
(2019) 09 SHI CK 0032

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 1773 Of 2019

Dr. Sidharth Sood

APPELLANT

Vs

State Of Himachal Pradesh And Others

RESPONDENT

Date of Decision : 17-09-2019

Acts Referred:

General Rules, 1976 — Rule 3

Citation : (2019) 09 SHI CK 0032

Hon'ble Judges : Tarlok Singh Chauhan, J

Bench : Single Bench

Advocate : B. Nandan Vasishta, S.S. Sood, Ajay Vaidya, Vinod Thakur, Bhupinder Thakur, Ram Lal Thakur

Final Decision : Dismissed

Judgement

Tarlok Singh Chauhan, J

1. Aggrieved by the action of the respondents whereby it has decided to conduct the selection of Senior Resident on the basis of the notification dated 22.6.2019 (Annexure P-8) instead of notification dated 25.9.2012 as was initially advertised, the petitioner has filed the instant petition for the grant of following substantive reliefs:

"I. To quash notification dated 22.6.2019 (Annexure P-8) qua the clause 7.2.4 being arbitrary, discriminatory, irrational and unjustified as it provides for selection to the post of Senior Resident solely on the basis of marks obtained in the MBBS and PG Course together with marks of publication whereas the selection criteria in all other reputed institutions like AIIMS, PGIMER and Safdarjung Hospital is by way of fresh written test and interview in order to ensure impartiality and transparency with further prayer to issue directions to the respondents to fill up the posts of Senior Resident by conducting written test as was prevailing before notification dated 25.9.2012.

II. In the alternative, quash advertisement (Annexure P-9) issued by respondent

No.3 seeking fresh applications for the post of Senior Resident under the changed criteria by putting on hold the previous selection process initiated through previous advertisement dated 27.2.2019 (Annexure P-3) with further prayer to issue directions to respondents No.1 and 4 to complete the said previous selection process (put on hold by Annexure P - and P-) as per the prevailing selection criteria vide notification dated 25.9.2012 out of the number of applications received on the cut off date of earlier advertisement (Annexure P-3)."

2. The petitioner is a Post Graduate in Orthopaedics and is thus eligible for the post of Senior Resident. On 27.2.2019, the respondents published advertisement regarding walk-in-interview of Senior Residents in various departments of Indira Gandhi Medical College (for short 'IGMC'), Shimla to be held on 22.3.2019, the petitioner being eligible accordingly applied for the same. However, the said interview was postponed and thereafter fixed for 19.6.2019. Even on that date, the interviews were not held and were ordered to be postponed till further orders due to administrative reasons/decision. A notice to this effect was issued on 7.6.2019 wherein it was mentioned that the next date, if any, as well as changes in the aforesaid advertisement/vacancies of Senior Residents will be intimated/communicated through website of the Institute.

3. On 22.6.2019, the respondents issued a notification (Annexure P-8) which was in supersession of all the previous notifications whereby it notified 'Resident Doctor Policy' for regulating the appointments of Senior/ Junior Residents in the Department of Medical Education. Thereafter, the respondents issued advertisement (Annexure P-9) whereby it notified that the applications from eligible candidates for the posts of Senior Residents and this time not only the posts available at IGMC, Shimla were sought to be filled up, but the posts lying in other hospitals like Dr. R.P. Govt. Medical College, Kangra at Tanda etc. were also sought to be filled up.

4. It is urged by the petitioner that once the selection process had been commenced vide advertisement dated 27.2.2019 (Annexure P-3) for filling up of the posts of Senior Residents through walk-in- interview notified in terms of the notification dated 25.9.2012, the respondents could not have changed the Rules of the game by amending the selection criteria and thereafter issue a fresh notification (Annexure P-9) for filling up of the posts in question.

5. On the other hand, Mr. Ajay Vaidya, learned Senior Additional Advocate General, would argue that since the process of selection as commenced vide advertisement dated 27.2.2019 (Annexure P-3) for filling up of the posts of Senior Residents had not even commenced, therefore, the State was well within its right to amend the criteria of selection and thereafter fill the posts in accordance with the amended criteria.

6. Therefore, in the given facts and circumstances of the case, the only moot question is whether the rules of the game/criteria for selection i.e. mode of

selection has been changed midway as claimed by the petitioner.

7. The learned counsel for the petitioner would argue that the issue in question is no longer *res integra* as it is squarely covered by the judgment rendered by this Court in CWP No. 1436 of 2014, titled *Jai Singh vs. State of H.P. and others*, decided on 16.6.2014 and another judgment of a Co-ordinate Bench of this Court (Justice Rajiv Sharma, J.) in CWP No. 4039 of 2011. Whereas, on the other hand, learned Senior Additional Advocate General would argue that the issue in question is squarely covered by the judgment of a Co-ordinate Bench of this Court (Justice Rajiv Sharma, J.) in CWP No.5266 of 2012, titled *Jitender Singh vs. State of H.P. and others*.

