
(1991) 01 RAJ CK 0025
In the Rajasthan High Court
Case No : Civil Writ Petition No. 344 of 1986

Dr. Bhikam Chand Mehta

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 16-01-1991

Acts Referred:

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

Citation : (1991) 2 WLN 292

Hon'ble Judges : Jagat Narayan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Jasraj Chopra, J.—The case of the petitioner is that he has done M.B.B.S. in the year 1976 and thereafter, he got the degree of D.M. (Neurology) from the Bangalore University in the year 1982, which is a recognised degree by Medical Council of India. It is alleged that for post-graduation purposes, the petitioner studied at National Institute of Mental Health and Neuro-Sciences. He has submitted that for selection of Lecturers in Medical Colleges of Rajasthan, the Govt. of Rajasthan has framed the Rajasthan Medical Service (Collegiate Branch) Rules, 1962, which provides the detailed procedure for selection of lecturers in Medical Colleges by direct recruitment.

2. It is alleged that the State Govt. decided to open some subjects in of certain specialities i.e. in Neurology, Nephrology, Cardiology and Nuclear Medicines and created certain posts. Pursuant to the creation of different specialities and to fill in the posts created, the Rajasthan Public Service Commission (for short the RPSC) advertised the posts in these specialities vide advertisement No. F. 7(4) Jt. Adv. 4/Rec./84-85 dated 2-1-1985 (Annexure-1) which included two posts of lecturers in the speciality of Neurology on permanent basis. One post was to be filled in by SC/ST candidates and the other was to be filled in from general quota. However, in case of non-availability of suitable candidate of SC/ST, that post was also to be filled in from the general quota. The requisite minimum qualification

for the post of lecturers in Neurology was D.M. in Neurology. The petitioner had applied for the same. Interviews were fixed on 1-8-1985. The petitioner, at that time was in Saudi Arabia and, therefore, he made all preparations to come to India to take part in this interview but by telegraphic communication (Annexure-2) dated 25-7-1985, he was informed that this interview has been postponed. Thereafter, the petitioner did not hear anything from the RPSC and so, he personally came to India from Saudi Arabia on 1-1-1986 and come to know that by order (Annexure-3) dated 13-9-1985, the advertised posts have been filled in by the Govt. of Rajasthan by circumventing the entire process of selection prescribed by the Rules. Two posts of lecturers in Neurology were filled by appointing respondents No. 3 and 4 designating them as Lecturers in Neurology. It has been contended that these selections/appointments have been made in complete disregard of the Rajasthan Medical Service (Collegiate Branch) Rules, 1962 (hereinafter referred to as "the Rules") and the entire process of selection by RPSC has been circumvented to give benefit to certain persons, whom the State Govt. wanted to favour and, therefore the other Annexure-3 dated 13-9-1985 is bad, invalid and unconstitutional, having no force of law.

3. It was submitted that fresh appointments could only be made by open selection on the recommendation of the RPSC. It was further submitted that Neurology is a separate branch of Medicines and to fill up the posts of Lecturers in Neurology, the suitability of the persons applied for the posts of Lecturers in Neurology has to be adjudged by the RPSC and then on the recommendations of the RPSC, the State Govt. has to fill up these posts 100% by direct recruitment. It was submitted that the selection made by the State Govt. by order Annexure-3 without undergoing the due process of law and without getting recommendations from the RPSC smacks of malafides on the part of the State Govt. because selection presupposes selection of the most suitable persons in the speciality. Accommodating persons who are already working in the Department is no selection and, therefore, such a selection, without affording an opportunity to compete to all the persons who have applied for these posts and were eligible, is violative of Articles 14 and 16 of the Constitution. It has also resulted in denial of opportunity of appointment to the persons who are eligible and, therefore, it is also violative of Article 19 of the Constitution. Consequently, it has been prayed that the impugned order Annexure-3 dated 13-9-1985 be set-aside and the respondent No. 1 the State of Rajasthan be directed to fill up these vacancies through RPSC by following the procedure prescribed by law. It was further prayed that the respondent No. 2 RPSC be directed to hold interviews of the candidates who applied for these posts in pursuance of Advertisement (Annexure-1) dated 2-1-1985. It was also prayed that if the Advertisement (Annexure-1) dated 2-1-1985, has been cancelled then these posts may be readvertised and the candidature of the petitioner be considered for these posts.

