
(2015) 01 RAJ CK 0203
In the Rajasthan High Court
Case No : Civil Writ Petition No. 8643 of 2013

Firoz Khan and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 28-01-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 15(1), 16, 16(1)

Citation : (2015) 01 RAJ CK 0203

Hon'ble Judges : Veerender Singh Siradhana, J

Bench : Single Bench

Advocate : Ilias Khan for Tanveer Ahmed, for the Appellant

Final Decision : Dismissed

Judgement

Veerender Singh Siradhana, J.—The petitioners, in the instant writ application, have prayed for a direction to the State-respondents to consider their candidature for appointment to the post of Pharmacist, extending relaxation in upper age limit. Claim has also been staked for award of bonus marks according to the length of experience of similar work acquired by the petitioners while working with the Private Establishments performing the work of Drugs Distribution.

2. Admittedly, the petitioners have not been engaged with any of the agency as described under Clause-8 of the advertisement, which entitles such candidates for grant of bonus marks. However, it is pleaded case of the petitioners that they are indulged in the Drugs Distribution Field for a long time while working with the Private Establishments and Private Medical Shops where the work is identical and similar in nature.

3. Learned counsel fairly admitted that all the petitioners were also overage when the vacancies for appointment to the post of Pharmacist were advertised on 26th November, 2011, wherein the petitioners did not participate.

4. I have heard the learned counsel for the petitioners and have given my

thoughtful consideration of the pleaded facts and grounds of the writ application.

5. Indisputably, the petitioners are overaged, as would be reflected from the details with reference to the age of the petitioners wherein the petitioner number 1 - Firoz Khan is stated to be 44 years of age; petitioner number 2 - Mohammad Barkatullah Khan is stated to be 37 years of age, and petitioner number 3 - Syed Munavver Ali, is stated to be 42 years of age, on the date of institution of the writ proceedings in the year 2013.

6. In a batch of writ applications, lead case being D.B. Civil Writ Petition Number 10038 of 2013 (Atar Singh Gurjar and Ors. versus State of Rajasthan and Ors.), decided on 26th November, 2014, the Division Bench of this Court while examining the somewhat similar controversy, considered the issue of taking into account the experience of only those employees, who have gained experience while working with the Establishments of the Government or under the control and supervision of the State Government while according the benefit of bonus marks. Relying upon the explanation of the scope of Article 14 and 16(1) of the Constitution, as observed by the Hon"ble Supreme Court, under paragraphs 21, 24, 25, 27, 28 and 34 the Division Bench, held thus:--

"27. Learned Additional Advocate General has relied on the explanation of the scope of Articles 14 and 16(1) in State of Kerala and Another Vs. N.M. Thomas and Others, AIR 1976 SC 490 : (1976) LabIC 395 : (1976) 1 LLJ 376 : (1976) 2 SCC 310 : (1976) 1 SCR 906 , where explaining the fundamental rights guaranteed under Articles 14 and 16(1) of the 34 Constitution of India, the Supreme Court held in paragraphs 21, 24, 25, 27, 28 and 34 as follows:--

"21. Articles 14, 15 and 16 form part of a string of constitutionally guaranteed rights. These rights supplement each other. Article 16 which ensures to all citizens equality of opportunity in matters relating to employment is an incident of guarantee of equality contained in Article 14. Article 16(1) gives effect to Article 14. Both Articles 14 and 16(1) permit reasonable classification having a nexus to the objects to be achieved. Under Article 16 there can be a reasonable classification of the employees in matters relating to employment or appointment.

24. Discrimination is the essence of classification. Equality is violated if it rests on unreasonable basis. The concept of equality has an inherent limitation arising from the very nature of the constitutional guarantee. Those who are similarly circumstanced are entitled to an equal treatment. Equality is amongst equals. Classification is, therefore, to be founded on substantial differences which distinguish persons grouped together from those left out of the groups and such differential attributes must bear a just and rational relation to the object sought to be achieved.

25. The crux of the matter is whether Rule 13AA and the two orders Exhibits P-2 and P-6 are unconstitutional violating Article 16(1). Article 16(1) speaks of equality of opportunity in matters relating to employment or appointment under the State. The impeached Rule and orders relate to Promotion from Lower

Division Clerks to Upper Division Clerks. Promotion depends upon passing the test within two years in all cases and exemption is granted to members of Scheduled Castes and Scheduled Tribes for a longer period namely, four years. If there is a rational classification consistent with the purpose for which such classification is made equality is not violated. The categories of classification for purposes of promotion can never be closed on the contention that they are all members of the same cadre in service. If classification is made on educational qualifications for purposes of promotion or if classification is made on the ground that the persons are not similarly circumstanced in regard to 35 their entry into employment, such classification can be justified. Classification between direct recruits and promotees for purposes of promotion has been held to be reasonable in *C.A. Rajendran v. Union of India*.

27. There is no denial of equality of opportunity unless the person who complains of discrimination is equally situated with the person or persons who are alleged to have been favoured. Article 16(1) does not bar a reasonable classification of employees or reasonable tests for their selection *State of Mysore v. V.P. Narasinga Rao*.

