
(2010) 12 RAJ CK 0089
In the Rajasthan High Court
Case No : Civil Writ Petition No. 15889 of 2010

Dr. Mahipal Nehra and Others

APPELLANT

Vs

State of Raj. and Others

RESPONDENT

Date of Decision : 06-12-2010

Acts Referred:

Rajasthan Medical and Health (Recruitment) Rules, 1963 — Rule 19, 26

Citation : (2010) 12 RAJ CK 0089

Hon'ble Judges : Ajay Rastogi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ajay Rastogi, J.—This is a joint petition filed by Petitioners who are appointed as Medical Officer vide order dt.30.06.2010. However, after their appointment under the Rajasthan Medical & Health Service Rules, 1963 post of Medical Officer has been advertised by the Rajasthan Public Service Commission vide its notification dt.18.09.2009 read with corrigendum dt.19.07.2010 and 13.10.2010.

2. The main thrust of submissions of counsel is that since the Petitioners are presently working as Medical Officer on urgent temporary basis appointed vide order dt.30.06.2010 they are entitled to be exempted from screening test which the Respondent intends to hold pursuant to advertisement dt.18.09.2009 and in support of submission place reliance upon the judgment of this Court in the case of Dr. Rajendra Kumar Surekha v. State of Rajasthan and Ors. CWP-5424/1990 decided on 11.04.1994.

3. The submission made is wholly without substance for the reason that Petitioners were appointed pursuant to short term advertisement dt.17.11.2009 on urgent temporary basis as Medical Officer and the post of Medical Officer is included in the schedule appended to Rajasthan Medical & Health (Recruitment) Rules, 1963 to be filled by open selection through the Rajasthan Public Service Commission which has been advertised pursuant to advertisement dt.18.09.2009

and it would be open for the applicants including Petitioners to participate in the process which the Respondent-Commission has initiated to be held under the scheme of Rules, 1963 and there is no such provision brought to the notice of this Court which may grant exemption to an applicant from appearing in screening test being held by the Commission. The Division Bench of this Court in the judgment rendered in the case of Dr. Bheru Singh v. State of Raj and Ors. and seven other appeals, reported in RLR 2008 (1) 632, has taken note of the judgment of this Court in Dr. Rajendra Kumar Surekha v. State of Raj. and Ors. referred to by the Petitioner and in para 7 of the judgment it has been observed as under:

7. In (5) Special leave to appeal (Civil) No. 12599-12602/96, Rajasthan Public Service Commission v. Deepak Verma and Another, decided on 7.8.1998, the Supreme Court clarified in unmistakable terms that the directions contained in the order dated June 5, 1995 in Civil appeals arising out of special leave petitions No. 1274041/95 (Dr. Rajendra Kumar Surekha) were given in the facts and circumstances obtaining therein and the said directions cannot be treated as laying down the law regarding selection for appointment by the Rajasthan Public Service Commission, which has to be made in accordance with the relevant rules. In our view, therefore, the decision of this Court in the case of Dr. Rajendra Kumar Surekha cannot be cited as precedent.

4. In the light of what has been observed in the judgment referred to by the Petitioner cannot be cited as precedent. The Division Bench further while examining the scope of Rule 19 observed in para 10 as under :

10. The Commission as a matter of policy has taken a decision that if number of applications exceed three times the posts so advertised, then number of candidates shall be called for interview on the basis of screening test. A close look at Rule 19 would show that upon receipt of the applications, the Commission scrutinises the applications so received and require the qualified candidates for appointment as may be found desirable to appear for interview. To achieve this, when number of applications exceed three times the posts so advertised, the holding of screening test to shortlist candidates cannot be said to suffer from any legal flaw. Merely because the Petitioners were appointed on urgent temporary basis under Rule 26 of the Rules of 1963, they do not get entitled for being exempted from screening test. In no way, they are class separate or different from other applicants insofar as screening test is concerned.

5. In the instant case, the Petitioners were appointed on urgent temporary basis much after issuance of the advertisement dt.17.11.2009 issued by the Rajasthan Public Service Commission which will not make them entitled for seeking exemption from screening test which the Commission may intend to shortlist the applicants while holding selections pursuant to advertisement impugned herein.

6. Consequently, the writ petition is devoid of merit and accordingly stands dismissed.