8. Adverting to the judgment rendered by this Court in *Jai Singh's case (supra)*, it would be noticed that the petitioners therein had sought their appointment to the post of TGT on the basis of old rules, but the State had amended these Rules wherein the condition of promotion of JBT teachers as TGT was extended from two years to five years and thereafter further a condition of minimum 50% marks in graduation was inserted. Yet again, on 31.5.2012, the rules were amended, wherein the condition of Teacher Eligibility Test (TET) was also made compulsory for promotion as TGT (Medical).

9. It was not in dispute that there was a backlog of 359 posts of teachers lying vacant with the respondent-department and, therefore, the only question was whether the criteria for filling up the vacant posts which had accrued after the last D.P.C. and before the amendment in the rules could be filled up on the basis of the amended rules and it was in this background that action of the State in filling up the posts on the basis of the amended rules was quashed.

10. When the matter came up before this Court in *Jai Singh's case (supra)*, learned counsel for the respondents therein relied upon the judgment in *Dr. K. Ramulu and another vs. Dr. S. Suryaprakash Rao and others (1997) 3 SCC 59* and another judgment of the Hon'ble Supreme Court in *Deepak Agarwal and another vs. State of Uttar Pradesh and others (2011) 6 SCC 725*, to contend that the State was well within its right to fill up the posts on the basis of the amended rules. Both the judgments were held to be not applicable to the facts of the case and it was observed as under:

"12. In *Dr. K. Ramulu's case (supra)*, the specific stand of the State Government was that it did not intend to fill up the posts as per the existing rules and contemplated to fill up all the posts in terms of its revised policy of appointment. However, the Tribunal still gave directions contrary to the policy decision taken by the government necessitating the exposition of law by the Hon'ble Supreme Court in this factual backdrop of the case. This is not the fact situation obtaining in the present case, as it is nowhere the case of the State? respondent that it proposes to fill up the posts between July 2009 to 22.10.2009 on the basis of the amended rules or does not propose to fill up the same at all. Moreover, as would be clear from a bare reading of paragraph? 12 of the judgment in *Dr. K. Ramulu's*

case (supra), the legal position laid down in Y.V. Rangaiah's case has not been doubted and the only reason for its non-applicability has been given in later part of paragraph 12 in the following terms:-

"..... In none of these decisions, a situation which has arisen in the present case had come up for consideration. Even Rule 3 of the General Rules is not of any help to the respondent for the reason that Rule 3 contemplates making of an appointment in accordance with the existing Rules."

It is also clear from paragraph 13 of the judgement in Dr.K. Ramulu's case that government therein had taken a conscious decision not to make any appointment till the amendment of the Rules.

13. Now, in so far as the judgment in Deepak Agarwal's case (supra), is concerned the ratio laid down in Y.V. Rangaiah's case was distinguished only on the ground that there was no statutory duty cast upon the respondent therein to prepare year wise panel of the eligible candidates or of the selected candidates for promotion and therefore, it was concluded that in no event had, any accrued or vested right of the appellants therein, been taken away by the amendment.

14. In none of the judgments relied upon by Sh. Dilip Sharma, learned Senior Counsel, was ever the ratio of Y.V. Rangaiah's judgment doubted and the judgments have been rendered in the peculiar facts of those cases. While, in the present case the respondent State has not taken any decision either not to fill up the posts in accordance with the old rules or taken a positive decision to fill up the posts on the basis of the amended rules. Rather tone and tenor of reply suggests that the State has chosen to abide by the directions passed in CWP No.4039 of 2011 (supra). Therefore, present cases are fully covered by the ratio of Y.V. Rangaiah's case (supra) and the decisions relied upon by Sh. Dilip Sharma, learned Senior Counsel have no application to the fact situation obtaining in the present case."

11. It would be noticed that this Court while distinguishing the judgment in Dr. K. Ramulu's case (supra) and Deepak Agarwal's case (supra), had categorically held that it was nowhere the case of the State-respondent that it proposes to fill up the posts on the basis of the amended rules or does not proposes to fill up the same at all. In fact, in Dr. K. Ramulu's case, the Government therein had taken a conscious decision not to make any appointment till the amendment of the Rules.

12. Similar issue had been raised by the aggrieved party in CWP No. 4039 of 2011 and the Court after applying the "old vacancy - old rules" upheld the contentions of the petitioners.

