

(2018) 05 RAJ CK 0188
In the Rajasthan High Court
Case No : Spl. Appl. Writ No. 629 of 2018

**Rajasthan Para Medical Council @APPELLANT@Hash Hitesh Kumar
Sharma**

Date of Decision : 25-05-2018

Acts Referred:

Rajasthan Para Medical Council Act, 2008 — Section 17
Rajasthan High Court Rules, 1952 — Rule 134
Constitution of India, 1950 — Article 225

Citation : (2018) 05 RAJ CK 0188

Hon'ble Judges : GOPAL KRISHAN VYAS, J; RAMCHANDRA SINGH JHALA, J

Bench : Division Bench

Advocate : Yashpal Kheileree, MA siddiqui, Vikas Balia

Final Decision : Dismissed

Judgement

Gopal Krishan Vyas

The instant special appeal has been filed by the Rajasthan Para Medical Council under Rule 134 of the Rajasthan High Court Rules read with

Article 225 of the Constitution of India so as to challenge the judgment dated 7.2.2018 passed by the learned Single Judge in SBCWP

No.13990/2016 (Hitesh Kumar Sharma & Ors. Vs. State of Rajasthan & Ors.) whereby the learned Single Judge while following the judgment in

the case of Sunil Bishnoi & Ors. Vs. State of Rajasthan & Ors. (SBCWP No.8149/2015), decided on 1.2.2018 allowed the writ petition only to the

extent that respondent no.3 Rajasthan Para Medical Council, Jaipur shall register the petitioners-respondents in case they are otherwise found eligible

within a period of one month from the date of receiving certified copy of the order.

Learned counsel for the appellant vehemently argued that in the writ petition, the respondents nowhere stated that their technical qualification i.e.,

diploma in Medical Lab Technology (DMLT), or Diploma in Radiology Technology (DRT) or Diploma in Ophthalmic Technology (DOT) obtained

from the Pacific Medical University, Udaipur is recognized by the State of Rajasthan, as well as by the Rajasthan Para Medical Council Regulations,

2014.Â Learned counsel for the appellant further submits that in the case of Gand Mal Dhakar & Ors. Vs. State of Rajasthan & Ors (DBSAW

No.955/2011, decided on 17.2.2017)Â theÂ candidates not possessing theÂ requisite statutory eligibility cannot beÂ considered for appointment on

the post created under the statue, therefore, the respondents are not entitled for any appointment.Â Â Further, the learned counsel for the appellantÂ

invited our attention towards the judgment of this court in the case of Ajju Khan Vs. State of Rajasthan (SBCWP No.700/2016) in which the petitioner

soughtÂ equivalence of the diploma orÂ certificate course in laboratory technician obtained from the private Universities with the requisite

recognized qualification as per the provisions of Rules of 1965 and that writ petition was dismissed on 19.9.2016, therefore, it is submitted that the

respondents are not entitled for any relief granted by the learnedÂ Single Judge.Â

Â Lastly, learned counsel for the appellantÂ argued that under Section 17 of the Rajasthan Para Medical Council Act, 2008 (hereinafter referred to

as the Act of 2008 for short) andÂ Regulation 42 and 43 of the Regulations of 2014 a person havingÂ recognized para medical qualification is

entitled to be registered as para medical professional, noneelse, but this aspect of the matter has not been considered properly by the learned Single

Judge, therefore, this appeal may kindly be allowed andÂ the judgment impugned may kindly beÂ quashed.Â Â

Â Per contra, learned counselÂ appearingÂ on behalf of the respondents argued that two prayers were made in the writ petition by the respondents-

petitioners; one for considering their candidature for appointment in pursuance of advertisement notification dated 10.10.2016 and another prayer was

made that respondent Rajasthan Para Medical Council may be directed to register the petitioner as per provisions of the Law.Â The learned Single

Judge allowed the writ petition only to the extent that respondent no.2 shall register the petitioners in case they are otherwise found eligible in view of

the judgment in the case of Sunil Bishnoi (supra). It is also argued that institution from where they acquired qualification is University established by

law and as per Section 17 a person having recognized para medical qualification shall be entitled to be registered as para medical professionals.Â

Further, it is submitted that as per regulation 42 framed in the year 2014, there is provision that a candidate eligible for registration, who has obtained

certificate of para medical course from any government body or private body permitted by the government for that purposeÂ who has run the course

and awardedÂ certificate before theÂ commencement of these regulations and admittedly, the aforesaid regulations were framed in the month of

Dec., 2014 and petitioners being eligibleÂ to take admission in para medical course applied with the University in the month of Jan., 2014 and

admittedly, after following due process in the course of two year, therefore, there is complete fallacy in theÂ arguments of learned counsel for the

appellant that qualification is not recognized by the Rajasthan Para Medical Council and therefore, they are not entitled for registration in the

Rajasthan Para Medical Council. While inviting attention towards the regulation 42(1) it is submitted that theÂ candidate who has passed the para

medical course from any government body or private body permitted by the government for the purpose who has run the course and awarded

certificate before the commencement of these regulations.Â Admittedly, the respondents-petitioners acquired qualification from the Pacific Medical

