
(2016) 04 MAN CK 0006
In the Manipur High Court
Case No : Writ Petition (C) No. 739 of 2010

Manoharmayum Bandana

APPELLANT

Vs

State of Manipur

RESPONDENT

Date of Decision : 19-04-2016

Acts Referred:

Citation : (2016) 3 GauLT 630

Hon'ble Judges : Mr. Rakesh Ranjan Prasad, J.

Bench : Single Bench

Advocate : Mr. M. Rarry, Advocate, for the Appellant; Mr. H.S. Paonam, Sr. Advocate, Mr. N. Bipin, Mr. B.P.Sahu, Sr. Advocate, Mr. K. Rabei, Mr. T. Rajendra, Mr. B.R. Sharma, Mr. N. Jotendro, Mr. R.K. Banna, Advocates and Mr. S. Nepolean, G.A, for the Respondent

Final Decision : Allowed

Judgement

Mr. Rakesh Ranjan Prasad, J. (Oral) - Heard Mr. M. Rarry, learned counsel appearing for the petitioners as well as learned counsel appearing for the private respondents and also learned counsel appearing for the respondents State.

2. On 12.02.2010, the Manipur Public Service Commission came with an Advertisement No.1/2010 inviting application from the eligible candidates for recruitment on the post of Medical Officer(MHS Grade-IV) and Dental Surgeon(MHS Grade-IV) for their appointments in the Department of Health, Manipur.

The essential eligibility which was prescribed in the advertisement in terms of the relevant rule for appointment of Medical Officer (MHS Grade-IV) is as follows:

"(A) MDECIAL OFFICER(MHS-GRADE-IV)

(i) Possession of a recognised Medical qualification included in the First or Second Schedule or Part-II of the Third Schedule (other than Licentiate qualification) to the Indian Medical Council Act, 1956. Holders of educational qualifications

included in Part-II of the 3rd Schedule should fulfil the condition as stipulated in Sub-Section(3) of Section 13 of the Medical Council Act, 1956.

(ii) Completion of Compulsory Rotatory Internship"

Likewise essential eligibility for appointment on the post of the Dental Surgeon (MHS Grade-IV) prescribed under the advertisement is there which is as follows:

(i) Possession of a recognised Dental qualification included in the First and Third Schedule to the Indian Dentist Act, 1984 as amended from time to time and

(ii) Registration with a State Dental Council.

3. The last date for submission of the application was fixed as 15.04.2010. Before expiry of the last date of submission of application, MPSC came out with an amended advertisement on 27.03.2010 by which earlier advertisement issued by the Commission on 12.02.2010 was modified to the extent that a candidate who has yet to complete compulsory rotatory internship is also educationally eligible for admission to the examination but on selection he/she will be appointed only after completion the compulsory rotatory internship.

4. Upon submission of applications in terms of aforesaid advertisements issued on 12.02.2010 and 27.03.2010 the applicants underwent through the process of selection. On completion of the process of selection, the Manipur Public Service commission came out with a select list which was published on 25.10.2010 declaring altogether 329 persons applied for the appointment on the post of MHS Grade-IV(Medical Officer) as successful. Whereas in case of Dental Surgeon, to which we are concerned with, a select list of 39 persons was notified which is under challenge, so far as it relates to the candidates belonging to OBC whose candidature was put on hold till verification of the OBC certificate and also with respect to the candidate who had not completed Compulsory Rotatory Internship, till the last date of submission of the application i.e. by 15.04.2010 more particularly, to the selection of respondent Nos. 3-18.

5. When the matter was taken up for hearing it was pointed out at the bar that so far as respondent No.3, 4 and 5 are concerned, they had nothing to do with the selection for the appointment on the post of Dental Surgeon. With respect to respondent No.6 whose candidature was also put on hold in anticipation of verification of the certificate, it be stated that no allegation whatsoever is there in the writ application relating to the selection on the post of Dental Surgeon. So far as the respondent Nos. 7, 9,11,12, 14 and 16 are concerned their candidatures had also been put to on hold for verification of the certificate. However, it was placed during the course of hearing of this case that the certificates on being verified were found to be genuine and thereby they all have been appointed. Further, it be stated that the respondent No.10 also happened to be the candidate belonging to OBC category, whose candidature was also put on hold for verification of the certificate but no allegation is there in the writ petition about his selection being made wrongly or illegally. Thus, only respondent Nos. 8

and 15 have remained whose selection for appointment is under challenge on the ground that till the last date of submission of application form, they had not completed Compulsory Rotatory Internship. However, it was pointed out that so far as the respondent No.8 is concerned, he would not be resisting the plea to be taken on behalf of the petitioners as he on being selected in subsequent selection process has been appointed. Similar statement was made with respect to the respondent No.15 as well as the respondent Nos. 17 and 18 whose names had been placed in the wait list.

6. In that event it was submitted by learned counsel appearing for the State that this writ application has virtually become in-fructuous and thereby no purpose would be served in deciding the issue involved in this writ application.

7. As against this, learned counsel appearing for the petitioners submits that the issue which has cropped up in this writ application is of public importance and thereby it needs to be decided as to whether selection/appointment made in terms of eligibility prescribed under the advertisement but not in consonance with the eligibility prescribed under recruitment rule can be held to be tenable?

