
(2020) 03 RAJ CK 0072

In the Rajasthan High Court

Case No : Civil Writ Petition No. 13868, 17112 Of 2018, 2262 Of 2019, 3502 Of 2020

Prem Prakash Subodh and Others

APPELLANT

Vs

State of Rajasthan, Through Its Principal Secretary Medical
And Health Department and Others

RESPONDENT

Date of Decision : 06-03-2020

Acts Referred:

Citation : (2020) 03 RAJ CK 0072

Hon'ble Judges : Sanjeev Prakash Sharma, J

Bench : Single Bench

Advocate : Vigyan Shah, Mahendra Shah, M.S. Singhi, VB Sharma, Prakhar Gupta, Tushar Pareek, Arvind Chaudhary, Vidhi Maheshwari

Final Decision : Dismissed

Judgement

Sanjeev Prakash Sharma, J

The petitioners by way of these writ petitions have prayed as under:â?

â??S.B. Civil Writ Petition No. 3502/2020:â?

1. The impugned order dated 30.05.2018 withdrawing the advertisement dated 09.04.2018 and the advertisement dated 30.05.2018 for 6035 vacancies

which included 4514 left out vacancies of Nurse Gr.II in the advertisement dated 26.02.2013 may kindly be declared illegal and arbitrary and

therefore, same may kindly be quashed and set aside.

2. The impugned advertisement dated 30.05.2018 for 617 vacancies in TPS area may kindly be declared illegal and arbitrary and therefore, same may

kindly be quashed and set aside;

3. The respondents may kindly be directed by issuing the writ of mandamus,

order or direction in the nature thereof to give appointments to the petitioners on the post of Nurse Gr.II in pursuance to the advertisement dated 26.02.2013 with all consequential benefit in the interest of justice.

4. Any other appropriate order or direction which this Hon'ble Court deems just and proper in the facts and circumstances of this case may kindly also be passed in favour of the petitioner.

S.B. Civil Writ Petition No. 13868/2018:â?

1. The impugned order dated 30.05.2018 withdrawing the advertisement dated 09.04.2018 and the advertisement dated 30.05.2018 for 6035 vacancies

which included 4514 left out vacancies of Nurse Gr.II in the advertisement dated 26.02.2013 may kindly be declared illegal and arbitrary and

therefore, same may kindly be quashed and set aside.

2. The respondents may kindly be directed by issuing the writ of mandamus, order or direction in the nature thereof to give appointments to the

petitioners on the post of Nurse Gr.II in pursuance to the advertisement dated 26.02.2013 with all consequential benefit in the interest of justice.

3. Any other appropriate order or direction which this Hon'ble Court deems just and proper in the facts and circumstances of this case may kindly also

be passed in favour of the petitioner.

S.B. Civil Writ Petition No. 17112/2018:â?

1. The impugned order dated 30.05.2018 withdrawing the advertisement dated 09.04.2018 and the advertisement dated 30.05.2018 for 6035 vacancies

which included 4514 left out vacancies of Nurse Gr.II in the advertisement dated 30.05.2018 may kindly be declared illegal and arbitrary and

therefore, same may kindly be quashed and set aside.

2. The respondents may kindly be directed by issuing the writ of mandamus, order or direction in the nature thereof to give appointments to the

petitioners on the post of Nurse Gr.II in pursuance to the advertisement dated 26.02.2013 with all consequential benefit in the interest of justice.

3. Any other appropriate order or direction which this Hon'ble Court deems just and proper in the facts and circumstances of this case may kindly also

be passed in favour of the petitioner.

S.B. Civil Writ Petition No. 2262/2019:â?

(a). The impugned order dated 30.05.2018 withdrawing the advertisement dated

09.04.2018 and the advertisement dated 30.05.2018 for 6035

vacancies which included 4514 left out vacancies of Nurse Grade - II in the advertisement dated 30.05.2018 may kindly be declared illegal and

arbitrary and therefore, same may kindly be quashed and set aside.

(b). The respondents may kindly be directed by issuing the writ of mandamus, order or direction in the nature thereof to give appointment to the

petitioners on the post of Nurse Grade - II in pursuance to the advertisement dated 26.02.2013 with all consequential benefits in the interest of justice.

