
(2013) 04 RAJ CK 0089

In the Rajasthan High Court

Case No : Civil Writ Petition No. 3622 of 2013

Manohar Singh and Others

APPELLANT

Vs

State of Raj. and Others

RESPONDENT

Date of Decision : 29-04-2013

Acts Referred:

Constitution of India, 1950 — Article 14, 309

Citation : (2013) 3 CDR 1496 : (2014) 2 RLW 1109 : (2014) 3 SCT 568 : (2014) 2 WLN 13

Hon'ble Judges : Gopal Krishan Vyas, J

Bench : Single Bench

Advocate : Mahaveer Bishnoi, Mr. Rakesh Arora and Mr. Ajay Vyas, for the Appellant; Yashpal Khileree, Dy. Govt. Counsel for State, for the Respondent

Final Decision : Allowed

Judgement

Gopal Krishan Vyas, J.—Heard learned counsel for the parties.

In above writ petitions, the petitioners are challenging Condition No. 7 of order dated 11.3.2013 (Annex. 6) issued by the Principal Secretary, Medical & Health (Group-III) Department, Government of Rajasthan, Jaipur whereby a specific instruction is issued for not granting bonus marks to those employees who were engaged to perform nursing work through NGO/placement agency. Learned counsel for the petitioner submits that for recruitment on the post of Nurse Grade-II, an advertisement was issued by the respondent Department on 26.02.2013. Before issuance of advertisement on 06.02.2013, an amendment was made by the State Government vide notification dated 6.2.2013 while exercising power conferred by proviso to Article 309 of the Constitution of India in the Rajasthan Medical & Health Subordinate Service Rules, 1965 whereby a proviso was added under Rule 19 of the Rules of 1965 whereby it is provided that in case of appointment to the posts other than pharmacist, which are not in 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 may be 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. The State Government issued advertisement dated 26.2.2013 specifically provided 10 marks for each year and up to the extent of 30 marks but this benefit is denied to the petitioners for the reason that petitioners were appointed through placement agency.

Learned counsel for the petitioners submits that in the amendment made under Rule 19 of the Rules of 1965, it is nowhere provided that benefit of bonus marks will be denied to those employees who were appointed through NGO/placement agency. The only words used is that such bonus marks as maybe 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 will be given. Meaning thereby, as per argument of petitioner" counsel, the condition No. 7 of the order dated 11.3.2013 runs contrary to the amendment made in the Rules of 1965, therefore, prayed that the Condition No. 7 of the order dated 11.3.2013 (Annexure-6) may kindly be quashed and respondents may be directed to grant benefit of bonus marks to the employees who performed the similar work under the Government, National Rural Health Mission and Medi Care Relief Society irrespective of the mode of appointment. The main ground to challenge the condition No. 7 is discriminatory practise by the respondent State which is violative of Article 14 of the Constitution of India.

2. Mr. Yashpal Khileree, Dy. Govt. Counsel appearing on behalf of the respondents vehemently opposed the prayer and submits that although an amendment was made to provide bonus marks for experience but the said amendment was restricted only for those employees who acquired experience after appointment by the Government in the National Rural Health Mission and Medi Care Relief Society and the benefit of bonus mark is not available to the employees who were appointed through placement agency for the simple reason that there is no relationship of master and servant between the government and the placement agency.

3. It is further submitted that order dated 11.3.2013 was issued by the Government in furtherance of the amendment made in Rule 19 of the Rules of 1965, therefore, it is within jurisdiction of the State Government to prescribe bonus marks for those employees who were appointed by the Government in the aforesaid national programme. While inviting attention of the Court towards the fact that before Division Bench, the notification dated 6.2.2013 as well as the order dated 11.3.2013 has been challenged in which the Division Bench of this Court refused to grant interim order in favour of those petitioners. Learned counsel for the respondents invited the attention of this Court towards the order dated 2.4.2013 passed by Division Bench in DB Civil Writ Petition No. 3181/2013 (Rakesh & Ors. vs. State of Raj. & Ors.) and submits that this writ petition may

kindly be dismissed.