4. Respondent No. 3 filed a separate reply. He has submitted that he holds the degree of M.D. (Medicines) as also D.M. Neurology and was already working as Lecturer in Medicines in the year 1978 by the RPSC and was given a regular

appointment under the Rajasthan Medical Service (Collegiate Branch) Rules, 1962 and was confirmed as Lecturer in Medicines vide order (Ex. 3) dated 22-1-1983. It was contended by him that Neurology being a speciality of Medicines, his candidature was sponsored by the Govt. of Rajasthan on full pay for the Post Doctoral Course of D.M. (Neurology at P.G.I., Chandigarh and he passed the post Doctoral Course of D.M. (Neurology) in first attempt with honours. It was submitted that after passing the said course, when the respondent No. 3 joined back, he was redesignated as Lecturer in Medicines (Neurology) vide order Ex. 5 dated 14-2-1983. Thus, prior to the issuance of order Annexure-3, he was already working on the said post and, therefore, the Govt. of Rajasthan thought it fit to accommodate him against that post by converting his post in the speciality of Neurology. It converting his post in the speciality of Neurology. It was submitted that the Govt. of Rajasthan, in order to avoid undue financial burden on the State exchequer has decided that the persons who are already qualified and are available with the Department working as Lecturers in the Department of Medicines must be redesignated as Lecturers in Neurology and that is how, the respondents No. 3 and 4 have been accommodated and their posts have been redesignated from Lecturers in Medicines to that of Lecturers in Neurology. It is actually, a case of renaming of the posts and, therefore, no process of selection was involved in it. It was submitted that even prior to the renaming or redesignating of the posts, the respondent No. 3 was performing the same duties, which he is performing now and, therefore, the petitioner is entitled to no relief.

5. A separate reply has also been filed on behalf of respondent No. 2 RPSC. It has admitted the qualifications of the petitioners. It has also admitted that vide Advertisement Annexure-1 dated 2-1-1985, the posts were advertised and applications were received in pursuance thereof. According to the respondent RPSC, the petitioner fulfilled the basic qualifications for appointment as lecturer in Neurology. He was called for interview because he fulfilled the minimum qualifications. Certain other applicants were also invited for interviews but the interviews were later on cancelled because the State Govt. suspended the interviews. It was submitted that later when the respondent RPSC sought clarification from the State Govt. as to whether the interview for Cardiology and Neurology should be deemed to have been suspended for ever or the interview may be held in near future. The State Govt. vide its letter dated 16-12-1985 intimated the respondent RPSC that as writ petitions are pending in the High Court at Jodhpur and Jaipur Bench and so, till the matter is finally decided by the High Court at its principal seat at Jodhpur and Bench at Jaipur, no decision can be taken by respondent No. 1. It was asserted that the vacancies that were advertised were permanent vacancies and these vacancies could only be filled up by the State Govt. as per the recommendations of the RPSC according to Rules. It was further asserted that respondents No. 3 and 4 were never selected by the RPSC for the post of lecturership in Neurology and it is for the State Govt. to clarify as to how respondents No. 3 and 4 have been selected. It was also

asserted that if the mandatory provisions of the Rules are not followed by the State Govt. and if the mode of selection as provided under Rule 7 of the Rules is not followed then it is for the State Govt. to reply because no such selection has been made at the instance of respondent RPSC.

