
(2011) 10 RAJ CK 0006

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 802 of 2011 in Civil Writ Petition No. 1799 of 2011

Nawal Kishore Sharma

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 19-10-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2012) 3 RLW 2588

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

Bench : Division Bench

Advocate : R.N. Mathur, assisted by Tanveer Ahmed and Mahendra Goyal, for the Appellant; S.N. Kumawat, AAG and Ashwani Jaiman, O.P. Mishra, Vinod Goyal and Sudhindra Kumawat, for the Respondent

Final Decision : Dismissed

Judgement

Arun Kumar Mishra, C.J.—These intra-Court appeals have been preferred as against the common order dated 28.03.2011 passed by the Single Bench in S.B. Civil Writ Petition No. 14873/2010, Kailash C. Sharma vs. State & Ors. along with 15 other connected matters. The controversy involved in the present matter is with respect to the qualifications prescribed in Schedule I appended to the Rajasthan Medical & Health Subordinate Service Rules, 1965 (hereinafter referred to as "the Rules of 1965"), which were amended in the year 1995. Schedule I appended to the Rules of 1965 provides for post of Laboratory Technician to be filled in 100% by way of direct recruitment and qualification for the said post prescribed is Secondary or its equivalent with nine months Training Certificate from Institution recognised by Government. The alternative qualifications have also been provided which are with respect to two years training certificate of Laboratory Technology Course run by the Santokba Durlabhji Memorial Hospital, Jaipur or B.Sc. with Biology with Post Graduate Diploma in Laboratory Technology from the Maharshi Dayanand Saraswati University, Ajmer with Hospital based training in the J.L.N. Medical College,

Ajmer recognised by the Government. The question, in the instant case, is not with respect to alternative qualifications obtained from the aforesaid two institutions i.e. Santokba Durlabhji Memorial Hospital, Jaipur and Maharshi Dayanand Saraswati University, Ajmer.

2. It is not in dispute that earlier upto 2002 nine months Training Certificate Course used to be run in the State of Rajasthan in various institutions Recognised by the Government. It is also not in dispute that with effect from 2002, Certificate Course of nine months duration as per policy decision has been stopped in the State and training certificate course of two years duration in Laboratory Technology is being provided in various institutions recognised by the Government.

3. An advertisement was issued on 06.10.2009 inviting the applications for the posts of Laboratory Technicians. Writ petitions were filed by two sets of incumbents; one who had completed nine months training certificate course from institutions recognised by the Government praying for that only they be appointed not two years duration certificate holders and other set of writ applications were filed by incumbents, who were possessing qualification of two years training certificate/diploma course in Laboratory Technology from the institutions recognised by the Government/Government institutions claiming that they are eligible to be appointed.

4. The Single Bench has ordered that since State is no more recognising nine months training certificate course and no institution in the State is running nine months training certificate course w.e.f. 2002, thus, the incumbents, who have completed two years Laboratory Technology Course, which is of longer duration, cannot be excluded from the zone of consideration for appointment to the posts of Laboratory Technician. Accordingly, directions have been issued to re-draw the list, as under interim order list was prepared placing incumbent holding 9 months training certificate on priority basis. The State Government has accepted the verdict and it has published the result.

5. Mr. R.N. Mathur, learned Senior Counsel assisted by Mr. Tanveer Ahmed and Mr. Mahendra Goyal learned counsel appearing on behalf of the appellants submitted that Schedule I appended to the Rules of 1965 is clear; it excludes the course of more than nine months duration and it is apparent from the amendment incorporated with effect from 25.07.1995 that qualifications with respect to course of two years training certificate of Laboratory Technology, which is being run by Santokba Durlabhji Memorial Hospital, Jaipur and B.Sc. with Biology with Post Graduate Diploma in Laboratory Technology from the Maharshi Dayanand Saraswati University, Ajmer, are to be treated as alternative qualifications and given second preference; as such, the incumbents, who have obtained training certificate or diploma of longer duration of more than nine months from other institutions also, are to be excluded; the directions could not have been issued by the Single Bench in derogation to the Rules of 1965; the decision rendered by the Single Bench is illegal; vires of the Rules of 1965 have

not been questioned, thus, it was not proper to issue the directions in question and the successful candidates were not added as respondents before the Single Bench; once, the participation was made under the particular provision of law, the petitioners were estopped from filing the writ petitions to question the action taken by the State Government.

