

(2011) 05 RAJ CK 0035

In the Rajasthan High Court

Case No : Civil Writ Petition No. 10826 of 2008 and 9 Others

Kuldeep Shukla

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 30-05-2011

Acts Referred:

All India Council for Technical Education Act, 1987 — Section 2, 2
Rajasthan Para-Medical Council Act, 2008 — Section 32

Citation : (2011) 4 RLW 3493

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Judgement

Hon'ble Rafiq, J.—These writ petitions involve common question of law and facts and therefore they are being decided by this common order.

2. All the petitioners applied for appointment on the post of Assistant Radiographer (Rural) pursuant to the advertisement dated 2.7.2008. They are aggrieved by the action of the respondents in not treating the diploma held by them from different institutions as recognized. Petitioners have therefore approached this Court with the prayer to declare action of the respondents illegal and direct them to consider them eligible and accordingly grant them appointment on the basis of their merit.

3. Petitioners in SB Civil Writ petition Nos. 10826/2008, 10825/2008, 10827/2008 and 10873/2008 have obtained Diploma in Medical Technology (X-ray and Imaging) Examination, which of the duration of 18 months. They studied the diploma course with Santokba Durlabhji Memorial Hospital, Jaipur and have been awarded certificate thereafter by the Indian Medical Association, New Delhi.

4. Grievance of the petitioners; in S.B. Civil Writ Petition Nos. 10681/2008, 10941/2008 and 10942/2008 is that they are being illegally deprived of consideration for appointment Their diplomas have wrongly been treated as not recognized by the State Government. They were admitted to National Institute of Paramedical Jaipur for diploma course of X-ray Vision in the year 2006.

Petitioners were selected for admission by the Board of Technical Education to which it was affiliated. Subsequently however, due to Act passed by the Rajasthan State Legislative Assembly, NIMS University was declared as independent University vide notification of the government dated 29.3.2008. Therefore they studied for the academic year 2007-08 in the said institution as affiliated to NIMS University. Their diploma certificates have wrongly been treated to be not recognized by the State Government.

5. It is argued that IMA is an autonomous body. It has been recognized by the Central Government, Delhi NCR State Government and Escort Heart Institute, New Delhi. Certificate issued to this effect by the In-charge of the Medical Technology (X-Ray) / Laboratory dated 24.10.2008 has been produced. Students of NIMS institute, who are undergoing study course is different subjects like B.Sc. MBBS, D. Pharma etc. were permitted to pursue their studies with that institution but they were permitted and to appear in examination conducted by the University of Rajasthan to which NIMS institution was earlier affiliated. Petitioners had to continue their studies with NIMS University because after its being declared as an independent University, it could not have thereafter remained affiliated to the Board of Technical Education, Rajasthan. It is argued that NIMS Paramedical College was initially recognized by the All India Council for; Technical education with the intake of 60 students in the year 2005-06. This approval was extended for the next academic years 2006-07, 2007-08, 2008-09 and 2009-10. Approval letters dated 26.6.2005, 17.7.2005, 5.6.2007, 17.6.2008 and 12.3.2009 for those years, respectively have been produced for perusal of the Court. Letters have been addressed to the Principal Secretary, Department of Technical Education, Government of Rajasthan, Jaipur by the Regional Officer of the AICTE North Western Regional Office at Chandigarh. Learned counsel has cited he order of the State Government showing affiliation of the NIMS University of Paramedical Technology for various technical subjects including Medical Lab Technician for the year 2006-07 to the Board of Technical Education.

6. In SB. Civil Writ Petition Nos. 10737/2008 and 10999/2008, petitioners have come out with the grievance that they obtained vocational certificate in Advance Imaging and Special DIAG Procedures Regional Radiography and Contract Media Radiation Physics, Dark Room Layout and Practices Radiography Human Anatomy and Physiology from the National Institute of Open Schooling," Government of India, New Delhi in the year 2004 and studied such course as regular students at Poddar Management Training Centre, Jaipur, which is affiliated to that institution. National Institute of Open Schooling, New Delhi is imparting vocational training organized by the Government of India. Resolution of the government of India, Human Resources Ministry, Elementary Education and Literacy Department dated 14.9.2008 has been placed on record to substantiate this plea.

