

(2020) 01 RAJ CK 0129
In the Rajasthan High Court
Case No : Spl. Appl. Writ No. 1526 Of 2019

Ram Dev Prajapat And Ors

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 22-01-2020

Acts Referred:

Constitution Of India, 1950 — Article 14, 16

Citation : (2020) 01 RAJ CK 0129

Hon'ble Judges : Sangeet Lodha, J;Dr. Pushpendra Singh Bhati, J

Bench : Division Bench

Advocate : Mahaveer Bishnoi, Rajat Arora, K.S. Rajpurohit, Kailash Jangid

Final Decision : Dismissed

Judgement

1. This intra court appeal is directed against order dated 11.12.19 passed by the learned Single Judge of this Court, whereby the writ petition preferred by the appellants questioning the legality of the provisional select list for contractual engagement of Nurse Gr.II (GNM) issued pursuant to advertisement dated 28.1.16 and seeking directions to the respondents to prepare a fresh merit list at district level as per the directions issued by the Full Bench of this Court in Rajkumar & Ors. vs. State of Rajasthan & Ors.: AIR 2016 Raj.176, has been dismissed.

2. The Director, Rajasthan Health & Family Welfare Institution, issued an advertisement dated 28.1.16 inter alia inviting applications for contractual engagement on the post of GNM on payment of fixed monthly honorarium Rs.7,500/- per month. As per the advertisement issued, the appointments were to be made on the basis of the guidelines issued by the National Health Mission (NHM). In the advertisement issued, it was not indicated as to whether the selection would be made at the district level or at the State level. Vide notice dated 18.2.19, the respondent called upon the candidates to fill on-line preference for 34 districts of the State of Rajasthan by 21.2.19. The result was declared on 21.2.19. After verification of the documents between 25.2.19 to

2.3.19, the provisional select list was issued by the respondents which was apparently prepared at State level. Aggrieved thereby, the appellants preferred a writ petition before this Court, which stands dismissed by the learned Single Judge by the order impugned. Hence, this appeal.

3. Precisely, the appellants claimed before the learned Single Judge that action of the respondents in providing for selection based on State wise list is contrary to Full Bench decision of this Court in Rajkumar's case (supra). It was contended that under the same advertisement qua the post of ANM, the respondents have followed district wise merit list and have accorded appointments accordingly and therefore, there is no reason why a different basis i.e. State wise merit list should be resorted to for appointment on the post of GNM.

4. The respondents had taken the stand that the decision in Rajkumar's case (supra) has not been contravened and they have followed the decision of the learned Single Judge in the case of Priyanka Saini & Anr. vs. State of Rajasthan & Ors.: S.B.Civil Writ Petition No.1766/17, decided on 1.5.17 at Jaipur Bench of this Court. The respondents also relied upon the decision of this Court in Mohammed Farukh Mehar & Ors. vs. State of Rajasthan & Ors.: S.B.Civil Writ No.3940/2019, decided on 14.3.19, wherein the criteria of State wise merit list adopted by the respondents was upheld.

5. After due consideration of the rival submissions, the learned Single Judge opined that the decision of the respondents in adopting State level merit list pattern, does not run contrary to Full Bench decision of this Court in Rajkumar's case (supra). The learned Single Judge found that the action of the respondents in issuing State level merit list following the dictum in the case of Priyanka Saini (supra) cannot be faulted with.

6. Learned counsel appearing for the appellants reiterating the stand taken before the learned Single Judge contended that the contractual engagement in question relate to the project of NHM in respect whereof a Full Bench of this Court has already upheld the preference given to the local residents by adopting the method of recruitment at district level and therefore, the respondents could not have adopted a different criteria i.e. recruitment at the State level. Learned counsel submitted that the decision of the respondents in adopting the State level merit list pattern for appointment on the post of GNM runs contrary to the Full Bench decision in Rajkumar's case (supra) and therefore, the provisional select list issued at the State level was liable to be quashed on this count alone. Learned counsel submitted that under the same advertisement, the posts of ANM were also advertised and for appointment on the said post, admittedly, the respondents have adopted the criteria of district level merit list and thus, the action of the respondents in adopting a different criteria for engagement of GNM is absolutely unjustified.

