

(2012) 09 RAJ CK 0030

In the Rajasthan High Court

Case No : Civil Writ Petition No's. 12346, 9356, 9999, 10673, 10674, 10859, 10902, 10903, 10904, 10905, 10932, 10950, 11860, 12506, 12616 and 13298 of 2012

Mool Chand Jat and 15 Another

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 06-09-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2013) 2 CDR 1095 : (2013) 3 RLW 2494

Hon'ble Judges : Arun Mishra, C.J.;Narendra Kumar Jain, J

Bench : Division Bench

Advocate : Mayank Choudhary, Mr. Akhil Simlote, Mr. Tanveer Ahmed, Mr. R.S. Sharma, Mr. J.R. Tantia, Mr. Mohan Choudhary, Mr. H.K. Sharma, Mr. J.K. Yogi and Mr. Mahendra Singh Yadav, for the Appellant; M.A. Khan and Mr. Akbar Khan, for the Respondent

Final Decision : Dismissed

Judgement

1. In these writ applications, the main grievance of the petitioners is that amendment made in the proviso to Rule 19 of the Rajasthan Medical & Health Subordinate Service Rules, 1965 (hereinafter referred to as "the Rules of 1965") vide notification dated 21.2.2012 extending benefit of bonus marks to the candidates working in Government Institutes etc. be declared ultra vires the Constitution or the notification dated 21.2.2012 be amended by extending benefit of bonus marks to the private pharmacists in accordance with their length of experience. Pursuant to the advertisement dated 26.11.2011 issued by the Rajasthan Health Science University, Jaipur inviting applications for appointment to the posts of Pharmacist, the petitioners possessing requisite qualifications have applied for the said post. The recruitment was to be made as per the provisions of the Rules of 1965. The petitioners possess experience of working as private Pharmacist in different private institutes. The last date for submission of on-line application was 17.12.2011 and for submission of hard copy application

alongwith documents, the last date was 26.12.2012. The advertisement dated 26.11.2011 provided for award of maximum 10 bonus marks to the candidates having experience of working as Pharmacist under State Government or National Rural Health Mission (for short "NRHM"). Thereafter, a decision was taken, to provide 20% bonus marks to the NRHM employees working with the Government. Thereafter, amended advertisement was issued on 30.12.2011 and the last date for submission of online application and hard copy application was extended upto 4.1.2012 and 9.1.2012 respectively.

2. Thereafter, vide notification dated 21.2.2012 issued by the Government of Rajasthan, Rule 19 of the Rules of 1965 was amended by way of Rajasthan Medical & Health Subordinate Service (Amendment) Rules, 2012 with effect from 24.11.2011. The amended Rule 19 provides that in case of appointment to the post of Pharmacist, the written examination shall be conducted by the Appointing Authority and the merit shall be prepared on the basis of marks obtained in such written examination 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, Medi Care Relief Society, AIDS Control Society, Institutes under Cooperative Department or Sahakari Upbhokta Bhandar.

3. After amendment made in Rule 19 of the Rules of 1965, a fresh advertisement was issued on 24.2.2012 and the last date for submission of on-line application and hard copy application was fixed as 2.3.2012 and 12.3.2012 respectively. Thereafter, examinations were conducted from 15th to 17th June, 2012 and result was declared on 29.6.2012.

4. The petitioners have challenged the amendment made in Rule 19 of the Rules of 1965 contending that the same is violative of Arts. 14 & 16 of the Constitution; the nature of duties performed by the Pharmacists working under the State Government and the Private Institutes/shops is the same and thus, award of bonus marks only to the Pharmacist working under the institutions of Government etc. is arbitrary, illegal and discriminatory; there is no justification to deny the bonus marks to the candidates having experience of working as Pharmacist with the private institutes. Apart from this, it was further submitted that amendment cannot be made with retrospective effect.

5. A reply has been filed on behalf of Rajasthan University of Health Sciences in Writ Petition No. 9356/2012 stating inter-alia that there is no violation of Art. 14 or 16 of the Constitution in giving bonus marks to only those candidates having experience of working as Pharmacist in the Government Institutions etc.; no case of discrimination has been made out if such bonus marks are not given to candidates working as Pharmacist in private institutes/shops; reasonable classification in service matters based on experience is permissible; preferential treatment to a particular class can be given by the State; the State is empowered to amend the Rule with retrospective effect.

6. The amended Rule 19 of the Rules of 1965 is quoted below:--

2. Amendment of rule 19.-The existing first proviso to rule 19 of the Rajasthan Medical & Health Subordinate Service Rules, 1965, shall be substituted by the following namely:--

Provided that in case of appointment to the post of Pharmacist, the written examination shall be conducted by the Appointing Authority and the merit shall be prepared on the basis of marks obtained in such written examination 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, Medi Care Relief Society, AIDS Control Society, Institutes under Cooperative Department or Sahakari Upbhokta Bhandar.