(c). Any other writ order or direction, which this Hon'ble Court deems fit and proper, may kindly also be passed in favour of the petitioners in the interest of justice.â??

2. Learned Counsel for the petitioners submits that the petitioners are candidates who applied under the advertisement dated 26.02.2013 for the post

of Nurse Gr.II and had been placed in the select list in the advertisement which was published in 2013. There were in all 15773 vacancies advertised

for Nurse Gr.II and 12278 vacancies were advertised for Public Health Nurse. The State Government vide Notification dated 28.06.2013 issued a

separate advertisement on 10.07.2013 for regular selection on several posts which were created by adding a separate cadre under NRHM under the

Rules of 1965 which did not include the post of Nurse Gr.II. Lateron, taking a policy decision, the NRHM posts which were advertised vide

advertisement dated 10.07.2013 were abolished and, therefore, the advertisement was withdrawn. However, in the aforesaid process, there was no

decision taken to abolish the post of Nurse Gr.II which was advertised in 2013 and, therefore, the petitioners were entitled to be considered against the

posts which had been advertised in 2013 and the contention that the posts of Nurse Gr.II had been abolished was erroneous and the petitioners ought

to have been considered against those posts. Learned Counsel has relied on the Note Sheet which has been produced as Annexure-12 to contend that

the posts which were advertised in 2013 were actually the posts under the Medical & Health Services alone and were not under the NRHM. It was

further submitted that the earlier judgment which was passed by the coordinate Bench in S.B.C.W.P. No. 15961/2015-Rajkumari v. State of

Rajasthan & other connected writ petitions, the State Government did not come out with correct facts which resulted in a finding given by the Court

that the reduction of posts in the advertisement was not required to be interfered with and there was no illegality committed. However, in view of the

facts which have come on record now, it is apparent that the Court was misled at that relevant time and there were no NRHM posts.

3. Keeping in view the said aspects, this Court had issued notices and the Additional Government Counsel appearing at that relevant time furnished an undertaking that the result of recruitment process shall not be declared on 19.07.2018. The said undertaking was directed to be continued subsequently by this Court with directions to the State to file its reply. This Court had also asked during proceedings to file affidavit with regard to the exact decision which was taken in relation to the reduction of posts.

4. The Advocate General submits that on 9.4.2018, an advertisement was issued which mentions 4514 posts. The said advertisement was later on withdrawn as certain number of vacancies were left unnoticed and a fresh advertisement was issued on 30.05.2018 advertising 6035 posts for Nurse

Gr.II. It is submitted that under the said advertisement, the entire selection process has been conducted and select lists have already been prepared.

However, on account of aforesaid undertaking recruitment process is come to stand still and in view of the epidemic relating to Swine Flu and Corona,

it became necessary that the recruitment of Nurse Gr.II must be done at the earliest. However, the Advocate General to shorten the entire

controversy placed the original note sheets relating to the entire selections which was conducted for the post of Nurse Gr.II from 2011-12 to till date.

Learned Advocate General submits that as per the note sheets, it is apparent that after the declaration of the Chief Minister in the Finance Budget of

2012-2013 to fill-up the posts in Medical & Health Department and it was decided to fill NRHM posts of Nurse Gr.II which were 7459 at that

relevant time in accordance with the Rules of 1965 and, therefore, when the advertisement was issued in 2013, total number of 15773 posts were

advertised which included 7459 sanctioned posts under the NRHM of Nurse Gr.II.

5. It is noticed that at the time of calculation of total number of posts, the department considered the existing 7459 posts of Nurse Gr.II of NRHM plus

3500 posts created under the NRHM vide order dated 14.02.2013 and accordingly, the total number of posts increased from 12273 to 15773. It is

noticed that after the advertisement was issued, a policy decision was taken not

to include the posts under NRHM under the Medical & Health

Services Rules, 1965 as the same were to be filled on contract basis resultantly the said posts were reduced and thereafter, the said posts of NRHM

were reduced from the advertisement dated 26.02.2013 and the appointments were made on total number of 11259 by adding the additional posts

which were created under the Medical & Health Services Rules and in the various medical colleges. The said issue was examined earlier by this

Court in the aforesaid judgment of Rajkumari (cited supra) and the coordinate Bench upheld the decision taken by the State Government. The

petitioners have come up again before this Court on account of the reason that a particular exact number of posts have been added namely 4540 posts

were advertised under the new advertisement dated 9.4.2018 and, therefore, they contend that these 4540 posts are those NRHM posts which have

now been again included.