28. This equality of opportunity need not be confused with absolute equality. Article 16(1) does not prohibit the prescription of reasonable rules for selection to any employment or appointment to any office. In regard to employment, like other terms and conditions associated with and incidental to it, the promotion to a selection post is also included in the matters relating to employment and even in regard to such a promotion to a selection post all that Article 16(1) guarantees is equality of opportunity to all citizens. Articles 16(1) and (2) give effect to equality before law guaranteed by Article 14 and to the prohibition of discrimination guaranteed by Article 15(1). Promotion to selection post is covered by Article 16(1) and (2).

34. The equality of opportunity takes within its fold all stages of service from initial appointment to its termination including promotion but it does not prohibit the prescription of reasonable rules for selection and promotion, applicable to all members of a classified group. *Ganga Ram v. Union of India*."

7. In the case of *Om Kumar and Others Vs. Union of India*, (2000) 3 JT 92 : (2000) 7 SCALE 524 : (2001) SCC(L&S) 1039 : (2000) 4 SCR 693 Supp , the Hon"ble Supreme Court while dealing with the classification based on intelligible differentia, held thus:--

"32. So far as Article 14 is concerned, the courts in India examined whether the classification was based on intelligible differentia and whether the differentia had a reasonable nexus with the object of the legislation. Obviously, when the courts considered the question whether the classification was based on intelligible differentia, the courts were examining the validity of the differences and the adequacy of the differences. This is again nothing but the principle of proportionality. There are also cases where legislation or rules have been struck

down as being arbitrary in the sense of being unreasonable. [see *Air India v. Nergesh Meerza* (SCC at pp.372-373)]. But this latter aspect of striking down legislation only on the basis of "arbitrariness" has been doubted in *State of A.P. v. McDowell and Co.*"

8. It is trite law that Article 14 forbids class legislation but permits reasonable classification provided the classification is founded on an intelligible differentia, which distinguishes persons or things that are grouped together from those that are left out of the group. In *re the Special Court Bills, 1978* (1979) 1 SCC 380, after a survey of several previous judicial proceedings involving interpretation of Article 14 of the Constitution culled out several propositions, holding thus:--

"72.(2) The State, in the exercise of its governmental power, has of necessity to make laws operating differently on different groups or classes of persons within its territory to attain particular ends in giving effect to its policies, and it must possess for that purpose large powers of distinguishing and classifying persons or things to be subjected to such laws.

(3) The constitutional command to the State to afford equal protection of its laws sets a goal not attainable by the invention and application of a precise formula. Therefore, classification need not be constituted by an exact or scientific exclusion or inclusion of persons or things. The courts should not insist on delusive exactness or apply doctrinaire tests for determining the validity of classification in any given case. Classification is justified if it is not palpably arbitrary.

(4) The principle underlying the guarantee of Article 14 is not that the same rules of law should be applicable to all persons within the Indian territory or that the same remedies should be made available to them irrespective of differences of circumstances. It only means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Equal laws would have to be applied to all in the same situation, and there should be no discrimination between one person and another if as regards the subject-matter of the legislation their position is substantially the same.

(5) By the process of classification, the State has the power of determining who should be regarded as a class for purposes of legislation and in relation to a law enacted on a particular subject. This power, no doubt, in some degree is likely to produce some inequality; but if a law deals with the liberties of a number of well defined classes, it is not open to the charge of denial of equal protection on the ground that it has no application to other persons. Classification thus means segregation in classes which have a systematic relation, usually found in common properties and characteristics. It postulates a rational basis and does not mean herding together of certain persons and classes arbitrarily.

(6) The law can make and set apart the classes according to the needs and exigencies of the society and as suggested by experience. It can recognise even degree of evil, but the classification should never be arbitrary, artificial or evasive.

(7) The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and (2) that that differentia must have a rational relation to the object sought to be achieved by the Act."

9. In the instant case at hand, the petitioners have stated themselves to be performing the work of Drugs Distribution in the Private Sector. The fact that they have not worked with any of the Establishments as detailed out under Clause-8 of the advertisement, is not in dispute. Legality and validity of Clause-8, is not under challenge. The State Government has decided to extend the benefit of bonus marks to such of the candidates, who have worked with the Establishments/Institutions, as detailed out under Clause-8. The candidates, who have been working under the Schemes floated by the State Government and the Establishments as included under Clause-8 of the advertisement, are under the control and supervision of the State Government, and their salary and wages are paid directly from the public exchequer. The criteria that has been adopted by the State Government, therefore, do not call any interference on the ground of discrimination while according benefit of weightage by way of bonus marks.

10. The recruitment to the post of Pharmacist was also conducted in the year 2011 wherein the petitioners did not participate. Relaxation in the age is the discretion of the State Government, which cannot be claimed as a matter of right. Moreover, in view of the fact that the petitioners, who are now 44, 37 and 42 years of age in the year 2013, cannot insist for relaxation in age having foregone the opportunity to participate in the recruitment process that was conducted in the year 2011.

11. For the reasons and discussions herein above, the writ petition is devoid of any substance, and lacks in merit, and therefore, deserves to be dismissed.

12. Ordered accordingly.

13. In view of the final adjudication on the writ application, the stay application stands closed.

14. However, in the facts and circumstances of the case, there shall be no order as to costs.