7. On the other hand, learned counsel appearing for the respondents submitted that in Rajkumar's case (supra), the engagement of staff under the Scheme of

National Rural Health Mission(NRHM), on the basis of the place of residence and/or local criteria was held to be not irrational or violative of Article 14 of the Constitution of India and thus, the engagement of the staff on the basis of the merit list prepared at district level was upheld but, it was nowhere laid down that the engagement of the staff under the Scheme of NRHM if undertaken at the State level, it would be violative of Article 14 & 16 of the Constitution of India. Learned counsel submitted that on the legal advise, the fair method of recruitment adopted by the respondents without adversely affecting the rights of the persons similarly situated, in no manner, runs contrary to the decision of the Full Bench in Rajkumar's case (supra). Learned counsel submitted that the action of the respondents in adopting the State level merit list pattern for engagement of the GNM is in conformity with the decision of this Court in Priyanka Saini's case (supra) and thus, the learned Single Judge has committed no error in dismissing the writ petition preferred by the appellants so as to warrant interference by the Division Bench in exercise of its intra court appeal jurisdiction.

8. We have considered the rival submissions and perused the material on record.

9. Indisputably, the respondent had issued the advertisement inviting applications for contractual engagement on various posts under NHM. The appointments were intended to be given for a period of one year or till the continuation of programme/ project, the period whichever is less. However, in case of continuation of the project on the services being found satisfactory, the period of contract could have been extended by the State Government. The merit list was proposed to be prepared on the basis of the marks obtained in online examination, however, it was clarified that in case, it is considered necessary to take interview, the merit list shall be prepared on the basis of the total of marks obtained in the written examination and interview in proportion of 85% and 15% respectively. It was nowhere laid down in the advertisement issued that the merit list shall be prepared either at the State level or the district level.

10. In Rajkumar's case (supra), the questions which were referred to the Full Bench for determination read as under:

"(1) whether in view of the frame and purport of the National Rural Health Mission ('NRHM') Scheme, engagement of Para-Medical Staff with preparation of merit at District level, as opposed to that at State level, is permissible in law?

(2) whether in view of the frame and purport of the National Rural Health Mission ('NRHM') Scheme, engagement of Para-Medical Staff with reference to the place of residence and/or local criteria is permissible in law?"

11. The Full Bench while considering the entire scheme of NRHM observed that the engagement of Para-Medical Staff by examining merit at district level is in accordance with the frame and purport of NRHM and thus, the engagement of the Para-Medical Staff with preparation of merit at district level does not violate Article 14 of the Constitution of India. But then, the question whether the merit list if prepared on the State level would be justified and in consonance with

Article 14 & 16 of the Constitution of India, was not even raised and examined by the Full Bench. Rather, the contractual engagement on the basis of the merit list prepared at district level keeping in view the scheme of NRHM was held to be not discriminatory so as to violative of Article 14 and 16 of the Constitution of India.

12. In *Kailash Chandra Sharma vs. State of Rajasthan*: (2002) 6 SCC 562, arising from a Full Bench decision of this Court, the Supreme Court held that so far as employment under the State or any local or other authority is concerned, no citizen can be given preference nor any discrimination be practised against him on the ground only of residence. The Court observed that residential requirement would be unconstitutional as a condition of eligibility for employment or appointment to an office under the State.

13. In *Priyanka Saini's case* (supra), the learned Single Judge while considering the decision of the Supreme Court in *Kailash Chandra Sharma's case* (supra) as also the Full Bench decision in *Rajkumar and others case* (supra), while not approving the appointment being restricted to residents of the home district, directed that option of the candidates shall be sought district wise and in this process, a meritorious candidate shall first give option for his/her home district and then shall give his/her preference for remaining district serial wise. The respondents were directed that after meritorious candidates are allowed to exercise option for his/her home district and posts are filled on that basis, shall allocate remaining posts in other districts to successful candidates on the basis of merits. It was clarified that no candidate lower in merit will be allowed to jump a candidate who is meritorious.

14. In the considered opinion of this Court, the preparation of the merit list at the State level and allocation of the district for contractual engagement on the various posts to the successful candidates on the basis of the merit-cum-choice appears to be just, fair and reasonable criteria adopted by the respondent wherein on the basis of the candidate being resident of a particular district, no preferential right of appointment is extended and the merit is not compromised for this reason.

15. It is pertinent to mention here that in the year 2013, NHM was launched by the Government of India subsuming the NRHM and National Urban Health Mission, which was further extended in March, 2018 to continue or till March, 2020 and thus, it is not the position now that NHM which is operative as on the date is confined to only rural areas rather, it covers urban areas as well. Merely because, for one of the category of the posts advertised, a different criteria i.e. district level merit list is adopted by the respondent, the fair criteria adopted so that the meritorious person may not be deprived from the appointment, cannot be set at naught.

16. For the aforementioned reasons, we are in agreement with the view taken by the learned Single Judge.

17. No case for interference by us in intra court appeal jurisdiction is made out.

18. The special appeal is therefore, dismissed. No order as to costs.