

(2014) 05 RAJ CK 0065

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 290/2014

Kuldeep Singh

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 12-05-2014

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2014) 05 RAJ CK 0065

Hon'ble Judges : Amitava Roy, C.J.;Vijay Bishnoi, J

Bench : Division Bench

Advocate : M.S. Godara, Advocate for the Appellant

Final Decision : Dismissed

Judgement

On application u/s 5 of the Limitation Act, 1963

1. For the reasons stated in the application, the delay of 99 days in filing the accompanying appeal is condoned. The application thus stands disposed of.

On Appeal.

2. The instant appeal witnesses a challenge to the judgment and order dated 29.8.2013 passed in S.B. Civil Writ Petition No. 7482/2012 declining the appellant-writ-petitioner's claim for consideration of his candidature for the post of Pharmacist against the vacancy reserved for physically handicapped candidates.

3. We have heard Mr. M.S. Godara, learned counsel for the appellant-writ-petitioner.

4. Briefly stated the relevant facts are that the Rajasthan Health Science University, Jaipur (for short, hereinafter referred to as "the respondent-University") issued advertisement dated 26.11.2011 initiating the process for appointment to 1010 posts of Pharmacist by direct recruitment under the Rajasthan Medical and Health Subordinate Service Rules, 1965 (for short,

hereafter referred to as "the Rules"). In terms of the said advertisement, 30 posts were reserved for physically handicapped candidates. This advertisement was amended twice thereafter increasing the number of posts to be filled. As per the amendment to Rule 19 of the Rules bonus marks in the eventualities as mentioned therein was also contemplated to contribute to the evaluation of the merit of the contending candidates. The appellant-writ-petitioner claiming himself to be eligible as per the terms of the advertisement, offered his candidature against the physically handicapped category and submitted his application on-line. He also submitted hard copy of the application alongwith the requisite documents with the respondent-University. Thereafter, he was issued roll No. 10713165 and he participated in the written examination held on 17.6.2012. In the results that followed he was shown to have secured 43.78 marks. However, though he was not called for counselling, one Anil Kharol, who had secured 43.25 marks was called for the purpose. In the final select list, the name of Anil Kharol did find place in the category of physically handicapped (other). Being aggrieved, the appellant-writ-petitioner turned to this Court.

5. The learned Single Judge in the impugned judgment and order recorded that on the basis of his application, the appellant-writ-petitioner was allowed to participate in the Pharmacist Recruitment Examination, 2011 as a general category candidate and his results accordingly were declared in terms of his said status. It was held that he was not allowed to appear in the examination as a candidate of physically handicapped category as contemplated by the advertisement and thus, his grievance that a candidate of such disability with lower marks had been preferred to him was misplaced.

6. Mr. Godara has insistently argued that the appellant-writ-petitioner having applied as a physically handicapped candidate, the impugned action of the respondents in selecting similarly placed candidates with lower marks is apparently illegal and arbitrary vitiating the selection process and thus, the learned Single Judge had fallen in gross error in declining to intervene. To buttress his plea, the learned counsel also drew our attention to the candidature of Dhruvendra Singh also claimed to be equally placed like the appellant-writ-petitioner who though had secured 39.03 marks had been selected.

7. We have scrutinized the pleaded facts and the documents on record. We have also carefully analyzed the arguments advanced.

8. A plain perusal of the advertisement would reveal that reservation for physically handicapped (one leg category) candidates to the extent of 3% was mandated by it. Clearly thus the respondents did not contemplate reservation for any other category of physically handicapped candidates for the post. Noticeably, the validity of the advertisement has not been impeached by the appellant-writ-petitioner. His grievance thus would have to be essentially adjudged in this backdrop. The copy of his application form appended to the writ petition reveals that therein he had mentioned his category as "GEN" and against the item "Physically Handicapped" he did mention "PH (Other)". The certificate issued by

the Medical Board of the Medical and Health Department, Government of Rajasthan indicates his permanent disability to be 50% in locomotive/orthopedics category. It is not the case of the appellant-writ-petitioner that he is physically handicapped (one leg category) as referred to in the advertisement. In this view of the matter, in our unhesitant opinion, his claim to be considered as a physically handicapped candidate as per the advertisement does not commend for acceptance. The materials on record as available do not overwhelmingly and irrefutably establish that the two candidates referred to by the appellant-writ-petitioner in his pleadings do not belong to the physically handicapped category as predicated by the advertisement. We thus do not find any persuasive reason to differ from the view taken by the learned Single Judge.

9. The appeal lacks in merit and is dismissed.