7. In S.B. Civil Writ Petition No. 11130/2008, petitioner - Devendra Kumar Kumhar has obtained diploma in the same subject from Gayathri Institute of Paramedical Sciences, Bangalore, which has been recognized by the Government

of Karnataka and Karnataka Paramedical Board. He contends that this diploma having been recognized by the Government of Karnataka should be deemed to be recognized also by the Government of another State i.e. the Government of Rajasthan.

8. Learned counsel have cited the order passed by the co-ordinate bench of this Court in S.B. Civil Writ Petition No. 2242/1998 Rajendra Kumar Sharma and Others Vs. State of Rajasthan and Others, and argued that similarly situated students admitted to Diploma Course of Investigative Bio Technology, who were not considered eligible for appointment on the post of Lab Technician because they obtained the said diploma from the University of Rajasthan and maintained that such diploma should have been obtained from the M.D.S. University, Ajmer, this Court held that University of Rajasthan is an autonomous body, which was set up with full concurrence of the State Government under the ordinance of the Governor of Rajasthan by which it is authorized to conduct such study course and therefore, Diploma of Investigative Bio Technology of Lab Technician granted by the University of Rajasthan cannot be questioned by any authority.

9. Learned counsel for the respondents argued that while Schedule-III (Medical Side) appended to the Rajasthan Rural Medical and Health Subordinate Service Rules, 2008 (for short, the "Rules of 2008") prescribes eligibility qualification for the post of Assistant Radiographer (Rural) to be School Certificate with 18 months Radiographer Course passed but no prescription has been made to the effect that diploma course should be recognized from the Government of Rajasthan. In contrast to this, eligibility qualification that has been prescribed in all other Schedules i.e. in Schedule-I for Rural Nurse Gr.II, Schedule-II for Rural Health Worker (Female), Schedule-IV, Schedule-IV for Laboratory Technician (Rural) and Schedule-V for Rural Health Worker (Male), provides Secondary standard with 18 months training course recognized by the Government. No such condition has been laid down in Schedule-III as also in the advertisement inviting objections and therefore now the respondents are estopped from questioning eligibility of petitioners and laying down any additional or new qualification which was not available at the time of issuance of advertisement.

10. Indian Medical Association, which is respondent No.3 in S.B. Civil Writ Petition No. 10826/2008 filed reply to the writ petition, has asserted that it is national body of doctors spread all over India and is a society registered under the Societies Registration Act. Education including technical education and medical education, are included in the concurrent list in entry 25 of Schedule-VII, which is subject to provisions of entries 63, 64, 65 and 66 of List I and therefore they fall within the domain of the Union Government. The Health Department of the Ministry of Health and Family Welfare vide letter dated 31.7.1987 clarified that the certificate issued by the institutions/hospitals recognized by IMA were recognized as valid by the Government of India for Central/State Government employment. Copy of the letter dated 31.7.1987 is placed on record. Paramedical courses do-not fall within the domain of AICTE, which operates exclusively in the

field of technical education as per Section 2(g) of the All India Council for Technical Education Act, 1987 (for short, the "Act of 1987"). Santokba Durlabhji Memorial Hospital, Jaipur was recognized by the IMA for imparting training in diploma courses in X-Ray Vision. AICTE has no role to play in this connection. Copy of the Circular issued by the Government of NCT of Delhi dated 3.6.2009 has been produced. It is contended that Government of Delhi has pending constitution of Paramedical Council treated as recognized all Paramedical Courses run by the Hospitals of Delhi Government, Central Government and State Governments, Indian Medical Association and Christian College of Nursing (St. Stephen Hospital). It is argued that since so far no paramedical council has been constituted in the State of Rajasthan, this parameter should also be applied in this State too.

