
(2016) 06 RAJ CK 0048
In the Rajasthan High Court
Case No : Civil Writ Petition No. 5877 of 2015

Rajendra Parihar

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 15-06-2016

Acts Referred:

Constitution of India, 1950 — Article 16

Citation : (2016) LIC 3451 : (2016) 4 RLW 3092 : (2017) 1 WLC 289

Hon'ble Judges : Mr. Sandeep Mehta, J.

Bench : Single Bench

Advocate : Mr. Kailash Jangid, Advocate, for the Petitioner; Mr. Rishabh Tayal for Mr. K.L. Thakur, AAG, for the Respondent

Final Decision : Allowed

Judgement

Sandeep Mehta, J.— Heard learned counsel for the parties and perused the material available on record.

2. By way of the instant writ petition, the petitioner Rajendra Parihar has approached this Court assailing the action of the respondents in not issuing him an experience certificate in accordance with the work performed by him under the respondent no.4 and to give him advantage of 15% bonus marks in the recruitment process conducted by the respondent Medical & Health Services, Govt. of Rajasthan for appointment on the post of Nurse Grade-II under the notification dated 26.2.2013.

3. The respondent Medical and Health Services, Government of Rajasthan, Jaipur issued the above notification for filling up 15773 posts of Nurse Grade-II, 200 posts of Public Health Nurse and 12278 posts of Woman Health Workers. As per the advertisement, the recruitment was to be made by assessment of marks obtained in the qualifying examination and bonus marks provided under Clauses 8 & 9 of the advertisement. Clauses 8 and 9 of the advertisement which are relevant and germane for deciding the controversy at hand are reproduced

herein below for the sake of ready reference :-

8- vuqHko ds vk/kkj ij cksul vad%& jktLFkku fpfdRlk ,oa LokLF; v/khuLFk lsok fu;e 1965 ;Fkk la"ksf/kr fu;eksa ds fu;e 19 esa mYysf[kr izko/kkuksa ds rgr vH;fFkZ;ksa dks cksul vad ns; gSaA

(i) bu foKkfir inksa ds fy;s ljdkj] jk"V~h; xzkeh.k LokLF; fe"ku ,oa esfMds;j fjfyQ lkslk;Vh ds vUrxZr foKkfir inksa ds lkeku dk;Z (similar work) ij dk;Z djus dh vof/k ds vk/kkj ij vuqHko izkIr vH;fFkZ;ksa dks izR;sd iw.kZ o"kZ ds vuqHkko ij 10 izfr"kr cksul vad ,oa vf/kdre 30 izfr"kr cksul vad ns; gksxsA ,d o"kZ ls de vof/k ds fy;s dksbZ cksul vad ns; ugha gksxA

uksV%& 365 fnol iw.kZ gksus ij gh ,d o"kZ ekuk tkosxA

(ii) foHkkx }kjk tkjh funsZ"ksa ds rgr fu/kkZfjr izi= esa l{ke vf/kdkjh }kjk tkjh vuqHko izek.k i= gh eku; gksxA vuqHko izek.k i= dk izk:i fuEu gS%&

dk;kZy;-----

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vuqHko izek.k i=

izekf.kr fd;k tkrk gS Jh@Jherh@dkekjh-----iq=@iRuh@iq=h-----
fuoklh-----dh fu;qfDr-----ds vkns"k dzekad-----fnukad-----
ds }kjk-----ds in ij lafonk@O;fDrxr vuqca/k@vLFkbbZ vk/kkj
ij-----;kstuk esa dh x;h Fkh] tks bl in ij fnukad-----ls
fnukad-----rd dk;Zjr gS@jgk gS@jgh gSA budh mDr in ij dqy dk;Z vof/
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iz/kkukpk;Z esfMdy@MsUVy dkWyst@v/kh{k d layXu fpfd0
lewg@ih0,e0vks0@lh0,e0,p0vks0@mi funs"kd vkS"kf/k ijh{k.k
iz;ksx"kk;k@funs"kd ,e0,l0;w0@funs"kd vkj0vkj0lh0@eq[; lkoZ0
fo"ys"kd@lgdkfjrk foHkkx dk l{ke vf/kdkjh@tks Hkh ykxw gksA