6. In its reply, it was submitted by respondent No. 1 that although the petitioner holds the degree of D.M. (Neurology) from the Bangalore University but nothing has been placed on record to show that this degree is recognised by Medical Council of India. It was admitted that permanent posts were advertised through the respondent RPSC and interview were also fixed but later on the interviews were suspended. It was submitted that vide Annexure-3, the lecturers who were substantively holding the posts in their parent departments were redesignated and, therefore, it does not amount to any selection. The posts are still vacant. It was only an adjustment and that was done because the policy regarding these posts was under consideration. According to respondent No. 1, the order Annexure 3 does not amount to any selection or appointment. The State Govt. is fully authorised to make such an adjustment till the regular selections are made. It was, therefore, prayed that the writ petition be dismissed.

7. I have heard Mr. L.M. Lodha, the learned Counsel appearing for the petitioner, Mr. Shankermal Singhvi, Addl. Govt. Advocate, Mr. N. Khan, learned Counsel for the respondent No. 2 and Mr. S.K. Vyas, Learned Counsel appearing for respondent No. 3 and have carefully gone through the record of the case. Nobody has appeared on behalf of respondent No. 4 despite service of notice.

8. From the perusal of advertisement (Annexure-1) it is clear that two posts of lecturers in Neurology (permanent vacancies) were advertised by the RPSC on 2-1-1985. The minimum qualifications for the posts were D.M. in Neurology and the pay scales were 1300-2175 with D.A. as provided by the Rules. It is an admitted case of the parties that interview calls were sent to all the candidates who applied for these posts vide Advertisement Annexure-1 and later, they were postponed vide Annexure-2. The selections were to be made to 1-8-1985 and the interviews were postponed on 25-7-1985 and, thereafter, vide order Annexure-3 dated 13-9-1985, respondents No. 3 and 4 who, were working as Lecturers in Medicines (Neurology) were redesignated as Lecturers in Neurology. The State Govt. has taken the stand that it has only made such an adjustment temporarily. According to it, the persons who were already working have been re-designated to work as Lecturers in Neurology and this is only a temporary arrangement by way of adjustment. The posts are still vacant. The respondent RPSC has taken categorical stand that respondents No. 3 and 4 have been asked to work as Lecturers in Neurology vide order Annexure-3 and they have never been selected by it. Although, respondent No. 4 has not appeared despite services of notice but respondent No. 3 has filed his return in which he has taken his stand that as he was having the requisite qualifications and was working in this very speciality and he being a selected candidate by the RPSC, his post was redesignated from that of Lecturer in Medicines (Neurology) to that of Lecturers in Neurology.

According to respondent No. 3, this redesignation was permissible under the Rules and the State Govt. is fully competent to do so. In this respect, we can do no better than to refer relevant provisions of the Rules.

9. Rule, 7 of the Rules provides for recruitment. It says that recruitment to the service after the commencement of these Rules shall be (a) by direct recruitment (in accordance with Part IV of these Rules); and (b) by promotion of (substantive members of service in accordance with part v. of this Rules. Certain provisos have been added to Rule 7 of the Rules, which have no relevance to the case in hand. Part IV of the Rules relates to the procedure for direct recruitment and part v. of the Rules relates to the procedure for promotion. We are not concerned with Part v. of the Rules as the post of Lecturer is required to be filled in by direct recruitment through RPSC. Part IV of the Rules lays down that the posts which are to be filled in by direct recruitment have to be advertised through RPSC and the RPSC is required to hold selections, prepare a select list and then to send it to the Govt. for appointment. If the selections are not made through RPSC then temporary or officiating appointments can be made by the State Govt. as per Rule 38 of the Rules. Rule 38(2) of the Rules provides that a temporary vacancy in the junior posts may be filled by the Govt. by appointing there to a person eligible for appointment by direct recruitment to the service under the provisions of these Rules. Sub-rule (3) of Rule 38 provides that no appointment made under Sub-rules (1) and (2) of Rule 38 shall be continued beyond a period of six months without referring it to the RPSC for their concurrence and shall be terminated on the refusal to concur.

