

(2016) 02 RAJ CK 0041

In the Rajasthan High Court

Case No : Civil Writ Petition No. 12942/2015

Jagdish Prasad and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 09-02-2016

Acts Referred:

Constitution of India, 1950 — Article 14, Article 16, Article 309

Citation : (2016) 02 RAJ CK 0041

Hon'ble Judges : Govind Mathur and Nirmaljit Kaur, JJ.

Bench : Division Bench

Advocate : Hanuman Singh Choudhary, for the Appellant; P.S. Bhati, Additional Advocate General assisted by Narendra Gehlot, Assistant Counsel and K.L. Thakur, Additional Advocate General assisted by Rishabh Tayal, Assistant Counsel, for the Respondent

Final Decision : Dismissed

Judgement

1. The Rajasthan Medical and Health Subordinate Service Rules, 1965 (hereinafter referred to as "the Rules of 1965") have been framed by the Governor of Rajasthan to regulate recruitment and other service conditions relating to the Rajasthan Medical and Health Subordinate Services. The post of Nurse Grade-II is a post encadred under the Rules of 1965 and Rule 19 provides the procedure for direct recruitment to the post aforesaid. As per proviso to Rule 19, the persons having experience of work similar to the posts other than Pharmacists under the Government, National Rural Health Mission and Medi Care Relief Society are entitled for some weightage in the form of bonus marks. The proviso aforesaid reads as under:-

"Provided that in case of appointment to the posts other than Pharmacist, which are not in the purview of the Commission, merit shall be prepared by the Appointing Authority on the basis of marks obtained in such qualifying academic examination or professional examination or both as specified in the schedule appended to these rules and such bonus marks as may be specified by the State

Government having regard to the length of experience on similar work under the Government, National Rural Health Mission and Medi Care Relief Society."

2. A challenge is given to the grant of bonus marks under the proviso aforesaid alleging discriminatory on the count that the weightage in the form of bonus marks has been confined to the persons working with the Government, National Rural Health Mission and Medi Care Relief Society but not to the other persons though may have experience of similar work.

3. According to learned counsel for the petitioners the object of the recruitment to the post of Nurse Grade-II is to have most efficient and skillful persons in service and for that purpose weightage is given to the experienced hands. The experience gained in Government Hospitals, National Rural Health Mission or Medi Care Relief Society cannot be treated on any higher pedestal than the persons having similar work experience with other institutions including the Government Hospitals of other States. Suffice to mention that under the Rules of 1965 the "Government" means the Government of Rajasthan. According to learned counsel for the petitioners the classification made among the persons on basis of their work place is in violation of Articles 14 and 16 of the Constitution of India which forbids any classification on basis of region. To substantiate the argument reliance is placed upon a Full Bench judgment of this Court in the case of Deepak Kumar Suthar & Anr. v. State of Rajasthan & Ors., reported in 2000(1) WLC (Rajasthan) 1. In this case a Full Bench of this Court was examining the issue relating to extension of weightage in the form of bonus marks to the residents of rural area. The Full Bench held that the residents of rural areas as well as urban areas of the State of Rajasthan form one class, therefore, the grant of weightage to the residents of rural area is in violation of Articles 14 and 16 of the Constitution of India.

4. While meeting with the arguments advanced on behalf of the petitioners, the stand of learned Additional Advocate General is that the persons working with National Rural Health Mission anywhere in the entire country, the persons working with Government Hospitals and Medi Care Relief Society constitutes a separate class than the persons working in the Government Hospitals in other States. It is brought into our knowledge that the Government of Rajasthan is conducting different training programmes for its employees working in different hospitals and health related schemes even on contractual basis. By relying upon such training programmes, it is submitted that the persons working with Government institutions, National Rural Health Mission and Medi Care Relief Society are having complete knowledge of the needs and requirements in health sector of the State of Rajasthan, therefore, they are entitled for preference in service in the form of weightage given.

5. Heard learned counsels.

6. Before coming to the facts, it would be appropriate to mention that the concept of equality enshrined in the Constitution of India does not forbid

reasonable classification for the purpose of legislation. If any classification is made which is founded on an intelligible differentia, it distinguishes persons or things that are good together from others left out and the differentia made possess a rational relation to the object sought to be achieved by the statute in question, then that does not offend the concept of equality. The concept of equality does not take away the authority of the State to classify the persons for legitimate purposes. If a law deals equally with members of a well defined class, it is neither obnoxious nor a denial of equal protection given under Article 14 of the Constitution.

7. A Full Bench of this Court while examining a reference made to it by a Single Bench in SB Civil Writ Petition No. 6207/2009, Rajkumar & Ors. v. State of Rajasthan & Ors., decided on 30.11.2015, while pondering the scope of the concept of equality, held as under:-

"Every law possesses its philosophy with executing concept, hence, while examining correctness of any action, the philosophy behind the law and its kinetics must be kept in mind. The philosophy of law is determinative factor of enactment, its kinetics indicate amplitude of its terminals and the executing concept provides mode for its implementation. The object and kinetics of every law must always be in consonance with the executing concept. Any disharmony in these factors may result into failure to achieve the object. It is well settled that under Article 14 of the Constitution of India right to equality is to describe within the periphery of doctrine of reasonable classification and principles of absence of arbitrariness. The concept of equality forbids class legislation but not a reasonable classification of purposeful nature. The classification sought to be made must not be arbitrary, artificial, evasive and must be based on some real substantial foundation evolving a just and reasonable relation to the object sought to be achieved.