11. Per contra, Shri S.C. Purohit, learned Additional Government Counsel and Dr. Vibhuti Bhushan Sharma, learned Additional government Counsel appearing for the respondent-State have opposed the writ petitions and argued that the Rules of 2008 provides eligibility qualification for the post of Assistant Radiographer (Rural) of Secondary standard with 18 months Radiographer Course passed. Government made appointments of trained candidates of Jaipur, Jodhpur, Udaipur and Bikaner Medical Colleges as Assistant Radiographer till 1996 and thereafter till 2002 of Medical Colleges at Jaipur, Jodhpur, Udaipur, Kota, Ajmer and Bikaner. Responsibility of Imparting training for the post of Assistant Radiographer was then conferred on the Board of Technical Education, Jodhpur. It is only with the approval, of that Board that admissions were made and candidates studying In such institutions recognized by the said Board were treated to be holders of the recognized institution and therefore petitioners were not called for interview. Information regarding recognized medical associations was obtained from the Board on 7.8.2008, 4.9.2008 and 19.9.2008, which has also submitted the list of such recognized institutions, namely; S.M.S. Medical College Jaipur, J.L.N. Medical College Ajmer, S.N. Medical College Jodhpur, Government Medical College Kota, Institute of Medical Technology and Nursing Education, Jaipur and Smt. Dakuben Sharemalji Sancheti Para Medical Inst. (Pali). Learned Additional government Counsel further argued that NIMS Paramedical College, Jaipur was approved for 2005-06 and 2006-07 with intake of 60 students. However, subsequently it did not have any affiliation with the Board of Technical Education, Jodhpur from 2007-08. Reference is made to the letter of NIMS University, which is on record as Ann. R/3 whereas it maintained that now from academic year 2008-09 and onwards, that University would not hold the entrance examination and the examination of the relevant study courses would be held and result would also be declared by that University because from 2007-08 all the branches of D.M.L.T., X-Ray, ECG and Ophthalmic have been taken over by that University. It was argued that the letter of the Government of India dated 31.7.1987 issued under the signatures of Undersecretary IMA New Delhi can have no legal force after the Act of 1987 promulgated w.e.f. 23.12.1987. It is denied that X-ray Vision Course is a technical course within the meaning of

Section 2(g) of the Act of 1973 and Section 2(h), which defines the word "technical institution". Reliance was also placed on the Rajasthan Para-Medical Council Act, 2008. It was argued that only an institution, which has been approved under the said Act can be recognized treated recognized institution.

12. I have given my anxious consideration to the rival submissions and perused the material available on record.

13. In so far as I.M.A. and the Hospitals like; Santokba Durlabhji Memorial Hospital Jaipur, Institute of Medical Technology and Nursing Education, Jaipur and Smt. Dakuben Sharemalji Sancheti Para Medical Institution Sumerpur (Pali), whom IMA has approved for running the diploma courses in X-Ray Vision and Medical Lab Technician etc. are concerned, neither any authority has been cited nor any enactment has been produced nor any specific order of approval by AICTE has been shown to contend that I.M.A. either has a statutory character or otherwise is competent to approve any hospital, which is may like to impart education and training in diploma courses like; Medical Technology in X-ray and Imaging etc. Letter issued by the Government of India dated 31.7.1987 has now lost its efficacy after the Act of 1987 came into force, which was promulgated by the Government of India vide notification 23.12.1987 and more particularly after the Act of 2008 was enacted by the Legislature of the State of Rajasthan. Argument of I.M.A. that the course of X-ray Technical/Radiographer does not fall within the definition of "technical education" as defined in Section 2(g) may not therefore be any assistance to it.

14. On examination of the issue on merits, petitioners" argument is found to be untenable. Section 32 of the Rajasthan Para-Medical Council Act, 2008 provides that the Council, if it is satisfied that any qualification in Para-Medical subjects granted by an authority outside the territories of the State of Rajasthan affords a sufficient guarantee of the requisite skill and knowledge, may declare such qualification to be a recognized qualification for the purpose of this Act. But so far that exercise has not been undertaken in regard to qualification held by the petitioners, because according to Section 4 of the Act of 2008, Rajasthan Paramedical Council, which is a statutory Council competent to do so, has not yet been constituted by the Government. Although it may be true that technical education is included in the concurrent list in entry 25 of Schedule-VII (List-III) and has been made subject to provisions of entries 63, 64, 65 and 66 of List-I, but it cannot be said that diploma courses of X-ray Vision, Lab Imaging, Lab Imaging, Lab Technician and Radiography etc. as "technical education" but the State Legislature has treated such courses to be "paramedical subjects" and specifically included the same in entry-4 of the Scheduled appended to the Rajasthan Para-Medical Council Act, 2008. In view of specific provisions of the Act of 2008 discussed above, writ petitioners cannot be said to be holders of paramedical qualification recognized by the State of Rajasthan either under the said Act or otherwise by any independent executive order. No case has been set up by any of the parties of their being" an apparent conflict or repugnancy