6. Mr. S.N. Kumawat, learned Additional Advocate General appearing on behalf of the State has supported the impugned order and submitted that State Government has stopped practice of recognising training certificate course of nine months duration w.e.f. 2002, consequently, it has decided to take into consideration the candidature of those candidates, who have undergone training course in Laboratory Technology of more than nine months duration; decision rendered by the Single Bench has been accepted by the State Government. He has further submitted that complication arose in the matter due to ex-parte interim stay order passed on 03.11.2010 in S.B. Civil Writ Petition Mo. 14873/2010, whereby State Government was directed to first consider candidatures of such candidates having possessed certificate of nine months laboratory technician Training Certificate from an institution recognized by Government and only on account of non-availability of such persons, other candidates be considered pursuant to advertisement dated 06.10.2009 for the post of Lab. Technician till further orders. Consequently, the State Government could not prepare the correct merit list, which has been prepared after the directions issued by the Single Bench in final order. The appointments have not been made so far.

7. Mr. Ashwini Jaiman, Mr. O.P. Mishra, Mr. Vinod Goyal and Mr. Sudhindra Kumawat, learned counsel appearing on behalf of other respondents have supported order passed by the Single Bench contending that qualifications have been prescribed in first part of Column 4 of the Schedule I appended to the Rules of 1965 and as per provision merely due to the fact that the incumbents have obtained training of longer duration of more than nine months, they cannot be excluded from the zone of consideration, as they have obtained longer duration training certificate from the institutions, which are recognised by the Government or from the Government institutions, particularly, when the State Government stopped recognising nine months training certificate with effect from 2002. Training certificate course of longer duration i.e. 2 years was only available in Rajasthan State after 2002; the intendment of the amendment was not to exclude such candidates and the provisions contained in the Schedule I, appended to the Rules of 1965, have to be construed to the effect that minimum nine months training certificate has to be obtained for eligibility and not of lesser duration. Thus, the holders of two years training certificate or post graduate diploma cannot be excluded from selection process.

8. In order to appreciate rival submissions of learned counsel for the parties, it is necessary to consider following provisions contained in Schedule I appended to the Rules of 1965, as amended in 1995;

9. It is apparent from the aforesaid provisions contained in Schedule I with respect to post of Laboratory Technician that a candidate must possess qualification of Secondary or its equivalent holding of which is not in dispute and the other requirement is that incumbent should also have obtained nine months training certificate from institutions recognised by the Government. Thus, an incumbent, who has obtained training for more than nine months duration, has not been excluded, in case he is having qualification of Secondary or its equivalent and has completed the training of longer duration than 9 months from the institution recognised by the Government is eligible. Any other interpretation of the aforesaid provisions which would oust the candidates possessing training certificate of longer duration than 9 months, would create anomalous situation and render the provision arbitrary and irrational. Submission of counsel appearing on behalf of the appellants to exclude the incumbents of longer duration than 9 months is based upon the amendment, which has been incorporated in the year 1995, for the purpose of recognising the two particular courses, one of them is run by Santokba Durlabhji Memorial Hospital, Jaipur, which imparts two years training certificate of Laboratory Technology and second course run by Maharshi Dayanand Saraswati University, Ajmer providing requisite qualification of B.Sc. with Biology with Post Graduate Diploma in Laboratory Technology from the said University. The aforesaid amendment, which has been incorporated is with respect to two institutions only not with respect to others, the amendment cannot control the main provision in Schedule which existed earlier. We are of the considered opinion that the incumbents, who are having qualification of more than nine months duration training certificate from institutions recognised by the Government, are not ousted from the eligibility criteria. In case they are ousted, anomalous result would occur better trained incumbents having training certificate of longer duration would be ousted and the incumbents having the training certificate of only nine months duration could only claim appointment. That is not purpose of the rules and an effort has to be made to interpret it in a pragmatic manner and not in illegal and arbitrary manner. The intention of the provisions can not be culled out to oust the training of longer duration, particularly, when it has been obtained from the institutions recognised by the Government. The provision has to be construed as minimum nine months training is required.