13. Adverting to the facts of the present case, the State has taken a conscious decision though belatedly on 5.9.2019 to fill up the posts on the basis of the new policy and the reasons for the same communicated to the learned Senior Additional Advocate General vide communication dated 5.9.2019 are as under:

"1. The State Government had notified Resident Doctor Policy dated 22.06.2019

for regulating the appointments of Senior/Junior Residents in the Department of Medical Education in the State, wherein the condition of mandatory one year field posting is required to all the candidates to become eligible for Senior Residency as per clause 7.3.5 and 7.3.6 of the present policy. As per old Senior Resident Policy, the mandatory field posting of 2 years has now been relaxed to 1 year in tune with the PG/Super-specialty policy notified vide notification No. HFW-B(F)4-9/2017-II dated 27.02.2019.

2. The marks allotted for the assessment of candidates were rationalized and fixed keeping in view various court orders, giving higher score for the candidates having done more research work and also higher weightage for the candidates having served the State for longer periods.

3. There were certain operating gaps in the pre-existing policy such as issue pertaining to NOC and difficulty in differentiations of GDOs versus Direct Candidates for which clear stipulations have been made in the new policy.

4. Large numbers of amendments were carried out in the old Senior Resident policy of the State from time to time resulting in confusion which necessitated the need for frame the new Resident Doctor Policy.

5. Under the old Senior Resident policy, each Government Medical College of the State used to invite the applications/conduct the interview at their own level for Senior Resident, now the Doctor, Medical Education & Research, Himachal Pradesh has been authorised to invite the applications for all the Government Medical College of the State which will ensure availability of Senior Residents/Junior Residents in all the Government Medical Colleges eliminating unnecessary effort at college level.

6. In addition to above, in the old SR policy, there were two court cases (O.A.No. 90/2019 & 92/2019) regarding Maternity leave, so in order to remove this discrepancy clause 7.5.3 was introduced in the new Resident Doctor Policy dated 22.06.2019."

14. Once a conscious decision has been taken by the respondents not to fill up the posts on the basis of old Rules, then the issue in question is squarely covered by the judgment rendered by a co-ordinate Bench of this Court in Jitender Singh's case (supra) wherein the Court after placing reliance upon the judgment of the Hon'ble Supreme Court in State of M.P. and others vs. Raghuveer Singh Yadav and others, (1994) 6 SCC 151, Dr. K. Ramulu's case (supra), Union of India and others vs. K.V. Vijeesh (1996) 3 SCC 139, Rajasthan Public Service Commission vs. Chanan Ram and another, (1998) 4 SCC 202 and Deepak Agarwal's case (supra), held that the principle of old rules for old vacancies would not be applicable when the posts are to be filled up by way of promotion and not by way of direct recruitment.

15. Noticeably, all the judgments of this Court as relied upon by the respective parties were rendered much prior to the judgment of the Hon'ble Supreme Court

in *State of Tripura and others vs. Nikhil Ranjan Chakraborty and others* (2017) 3 SCC 646, wherein the Hon'ble Supreme Court categorically held that the law is clear that a candidate only has right to be considered in light of the existing rules, namely "rules in force on the date" the consideration takes place and that there is no rule of absolute application that vacancies must invariably be filled by law existing on date when they arose.

16. Similar issue came up for consideration before the Hon'ble Supreme Court in *Union of India and others vs. Krishna Kumar and others* (2019) 4 SCC 319 wherein reiterating the ratio as laid down in *Nikhil Ranjan Chakraborty's* case (*supra*), it was observed as under:

" 10. In considering the rival submissions, it must, at the outset, be noted that it is well-settled that there is no vested right to promotion, but a right be considered for promotion in accordance with the Rules which prevail on the date on which consideration for promotion takes place. This Court has held that there is no rule of universal application to the effect that vacancies must necessarily be filled in on the basis of the law which existed on the date when they arose. The decision of this Court in *Y.V. Rangaiah Vs. Sreenivasa Rao* (1983) 3 SCC 284 has been construed in subsequent decisions as a case where the applicable Rules required the process of promotion or selection to be completed within a stipulated time frame. Hence, it has been held in *H.S. Grewal Vs. Union of India* (1997) 11 SCC 758 that the creation of an intermediate post would not amount to an interference with the vested right to promotion. A two-Judge Bench of this Court held thus: (SCC p. 769, para 13.)

"13.....Such an introduction of an intermediate post does not, in our opinion, amount to interfering with any vested rights cannot be interfered with, is to be accepted as correct. What all has happened here is that an intermediate post has been created prospectively for future promotions from Group- B Class-II to Group-A Class-I. If, before these Rules of 1981 came into force, these officers were eligible to be directly promoted as Commandant under the 1974 Rules but before they got any such promotions, the 1981 Rules came in obliging them to go through an intermediate post, this does not amount to interfering with any vested rights."

