

(2011) 01 RAJ CK 0012

In the Rajasthan High Court

Case No : Civil Writ Petition No"s. 343, 384, 396 and 400 of 2011

Nishant and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 13-01-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2011) 4 RLW 3320

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hon"ble Rafiq, J.—All these writ petitions raise identical question of fact and law therefore they have been heard together and are being decided by this common judgment.

2. Petitioners have approached this court with the prayer that Note No.1 below condition No.2 of the advertisement dated 18/9/2009 issued by the Rajasthan Public Service Commission (for short, "RPSC") for appointment on the post of Medical Officer be declared illegal, arbitrary, violative and ultravires of Articles 14 and 16 of the Constitution of India and that respondent-RPSC be directed to consider candidature of the petitioners for appointment on the post of Medical Officer against the advertisements dated 18.9.2009 and 13.10.2010 on the basis of their result of written examination declared on 24.10.2010 by allowing them to appear in interview by not considering/ignoring condition prescribed in Note (2) of Condition No.2 of the advertisement dated 18.9.2009 and appoint them with all consequential benefits.

3. Factual matrix of the case is that all the petitioners have qualified their M.B.B.S. Examination and they are presently undergoing the Compulsory Rotating Internship for a period of 12 months in terms of Clause 268(d) of the University Ordinance. Petitioners would complete their internship in two batches.

While the first batch would complete such internship on 17/3/2011, another batch would complete this on 26/3/2011. The examinations for appointment on the post of Medical Officer were held by the RPSC on 5/10/2010 and thereafter interviews commenced from 12/1/2011 and would continue upto 14/2/2011. Explanation given by the RPSC below Note (2) of the advertisement dated 18/9/2009, inter-alia provides that for being eligible, a candidate must have completed rotating internship till the date of interview. Petitioners are aggrieved by that condition because according to them, if this period is further extended upto the date of completion of their internship; in other words, on completion of 12th month of their compulsory rotating internship respectively on 17/3/2011 and 26/3/2011, they would also be eligible and therefore would be entitled to compete for appointment against advertised posts.

4. Shri Rajendra Soni, learned counsel for the petitioners has argued that when the advertisement was issued by the RPSC, petitioners were made to believe that by the time interviews would be completed, they would complete their internship; thus would be eligible for appointment. The respondent-RPSC ought to have therefore suitably extended the date of interview upto the time petitioners complete internship. This court may therefore direct them to do so because petitioners acquired legitimate expectation by the action of the respondents. It is argued that dates of interview have been arbitrarily fixed by the RPSC on fictitious circumstances. There is no rational or nexus with the object sought to be achieved by fixing the interviews for the period from 12/1/2011 to 14/2/2011, which in any case would continue for more than one month, therefore the process of selection could have been continued even upto the time petitioners acquired eligibility. Learned counsel for the petitioners in support of his arguments, relied on the judgment of Orissa High Court in Dr. Nilamani Mohanty Vs. State of Orissa, Further argument of the learned counsel for the petitioners is that result of all the petitioners of the final year MBBS Examination was declared in January 2010. They have all been registered with the Rajasthan Medical Council. Registration Certificates issued to them by the Registrar of the Rajasthan Medical Council have been placed on record to substantiate this contention. It is argued that in those certificates, qualification of the petitioners has been shown as M.B.B.S. and Entry 11 Column 5 in Schedule-I appended to the Rajasthan Medical & Health Service Rules, 1963 (for short, "Rules of 1963") regarding Medical Officer merely refers the qualification of M.B.B.S. as eligibility for appointment on the post of Medical Officer. Learned counsel argued that even the University Ordinance 267 also does not envisage the internship to be an integral part of the M.B.B.S. Examination and therefore degree of M.B.B.S. can be awarded even without internship and therefore petitioners cannot be held to be ineligible for appointment.