(iii) iz/kkukpk;Z esfMdy@MsUVy dkWyst@v/kh{k d layXu fpfd0
lewg@ih0,e0vks0@lh0,e0,p0vks0@mi funs"kd vkS"kf/k ijh{k.k
iz;ksx"kk;k@funs"kd ,e0,l0;w0@funs"kd vkj0vkj0lh0@eq[; lkoZ0
fo"ys"kd@lgdkfjrk foHkkx dk l{ke vf/kdkjh ekuk tkosx ;fn foHkkx }kjk fdLh vU;
vf/kdkjh dks Hkh l{ke vf/kdkjh ?ksf"kr fd;k tkrk gS rks mlds }kjk tkjh vuqHko
izek.k i= Hkh eku; gksxA

(iv) vH;FkhZ }kjk izlrqr izek.ki= dks l{ke vf/kdkjh }kjk tkjh gksus ds IR;kiu ds i"pkr~ gh cksul vad@vk;q esa f"kfFkyrk fu;ekuqlkj nh tkosxh ,oa foHkkx }kjk pkgS tkus ij ewy vuqHko izek.k i= izLrqr fd;k tkuk vfuok;Z gksxkA

(v) vuqHko izek.k i= vkWuykbZu vkosnu ds lkFk viyksM djuk vfuok;Z gSA vkWuykbZu vkosnd ds lkFk vuqHko izek.k i= viyksM ugha djus ij vuqHko ds vk/kkj ij cksul vad ns; ugha gksaxs ,oa ckn esa dksbZ vuqHko izek.k i= Lohdkj ugha fd;k tkosxkA

9- p;u dk vk/kkj ,oa ofj;rk lwph rS;kj djus dk vk/kkj%&

(i) vkosfnr in gsrq vkosndksa dk p;u jktLFkku fpfdRlk ,oa LokLF; vf/kulFk Isok fu;e 1965 ds fu;e 19 esa mYysf[kr izko/kkuqlkj fu;eksa esa mYysf[kr U;wure "kS{kf.kd ;ksX;rk ijh{k k vFkok O;olkf;d ;ksX;rk ijh{k k vFkok nksuksa tSlh Hkh fLFkfr gks esa izkIr izkIrkadksa ,oa cksul vadksa ds vk/kkj ij fu;ekuqlkj rS;kj ofj;rk lwph esfjV ls fd;k tk;sxkA

(ii) ofj;rk lwph rS;kj djus gsrq vkosnd }kjk fu;eksa esa mYysf[kr U;wure "kS{kf.kd ;ksX;rk ijh{k k vFkok U;wure O;kolkf;d ;ksX;rk ijh{k k vFkok nksuksa tSlh Hkh fLFkfr gks] ds izfr"kr ds vkSlr dk 70 izfr"kr fy;k tk;sxk ,oa izkIr bu izfr"kr vadksa esa vuqHko izkIr vH;fFkZ;ksa ds fy;s fcUnw la[k 8(i) ds vuqlkj cksul vadksa dk izfr"kr vf/kdre 30 lh/ks gh tksM+ dj ofj;rk lwph cukbZ tkosxhA foKkfir inkSa ds fy;s fu;qfDr gsrq ofj;rk lwph rS;kj djus ds fy;s U;wure "kS{kf.kd ;ksX;rk ijh{k k ,oa U;wure O;olkf;d ;ksX;rk ijh{k k dk fooj.k bl foKfir esa mij fcUnq la[k 6 esa fn;k tk pqdk gSA

(iii) ofj;rk lwph esa p;fur vH;fFkZ;ksa dks ik=rk nLrkost "kS{kf.kd ;ksX;rk] O;olkf;d ;ksX;rk] vU; ;ksX;rk] vuqHko izek.k i= vkfn leLr nLrkostksa dk IR;kiu] iqfyl IR;kiu] pfj= izek.k i= ,oa LokLF; izek.k i= vkfn ds izLrqr djuk gksxkA

4. Thus, as per the above condition no.8, the aspirant who was having the requisite experience certificate was entitled to 10% bonus marks for each year's service with a maximum of 30% bonus marks for three years service experience.

