
(1994) 02 RAJ CK 0037

In the Rajasthan High Court

Case No : Civil Writ Petition No's. 1691, 1751, 1891, 2063 and 2178 of 1993

Dr. Suresh Chand

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 22-02-1994

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (1994) 1 WLN 363

Hon'ble Judges : Y.R. Meena, J; M.R. Calla, J

Bench : Division Bench

Final Decision : Allowed

Judgement

M.R. Calla, J.—This batch of five writ petitions arises out of the identical facts involving common questions of law and therefore, all these five writ petitions are being decided by this common judgment and order.

2. All the petitioners in these writ petitions are regularly appointed Civil Assistant Surgeons in the Rajasthan Medical and Health Service, under the Rajasthan Medical and Health Service Rules, 1963 (in short "the Rules of 1963") and all of them are desirous of appointment on the post of Assistant Professor in the respective specialities, under the Rajasthan Medical and Health Service (Collegiate Branch) Rules, 1962 (hereinafter referred to as the "Collegiate Branch Rules". In the case at hand, the dispute is about the selections held for urgent temporary appointments under Rule 30 of the Collegiate Branch Rules and in all the writ petitions the challenge has been thrown to the validity of the lost part of proviso (vi) to Rule 11(2) of the Collegiate Branch Rules. It is not in dispute that at the relevant time, when the selections were held all these petitioners had crossed the age of 35 years but had not attained the age of 40 years. All these petitioners are aggrieved because their candidature has been rejected for the purpose of selection through the Central Selection Committee for urgent temporary appointment under Rule 30 of the Collegiate Branch 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, has been made inapplicable to urgent temporary appointments under the aforesaid impugned part of proviso (vi) to Rule 11(2) and on the basis of this part of the proviso, they have been held to be ineligible for selection through the Central Selection Committee (C.S.C.) for the purpose of urgent temporary appointments, although they are eligible for regular recruitment to the same post. The common question which arises in all these writ petitions is about the validity of proviso (vi) to Rule 11(2) of the Collegiate Branch Rules. The same is reproduced as under:

(vi) 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. (underlining of the impugned part of the rule is ours).

3. Learned Counsel for the petitioners while assailing the validity of the last para of this proviso viz., "this relaxation shall not apply to urgent temporary appointments", have invited our attention, in the first instance, to Rule 30 in Part-VIII of the aforesaid scheme of the Rules. Mr. Joshi has submitted that urgent temporary appointments under Rule 30 of the Collegiate Branch Rules are to be made in case the vacancy in the service cannot be filled in immediately either by direct recruitment or by promotion under the rules and therefore, the vacancy being the same, the eligibility cannot be taken to be different for the purpose of urgent temporary appointment and for the purpose of regular appointment. The submission of Shri Joshi is that same candidate though eligible against same vacancy for regular recruitment and appointment to the service is not considered as eligible for the purpose of urgent temporary appointment and this part of proviso (vi) to Rule 11(2) is on the face of it unreasonable and there is no rationale to sustain the inclusion of this part in the proviso. Mr. Prem Asopa has further submitted that Rule 30 clearly postulates that the vacancy which cannot be filled in immediately by either of the methods of recruitment may be filled under Rule 30 by way of urgent temporary appointment by appointing in an officiating capacity thereto an officer eligible for appointment to the post by promotion or by appointing temporarily thereto a person eligible for direct recruitment to the service and therefore, in terms of Rule 30 itself, any candidate who is eligible for direct recruitment should also be eligible for urgent temporary appointment under Rule 30 and the eligibility cannot be varied only with reference to the appointment under Rule 30 as against that for the regular appointment.

4. Mr. R.D. Rastogi, appearing for one of the petitioners has also submitted that there cannot be more stringent conditions for the purpose of giving urgent temporary appointments vis-a-vis the conditions which are there for giving

regular appointment. The submission which has been made on behalf of the petitioners is that the vacancy is the same and it does not stand to reason that against the very same vacancy a candidate who is eligible for regular appointment is not eligible for urgent temporary appointment under Rule 30 and the exception with regard to the upper age limit of 40 years in case of the persons serving in connection with the affairs of the State in substantive capacity upto the age limit of 40 years, has been wrongly made in applicable for the purpose of urgent temporary appointments. It has also been submitted that there is no nexus with the object sought to be achieved for denying this upper age limit of 40 years in the case of urgent temporary appointments while the same is very much available for the purpose of regular appointments.