7. The benefit of bonus marks has been given under amended Rule 16 to the Pharmacists, who have obtained the experience of Government Schemes/Institutions under Cooperative Department or Sahakari Upbhokta Bhandar. Experience gained in private job has not been included for grant of bonus marks. In our opinion, private job stands on different footing and cannot be said to be on similar terms and conditions as rendered in Government Institutions etc. as provided in amended Rule 19. The private Pharmacists cannot be treated of same class, hence, they cannot take plea of discrimination. It is open to the State Government to give bonus marks to particular class of person. As there is difference in conditions, liabilities, requirement of job, the petitioners cannot claim similar treatment. The classification made by the Government cannot be said to be illegal or arbitrary. It is open to the Government to classify person for such purpose. Classification made cannot be said to be irrational. Art. 14 permits classification on different bases. The responsibility of Government job/cooperative is different than private job. Since there is qualitative difference also in jobs, classification cannot be said to be arbitrary. We are not able to accept the submission that private work can be equated in all respects with the jobs enumerated in amended proviso to Rule 19 of the Rules of 1965. The condition of service responsibility differs from job to job, thus, private Pharmacists cannot claim part of the same class. Hence, plea of discrimination is not available to them.

8. In Asgarali Nazarali Singaporawalla Vs. The State of Bombay, , the Apex Court observed that. It is now well-established that while Art. 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases, namely, geographical, or according to objects or occupations or the like. The Apex Court

laid down thus:--

(15) The principles underlying Art. 14 of the Constitution have been completely thrashed out in the several decisions of this Courts ere this. The earliest pronouncement of this Court on the meaning and scope of Art. 14 was made in the case of Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others, . The principles enunciated in that case were summarized by Fazl Ali J. as follows in The State of Bombay and Another Vs. F.N. Balsara, :

(1) The presumption is always in favour of the constitutionality of an enactment, since it must be assumed that the legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience and its discriminations are based on adequate grounds.

(2) The presumption may be rebutted in certain cases by showing that on the face of the statute, there is no classification at all and no difference peculiar to any individual or class and not applicable to any other individual or class, and yet the law hits only a particular individual or class.

(3) The principle of equality does not mean that every law must have universal application for all persons who are not by nature, attainment or circumstances in the same position, and the varying needs of different classes of persons often require separate treatment.

(4) The principle does not take away from the State the power of classifying persons for legitimate purposes.

(5) Every classification is in some degree likely to produce some inequality, and mere production of inequality is not enough.

(6) If a law deals equally with members of a well-defined class, it is not obnoxious and it is not open to the charge of denial of equal protection on the ground that it has no application to other persons.

(7) While reasonable classification is permissible, such classification must be based upon some real and substantial distinction bearing a reasonable and Just relation to the object sought to be attained, and the classification cannot be made arbitrarily and without any substantial basis.

9. In State of U.P. and Others Vs. J.P. Chaurasia and Others, , the Apex Court held that Art. 14 permits reasonable classification founded on different bases. The classification can be based on some qualities or characteristics of persons grouped together and not in others who are left out. Those qualities or characteristics must, of course, have a reasonable relation to the object sought to be achieved. In service matters, merit or experience could be the proper basis for classification to promote efficiency in administration. The classification based on experience is a reasonable classification having a rational nexus with the object thereof.

10. In Federation of All India Customs and Central Excise Stenographers (Recognised) and others Vs. Union of India and others, , the Apex Court has laid down that there may be qualitative differences as regards reliability and responsibility. Functions may be the same but the responsibilities make a difference. The same amount of physical work may entail different quality of work, some more sensitive, some requiring more tact, some less-it varies from nature and culture of employment.

11. In view of the above, if benefit of bonus marks has been extended only to the Pharmacists, who have gained experience under the Government Institutions, Cooperative Department, Sahakari Upbhokta Bhandar etc. as enumerated in the amended Rule 19 of the Rules of 1965 and such benefit has not been made available to the private Pharmacists, who have gained experience in private institutes/shops, it cannot be said that action of the Government was arbitrary or violative of Art. 14 or 16 of the Constitution of India Classification made by the Government does not suffer from the vice of arbitrariness, rather it appears to be reasonable and rational one. No case of discrimination is made out.

12. Apart from this, it is apparent that advertisement was initially published on 26.11.2011; later on, amended advertisement was issued on 30.12.2011 and last date for submission of on-line application and hard copy application was fixed as 4.1.2012 and 9.1.2012 respectively. Thereafter, vide notification dated 21.2.2012, amendment in Rule 19 of the Rules of 1965 was made with retrospective effect from 24.11.2011 and in view of the said amendment, a fresh advertisement was issued on 24.2.2012 incorporating award of bonus marks to the candidates, who have gained experience as Pharmacists in Government Institutions etc. as enumerated in the amended Rule 19 and last date for submission of on-line application was fixed as 2.3.2012 and for submission of hard copy application, last date was fixed as 12.3.2012. Thereafter, examinations were conducted from 15th to 17th June, 2012 and the result was declared on 29.6.2012.