10. Apart from what has been discussed above, as the State Govt. has stopped recognising nine months training certificate course with effect from 2002, nine months training certificate is not being provided by any recognized institution and only course of Laboratory Technology, which is being run by institutions recognised by the State Govt. with effect from 2002, is of duration of two years and such incumbents are not to be ousted from the zone of consideration. The intention was not to appoint only those incumbents, who were having nine months training certificate obtained before 2002 and oust those who have obtained prevailing better qualification in last 9 years. An interpretation to contrary would make provision to be harsh, oppressive and violative of protection

conferred under Arts. 14 and 16 of the Constitution of India. Interpretation has to be purposive. The incumbents, who are having training certificate or diploma of longer duration of more than nine months, are also eligible for consideration. They are better trained incumbents.

11. However, apprehension has also been expressed by learned counsel appearing on behalf of the appellants that incumbents, who have obtained Diploma Certificate from institutions which are not recognised by the State Government, may also be appointed. Mr. S.N. Kumawat, learned Additional Advocate General has rightly stated that they would not appoint even a single candidate, who has obtained qualification from institution which is not recognised by the State Government. That takes care of the apprehension raised by learned counsel for the appellants and we hold that incumbents who are not holding the qualification recognised by State Government cannot be appointed.

12. It has also been submitted by learned counsel for the appellants that it was incumbent upon the respondent to join the successful candidates as parties to the writ petition. In our opinion since certain writ applications were filed by the incumbents, who were having nine months training certificate; their writ petitions were before the Court, therefore, it was not necessary to implead all the incumbents/candidates, apart from that in ex-parte interim order passed by Single Bench it was ordered that priority be given to 9 month certificate holders; merely on the basis of appointment made pursuant to preparation of the select list that too on the basis of ex-parte interim order dated 03.11.2010 passed by the Single Bench in S.B. Civil Writ Petition No. 14873/2010 which order has not found to be correct. No rights could be said to have accrued. Ultimately while rendering final decision by Single Bench the direction in interim order has not been found to be correct and consequently, in final order directions had been issued for redrawing the list in accordance with law. In these circumstances, it was not necessary to join each and every person who were included in the list prepared under the interim order passed by the Single Bench.

13. Mr. R.N. Mathur, learned Senior Counsel has submitted that certain appointments were made in pursuance of interim directions issued by the Single Bench; since the appointments were made, therefore, the same may be saved. We are afraid that we can accept the submission raised by learned Senior Counsel, firstly for the reason that ex-parte interim stay order to give priority to 9 month candidates, which was passed by the Single Bench, was not proper and it was ultimately not found to be correct and the incumbents had been appointed on the basis of faulty list prepared as per interim order passed by the Single Bench in S.B. Civil Writ Petition No. 14873/2010 and wrong order of the Court cannot come to the shelter of some incumbents and cause prejudice to others. The Single Bench, while passing the interim order, had not considered the aspect that nine months training certificate course had been stopped in the State with effect from 2002 and it would not be appropriate to interpret the rules in such a manner, so as to oust the candidates having longer duration better training and

certificate than nine months training certificate course. No fruits can be allowed to be ripened on the basis of faulty list prepared under interim order, which order was uncalled for. Thus, the appointments so made cannot be saved. An incumbent has to stand on the merit, which he/she has obtained on proper appreciation of provisions of law and amongst eligible.

Resultantly, we find no ground to interfere in the order passed by the Single Bench. The appeals are liable to be dismissed, they are hereby dismissed. Stay applications also stand dismissed. Parties to bear their own costs as incurred.