between these two enactments. No case has been set up that the State legislature was not competent to enact the Act of 2008 on the special branch of paramedical education. Although the State Legislature possesses all the competent to enact such a law in view of entry 25 of list III (concurrent list) of the Seventh Schedule to the Constitution of India. Even Otherwise, therefore this argument could not be countenanced. Act of 2009 being not only a special Act but also later enactment has to therefore prevail upon any other general enactment including the Act of 1987. Therefore, even those petitioners, who were initially granted admissions in NIMS Paramedical College on the basis of the selection by the Board of Technical Education Rajasthan, for the year 2006-07 and studied with the NIMS Paramedical College, Jaipur, which was approved for 2005-06 and 2006-07 with intake of 60 students because subsequently it did not have any affiliation with the Board of Technical Education, Jodhpur from 2007-08 onwards, cannot be held to be holders of paramedical qualification recognized by the State Government, notwithstanding its subsequent approval by AICTE.

15. Having held so, what has to be now examined is whether omission of the phraseology "recognized by the State Government" in Schedule-III appended to the Rules of 2008 for the post of Assistant Radiographer/ Radiographer would imply that since similar terminology has been used in all other four Schedules namely; I, II, IV & V for the posts of Rural Nurse, Rural Health Worker (Female), Laboratory Technician (Rural) and Rural Health Worker (Male) respectively, would it mean that whatever diploma or certificate qualification from wherever obtained, has to be deemed to be recognized qualification? This is too tall an argument to accept Answer to that question, in my humble opinion, would be a firm no. In the absence of a regulatory body, which may lay down standards of paramedical education and training and regulate such institution; ill trained persons with sub-standard knowledge of this specialized subject, may create havoc with the life of patients in health sector.

16. Recognition of a qualification by the State Government cannot be a matter of inference. It can be accepted only, if the government has by a positive order done so or otherwise it is so proved according to relevant statute. As far as State of Rajasthan is concerned, Act of 2008 is the relevant statute on the subject, which in its Section 32 has provided mechanism for doing so. If the State Government has to have recognition of such diplomas/ certificates, it has to constitute the Paramedical Council in terms of Section 32 of the Rajasthan Paramedical Council Act, 2008, which may decide whether or not any qualification in paramedical subjects granted by an authority outside the territories of the State of Rajasthan affords a sufficient guarantee of the requisite skill and knowledge. Paramedical Council may declare such qualification to be a recognized qualification for the purpose of the Act of 2008. It is of utmost urgency and importance that the State Government immediately constitutes Paramedical Council in the State of Rajasthan in terms of Section 4 of the Act of 2008 because health is one such sector which vitally affects the public at large.

17. Conclusion that emanates from the discussion made above is that qualification possessed by the petitioners cannot be held to be recognized by the State Government or the Paramedical Council for employment under the Government of Rajasthan. Although, for that reason they may not be always ineligible for such appointment. However that confusion should not persist forever and this state of uncertainty must come to end. In other therefore to resolve the controversy for once and all, the State Government is directed to constitute the Paramedical Council as per Section 4 supra within a period of three months from the date copy of this order is produced before it. Matter with regard to recognition or otherwise of the qualifications held by the petitioners in the State of Rajasthan, shall be laid before the Paramedical Council, which in terms of Section 32 of the Rajasthan Para-Medical Council Act, 2008 shall take a decision thereabout within three months next after its constitution. If eventually, qualification possessed by the petitioners is recognized by the Paramedical Council, that recognition shall hold the field prospectively.

18. Writ petitions are accordingly disposed of with the aforesaid directions.