

(2020) 11 RAJ CK 0029

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 799 Of 2020 In Civil Writ Petition No. 11312 Of 2020

Dr. Chitralekha Nagar And Ors

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 05-11-2020

Acts Referred:

Constitution Of India, 1950 — Article 14, 16, 226

Citation : (2020) 11 RAJ CK 0029

Hon'ble Judges : Sabina, J;Prakash Gupta, J

Bench : Division Bench

Advocate : Arvind Kumar Arora

Final Decision : Dismissed

Judgement

Appellants have filed the appeal challenging order dated 01.10.2020 passed by the learned Single Judge, whereby, writ petition filed by the appellants and other connected writ petitions were dismissed.

National Health Mission, Rajasthan has invited applications from eligible candidates for the post of Community Health Officer on contractual basis vide advertisement dated 31.08.2020. In all, 6310 posts were advertised. A perusal of the advertisement dated 31.08.2020 reveals that essential qualifications for the post were B.Sc. in Community Health or Nurse (GNM or B.Sc.) or Ayurveda Practitioner (BAMS) from some recognized university registered with Rajasthan Nursing Council/Board of Indian Medicine in Rajasthan. All the eligible candidates who were aged between 18 to 45 years as on 01.01.2021, were eligible to apply for the said post and the maximum honorarium was fixed as Rs.25,000/- per month.

Appellants had filed the writ petition challenging the part of the advertisement, whereby, essential qualifications were prescribed. It was the case of the appellants that the candidates who were having Bachelor in BHMS (Homeopathic

Medicine and Surgery), Bachelor in BDS (Dental Surgery), Bachelor in B.Pharm (Pharmacy) and Bachelor in Naturopathy and Yogic Sciences were also liable to be considered for the post of Community Health Officer.

Learned counsel for the appellants has submitted that as per National Health Policy, 2017 post of Mid Level Service Providers were also earmarked and with regard to Mid Level Service Providers, it was observed as under:- "For expansion of primary care from selective care to comprehensive care, complementary human resource strategy is the development of a cadre of mid-level care providers. This can be done through appropriate courses like a B.Sc. in community health and/or through competency-based bridge courses and short courses. These bridge courses could admit graduates from different clinical and paramedical backgrounds like AYUSH doctors, B.Sc. Nurses, Pharmacists, GNMs, etc and equip them with skills to provide services at the sub-centre and other peripheral levels. Locale based selection, a special curriculum of training close to the place where they live and work, conditional licensing, enabling legal framework and a positive practice environment will ensure that this new cadre is preferentially available where they are needed most, i.e. in the under-served areas."

Now the said post has been designated as Community Health Officer. Learned counsel has submitted that the word 'AYUSH' doctors includes all doctors, who were practicing in Ayurveda, Yoga, Unani, Sidhha and Homeopathy. Hence, the state was bound to consider the appellants for the post of Community Health Officer as the appellants were having the qualification of Bachelor of Homeopathy Medicine and Surgery.

This Court cannot review the qualifications fixed by the State. In-fact, request was sent by different states to include Homeopathy and Unani practitioners for the post of Community Health Officer and the matter was examined by the Government of India and stand was taken that Homeopathy Practitioners, Bachelor of Pharmacy and Unani Practitioners could not be appointed as Community Health Officer.

The Hon'ble Supreme Court in *Banarsidas & Ors. Vs. State of UP & Ors.* AIR 1956 (SC) 520 held as under:- "...In our opinion, it is open to the appointing authority to lay down the requisite qualifications for recruitment to Government service and it is open to the authority to lay down such prerequisite conditions of appointment as would be conducive to the maintenance of proper discipline amongst Government servants. If persons already under Government employment on part-time basis had shown themselves not to be amenable to proper discipline in Government offices, it was open to Government not to appoint such persons to the permanent cadre of Lekhpals because such persons could not be said to be as efficient as those who had excellent records of service and had shown greater sense of responsibility to their employers.

Article 16 of the Constitution is an instance of the application of the general rule

of equality laid down in article 14, with special reference to the opportunity for appointment and employment under the Government.

Like all other employers, Government are also entitled to pick and choose from amongst a large number of candidates offering themselves for employment under the Government."

The Hon'ble Supreme Court in Mukul Kumar Tyagi Vs. State of Up & Ors. (2020) 4 SCC 86 held as under:- "The equivalence of qualification as claimed by a candidate is matter of scrutiny by the recruiting agency/employer. It is the recruiting agency which has to be satisfied as to whether the claim of equivalence of qualification by a candidate is sustainable or not. The purpose and object of qualification is fixed by employer to suit or fulfil the objective of recruiting the best candidates for the job. It is the recruiting agency who is under obligation to scrutinise the qualifications of a candidate as to whether a candidate is eligible and entitled to participate in the selection. More so when the advertisement clearly contemplates that certificate concerning the qualification shall be scrutinised, it was the duty and obligation of the recruiting agency to scrutinise the qualification to find out the eligibility of the candidates. The self-certification or self-declaration by a candidate that his computer qualification is equivalent to CCC has neither been envisaged in the advertisement nor can be said to be fulfilling the eligibility condition."

The Hon'ble Supreme Court in Zahoor Ahmad Rather & Ors. Vs. Sheikh Imtiyaz Ahmad & Ors. (2019) 2 SCC 404 held as under:-

"The prescription of qualifications for a post is a matter of recruitment policy. The state as the employer is entitled to prescribe the qualifications as a condition of eligibility. It is no part of the role or function of judicial review to expand upon the ambit of the prescribed qualifications. Similarly, equivalence of a qualification is not a matter which can be determined in exercise of the power of judicial review. Whether a particular qualification should or should not be regarded as equivalent is a matter for the state, as the recruiting authority, to determine."

Thus, in the present case by way of the appeal, appellants want that qualification determined by the State in the advertisement be modified and the appellants be also held to be qualified for the post of Community Health Officer in view of the qualification held by them.

Learned Single Judge, after considering the decisions of the Hon'ble Supreme Court, rightly came to the conclusion that this Court could not add some new qualifications for the post of Community Health Officer while exercising jurisdiction under article 226 of the Constitution of India.

It was for the State to prescribe necessary qualifications for the advertised post. The qualification fixed for a post was an exclusive domain of the appointing authority and this Court could not resort to judicial review to expand the ambit of prescribed qualification. Equivalent of particular qualification could be determined

by the State Government being the recruiting authority.

The reasons given by the learned Single Judge while dismissing the writ petition filed by the appellants alongwith other connected writ petitions call for no interference.

Dismissed.