

(2018) 08 RAJ CK 0219

In the Rajasthan High Court

Case No : Civil Writ Petition No.15255 of 2017, Civil Misc. Stay Application No.13470 of 2017

Mahavir Singh Choudhary @APPELLANT@Hash State of Rajasthan & Ors

Date of Decision : 13-08-2018

Acts Referred:

Drugs and Cosmetics Rules, 1945 — Rule 44

Citation : (2018) 08 RAJ CK 0219

Hon'ble Judges : Mohammad Rafiq, J;Goverdhan Bardhar, J

Bench : Division Bench

Advocate : Vijay Poonia, Anil Kumar, Shyam Arya

Final Decision : Dismissed

Judgement

This writ petition has been filed by Mahavir Singh Choudhary challenging constitutional validity of Entry 12 of the Appendix II of the Rajasthan

Medical and Health Service Rules, 1963 with prayer that the same be declared ultra vires of Rule 44 of the Drugs and Cosmetics Rules, 1945.

Mr. Vijay Poonia, learned counsel for the petitioner, argued that certain posts of Assistant Drug Analyst were advertised under the Rajasthan Medical

and Health Service Rules, 1963 (for short, "the Rules of 1963") and the source of recruitment was hundred percent by direct recruitment and

that the qualification was that a candidate must possess Bachelor of Pharmacy and at least three years' experience of analysis of drugs in a lab

under a Government Analyst or having associate-ship diploma of the Institute of Chemist of India of drugs and cosmetics analysis having one year

experience of analysis of drugs in a lab under Government Analyst.

Learned counsel argued that the next post for promotion from the post of Assistant Drug Analyst is the post of Drug Analyst, which is entered at

Entry 9 of the Appendix II of the Rules of 1963, its source of recruitment being

100% by promotion. The eligibility qualification for promotion has been indicated in Column 6, which is the same qualification as given for the post of Assistant Drug Analyst with experience of five years.

Learned counsel submitted that the Rule 44 of the Drugs and Cosmetics Rules, 1945 (for short, 'the Rules of 1945') has provided that a

candidate having Degree of Graduation in Medicine or Science or Pharmacy or Pharmaceutical Chemistry with five years post-graduate experience

or a candidate possessing a postgraduate degree in Medicine or Science or Pharmacy or Pharmaceutical Chemistry with three years experience in the

Laboratory under the control of the Government Analyst would be eligible for appointment on the post of Drug Analyst.

There is no post of Assistant Drug Analyst in the Rules of 1945 and therefore the Rules of the State are not in conformity with respect to its staffing

pattern inasmuch as they are also contrary to the Rules of 44 of the Rules of 1945. Learned counsel submitted that the petitioner has obtained the

Degree of Master of Pharmacy consisting of four semesters. A copy of the mark-sheet of Fourth Semester dated 08.02.2017 has been placed on

record. It is argued that the writ petition was filed on 04.09.2017 and by now the petitioner has acquired the experience of almost two years.

Mr. Shyam Arya, learned Additional Advocate General appearing on behalf of the respondent State, submits that the petitioner has no locus to

challenge the constitutional validity of the said Rules, which have been introduced by amendment brought about vide notification dated 02.08.1995,

reference is made to the copy of Notification dated 02.08.1995 published in the Gazette Notification dated 16.08.1995 (Annexure-3). It is argued that

not only the petitioner is not eligible as per the Rules of 1963 but he is also not eligible even according to the Rule 44 of the Rules of 1945 and,

therefore, he does not enjoy the locus to challenge the validity of the State rules. Besides, challenge has been made enormously belatedly.

Learned counsel for the petitioner rejoined and submitted that the respondent State should bring down the eligibility criteria in respect of the candidates

possessing post-graduation Degree in Pharmacy with respect to the experience on the post of Assistant Drug Analyst.

Prima facie this court finds that the petitioner has not placed on the record any certificate or provisional degree or any other proof that he has finally

passed the degree of Master of Pharmacy. But even if what he has submitted that the mark-sheet of fourth semester, which is placed on record, can be taken to mean that he has passed the course consisting of only four semesters and he has passed all the semesters, then also the mark-sheet of the fourth semester appears to be issued on 08.02.2017. The petitioner has not placed on record any certificate as to in which laboratory under the control of the government analyst appointed under the Drugs and Cosmetics Act, 1940, he worked to acquire the work experience. The petitioner only wants that the experience should be counted from the date aforesaid mark-sheet was issued, which should be deemed as the date on which he acquired the requisite experience. Even then this period comes to about six months when writ petition was filed on 04.08.2018 and even now comes near about one-and-a-half-year. This experience would not entitle him to appointment either under the Rules of 1944 or under the Rules of 1963.

In view of the above, this court is not inclined to consider the question about the validity of the Rules of 1963 at the instance of a candidate, who is not eligible to appointment. The writ petition is accordingly dismissed. This also disposes of the stay application.