Admittedly, in the present case both the writ petitioners were found to be within age limit for appointment to the post of Assistant Professor for urgent temporary appointment and Rule 11(2)(iv) specifically states that if the incumbent was within the age limit at the time of such appointment, he is to be considered within age limit on the point of regular selection by the RPSC and he is to be given two chances.

13. In my opinion, there is no escape from the judgment of Chatterjee which stood confirmed so far age limit is concerned by the Hon''ble Supreme Court.

14. Counsel for the respondent relies on a judgment of this Court in Radhey Shyam v. State of Rajasthan and Ors. 1995 (1) WLC 747, which authority has no relevancy and is not applicable in the present case as for the reason that the case of Radhey Shyam related to the Rajasthan Educational Subordinate Service Rules, 1971 and not to the Rajasthan Medical Service (Collegiate Branch) Rules, 1962.

15. Reliance is also placed in S.B. Civil Writ Petition No. 136/1991 decided on 9.1.1991, but that case related to the age relaxation of handicapped persons.

16. For the reasons that this Court in Division Bench judgment in Chatterjee's case had held that the persons similarly situated as in the present petitions were entitled to be considered for regular selection and they were not over age and they were to be given two chances, there is no escape but to allow the writ

petitions and quash the order of non-consideration of their names on the ground that they were beyond the age prescribed. Both the petitioners did fall under the protection of Sub-rule (iv) of Rule 11(2) of the Rules. The petitioners have already appeared in the examination and have been interviewed and as such in the circumstances their result shall be declared and if they are qualified in the interview, in that situation, they would be appointed with all consequential benefits.

17. For the reason that despite the authoritative judgment of this Court which was upheld by the Hon''ble Supreme Court, RPSC still opposes the writ petition, it is a fit case where the petitioners are entitled to costs of Rs. 5,000/- each to be paid by the RPSC in each writ petition.

18. For the reasons mentioned above, both the writ petitions are allowed with costs.