10. The order Annexure-3 dated 13-9-1985 provides that the State Govt. has decided to start post-graduate course/post Doctor course in the specialities of Neurology, Cardiology and Nuclear Medicines and accordingly, special Units were created in the department of Medicines in the SMS Medical College & Hospital, Jaipur. Neurology was also created as one unit and it was ordered that to man these Units, the teachers whose names are mentioned in order Annexure-3 and who substantially hold the posts in their parent departments are redesignated as mentioned in the order Annexure-3. Under the head Neurology, item Nos. 2 & 3 relate to respondent No. 3 Dr. Ashok Pangaria and respondent No. 4 Dr. A. Saifee. They were working as Lecturers in Medicines (Neurology) and their present post was redesignated as Lecturers in Neurology. It is nowhere mentioned in the order Annexure-3 that it is a temporary arrangement for six months. It is not the case of the respondents that any concurrence was obtained from the RPSC on expiry of six months. The State Govt. itself has taken the plea that it is only a temporary arrangement and such a temporary arrangement under the Rules could and not beyond that and if it was to be continued, the concurrence of the RPSC was to be obtained, which has not been done in this case. In this case, the post of Lecturers in Neurology have to be filled in 100% by direct recruitment.

11. It was contended that the Neurology is a branch of the speciality in Medicines

and, therefore, the Lecturers who were working as Lecturers in Medicines (Neurology), their redesignation as Lecturers in Neurology was permissible. The schedule appended to the Rules does not relate to any speciality. It only relates to two wings viz., clinical and non-clinical wings. As per Schedule appended to the Rules, Part A (Selection Posts) covers the posts of Professors and Addl. Professors and Part B (Senior Posts) covers the posts of Readers and Part C (Junior Posts) covers the posts of Lecturers. It is well known that there are two broad specialities in the field of Medical services and they are: Medicines and Surgery and then there are various higher specialities in the two specialities. In the case of *N.C. Singhal v. Union of India* 1988 (2) SLR 118, the Supreme Court dealt with this aspect of the matter and has observed in para 8 as follows:

Unlike other professions, medical Profession has developed branch-wise expert specialised knowledge referable generally to number of parts in which human anatomy is divisible. General medicine and general surgery are two broad genus but under each one of them there are numerous specialities and there is intensive study and research in speciality for being qualified for the speciality. Being an expert in any one speciality simultaneously results in being excluded from other specialities even though the specialities may be specialities, may be species of a genus like general medicine or general surgery.

It is, therefore, clear that if any post is created for any particular speciality then that post will be treated as a post for that particular speciality, whether it be a selection or senior or junior post. If it is a junior post, then recruitment to such posts has to be made 100% by direct recruitment. The Rules do not provide for any redesignation of the posts. The State Govt. has taken the plea that it has only made a temporary arrangement and temporary arrangement can be made initially for a period of six months and if the State Govt. wants to extend that period of six months, then it has to obtain concurrence from the RPSC. Even in doing so, the Rules do not provide or permit for any redesignations of the posts for adjustment. The posts have to be filled temporarily as per Rule 30 of the Rules.

12. It was contended by Mr. S.K. Vyas, the learned Counsel appearing for respondent No. 3 that such a matter came up for consideration before a Division Bench of this Court in which the validity of order Annexure-3 was under challenge and this Court has upheld the validity of order Annexure-3. Actually, that was a case in which it was claimed that the persons who have been appointed against these specialities are not qualified to hold the posts and, therefore, the respondents Dr. S.K. Sharma, Dr. Baldwa, and Dr. Sogani are not eligible to be appointed as Professors in Medicines (Cardiology) and Reader in Medicine (Cardiology), respectively. The Court held that they were eligible to be appointed as Professors and Readers because they were qualified for appointment. In that case, the petitioner sought the writ of quo warranto. The Division Bench of this court held that it cannot be said that redesignations of the respondents as Professors or Readers in against the Rules and, therefore, no writ

