

(2014) 09 RAJ CK 0036

In the Rajasthan High Court

Case No : Civil Writ Petition Nos. 1582, 5312/2001, 2292/2003, 2685, 3263, 3443/2004, 10011, 10035, 10065/2006, 1131, 3841, 4769, 4808, 5199, 5476, 8681/2007, 1889/2008 and 6425/2011

Maniram and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 23-09-2014

Acts Referred:

Citation : (2014) 09 RAJ CK 0036

Hon'ble Judges : M.N. Bhandari, J.

Bench : Single Bench

Advocate : Kailash Chandra Sharma, Mahesh Gupta, Ashwani Chobisa, Vijay Jangid, Rajneesh Gupta, H.C. Ganeshia, M.L. Sharma and Chitra Goel, for the Appellant; G.S. Gill, Additional Advocate General assisted by Harish Kandpal, Additional Govt. Counsel, Indresh Sharma and Ishwar Jain, for the Respondent

Final Decision : Dismissed

Judgement

M.N. Bhandari, J.?By this bunch of writ petitions, a challenge is made to the appointment on the post of Ayurved Compounder. It is pursuant to the advertisement in the year 1996 and 1997.

2. Learned counsel for the petitioners have challenged the process for determination of merit and select list for appointment on the post of Ayurved Compounder. It is submitted that the respondents failed to determine the merit based on the marks obtained by the candidates in the qualifying examination. The appointments were given based on determination of merit batch-wise. If a candidate has passed the qualifying course earlier in time, was given priority and merit position above the candidates, who had passed the course later on. It is by making year-wise batch. The aforesaid procedure was contrary to the rules applicable for appointment and otherwise, it was held to be illegal in the writ petition decided by this Court in the case of Gopal Lal Sharma v. The State of Rajasthan & Ors.(S.B. Civil Writ Petition No. 3688/95), decided on 11.05.2006.

The only difference is of the year of advertisement. Therein, it was in pursuance to the advertisement of the year 1995, whereas the cases in hand are in pursuance to the advertisement in the year 1996 and of 1997. The judgment of the learned Single Judge therein was challenged before the Division Bench, but the State remained unsuccessful therein. The appeal preferred by the State of Rajasthan was dismissed by the Division Bench vide its judgment dated 03.10.2007 in D.B. Civil Special Appeal(Writ) No. 807/2006. The case in hand is covered by the judgment aforesaid. If the merit position is determined based on the marks obtained by the candidates in the qualifying examination, the petitioners would stand higher in merit than the candidates, who have been given appointment. In view of the above, the writ petitions be allowed by applying the judgment in the case of Gopal Lal Sharma(supra). It is more so when not only the post is same, but the rules applicable therein are also same.

3. It is further contended that four candidates were given appointment vide order dated 25.02.1999, though their names did not appear even in the merit list and was beyond the lifetime of the panel. The respondents cannot make discrimination with the present petitioners. The issue of delay and expiry of lifetime of the panel is not otherwise raised by the respondents while submitting reply, thus, should not be taken as a ground to dismiss the writ petitions.

4. It is also stated that few other candidates were given appointments in pursuance to a decree passed by the Civil Court and therein also, the appointments were subsequent to expiry of lifetime of the panel. Thus, the petitioners are also entitled to the similar benefit, as was given to the four candidates vide appointment order dated 25.02.1999 and the subsequent order of appointment in favour of those, who remained successful in the Civil Court.

5. Mr. G.S. Gill, learned Additional Advocate General on the other hand opposed the petitions though admitted that the issue as to how merit is to be determined, was decided by this Court in the case of Gopal Lal Sharma(supra) and the judgment therein was upheld by the Division Bench. Those writ petitions were filed in pursuance to the advertisement of the year 1995 without delay, rather the petition by Gopal Lal Sharma was in the same year, in which the advertisement was issued. The direction given in the said writ petition was thus complied by the respondents. In the case in hand, the petitions are much after the expiry of the select list/panel in pursuance to the advertisement issued subsequently in the year 1996 and 1997. Few writ petitions have been filed in reference to the advertisement dated 01.05.1996, whereas others in reference to the advertisement dated 02.08.1997. Out of bunch of writ petitions, two writ petitions were filed in the year 2001, whereas most of the writ petitions were filed in the year 2004, 2006, 2007 and even in 2008, apart from a petition in the year 2003 and lastly in the year 2011. All these writ petitions have been filed much beyond the lifetime of panel of six months, as provided under Rule 20 of the Rajasthan Ayurvedic, Unani, Homoeopathy and Naturopathy Subordinate Service Rules, 1966 (for short, "the Rules of 1966"). As per the Proviso to Rule