5. Shri Anoop Dhand, learned counsel for petitioner-Dr. Sangeeta Khyalia has argued that R.P.S.C. originally fixed 12/2/2010 as the date of examination. This date was preponed to 12/12/2010 for malafide reasons. If the date can be preponed for one reason, it can be postponed for another. Their examination

should have been held on the originally declared date or at a later date. But preponement of the examination has had very adverse consequences in that the petitioner will miss the selection merely by few weeks. Moreover, contention of the learned counsel is that R.P.S.C. had originally invited only 546 vacancies, which were then increased to 644, 848 and 1248 by issuance of corrigendum thus, practically leaving no vacancy for the petitioner. Petitioner in this manner would suffer a loss in that, she would be for considerable time period, deprived of right to compete against vacancies, which had arisen subsequent to issuance of the original notification dated 18/9/2009. Learned counsel in order to bring home his point referred to the calendar of examination issued by the R.P.S.C. itself at Ann.9 in SBCWP No.400/2011 and argued that no further examination/selection for the post of Medical Officer is scheduled to take place during entire academic session 2010-11. Action of the R.P.S.C. in fixing 12/1/2011 to 14/2/2011 dates of interview must be held illegal, unconstitutional and writ petition therefore be allowed in terms prayed for.

6. Shri S.N. Kumawat, learned Additional Advocate General opposed the writ petitions and submitted that compulsory rotating internship is integral part of the M.B.B.S., without which, degree of M.B.B.S. cannot be awarded. Learned counsel in this connection referred to Ordinance 268(d) of the University Ordinances, which inter-alia provides that "the M.B.B.S. Degree shall be conferred after passing the Final M.B.B.S. Examination and after a candidate has undergone compulsory rotating Internship for a period of 12 months". Learned counsel submitted this issue is *res-integra* and has been decided by this Court in the context of B.D.S. and M.S. Degree, former arising out the same rules and the latter, by analogous set of rules. In this connection, learned counsel relied on the Single Bench decisions of this Court in *Brajraj Kumar Sharma vs. State of Rajasthan & Ors.* (SBCWP No. 4888/1995) decided on 28.11.1995, *Ramesh Ku. Barayach vs. State of Rajasthan & Ors.* (SBCWP No. 938/1996) decided on 29/8/1996. Division Bench of this Court upheld the later Single. Bench judgment in *Ramesh Ku. Barayach supra*. Learned counsel submitted that similar decision was rendered by the co-ordinate bench of this Court in *Sanju Choudhary & Ors. vs. State of Raj. & Ors.* 2009 WLC Raj. 154.

7. Shri S.N. Kumawat, learned Additional Advocate General further argued that such impugned condition in the advertisement inserted an omnibus amendment that was made by the Rajasthan Various Service (Amendment) Rules, 1999 in all the Service Rules of the State vide notification of the Government dated 17/9/1999. By this amendment, it was provided that a candidate, who has appeared or is appearing in the final year examination of the course, which is the requisite educational qualification for the post as mentioned in the rules or schedule for direct recruitment, shall be eligible to apply the post but he/she shall have to submit proof of having acquired the requisite educational qualification to the appropriate selection agency:-

(i) before appearing in the main examination, where selection is made through

two stages of written examination and interview;

(ii) before appearing in interview where selection is made through written examination and interview;

(iii) before appearing in the written examination or interview where selection is made through only written examination or only interview, as the case may be.

8. This was inserted by way of amendment in the Rules of 1963 also. Validity of such rule inserted by way of amendment in various service rules was called in question in number of petitions before this court and the matter was referred to the larger bench. Larger bench in DBSAW No.571/2004 vide its judgment dated 13/4/2010 held the aforesaid amendment to be valid and intravires of the Constitution. The challenge to Note in the present matters should also therefore fail.

9. Shri S.N. Kumawat, learned Additional Advocate General further submitted that R.P.S.C. is already over burdened with the task of selecting suitable candidates to the various services and at the same time, participating in various proceedings of D.P.C. of the State Government held from time to time. It is according to its convenience that the dates of the examinations and interviews are fixed. This is a general decision applicable to all concerned. The allegation of malafide in fixing of dates is therefore strongly refuted. It is denied that date of written examination was changed or number of vacancies were increased for reason of malafide. Learned counsel also denied the assertion that by the subject selection of the medical officers against increased vacancies, all the vacancies would be filled and there would remain no further vacancies for years together. Learned Additional Advocate General submits that R.P.S.C. has recently received another requisition from the State Government for filling up 73 more posts of medical officers, which are in addition to the posts that are being filled in by selection process in question. It has been denied that this is a case of legitimate expectation. Writ petitions therefore be dismissed.

10. I have given my anxious consideration to the rival submissions of the parties and scanned the material available on record and case law cited on the subject.