of quo warranto can be issued. Here, in this case, the petitioner has sought the writ of mandamus and has challenged the impugned order Annexure-3 on the ground that the appointment of respondents No. 3 and 4 is against the Rules. These procedure prescribed for direct recruitment in Part IV of the Rules has not been followed. The post could only be filled up by an advertisement through RPSC and the RPSC is required to hold a selection and prepare a select list and then that list was to be forwarded to the Govt. for appointment and thereafter, the State Govt. can make appointment on such posts. That has not been done in this case. In this case, it has not been contended that the persons who have been appointed are not qualified to hold the posts. Such a question was raised in *Surendra Kumar Pareekh v. State of Raj. and Ors.*, S.B. Civil Writ Petition No. 1661 of 1985, decided on October 14, 1986 at Jaipur Bench, Jaipur and that writ petition was decided qua the persons involved in that writ petition. That was not a judgment in rem but it was per incuria. Hence the judgment in *Surendra Kumar Pareekh's* case has no bearing on the facts of this case.

13. In this case, the petitioner has alleged that requisition for two permanent posts of Lecturers in Neurology was sent to the RPSC by the State Govt. The RPSC advertised these posts and certain persons have applied for them. They were called for interviews but the interviews were postponed. Thereafter, certain writ petitions were filed at the principal seat of this Court as also at its Jaipur Bench and, therefore, the interviews were permanently postponed till the matter is decided by this Court. The Rules provides for filling up the post of Lecturers 100% by direct recruitment and, therefore, redesignation or readjustment is not at all permissible. Only temporary appointments can be made under Rule 30 of the Rules and it is not a case of temporary appointment because that has not been made clear in the order Annexure-3. Although the State Govt. has claimed that it was only a temporary appointment and the posts are still vacant but that appears to be incorrect statement made on behalf of the State Govt. because firstly such a temporary arrangement could have been made under Rule 30 of the Rules for a period of six months and if it was to be continued beyond the period of six months then concurrence of the RPSC was necessary. In this case, as stated above, no concurrence has been obtained from the RPSC and hence, it is not a case of temporary appointment. Appointment in any other manner on Junior posts has not provided in the Rules and, therefore, these appointments vide order Annexure-3 by way of readjustment are against the Rules and deserve to be quashed qua the respondents No. 3 and 4.

14. The posts have already been advertised and certain applicants have also applied for it. The interviews were fixed on 1-8-85 but they were postponed and by order Annexure-3 dated 13-9-1985, appointments were made by redesignation/readjustment. Thus, the entire process of selection has been circumvented by the State Govt. in order to accommodate these persons who were already working. It may be that the persons already working may be qualified and experienced but when the posts were to be filled up by direct recruitment then the suitability has to be adjudged by the RPSC and not by the

State Govt. In matters of selection by the RPSC, survival of the fittest amongst the qualified persons as a rule can alone form the basis for selection. It has not been the stand of the State Govt. that advertisement has been totally recalled. The applications are still pending with the RPSC and interviews were only suspended or postponed sine a die because of the pendency of the writ petitions. In the facts and circumstances of this case, it appears just and proper to direct respondent No. 2 to hold interviews for the posts of Lecturers in Neurology from amongst the candidates who have applied for that post in pursuance of advertisement Annexure-3. Till the candidates selected by the RPSC are made available to the State Govt., the respondents No. 3 and 4 who are already working as Lecturers in Neurology should be allowed to continue so that the work of the Institutions is not disrupted.

15. In the result, this writ petition is allowed and the order Annexure-3 dated 13-9-1985 by which respondents No. 3 and 4 were appointed as Lecturers in Neurology by way of adjustment/redesignation is set aside qua the respondents No. 3 and 4. However, the respondent No. 1 is directed to continue respondents No. 3 and 4 on the posts till the regular selection is made by the RPSC in pursuance of the advertisement Annexure-1. The respondent RPSC is directed to hold interviews of the persons who have applied for the post of Lecturers in Neurology in pursuance of advertisement Annexure-1 dated 2-1-1985 forthwith and the results should be conveyed to the State Govt. within a period of six months from today.

16. In the facts and circumstances of the case, the parties are left to bear their own costs of this Writ Petition.