20, the penal is having validity life of six months only. The writ petitions are thus not maintainable to seek relief after the expiry of the panel. A reference of the judgment of the Division Bench in the case of Dalip Kumar v. State of Rajasthan & Another, dated 05.03.2008 in D.B. Civil Special Appeal No. 989/2006, has been given. Therein, maintainability of the prayer of appointment after expiry of the panel was considered in the light of the judgment of the Supreme Court, so as the judgment of the Single Bench in the case of Idan Singh Vs. State of Rajasthan and Others, . An argument was also raised regarding appointment of few candidates after the expiry of the panel, but could not find favour by the Division Bench of this Court in the case supra.

6. Further reference of the judgment of this Court in the case of Satya Prakash & Ors. v. The Secretary Ayurveda Department & Anr. (S.B. Civil Writ Petition No. 501/2007), dated 15.02.2007, has been given, wherein also the writ petition was filed in pursuance to the advertisement of the year 1997, as involved herein. The writ petition was dismissed on the ground of delay after holding that the recruitment in pursuance to the advertisement of 1997 has attained finality. The present case is covered by the aforesaid judgment as well.

7. So far as the allegation of appointment of four candidates vide order dated 25.02.1999 is concerned, it is stated that those candidates were overage, thus their matter was sent to the Government for relaxation of age writ petitions by keeping four vacancies for them. The Government granted relaxation in age and immediately after passing of the order by the Government, appointments were given to those candidates. The case in hand is not of the same nature or category. Thus, the question of discrimination does not arise.

8. It is further stated that so far as appointment of other candidates in pursuance to a decree of the Civil Court is concerned, it was in compliance to the order and not by the Department at their own. The same issue was raised before the Division Bench in the case of Dalip Kumar (supra), but could not found favour. In the background aforesaid, all the writ petitions to seek appointment on the post of Ayurved Compounder deserve to be dismissed.

9. I have considered the submissions of the learned counsel for the parties, perused the record and scanned the material carefully.

10. There are two issues which need to be addressed by this Court in respect of appointment on the post of Ayurved Compounder. The first is as to whether the department was justified in making appointment based on the merit arranging in the order of year of passing of the qualifying examination by the candidates. This Court is not required to bother itself much on the aforesaid issue, as it was answered by this Court in the case of Gopal Lal Sharma(supra). Therein, the recruitment was in pursuance to the advertisement of the year 1995. It was held that the Rules of 1966 does not provide batch-wise merit. Hence, after taking into consideration the Rules of 1966 and referring the judgment of this Court in Mahesh Chandra Sharma v. State, 1999(2) RLR 755, it was held that merit needs

to be determined based on the marks obtained by the candidates, instead of to be on the basis of batch i.e. the year of passing qualifying examination. The writ petition in that case was however filed in the year 1995 itself i.e. in the year of advertisement, thus was not after the expiry of the panel or with the delay, as is the case in hand. The judgment in the case of Gopal Lal Sharma(supra) was then upheld by the Division Bench. The petitioners could have been given the same relief, if the writ petitions would have been filed before the expiry of the panel. In view of above, the second issue gets relevance and to be dealt with.

11. The second issue is as to whether relief can be sought for appointment after the expiry of the panel. The aforesaid issue has been raised by the respondents referring to Rule 20 of the Rules of 1966, thus, reproduced hereunder as was existing at the relevant time:--

"20. Recommendations of the Commission or the Appointing Authority.--The Commission or the Appointing Authority as the case may be, shall prepare a list of the candidates whom they/it consider suitable for appointment to the posts concerned and shall arrange in the order of merit. The Commission may forward the same to the Appointing Authority.