8. Upon subscribing the same view I proceeded with the hearing of this case. Mr. M. Rarry, learned counsel appearing for the petitioners by referring to the advertisement as contained in Annexure-P/6 submits that one of the essential qualifications which was prescribed under the advertisement was with respect to completion of Compulsory Rotatory Internship which eligibility had been put in terms of recruitment rules and so far as matter relating to selection of Dental Surgeon(MHS Grade-IV) is concerned one of the essential eligibility was that the candidate must have registration with State Dental Council. In this regard, it was submitted that though eligibility is not there of completion of Compulsory Rotatory Internship as is there in case of the Medical Officer (MHS Grade-IV) but one is registered with the State Dental Council only upon completion of Compulsory Rotatory Internship which would be evident from certificates annexed with the writ petition issued by the State Dental Council. Submission is that those essential qualifications prescribed under rule cannot be diluted during process of selection. Since it has been done here in this case and thereby selection/appointment made is illegal. Learned counsel appearing for the State submits that there has been absolutely no illegality on the part of the MPSC allowing the candidate undergoing rotatory internship in participating in the process of selection as any barrier put under the rule for completing rotatory internship is with respect to appointment and not selection and thereby all those candidates who were undergoing rotatory internship were eligible to be selected. While making relaxation for the purpose of selection no such relaxation was given for the purpose of appointment as stipulation was made that by the time appointment is made the candidate must have completed Compulsory Rotatory Internship and thereby none of the conditions mentioned in the recruitment rule gets contravened.

9. It was reiterated that nothing is wrong if the candidates who were undergoing

Internship by last date of submission of the application had been selected by the Commission and their names were recommended for appointment on the post of Medical Officer/ Dental Surgeon who were appointed on the post only on finding that they had completed Internship on the date of appointment.

10. Thus, the stand which has been taken on behalf of the petitioners, on one hand is that the person who had not completed the rotatory internship on the last date of submission of the application is not entitled to be selected for appointment on the part of Medical Officer/Dental Surgeon. On the other hand, the stand which has been taken on behalf of the State is that the eligibility as stipulated under the recruitment rule never gets infringed by relaxing eligibility as those who were undergoing Compulsory Rotatory Internship by the last date of submission of application would be appointed only upon completion of Compulsory Rotatory Internship. In the context of submission made on behalf of the parties, one needs to take notice of the rule made in this regard named as "Manipur Health Services, Rules 1982" Section 7 of which speak about method of recruitment which reads as follows:

"7. Method of recruitment:-

(a) Direct recruitment to any grade of the Service including specialist posts in a grade be made on the recommendation of the commission.

(b) The qualifications for direct recruitment to the various Grades of the Service shall be as specified Schedule-II.

(c) The Commission shall, after following such procedure for selection of candidates as they deem fit forward to the Government a list, in order to merit, of the candidates who have qualified by such standard as the Commission may determine for selection in respect of the actual number of vacancies reported from time to time by Government.

Provided that the Commission may maintain a confidential reserve list for nomination of candidates for vacancies that may arise during the course of twelve months from the date of selection.

Provided further that if the Commission do not expect better candidates to be available outside the reserve list, it shall be open to the Commission to nominate candidates from the reserve list for vacancies arising during a further period of six months."

The qualification/eligibility has been stipulated in Schedule 2 which reads as follows:

"(i) Possession of a recognised Medical qualification included in the First or Second Schedule of Part II of the Third Schedule (other than licentiate qualifications) to the Indian Medical Council Act, 1956. Holders of educational qualifications included in Part II of the Third Schedule should fulfil the conditions as stipulated in Sub-Section (3) of Section 13 of the Indian Medical Council Act,

1956.

(ii) Completion of compulsory rotating internship."

11. Thus, we find that one of the essential eligibilities is that one should have completed Compulsory Rotatory Internship for being recruited on the post of Medical Officer/Dental Surgeon. Initially that eligibility had been incorporated in the advertisement but subsequently that was modified as have been indicated above but that essential eligibility was never amenable to alteration/modification in terms of 16 of the said rule which read as follows:

"16. Relaxation:- The Governor may, in consultation with Commission, relax any provision of these Rules to such extent as may be necessary to ensure satisfactory working of these Rules or to remove any inequitable results.

Provided that the power shall not be exercised so as to relax essential qualifications prescribed for appointment by any of the methods specified in these rules (including promotion) or the provisions regarding pension and age of retirement."

12. On going through the said provision one does not find that the power is there with the Governor to relax rule to ensure satisfactory working of the rule but so far rule relating to essential qualification is concerned that is not amenable to modification/relaxation in terms of proviso to that rule. The essential qualifications as had been stipulated initially in the advertisement was modified which power neither the State Government nor MPSC was having. In that event any appointment made in terms of rule which was relaxed would be bad and illegal.

13. In this regard, I may refer to a decision rendered in the case of Harpal Kaur Chahal (Smt) v. Director, Punjab Instructions, Punjab & Anr. reported in 1995 Supp. (4) SCC 706 wherein it has been held by the Hon^{ble} Supreme Court that when the recruitment is sought to be made, the last date has been fixed for receipt of the application. Such of those candidates who possessed of all the qualifications as on that date alone are eligible to apply for and to be considered for recruitment according to rules. The same view has been reiterated in the case of Ashokumar Sonkar v. Union of India & Ors. reported in (2007) 4 SCC 54 wherein their Lordships were pleased to hold that the position that where the applications are called for prescribing a particular date as the last date for filing the applications, the eligibility of the candidates shall have to be judged with reference to that date and that date alone, is a well-established one. A person who acquires the prescribed qualification subsequent to such prescribed date cannot be considered at all.

14. Thus, I do find that the select list so far it relates, to respondent No. 8 namely, Chongboi DOUNGEL (Roll No.13) and respondent No. 15 namely, Jabil Begum (Roll No.127) and wait list candidates respondent No.17 namely, Rajkumar Sony (Roll No.118) and respondent No. 18 namely, Dr. Wahengbam

Malvika being bad is hereby quashed.

15. In the result, this writ application stands allowed to the extent indicated above.