13. It is also apparent that most of the petitioners have appeared in the examination without questioning the retrospective amendment made in Rule 19 and participated in the selection process without any demur. It is only after the declaration of the result of the selection process that most of the petitions except one have been filed questioning the amendment made in Rule 19. In such circumstances, it is not appropriate to make interference, as laid down by the Apex Court in State of Jharkhand and Others Vs. Ashok Kumar Dangi and Others, . In the case of Ashok Kumar Dangi (supra), the Apex Court has laid down that it is open to the State Government to withdraw the notification by which it had previously notified recruitment and to issue fresh notification in that regard on the basis of the amended Rules and to make selection in accordance with the changed rules. Reliance was placed on the decision in Rajasthan Public Service Commission Vs. Chanan Ram and Another, . In the case of Ashok Kumar Dangi (supra), the Apex Court has also considered the scope of judicial review in

policy/policy decision/policy matter and it has been laid down that in framing a policy various inputs are required; it is neither, desirable nor advisable for the Court to direct Government to adopt a particular policy which it deems fit or proper; it is well settled that Government must have liberty and freedom in framing policy; Courts are ill-equipped to deal with competing claims and conflicting interests; they do not have satisfactory and effective means to decide which alternative, out of many competing ones, is best in the circumstances of the case; these competing claims need to be addressed by the policy makers. The Apex Court laid down thus:--

17. The High Court has found that the Government of Jharkhand, till date, had not framed any policy regarding the number of posts to be filled by Physical Trained Candidates. How many posts of Primary School Teachers be filled up by Physical Trained candidates, in our opinion, is essentially a question of policy for the State to decide. In framing of the policy, various inputs are required and it is neither desirable nor advisable for a Court of law to direct or summarise the Government to adopt a particular policy which it deems fit or proper. It is well settled that the State Government must have liberty and freedom in framing policy. Further, it also cannot be denied that the Courts are ill-equipped to deal with competing claims and conflicting interests. Often, the Courts do not have satisfactory and effective means to decide which alternative, out of the many competing ones, is the best in the circumstances of the case.

18. One may contend that providing primary education to the children is essential for the development of the country. Whereas others argue that physical training of the children in the Primary School is must as that would make the nation healthy. As in the present case, the candidates trained in teaching claim that the posts of Primary School Teachers be filled by them and Physical Trained Candidates be considered for posts of Physical trained teachers only as they in absence of any training in education are not equipped to teach in Primary Schools, whereas physical trained teachers contend that they should be considered for appointment against both the posts. These competing claims, in our opinion, need to be addressed by the policy-makers. Further, we do not have the statistics as regards to the number of primary schools, the resources which the Government can spend for providing physical trained teachers and their need. In such a situation, any direction in matters of policy is uncalled for.

14. In *Devi Bijani vs. State of Rajasthan & Anr.*, D.B. Civil Writ Petition No. 3836/2011 decided on 25.8.2011 alongwith 10 other connected matters, the Division Bench of this Court at Principal Seat, Jodhpur has upheld the applicability of amendment made in the Rajasthan Educational Subordinate Service Rules 1971 with retrospective effect from 18.7.2008 by way of Rajasthan Educational Subordinate Service (Amendment) Rules, 2010 notified vide notification dated 16.4.2010. In the case of *Devi Bijani* (supra), this Court has observed that rules have been amended with retrospective effect and relate back to issuance of the advertisement and initiation of process of recruitment and

apart from that, corrigendum has also been issued, which amounted to issuance of fresh advertisement, which recourse was held to be permissible by the Apex Court in Madan Mohan Sharma and Another Vs. State of Rajasthan and Others, to issue fresh advertisement according to the new rules, which had come into force.

15. In the instant case, after amendment made in Rule 19 with retrospective effect, a fresh advertisement was issued and examination and selection process was conducted as per amended Rule and this recourse is permissible in view of the decisions of the Apex Court in Madan Mohan Sharma (supra) and Ashok Kumar Dangi (supra). Since fresh applications were invited and thereafter, examinations were held as per amended Rule, it cannot be said that anybody was deprived of staking claim under the amended Rule. The amendment cannot be said to have caused any prejudice or jeopardize any of the rights of the petitioners. The classification is intelligible one and cannot in any manner be regarded as discriminatory or arbitrary. In view of the discussion made above, there is no merit in the writ petitions and the same are dismissed. The stay applications are also dismissed. No costs. A copy of this order be placed in all the files.