In Chirangji Lal v. Union of India (, AIR 1951 SC 41), Hon"ble Supreme Court held that mere differentiation or inequality of treatment does not per se amount to discrimination with the inhabitation of the equal protection clause. To attract the operation of the clause, it is necessary to show that the selection or differentiation is unreasonable or arbitrary, that it does not rest on any rational basis having regard to the object which the Legislature has in view. In the same case it was observed that the Court should not adopt a doctrinaire approach which might choke all beneficial legislation.

The U.S. Supreme Court in Arkansas Gas Co. v. Railroad Commission (261 US 379), while discussing the concept of equality, held that mere production of inequality is not enough to hold that equal protection has been denied. For, every selection of person for regulation produces inequality in some degree. The inequality produced, in order to encounter the challenge of the Constitution, must be "actually and palpably unreasonable and arbitrary". The governance is not a simple thing. It encounters and deals with the problems which come from persons in an infinite variety of relations. Classification is the recognition of those

relations, and, in making it a wide latitude of discretion and judgment must be given."

8. Keeping in mind this nature of the concept of equality, we have considered constitutionality of the provision impugned. The argument advanced by learned counsel for the petitioners is that the grant of weightage in the form of bonus marks to the persons working with National Rural Health Mission, Government Hospitals and other health related institutions in the State of Rajasthan and Medi Care Relief Society is nothing but a discrimination among similarly situated persons. It is asserted that on basis of the region no favour is permissible in light of Articles 14 and 16 of the Constitution of India and further in light of the law laid down in the case of Deepak Kumar Suthar (*supra*).

9. As per the proviso in question a weightage in the form of bonus marks is given to the persons working with National Rural Health Mission, persons working with Government of Rajasthan Hospitals and other health related institutions and with Medi Care Relief Society. So far as the National Rural Health Mission is concerned, that is a nationwide scheme and, therefore, the persons working under this scheme are entitled to have weightage irrespective of the place of their working. All the persons working with National Rural Health Mission anywhere in country and discharging similar work to the work of Nurse Grade-II are entitled for weightage in the form of bonus marks.

10. The main emphasis of the petitioners is extension of weightage in form of bonus marks to the persons working with Government of Rajasthan and Medi Care Relief Society.

11. From perusal of the record made available, the Government of Rajasthan has conducted several training programmes for the persons working even on contractual basis and under different schemes controlled by the Government of Rajasthan and Medi Care Relief Society. The training programmes mainly pertain to the peculiar working pattern in the rural areas of the State of Rajasthan including tribal and arid zones. It is also pertinent to note that the participation in such trainings is mandatory and non-joining of the same may result into non-renewal of service contract. The persons working with Government of Rajasthan and Medi Care Relief Society with experience similar to the work of Nurse Grade-II are posted at different hospitals and other institutions affiliated with the health projects and as such these persons are having a special knowledge of working in the State. A person having such knowledge certainly forms a class different than the persons not having such experience of working in the State. It is also pertinent to note that the benefit extended is only a little weightage on basis of the length of service with experience of working in Rajasthan and not the eligibility. A person having qualification eligibility is entitled to face the process of recruitment irrespective of having any experience or not. The experience gained in other States cannot be compared with the working in the State of Rajasthan as every State is having its own problems and issues and the persons trained to meet such circumstances stand on different pedestal.

12. In view of it, we are of considered opinion that the persons having experience on similar work under the Government, National Rural Health Mission and Medi Care Relief Society form absolutely a different category and the classification made under the proviso impugned is not at all discriminatory.

13. So far as the law laid down in the case of Deepak Kumar Suthar (supra) is concerned, that is having no application in the instant matter. The case aforesaid was relating to preference given in the form of bonus marks to the residents of rural area while making appointments under the Rajasthan Education Subordinate Service Rules, 1971. The Rules of 1971 are the Rules framed under proviso to Article 309 of the Constitution of India and those regulate service conditions of the persons employed to Rajasthan Education Subordinate Service. The Rajasthan Education Subordinate Service under the Rules of 1971 is a State level integrated service and, therefore, any preference prescribed on basis of the place of residence by awarding bonus marks was treated bad by Full Bench of this Court. The Full Bench found that the residents of urban area as well rural area stand on absolutely same pedestal so far as their eligibility and other objective considerations required for recruitment on the post in question are concerned. In the case in hand, that is not the position. As already stated, the persons having working experience in the Government institutions of the State of Rajasthan are having regular training to work in different conditions of the State, they are also having experience of working with the people of Rajasthan. The respondents, if want to abstract any benefit of the experience gained by these persons in the State of Rajasthan, then that is nothing but an effort to achieve the object of recruitment to the post of Nurse Grade-II.

14. In view of whatever discussed above, we do not find any illegality as alleged with the provision impugned. The writ petition as such is having no merit, hence dismissed.