11. The issue that needs to be dealt with first is whether eligibility qualification shown as M.B.B.S. in Entry 11 Column 5 in Schedule-I appended to the Rules of 1963 envisage the internship to be an integral part of the M.B.B.S. Examination or mere passing of the final year M.B.B.S. would suffice for the purpose of such eligibility. Before considering the cited judgments, relevant provisions governing the field have to be noticed and discussed. Clause (d) of Ordinance 268 of the University Ordinances inter-alia provides that "the M.B.B.S. Degree shall be conferred after passing the Final M.B.B.S. Examination and after a candidate has undergone compulsory rotating Internship for a period of 12 months". Reading of this ordinance, leaves no manner of doubt that M.B.B.S. Degree shall not be considered as a valid degree for any purpose whatsoever, either for practice of for securing employment, unless a candidate has successfully undergone

compulsory rotating internship for a period of 12 months. Only exception that has given in clause (d) of Ordinance 268 of the University Ordinances is that in case of hardship in genuine matters and in the very exceptional circumstances and that too on recommendation of the college, relaxation not exceeding of thirty days may be granted but we are not concerned with that.

12. Argument that was raised before the co-ordinate bench of this court in Ramesh Ku. Barayach supra was that for the post of Dental Surgeon under Column 5, the only qualification that was sought was B.D.S. and there was no condition of Internship mentioned, therefore, order of the respondents rejecting application form of the petitioner is liable to be set-aside. This Court held that a candidate as per the notification could only be eligible if he was having the requisite qualification On the last date of submission of application form. Although, as per Column 5, requisite qualification shown was B.D.S. however, a perusal of the Internship Regulation Examination Scheme of B.D.S. prescribed by the Dental Council of India and approved by the Central Government shows that for acquiring a B.D.S. degree, a candidate is required to undergo compulsory Rotating Internship of one year; only thereafter, he can be considered eligible for award of B.D.S. degree. In the present case, although no similar regulations of the Medical Council of India have been cited by either of the parties but this Court must proceed on the footing that similar regulations must be available even for M.B.B.S. degree and it is in conformity therewith that such provisions have been incorporated in the University Ordinances.

13. In Brajraj Kumar Sharma supra advertisement was issued by the R.P.S.C. for appointment on the post of Ayurvedic Chikitsak. Learned counsel appearing for the R.P.S.C. in that case while opposing the writ petition argued that petitioner did not possess the requisite qualification for the post of Ayurvedic Chikitsak under Schedule attached to the Rajasthan Ayurvedic Unani Homeopathy and Naturopathy Subordinate Service Rules, 1973. The minimum qualification and experience for direct recruitment on the post of Ayurvedic Chikitsak is that of: (i) Degree of Bhishagacharya from University of Rajasthan or (ii) Ayurvedacharya i.e. Bachelor of Ayurvedic Medicine and Surgery from University of Rajasthan or (iii) qualification recognized as equivalent thereto by the Government. In that case, the argument was raised that petitioner had passed the examination of B.A.M.S. in April 1995 and the last date for submission of the application form was 16/5/1995. It was argued that petitioner should be held eligible because he had already passed final examination of B.A.M.S. degree course. R.P.S.C. contested the claim of the petitioner by citing clause 5(ii) of the University Ordinances, which provided that degree shall be awarded only after completion of internship of six months. Single Bench of this Court dismissed the writ petition by upholding the argument of the R.P.S.C. This judgment was challenged before the Division Bench in Shambhu Lal Sharma supra in which, Division Bench held that if argument of the petitioner was upheld and the advertisement was interpreted in such a manner, it would lead to absurd consequences. Co-ordinate Bench of this Court in Sanju Choudhary supra reiterated the same view by

following all the judgments in which case also, internship of the candidates seeking appointment on the post of Ayurvedic Chikitsak was not yet completed and he was claiming appointment on the strength of final examination of B.A.M.S. passed by them.