5. During the pendency of the recruitment process, the criteria of bonus marks was altered and it was decided vide communication dated 22.3.2015 that maximum of 15% bonus marks @ 5% each year, would be admissible to the aspirants.

6. The petitioner claims to have worked under the respondent no.4 Superintendent, Mahatma Gandhi Hospital, Jodhpur on contractual basis between 31.1.2010 to 28.2.2013. He approached the Superintendent for issuing an experience certificate of 3 years & 29 days service put in by him. However, the respondent no.4 issued certificate Annex.6 dated 13.3.2013 to the petitioner wherein, his work experience has been acknowledged for a period of 2 years 11 months 5 days only despite taking note of the fact that the petitioner worked at the hospital from 31.1.2010 to 28.2.2013. The petitioner has raised a grievance that the issuance of the erroneous certificate caused him a loss of 5% bonus marks, thus, depriving him from appointment in the questioned recruitment

process. He served a legal notice to the competent authorities but they did not respond to the same. Upon this, the petitioner has approached this Court by way of this writ petition.

7. The respondents have filed a reply to the writ petition wherein, it is asserted that the experience certificate can only be issued to a contractual employee accounting for actual working days put in by the concerned employee only. The petitioner had remained absent for 56 days in the year 2010-2011 and thus, the said period was rightly deducted while issuing the experience certificate to the petitioner. The respondents have thus justified their decision in issuing experience certificate of 2 years 11 months 5 days only to the petitioner and as a consequence, extending him the benefit of 10% bonus marks as against his claim of 15% bonus marks in the questioned recruitment.

8. Mr. Kailash Jangid, learned counsel representing the petitioner, vehemently contended that the period of 56 days which the respondents deducted from the petitioner's experience while issuing the experience certificate was a sanctioned medical leave period and as such, the same could not have been deducted. He thus urged that the writ petition should be allowed and the respondents be directed to issue experience certificate for the entire period of contractual assignment undertaken by the petitioner with respondent no. 4.

9. Per contra, Mr. Tayal learned counsel for the respondents vehemently opposed the submissions advanced by the learned counsel for the petitioner. He urged that experience certificate was issued to the petitioner after allowing all admissible leave period. Admittedly, the petitioner remained absent for 56 days in the year 2010- 2011 and thus, the respondents were justified in deducting the said period from his total contractual service period and issuing experience certificate for 2 years 11 months 5 days to him. In the background of these facts, he has defended the action of the respondents in not yielding to the prayer made by the petitioner in his representation and prayed that the writ petition is liable to be dismissed.

10. Heard and considered the arguments advanced at the Bar and perused the material available on record.

11. It is unquestioned that the petitioner worked with the respondent no.4 on contractual basis under the contract issued on 30.1.2010. He continued on his contractual assignment till 28.2.2013 as is evident from the experience certificate Annex.6 dated 13.3.2013. The reason for deduction of period of about 56 days is not reflected in the certificate Annex.6. In the reply, a case has been set up that the petitioner took medical leave for 56 days and such period was deducted while counting his experience. In the opinion of this Court, the said stance of the respondents while issuing the experience certificate is totally unjustified and arbitrary.

12. For reaching of this conclusion, the definition of the terms "month" and "year" as provided in the General Clauses Act, 1897 (for short, "the Act of

1897") need to be looked at. "Month" is defined in Section 3(35) of the Act of 1897 and "Year" is defined in Section 3(66) of the Act of 1897 and read as below :-

"3(35) "month" shall mean a month reckoned according to the British calendar.