University, UdaipurÂ which is established under the Act, therefore, the case of the respondentsÂ fully covered with the judgment in the case of

Sunil Bishnoi (supra) case.Â In view of the above arguments it is submitted that there is no force in this appeal, therefore, this appeal may kindly be

dismissed.Â

Â After hearing learned counsel for the parties, first of all, we have considered the fact which is not in dispute that respondents were admitted in the

respondent Pacific University, Udaipur for acquiring course in the month of Jan.2014. The regulations were framed as per theÂ Rajathan Para

Medical Council Act, 2008 in the month of Dec., 2014. Section 17 of the Act of 2008 is as follows:

â??Section 17.Â Persons entitled to be registered-Â A person having recognized Para-medical qualification shall be entitled to be registered as

Para-medical profession.â??Â

Â The regulations framed under the provisions of the Act by the Rajathan Para

Medical Council. The regulation 42 was incorporated in which eligibility for registration was provided. The regulation 42 is as follows:

Regulation 42. Eligibility for registration The following persons be eligible for registration-

(i) Who has obtained certificate of a para-medical course from any Government body or private body permitted by the Government for the purpose who has run the course and awarded certificate before the commencement of these regulations.

(ii) Who has passed the Para-medical course from any institution recognized by the Rajasthan Para medical Council.

(iii) Who has passed the Para medical course from any institution/Government body, outside the territories of Rajasthan, recognized for the purpose by the concerned State Government or Central Government.

(iv) Who has passed the para-medical course from any institution outside the territories of India, recognized for the purpose by the Government for the purpose by the Government of the country concerned and verified by the Government of India.

There is no doubt that as per Section 17 of the Act of 2008 a person having recognized para medical qualification is entitled for registration as para

medical professional, therefore, obviously the respondents-petitioners who acquired qualification after getting admission in the month of Jan., 2014

became entitled for registration in view of Section 17 of the Act. The regulation 42(1) of the Rajasthan Para Medical Regulation, 2014

clearly provides that those candidates who obtained certificate of para medical course from any government body or private body permitted by the

government for the purpose who has run the course and awarded certificate before the commencement of these regulations. The aforesaid

regulation 42 is for the recognized institutions, but the University from where respondents-petitioners acquired degree diploma is established by law,

therefore, question of recognition is irrelevant. In case of

Rajasthan Nursing Council, Jaipur Vs. Singhanian University & Ors, (DBSAW No.671/2018), this court dismissed the special appeal today itself in

which following adjudication is made, which reads as under: -

After hearing learned counsel for the parties, first of all it is required to be observed that in the grounds of the writ petition no other ground has

been taken by the appellant except the ground which is incorporated and mentioned above. The only argument and ground taken in the appeal

is that registration is required from appellant RNC by the Singhania University, which is established by law.

We have considered the rival submissions and come to the conclusion that once the controversy has already been adjudicated by the Hon'ble Apex

Court in the case of Dr. B.L. Asawa Vs. State of Rajasthan & Ors reported in AIR 1982 SC 933 and in case of Mrs. Madhu Santosh Vs. State of

Rajasthan (SBCWP NO.2502/1989), decided on 21.2.1991 while relying upon the aforesaid judgment then there is no question to hold that any error

has been committed by the learned Single Judge in directing the appellant RNC so as to deny the registration on the pretext that recognition is

necessary from the appellant Rajasthan Nursing Council.

We are of the firmed opinion that if any University is established by law and imparting the course in the form of diploma and degree or qualification,

that cannot be questioned by the appellant RNC for the purpose of registration.

We have considered the judgment cited by the learned counsel for the appellant in the case of Gand Mal Dhaker & Ors. Vs. State of Rajasthan

(DBSAW No.955/2011), decided on 17.2.2017 in which question of appointment and qualification was involved and hear the controversy is only

with regard to registration, therefore, the judgment rendered in aforesaid case not applicable in the present case.

In our opinion no error has been committed by the learned Single Judge so as to allow the writ petition filed by the respondents while following the

adjudication made by the Hon'ble Apex Court , in the case of Dr. B.L. Asawa (Supra) which is subsequently followed by this court in the case of

Mrs. Madhu Santosh (supra).

Consequently, the instant special appeal is hereby dismissed.

After considering the judgment and the fact that the respondents petitioners acquired qualification from the University established by law, therefore, no

further recognition was required. Therefore, in our opinion, no error has been committed by the learned Single Judge so as to issue direction to the

Rajasthan Para Medical Council to register the respondents-petitioners in the writ petition filed by the respondents while following the adjudication

made by the Hon'ble Supreme Court in case of B.L. Asawa Vs.

State of Rajasthan & ors. reported in AIR 1982 SC 933 and in case of Mr. Madhu Santosh Vs. State of Rajasthan (SBCWP No.2502/1989), decided

on 21.2.1992 and decision of the Punjab and Haryana High Court in case of Ms. Neelam Devi & Anr. Vs. Haryana Nurses Registration Council &

Ors. (Civil Writ petition No.4021/2009), decided on 19.2.2010 reported in 2010 158 PLR 323.Â

Consequently, there is no force in this appeal filed by the Rajasthan Para Medical Council, Jaipur.Â Hence, this special appeal is hereby dismissed.Â