5. Mr. A.K. Bhandari, learned Additional Advocate General and Shri N.C. Goyal and R.N. Mathur appearing for the respondents have submitted that the impugned part of proviso (vi) cannot be assailed for the simple reason that this part of the rule enlarges the scope of selection of the candidates from the open market for the purpose of urgent temporary appointments and persons who are already in the service of the State Government as Civil Assistant Surgeons are allowed to be considered for the purpose of urgent temporary appointments, they will have to be reverted back to their original posts of Civil Assistant Surgeon in case they are not selected. Shri A.K. Bhandari, learned Additional Advocate General, has taken us through the legislative history of this rule and has made reference to the report of the Heeralal Devpura Committee on the demands of the Rajasthan Rajya Karmchari Sangh in respect of demands contained in their Charter of 25 demands. Shri Bhandari submitted that this report was presented on 10th May, 1974 and there after the amendments were made in the various Service Rules in the State of Rajasthan and such a provision was included in the various Service Rules by amendment and it was inserted vide notification No. F.7(8)DOP/A- II/74 dated 31.12.74 read with the Corrigendum dated 25.2.1975 making it effective from 28th October, 1974. We have also gone through the notification dated 31.12.74 which was published in the Rajasthan Gazette dated 23.1.75 by which the proviso (vi) to Rule 11(2) was inserted in the various Service Rules as per the schedule attached with this notification. In this Schedule, the Rajasthan Medical & Health Service (Collegiate Branch) Rules, 1962 appear at Sl. No. 23 and against it, the number of existing proviso with rule has been mentioned as 11 (v) and thus, this new proviso (vi) has been inserted after the aforesaid existing proviso (v) under Rule 11(2). So far as the legislative history and reference to the Devpura Committee at the instance of the Rajasthan Rajya Karmchari Sangh is concerned, it may be observed that there might have been demands of the Sangh and the Committee might have given such a report, but so far as the present impugned part of the proviso (vi) to Rule 11(2) of the Collegiate Branch Rules is concerned, it has to be decided on the anvil of Article 14 and 16 of the Constitution as to whether it withstands the challenge of Articles 14 and 16 of the Constitution of India or not. Mr. A.K. Bhandari, learned Additional Advocate General has cited before us the following cases:-1. Ram

Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others, . 2. Swami Motor Transport (P) Ltd. and Another Vs. Sri Sankaraswamigal Mutt and Another, 3. Khemchand Tejwani Vs. State of Rajasthan and Another,

6. Shri R.N. Mathur has cited before us the following cases: 1. Jagannath v. Union of India (1992) 2 Supp SCC 105. 2. Mohan Kumar v. Union of India . 3. 1993 (supp.) (3) SCC 528, para 8 Head Note-"G"

7. It has been submitted that the impugned part of the Rule is not open to challenge as it is in conformity with Article 14 and 16 of the Constitution of India and in all such matters, absolute mathematical equality cannot be claimed nor the rule can be struck down or held to be invalid on the grounds as have been submitted on behalf of the petitioners.