3(66) "year" shall mean a year reckoned according to the British calendar."

13. Thus, while calculating the experience of the petitioner between 31.1.2010 to 28.2.2013, these definitions would definitely have to be kept in mind. The stand of the respondents that the absence of the petitioner be it on medical grounds for a period of 56 days has to be excluded while issuing experience certificate is totally unacceptable. For dealing with the issue, analogy can be drawn from Article 217(2) of the Constitution of India which deals with appointments on the post of a High Court Judge and reads as below :-

Article 217(2)

(2) A person shall not be qualified for appointment as a Judge of a High Court unless he is a citizen of India and

(a) has for at least ten years held a judicial office in the territory of India; or

(b) has for at least ten years been an advocate of a High Court or of two or more such Courts in succession; Explanation For the purposes of this clause

(a) in computing the period during which a person has held judicial office in the territory of India, there shall be included any period, after he has held any judicial office, during which the person has been an Advocate of a High Court or has held the office of a member of a tribunal or any post, under the Union or a State, requiring special knowledge of law;

(aa) in computing the period during which a person has been an advocate of a High Court, there shall be included any period during which the person has held judicial office or the office of a member of a tribunal or any post, under the Union or a State, requiring special knowledge of law after he became an advocate;

(b) in computing the period during which a person has held judicial office in the territory of India or been an advocate of High Court, there shall be included any period before the commencement of this Constitution during which he has held judicial office in any area which was comprised before the fifteenth day of August, 1947, within India as defined by the Government of India Act, 1935, or has been an advocate of any High Court in any such area, as the case may be."

14. If the interpretation of the word "experience" as adopted by the respondents is accepted, then the period of summer vacations enjoyed by a judicial officer/ advocate or other holidays which fall during the course of such ten years working period would have to be excluded. It would give rise to an absolutely absurd proposition. The entire service period or the professional career as the case may be has to be accounted for while calculating the experience required by a person

to be appointed as High Court Judge.

The medical leave which the petitioner took has been sanctioned as per the case set up by him in an additional affidavit. It is not the case of the respondents that the absence period of 56 days was declared to be "dies non". Thus, merely because the petitioner had remained absent for a few days during the contractual service owing to his illness, such period cannot be excluded from his experience in terms of the specific provisions of the General Clauses Act.

15. As per the Oxford English Dictionary, the word "experience" is defined as practical contact with and observations of facts or events : the knowledge or skill acquired by such means over a period of time, especially that gained in a particular profession by someone at work.

16. A person who works as a nurse in a hospital on contractual basis for a period in excess of 3 years gains experience over the entire length of service. Absence during the said period unless highly excessive cannot be eschewed from the period of experience. Thus, merely because the petitioner was forced to go on medical leave for a certain duration because of his ailing health, the said period cannot be excluded while assessing his experience for being appointed as a Nurse Grade-II. The work put in by the petitioner over a length of three years and the skills gained by him for such extended period of time cannot be curtailed merely because he had to undergo medical treatment for a short duration in this entire span of more than three years, more particularly, because the period of absence was not declared to be "dies non".

17. Consequently, the action of the respondent no.4 in deducting the period of 56 days (availed by the petitioner as medical leave) during his contractual assignment between 31.1.2010 to 28.2.2013 while issuing him the experience certificate cannot be approved as being unjust and arbitrary.

18. Resultantly, the instant writ petition deserves to be and is hereby allowed. The respondent no.4 is directed to issue experience certificate to the petitioner for the entire period of his contractual assignment commencing from 31.1.2010 and ending on 28.2.2013. The recruiting authority shall acknowledge such experience certificate and give benefit of 15% bonus marks to the petitioner and shall consider his case for recruitment to the post of Nurse Grade-II in the questioned recruitment process. The entire exercise as directed above shall be completed within a period of 3 months from today.

19. Stay petitions also stand disposed of.

20. No order as to cost.