4. After hearing learned counsel for the parties, first of all, I have perused the amendment (Annexure-4) made by the State Government on 6.2.2013 in the Rules of 1965, which reads as under:--

In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of Rajasthan hereby makes the following rules further to amend the Rajasthan Medical & Health Subordinate Rules, 1965 namely:--

1. Short title and commencement.--(1) These rules may be called the Rajasthan Medical & Health Subordinate Service (Amendment) Rules, 2013.

(2) They shall come into force on the date of their publication in the Official Gazette.

... ..

... ..

4. Amendment of rule 19.- The existing provisos to rule 19 of the said rules, shall be substituted by following new provisos, namely:--

Provided that in case of appointment to the post of Pharmacist, merit shall be prepared by the Appointing Authority on the basis of marks obtained in qualifying 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, Chief Minister BPL, Jeevan Raksha Kosh, National Rural Health Mission and Medi Care Relief Society, AIDS Control Society, Institutes under Cooperative Department or Sahakari Upbhokta Bhandar.

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.

Provided further that the decision of the Commission or Appointing Authority, as the case may be, as to the eligibility or otherwise of a candidate, shall be final.

5. Upon simple reading of aforesaid amendment made in Rule 19 of the Rules of 1965, it is abundantly clear that in the amendment, it is nowhere provided that what will be the mode of appointment of the employees to whom the bonus marks are to be given, more so, it is specifically provided that 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, will be provided. Meaning thereby, once the legislature, with open eyes, did not prescribe mode of appointment to get benefit of experience for the purpose of granting bonus marks then obviously, the petitioners who were appointed through NGO/placement agencies cannot be denied the benefit of bonus marks.

6. In the condition No. 7 of order dated 11.3.2013, restriction has been imposed for denial of bonus marks to the employees who were provided appointment through NGO/Placement Agency. In the opinion of this Court, the State Government cannot be permitted to make class of employees in a class for which specific bonus marks are provided for experience. The experience is to be acquired by the employees irrespective of the mode of appointment. Therefore, the plea of respondents for granting bonus marks only to the employees who were appointed by the Government other than mode of appointment is not sustainable in law because it is totally discriminatory and violative of Article 14 of the Constitution of India. On one hand, the State Government is providing bonus marks for experience to those employees who were appointed by the Government in National Rural Health Mission and Medi Care Relief Society irrespective of mode of appointment and on the other hand, a complete denial is provided vide clause-7 of the order dated 11.3.2013 to the employees who were engaged other than NGO or placement agency. It is nowhere disputed by the respondents that the petitioners are performing the same duties but prayer made in this writ petition is vehemently opposed on the ground that appointment was not made by the State Government as per policy, therefore, those employees who were engaged through placement agency are not entitled for bonus marks. In the opinion of this Court, the argument of Dy. Govt. Counsel runs contrary to the amendment itself because in the amendment, the words "similar work" is used and not mode of appointment, therefore, bonus marks cannot be denied to the petitioners, who were appointed through NGO or placement agency and are performing the similar work, which is performed by the employees appointed by the Government.

7. It is also required to be observed that welfare State is under constitutional obligation to grant equal opportunities to get bonus marks for experience while leaving the unnecessary hurdles for granting bonus marks in recruitment, if they were otherwise eligible.

8. With regard to contention of learned counsel for the respondents that controversy is pending before the Division Bench, it is required to be observed that in these writ petitions, the petitioners are challenging the order dated 11.3.2013 (Annex. 6) in which condition No. 7 is incorporated, which is totally contrary to the amendment made in the Rules vide notification dated 6.2.2013, therefore, this Court is having jurisdiction to examine the validity of the said condition which obviously runs contrary to the amendment made in Rule 19 of the Rules of 1965 for providing bonus marks for experience. In view of above Condition No. 7 of the order dated 11.3.2013 (Annex. 6) is hereby quashed and

set aside. The respondent - State is directed to treat the experience of the petitioners at par with those employees who were appointed by the Government in National Rural Health Mission and Medi Care Relief Society and consider their case for appointment while taking into account the eligibility for the post of Nurse Grade-II.

All above writ petitions are allowed in above terms.