8. We have considered the submissions which have been made on behalf of both the sides and we find that so far as the legal prepositions which have been laid down in the aforesaid authorities, there can't be any quarrel but the case here is entirely different in which the situation which is being created is that the very candidate while being considered against the very same vacancy is held to be eligible under the very same scheme of the rules for the purpose of regular recruitment but he has been held to be ineligible for the purpose of urgent temporary appointment. The arguments which have been raised on behalf of the petitioners are that more stringent conditions may be conceived for the purpose of regular recruitment vis-a-vis urgent temporary appointment and when Rule 30 itself provides that all those persons who are eligible for regular recruitment will also be eligible for urgent temporary appointment under Rule 30, there is no question of denying this eligibility to them by way of adding the impugned part of the rule under proviso (vi) to Rule 11(2) of the Rules. The other argument which was raised on behalf of the petitioners is also equally weighty inasmuch as it seeks to counter-act the argument of the learned Additional Advocate General that in case the in service C.A.S. doctors are also allowed to be eligible for the purpose of urgent temporary appointments, they may have to be sent back to their original posts if they are not ultimately selected for the purpose of regular recruitment. This, submission which was raised by Shri Bhandari, learned Additional Advocate General, does not impress us for twin reasons, inasmuch as this situation would be equally applicable even to those C.A.S. doctors who have not crossed the age of 35 years and therefore, merely because certain candidates who are otherwise eligible for promotion they cannot be denied the eligibility on the ground that they may have to be sent back to their original posts in case they are not selected on regular basis. It is not in dispute that it is a case of selection for urgent temporary appointments under Rule 30 through the Central Selection Committee, and any candidate who is given appointment under Rule 30 through the C.S.C. whether he is a candidate from open market or whether he is an in service candidate below the age of 35 years or above the age of 35 years, and who has not attained the age of 40 years, will have to go back to his original post in case he is not selected in the regular recruitment and

therefore the argument of Shri A.K. Bhandari, learned Additional Advocate General is only illusory. The scheme of the rules show that the vacancy is the same, the candidate, who is appearing is also the same, whether it is a case of regular appointment or whether it is a case of urgent temporary appointment, and yet the eligibility is being denied only on the ground that the nature of appointment which is being given is urgent temporary. It militates against the basic principles of service jurisprudence that for the purpose of urgent temporary appointment more stringent conditions are being pressed as compared to those which are made applicable at the time of giving regular appointment. Besides this, Shri Prem Asopa, had invited our attention to the Rajasthan Medical and Health Service Rules, 1963. Under this service, appointments are made on the post of Civil Asstt. Surgeon and certain other posts. For the post of C.A.S. the only requirement of the qualification is M.B.B.S. and yet, in the scheme of the Rules, the upper age limit is 45 years, whereas in the present scheme of Rules i.e. the Collegiate Branch Rules, where the qualification required for the post of Assistant Profession is Post Graduation, the upper age limit even in the case of govt. servants has been kept to be 40 years for regular recruitment and that too is being denied at the time of urgent temporary appointment. Thus, we find that a post for which a candidate has to devote at least three years more period of study, is available to him only upto the age of 40 years while those who are simply MBBS candidates, for them the upper age limit has been kept to be 45 years, in the Rules of 1963. Though these are two different services but while examining the validity of the impugned part of the rule, it cannot be lost sight of that in a service where the candidate who gets entry after devoting a longer period in his educational career or for the purpose of acquiring educational qualifications has been restricted to upper age limit upto 40 years, whereas in the case where a shorter period is devoted by the candidate, yet the upper age limit is 45 years. While examining the validity of the rule, it has to be seen as to after all what is the nexus with the object sought to be achieved. In the cases at hand, we find that there is no nexus with the object sought to be achieved, in restricting the upper age limit upto 35 years only for the purpose of urgent temporary appointment for the same post while keeping it to be 40 years for the purpose of regular recruitment. Having considered all the submissions which have been made at bar, we are of the opinion that the following part of proviso (vi) to Rule 11(2) of the Collegiate Branch Rules, i.s. "this relaxation shall not apply to urgent temporary appointments", cannot be sustained in the eye of law. Since this part of the rule is clearly severable from the earlier part of it whereby the upper age limit has been fixed as 40 years in the case of persons serving in connection with the affairs of the State in substantive capacity, there cannot be any difficulty in striking down only that part of the rule which is unreasonable and accordingly, the above quoted part of proviso (vi) to Rule 11(2) of the Collegiate Branch Rules is held to unreasonable and irrational, arbitrary and discriminatory and hence violative of Articles 14 and 16 of the Constitution of India; it neither advances the object sought to be achieved nor has any nexus with such object and the same is declared invalid and is hereby struck down.