14. Coming now to the argument that fixation of dates of examination from 12/1/2011 to 14/2/2011 must be held to be arbitrary and unreasonable as it non-suits a large number of candidates, who would be completing their internship few weeks thereafter, I find that such an argument cannot be accepted on mere ipse dixit of the petitioners. In any selection process, R.P.S.C. has to fix one or the other date for holding written examination and for the purpose of interview. It is a matter of common knowledge that R.P.S.C. is over burdened with number of selections for the government in its different departments. R.P.S.C. has to thus act according to its own convenience. It has to be given freedom to fix its own calendar for fixing of dates for written examinations or interviews, considering that lacs of applications are received by it for every selection, that requires lot of exercises to be undertaken on its part. When R.P.S.C. fixes a date for written examination or interview irrespective of particular person or class of persons, it is done for all eligible candidates as has been given in the present case. In view of enormity of number of candidates, R.P.S.C. has to undertake a protracted exercise of holding written examination and interview. Even in this case, interviews have already started in a schedule, which are spread over weeks. Sometimes it is more than even a month. Even in this case, interview would take place from 12/1/2011 and continue upto 14/2/2011. Number of candidates compete for several selections. If the argument of the petitioners is further tested, that if the dates so fixed by the R.P.S.C. for interviews are not taken as correct and dates are postponed to any other time in future, then also, there would always be a situation where some candidates would be non-suited for competing against the posts in question because in their case too, same situation might arise that their internship might not be complete upto the last date on which interviews are fixed. It must be noted that in any selection process for any post, a line has to be drawn somewhere. There would always be a situation where a section of the candidates would be eligible and another section of that candidates would be on the verge of acquiring eligibility. Mere enormity of problem of unemployment of large number of young youth, and that some candidates may not have yet acquired eligibility, possibly may not be a reason to stall the entire process of selection. Doing so would be causing a grave prejudice to those unemployed youth, who have been waiting for employment for years and years, which is scarcely available these days. Learned Additional Advocate General at this stage has given a fair concession that if any candidate would be completing internship upto the last date of interview and if he appears before the R.P.S.C. with such request, there would be no reason why his request would not be accepted. So far as however validity of fixing the dates for interviews is concerned, no fault can be found therewith. Action of R.P.S.C. is just and reasonable. This argument must therefore also fail.

15. Contention that since originally 546 posts were advertised and therefore those posts could not have been subsequently increased to 644 and then to 848 and 1242, is also devoid of any substance because like in any other advertisement, herein also it was clarified by the R.P.S.C. that the posts can be increased or decreased by the R.P.S.C., in its discretion. One can understand the grievance if raised for decrease in the number of posts. However, increase in the number of advertised posts. is always beneficial to a large number of unemployed candidates because in that event, more number of candidates would be in a position to secure appointment. There is nothing on record nor even such inference can be drawn that there was any malice on the part of the R.P.S.C. in increasing number of posts. In fact, such increase is made when additional requisition is received in that behalf from the government. On facts also, it is an incorrect assertion in view of the clear statement made by the learned Additional Advocate General that State has recently sent requisition to the R.P.S.C. for further filling up 73 more posts of medical officers, which are in addition to the posts that are being filled in by the selection process in question.

16. Coming now to the argument of legitimate expectation, I see no substance in this argument either. Doctrine of legitimate expectation can be applied only on clearly laid down foundations, which in the present case are totally absent. Cited judgment of Dr. Nilammani Mohanty *supra* of Orissa High Court has no application in the present case. In that case, there were two categories of appointees at the time of actual selection, who were competing for admission to P.G. Specialty Course at the medical colleges. At the time of selection/admission, they were both eligible but the cut-off date fixed with reference to prospectus was 31.3.1999, which provided that only those candidates, who acquired minimum qualification upto that date would be eligible. Those, who acquired qualification after 31.3.2009 but before the last date of submission of the application form i.e. 22.6.2009 were debarred from being considered. It was held that an artificial classification has been made between the candidates, who otherwise fell within the same class and thus equals were treated unequally in violation of Article 14. Facts of that case are entirely different, therefore, ratio thereof would not be applicable to the present case.

17. Mere advertisement of vacancies by the R.P.S.C. does not give rise to legitimate expectation that candidates in all probabilities would be selected. In this case, only relaxation has been given for acquiring eligibility upto the date of interview to those candidates, whose eligibility in view of earlier rules, was to be tested on the last date of submission of the application forms and now it is upto the date when interviews take place. This is a beneficial provision, which acts to the advantage of those, who were being deprived of the right to compete in examination and appointment in selection. Now, this has been made possible for such candidates also to participate in the process of selection. This is because rule making authority has taken cognizance of the delay that takes place on the part of the University in conducting the examinations and declaring the results etc. Moreover, validity of the rule itself has been tested by the larger bench of

this Court and such rule has been held to be valid and intravires of the Constitution. Argument of legitimate expectation is also therefore liable to be rejected.

18. I do not find any merit in any of these writ petitions, which are all dismissed with no order as to costs.