11. In *Deepak Agarwal Vs. State of Uttar Pradesh* (2011) 6 SCC 725, this Court observed thus: (SCC p.735, para 26-27)

"26. It is by now a settled proposition of law that a candidate has the right to be considered in the light of the existing rules, which implies the 'Rules in force' on the date the consideration took place. There is no rule of universal or absolute application that vacancies are to be filled invariably by the law existing on the date when the vacancy arises. The requirement of filling up old vacancies under the old rules is interlinked with the candidate having acquired a right to be considered for promotion. The right to be considered for promotion accrues on the date of consideration of the eligible candidates. Unless, of course, the

applicable rule, as in Y.V. Rangaiah's case (supra) lays down any particular time frame, within which the selection process is to be completed. In the present case, consideration for promotion took place after the amendment came into operation. Thus, it cannot be accepted that any accrued or vested right of the appellants have been taken away by the amendment.

27. The judgments cited by learned counsel for the appellants namely B.L. Gupta Vs. MCD (1998) 9 SCC 223, P. Ganeshwar Rao Vs. State of Andhra Pradesh 1988 Supp.SCC 740, and N.T. Devin Katti & Ors. Vs. Karnataka Public Service Commission & Ors (1990) 3 SCC 157 are reiterations of a principle laid down in Y.V. Rangaiah's case (supra)."

12. Recently, in State of Tripura Vs. Nikhil Ranjan Chakraborty (2017) 3 SCC 646 another two-Judge Bench of this Court held thus: (SCC pp. 650-51, para 9)

"9. The law is thus clear that a candidate has the right to be considered in the light of the existing rules, namely, "rules in force on the date" the consideration takes place and that there is no rule of absolute application that vacancies must invariably be filled by the law existing on the date when they arose. As against the case of total exclusion and absolute deprivation of a chance to be considered as in the case of Deepak Agarwal (supra), in the instant case certain additional posts have been included in the feeder cadre, thereby expanding the zone of consideration. It is not as if the writ petitioners or similarly situated candidates were totally excluded. At best, they now had to compete with some more candidates. In any case, since there was no accrued right nor was there any mandate that vacancies must be filled invariably by the law existing on the date when the vacancy arose, the State was well within its rights to stipulate that the vacancies be filled in accordance with the Rules as amended. Secondly, the process to amend the Rules had also begun well before the Notification dated 24.11.2011."

13. In view of this statement of the law, it is evident that once the structure of Assam Rifles underwent a change following the creation of the intermediate post of Warrant Officer, persons holding the post of Havildar would be considered for promotion to the post of Warrant Officer. The intermediate post of Warrant Officer was created as a result of the restructuring exercise. The High Court was, in our view, in error in postulating that vacancies which arose prior to the amendment of the Recruitment Rules would necessarily be governed by the Rules which existed at the time of the occurrence of the vacancies. As the decided cases noted earlier indicate, there is no such rule of absolute or universal application. The entire basis of the decision of the High Court was that those who were recruited prior to the restructuring exercise and were holding the post of Havildars had acquired a vested right of promotion to the post of Naib Subedar. This does not reflect the correct position in law. The right is to be considered for promotion in accordance with the Rules as they exist when the exercise is carried out for promotion."

17. Similar issue came up recently before the Hon'ble Supreme Court in State of Orissa and another vs. Dhirendra Sundar Das and others (2019) 6 SCC 270, wherein again the ratio laid down in Nikhil Ranjan Chakraborty's case (supra) was reiterated.

18. In view of the law expounded by the Hon'ble Supreme Court in the judgments, referred to above, it can now be taken to be well settled that there is no vested right of promotion, but only a right to be considered for promotion in accordance with the Rules which prevail on the date on which the consideration for promotion takes place. There is no rule of universal application to the effect that vacancies must necessarily be filled in on the basis of the law which existed on the date when they arose. (Referred to Krishna Kumar's judgment, para 10).

19. In the instant case, the game i.e. the selection is yet to commence and the mere fact that the petitioner has applied pursuant to the advertisement cannot by itself confer any right upon the petitioner to claim that the selection should be conducted only on the basis of old notification of 2012 and not as per the policy decision taken vide Annexure P-8.

20. In view of the law expounded by the Hon'ble Supreme Court, the petitioner has no vested right of being selected as a Senior Resident, but only a right to be considered in accordance with the Rules which prevail on the date on which consideration takes place.

21. As observed, the consideration in this case is yet to take place and obviously that will have to take place in accordance with the amended policy.

22. In view of the aforesaid discussion, there is no merit in the instant petition and consequently, the same is dismissed, so also the pending application(s), if any, leaving the parties to bear their own costs.