Once the aforesaid rule has been held to be invalid, there cannot be any difficulty about the holding of these petitioners, who were all between the age of 35- 40 years, at the relevant time, to be eligible for consideration for urgent temporary appointment under Rule 30 of the Collegiate Branch Rules in their respective specialities and their rejection or denial of eligibility on this ground alone is held to be illegal.

9. Now, so far as the facts of particular cases are concerned, for the purpose of considering the relief to be granted, we may advert to each case as under:

D.B. Civil Writ Petition No. 1891/1993

Dr. Sursh Chand Gupta v. The State of Raj. and Ors.

An ancillary argument was raised on the basis of the additional affidavit dated 5.4.1993 filed on 6.4.1993, with reference to Ex.5, that urgent temporary appointments have been made in various specialities such as Radio-diagnosis, Psychiatry, Microbiology, of in service candidates who had already crossed the age of 35 years. It was argued that in several cases, appointments on urgent temporary basis under Rule 30 have been given notwithstanding the fact that in service candidates have crossed the age of 35 years and therefore in denying appointment to the petitioner on the basis of age being more than 35 years the petitioner has been discriminated and the government has not applied the uniform standards. On this question, a controversy was raised by Shri R.N. Mathur that copy of such additional affidavit along with the document filed in the case of Shri S.C. Gupta had not been made available to him and therefore, he could not controvert the same. The document (Ex.5) is there on the record which shows that such appointments have been given but once we have already considered the validity of the rule itself and the impugned part of proviso (vi) to Rule 11 (2) has already been held to be invalid by us, it is not necessary for us to go into this question, although it does appear on the basis of the order that uniform standards have not been applied by the government. Sometimes the appointments have been given to those candidates also on urgent temporary basis under Rule 30 who were in service and who had crossed the age of 35 years, whereas the same has been denied in the present case.

10. The result of the Central Selection Committee relating to this writ petitioner in the speciality of Radio-diagnosis, for the post of Assistant Professor shows that the petitioner Dr. Suresh Chand Gupta has obtained the highest marks i.e. "8" whereas the respondent No. 2 Dr. (Miss) Reena Mathur has obtained "7 1/2" marks only. The petitioner Dr. Suresh Chand Gupta has therefore naturally legitimate grievance and had the petitioner not been rejected on the ground of age, he would have been entitled for appointment instead of respondent No. 2, Dr. (Miss) Reena Mathur. However, it is not disputed before us that the vacancies are still available and therefore, in our opinion, no useful purpose will be served by quashing the appointment of respondent No. 2 and it will be sufficient if a direction is given that the petitioner Dr. Suresh Chand Gupta may also be given

appointment as Assistant Professor in the speciality of Radio diagnosis from the same date from which the respondent No. 2 Dr. (Miss)Reena Mathur had been appointed and the petitioner will be entitled to all consequential benefits, except the salary as Assistant Professor for the period prior to the date of this judgment. It is also made clear that in order to give relief to the petitioner in case it is found that it is not possible to give relief to him without disturbing the position of the respondent No. 2, the Government shall take such immediate steps whereby the petitioner gets the relief of urgent temporary appointment as Assistant Professor in the speciality of Radio Diagnosis from the date on which Dr. (Miss) Reena Mathur, respondent No. 2, was so appointed on the basis of the impugned selections by the C.S.C. and Dr. (Miss) Rena Mathur shall be displaced to make room for the petitioner on the post of Assistant Professor in Radio diagnosis. Ordered accordingly.

D.B. Civil Writ Petition No. 1751/1993

Dr. Priya Sharan v. The State of Raj. and Ors.