6. Taking note of the entire note sheets as above, this Court is satisfied that the posts which have been presently advertised do not form part of

NRHM posts. It is also informed by the Advocate General that so far as NRHM posts are concerned, they have been separately advertised in 2016

and they are to be filled on contract basis. This Court also noticed that the advertisement dated 9.4.2018 has been withdrawn and a fresh

advertisement has been issued on 30.05.2018 wherein 6035 posts of Nurse Gr.II have been advertised.

7. Keeping in view above, the contention of the petitioners is found to be without basis.

8. Learned Advocate General also submits that reduction of posts or addition of posts is an exclusive domain of the State Government and as per Rule

4 of the Rules of 1965, the composition of strength of service provides that the strength of posts in each group shall be such, as may be determined by

the Government, from time to time provided that the Government may-

â??(a) create any post, permanent or temporary, from time to time as may be found necessary; and

(b) leave unfilled or hold in abeyance or abolish any post, permanent or temporary, from time to time, without thereby entitling any person to any

compensation.â??

9. On the strength of the aforesaid provision, learned Advocate General submits

that even in advertisement, it is mentioned that the posts may be increased or decreased thus, learned Advocate General contends that no candidate or aspirant who participated in the selection process has a right to contend that a number of posts which have been advertised must be necessarily filled. The learned Counsel has relied on *State of Rajasthan v. Jagdish Chopra*, (2007) 8 SCC 161 to contend that no individual right is available with the candidate for the said purpose.

10. Per contra, learned Counsel for the petitioners however, submits that the reduction of posts must be on bonafide grounds and it cannot be arbitrary.

11. I have considered the submissions.

12. Constitution Bench of the Supreme Court in *Shankarsan Dash v. Union of India* - (1993) 1 SCC 154 in para 7 has held as under:â?

â??7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the

successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to

an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant

recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the

licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the

vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and

no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the

decisions in *State of Haryana v. Subhash Chander Marwaha*, [1974] 1 SCR 165; *Miss Neelima Shangla v. State of Haryana*, (1986) 4 SCC 268 and

Jitendra Kumar v. State of Punjab, (1985) 1 SCC 122 : [1985] 1 SCR 899.â??

13. This Court finds that it is not a case where a persons having lesser merit than the petitioners were given appointment in the year 2013 selections.

The selection process of 2013 is already over. The contention of the petitioners that the reduction of posts was unjustified has also been examined and

rejected by this Court in the case of *Rajkumari* (supra). A fresh writ petition on

the same count would not be maintainable. This Court noticed that under the fresh advertisement which has been issued on 9.4.2018 was posts which were made available in between 2013 and 2018. It is also noticed that the advertisement dated 9.4.2018 was withdrawn and a fresh advertisement has been issued on 30.05.2018 which includes additional number of posts for Nurse Gr.II and total number of 6035 posts have been advertised. The process for the said selection has already been completed by the respondents. Those petitioners who were eligible under the advertisement of 2018 could have and may have participated and may find place in the present selection. However, even if the said position is not to be found, this Court holds that no candidate or aspirant has a right of appointment available under the Constitution. The Courts have only recognized a candidate right of consideration for appointment. The present writ petitions are found to be solely on the basis that the number of posts which were advertised vide advertisement dated 9.4.2018 were incidentally almost the same number of posts which had been reduced in the earlier advertisement of 2013 as this Court has already reached to the finding that the posts which were reduced in 2013 were those of NRHM and not cadered posts under the Rules of 1965. The challenge to the advertisement is found to be baseless.

14. Keeping in view the aforesaid finding the undertaking of the State Government directed to be continued is allowed to be withdrawn. The respondents are left free to proceed further with the selection process under the advertisement dated 30.05.2018 and take all steps to immediately fill up the posts.

15. Accordingly, no case for interference is made out. The writ petitions are found to be devoid of merit and the same are dismissed. All pending applications stand dismissed.