Provided that the Commission or the Appointing Authority as the case may be, may to the extent of 50% of the advertised vacancies keep names of suitable candidates on the reserve list. The Commission may on requisition recommend the names of such candidates in the order of merit to the Appointing Authority within 6 months from the date on which the original list is forwarded by the Commission to the Appointing Authority."

12. The Proviso to Rule then existing before amendment provides life of the panel to be of six months and these writ petitions have been filed much beyond the period of panel prepared in pursuance to the advertisement of 1996 and thereafter of 1997. In view of the above, right is sought based on the panel already expired.

13. Learned counsel for the petitioners tried to play with the words by making difference between the merit list and select list. It is without referring as to how it is going to affect because the final select list in reference to the selection in question, expired much prior to filing of the present writ petitions. The issue aforesaid was dealt with by the Division Bench of this Court in the case of Dalip Kumar v. State of Rajasthan & Another(supra) along with bunch of special appeals on 5th March, 2008. Therein, the judgment of this Court in the case of Narendra Kumar Sharma & Others v. State of Rajasthan & Another (S.B. Civil Writ Petition No. 5022/2002), was relied, apart from consideration of the judgment of the Apex Court in the case of K.T. Veerappa and Others Vs. State of Karnataka and Others, , and the judgment of the Single Bench in the case of Idan Singh v. State of Rajasthan & Others(supra). The judgment cited by the respondents in the case of State of Rajasthan and Others Vs. Jagdish Chopra, was also referred, apart from a judgment in the case of J. Ashok Kumar Vs. State

of A.P. and Others, . It was held that after expiry of the panel, no right of appointment can be claimed. Therein Rule 9 of the Rajasthan Education Subordinate Service Rules, 1971 was taken into consideration, which does not provide even the lifetime of the panel, as was existing. The Division Bench took cognizance of the judgment of the Supreme Court and held that if no period of lifetime of the panel is provided, it would be of one year. Considering the aforesaid and even the argument that few candidates were given appointment subsequent to the expiry of the panel, the appeals were dismissed with the reasons. Therein, the judgment in the case of Idan Singh v. State of Rajasthan & Others(supra) was also considered. In view of the judgment of the Division Bench and catena of judgments of the Supreme Court, the petitioners would not be entitled to seek appointment after expiry of the lifetime of the panel. The panel in pursuance to the advertisement was issued in the year 1996 itself followed by appointments in the same year. Same is the position of subsequent appointments.

14. Accordingly, even if the issue No. 1 is decided in favour of the petitioners, the prayer cannot be granted in the petitions filed much after the expiry of the panel. It is also a case where most of the writ petitions were filed after 2003 onwards and upto 2011. The Single Bench of this Court in the case of Satya Prakash & Ors. (supra), dismissed similar writ petition in regard to the same post and the year of vacancy on the ground of delay. Therein, it was held that once the selections has attained finality, the writ petition would not be maintainable. In the background, the relief prayed by the petitioners cannot be granted.

15. The petitioners have raised two other issues. One is in respect of appointments vide order dated 25.02.1999, and other in pursuance to the order passed by the Civil Court. The respondents have given proper explanation to the aforesaid. It is submitted that four appointments vide order dated 25.02.1999 were given to those, who were considered, but could not be given appointment being overage. Their case was sent to the Government to seek relaxation in age and was granted as per Rules. The respondents thereupon gave appointments to the four candidates, for whom the posts were kept vacant, which is not the case in hand. Few appointments were made in pursuance to a decree passed by the Civil Court i.e. in compliance of the order of the Court, and not by the respondents at their own. Similar circumstances were considered by the Division Bench in the case of Dalip Kumar v. State of Rajasthan & Another(supra) and decided adverse to the proposition, as has been given by the Counsel for the petitioners.

16. In view of the discussion made above, I am unable to grant relief to the petitioners for appointment after expiry of the panel prepared in pursuance to the advertisement of 1996 and 1997, qua the post of Ayurved Compounder.

17. All the writ petitions so as the stay applications are accordingly dismissed.