11. This petitioner is seeking relief in the speciality of Anaesthesia and the result-sheet shows that he has obtained "7 1/2" marks. The result-sheet also shows that alongwith the present petitioner Dr. Priya Sharan, there are some other candidates also, who have secured "7 1/2" marks and they are all bracketed at position No. 2 because one Dr. (Mrs.) Neelam Dogra has obtained 8 3/4 marks which is the highest. It has been submitted that had the petitioner been treated to be eligible, he too would have been appointed as Assistant Professor in the speciality of Anaesthesia, as urgent temporary appointee along with others who had been so appointed and it has also been submitted that later on the selections have been held through the R.P.S.C. also and even after accommodating all the candidates selected by the R.P.S.C. the vacancies are still available against which the petitioner can be appointed and allowed to continue. Not only this, it has been submitted that there are as many as 7 candidates rejected by the R.P.S.C. and they are also continuing as Assistant Professors despite their failure to be selected on regular basis through the R.P.S.C. These factual submissions are not disputed before as.

12. In this view of the matter, the petitioner's claim for urgent temporary appointment as Assistant Professor in the speciality of Anaesthesia through Central Selection Committee is sustained and accordingly, it is directed that he may be appointed as such from the date of appointment of any other candidate having 7 1/2 marks, with all consequential benefits, except the salary as Asstt. Professor for the period prior to the date of this judgment.

D.B. Civil Writ Petition No. 1691/1993

Dr. Mohan Lal v. The State of Rajasthan and Ors.

13. This petitioner had sought appointment through the Central Selection Committee on urgent temporary basis in the speciality of General Surgery and as

per the result sheet and the marks obtained by him, he could not be appointed according to his merit against the available vacancies for which the selections were held and therefore, it is declared that though he was eligible for consideration for urgent temporary appointment through the Central Selection Committee and would continue to be so, until he attains the age of 40 years, no directions with regard to his appointment can be given in this case as he does not stand the position in the merit list so as to be selected for appointment.

D.B. Civil Writ Petition No. 2178/1993

Dr. Avinash Vishnoi v. State of Raj. and Ors.

14. This petitioner had sought appointment as Assistant Professor in the speciality of Dentistry and as per the result- sheet of the Selection Committee, this petitioner has obtained "7 1/2" marks and was next to the candidate who had obtained the highest marks. There were seven posts and therefore, there could not be any difficulty in his appointment on the basis of the merit list and therefore, it is directed that he be appointed as Assistant professor in the speciality of Dentistry from the date other selected candidates were appointed on the basis of their selection by C.S.C. and the petitioner shall also be entitled to all consequential benefits, except the salary as Assistant Professor(Dentistry) for the period prior to the date of this judgment.

D.B. Civil Writ Petition No. 2063/1993

Dr. K.K. Mangal v. The State of Rajasthan and Ors.

15. This petitioner has sought appointment as Assistant Professor in the speciality of Plastic Surgery and the result sheet shows that he is one of the two candidates who have obtained the highest marks i.e. "7 1/2". Only one appointment has been made in this speciality on the basis of the C.S.C. as has been given out by the learned Additional Advocate General and this fact is not disputed by Shri JP Sharma, learned Counsel for the petitioner. It has also been given out by Shri A.K. Bhandari, learned Addl. Advocate General that there is dispute about the petitioner's academic qualifications also and for that purpose, the petitioner has filed a separate writ petition. Since that writ petition is not before us, we do not express any opinion about his academic qualifications and that question will be decided in the writ petition which has been separately filed by the petitioner. However, so far the age is concerned; it may be declared in his favour that the petitioner cannot be treated to be ineligible for urgent temporary appointment under Rule 30, through C.S.C. only on the ground that he has crossed the age of 35 years and if he is otherwise found to be eligible, he shall not be deprived from all legal consequences on the basis of his merit position and in case he is given any appointment on the basis of impugned selection, he will also be entitled to all consequential benefits except the salary for the period prior to the date of the judgment subject to the condition that he is otherwise eligible to be appointed, on the basis of his academic qualifications.

16. All these writ petitions are allowed as indicated above. The last part of the proviso (vi) to Rule 11(2) of the Rajasthan Medical Service (Collegiate Branch) Rules, 1962 viz., "This relaxation shall not apply to urgent temporary appointment" is struck down. The directions given in this judgment with regard to the petitioners shall be carried out immediately, but in no case later than 31.3.1994. Costs are made easy.