
(1976) 08 RAJ CK 0001

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1532 of 1975

Ramnath Khanna

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 04-08-1976

Acts Referred:

Rajasthan Medical and Health Service Rules, 1963 — Rule 6(1)

Citation : (1976) RLW 404 : (1976) WLN 386

Hon'ble Judges : Rajindar Sachar, J

Bench : Single Bench

Judgement

Rajindar Sachar, J.—The petitioner started his career as X Ray Technician in the year 1960. A post of Electro Medical Technician in the pay scale of 250 500 was created in the Medical and Public Health Department by the Government of Rajasthan and the petitioner was appointed to the said post on 6-6-59. This grade was revised to Rs. 250-540 in the year 1961. The said post was later on advertised and the petitioner was selected by the Rajasthan Public Service Commission (hereinafter to be called "the Commission") for the said post and he was appointed on probation with effect from 10-7-59. The petitioner was duly confirmed on 18-11-61. The petitioner remained on deputation between the period 1962 63 when he came back to his parent department and he was posted on his original post of Electro Medical Technician. According to the petitioner he held the charge of the post of State Health Transport Officer (hereinafter to be called S.H.T.O.) for the period from 16-11-66 to 2-8-67. A new permanent post of Senior Foreman in the pay scale of Rs. 250 625 having been created in the Health Transport Organisation from 1-3-69 the petitioner was absorbed as a Senior Foreman with effect from 23-4-69. In the State Health Transport Organisation there was at that time a post of S.H.T.O. The incumbent having retired the petitioner, it is alleged, held the additional charge of the post of State Health Transport Officer from 6-5-72 to 10-4-74.

2. It appears that the petitioner when he was holding the charge of S.H.T.O. had

asked the Government that the should be promoted to the higher post. For the said post however applications were invited by the Health Department. The petitioner appeared before the Selection Committee in February 1973 but he was told that he was not eligible for the said post of SHTO and evidently the petitioner was not appointed Respondent No. 5 who was working as Deputy Controller of Transport, Ministry of Health and Family Planning, New Delhi, was appointed on a temporary basis for one year till the candidates duly selected by the Commission are available or whichever is earlier, by the order of the Government dated 1-3-74 It may be mentioned that respondent 5 is continuing in the present post by getting the appropriate extension from the Commission and the last extension, 1 am told has been given upto 31st October, 1976,

3. The petitioner apparently feels that this post of SHTO should be given to him and though be represented to the Government but nothing came out of it and that alongwith other grievances has led him to file the present writ petition.

4. I would appear that sometime in 1973 the Rajasthan Medical and Health Service Rules, 1963 (to be called the Rules) were amended and amongst others the following posts were added to the schedule:

- (1) State Health Transport Officer,
- (ii) Deputy State Health Transport Officer/Works Manager,
- (iii) Service Engineer/Senior Foreman, and
- (iv) Stores Officer.

Now all these posts are to be filled up 100% by promotion. The counsel for the petitioner's first grievance is that one post each of Deputy SHTO and Works Manager is lying vacant in the Department but the same has not been filled up. The petitioner it appears has been representing prior to the filing of the writ petition that this post should be filled up.

5. In the reply by the State it is admitted that two posts i.e. one of Dy Health Transport Officer and other of Works Manager were created by the Government on 17-3-73 but that the same could not be filled up on account of administrative reasons and for the reason that there was a ban on holding the Departmental Promotion Committee Meeting & that they would be filled soon when ban is lifted. Apart from the reason for hoping for a promotion the petitioner is interested in being considered for this post because it is realised by the petitioner that he can lay no claim to the post of SHIO unless he holds either of the post of Dy. SHIO or Works Manager. The grievance of the petitioner therefore is both on the ground of being denied a promotion to the next higher post of Dy. Health Transport Officer and a Works Manager and the consequential non consideration for the highest post of the SHTO On my query the learned Counsel for the State Mr. Calla informs me that the ban which was on the filling of these posts has been lifted and that now the department is under no prohibition to fill up these poses. The only justification given in the return that there was a ban on the

holding of the Departmental Promotion Committee and the same having been lifted I can see no reason why the department should not now proceed to deal with filling up of these posts. I am not suggesting that the department necessarily must fill up these posts even if for good administrative reasons it is of the contrary opinion. But no such suggestion is forthcoming. As a matter of fact, but for the ban (which has now been lifted) no other reason for keeping these posts vacant has been advanced. Though all aspects have to be considered by the department, but once it is conceded that these posts are continuing and that there is no ban, the grievance of the petitioner for not filling of these posts has substance. I can see no reason why such an impression should be allowed to be continued by the Department, Either the posts stand abolished or are continuing and the bans are not subsisting. As later is the situation, to the extent therefore that the petitioner is seeking a mandamus directing the respondents to do their duty by taking appropriate steps to fill up the post of Deputy Health Transport Officer and the Works Manager as provided by the rules, the grievance is justified and I would therefore issue a mandamus to the respondents to do their duty under the rules. I can only hope that the Departmental Promotion Committee will meet with the greatest of expedition and will be able to finalize its decision within a period of three months.

6. The next grievance of the petitioner is that his pay scale has not been fixed properly. It appears that the petitioner was in the grade of 285-540 as Electro Medical Technician. It appears that the State of Rajasthan had appointed Ranawat Pay Commission. The post of Electro Medical Technician had been abolished and was not in existence when the Ranawat Pay Commission started its work. The post of Senior Foreman had not yet come into existence (because it came into existence in 1969 and by that time the Ranawat Pay Commission had finished its work). So evidently none of these two posts were the subject matter of consideration by the Ranawat Pay Commission with the result that no pay scale was fixed for these two posts. The petitioner however was aggrieved as according to him some other similar posts with similar duties and the similar grades have been upgraded and therefore he was entitled for the revision of the grade. He took up this matter with the Finance Department of the State of Rajasthan and ultimately the State Govt. have revised the grade of Electro Medical Technician and of a Senior Foreman to the grade of 250-625. The petitioner is apparently not satisfied and urges that this is how and he is entitled to higher grade. In the petition he has given a reference to the post of Electro Lodging Technician in the Ground Water Board for which the grade was 285 540 before the Ranawat Pay Commission but has been revised in the grade of 300 800 because of the recommendation of the Ranawat Pay Commission. He also referred to some new pay scales which have been revised the Rajasthan Civil Service (New Pay Scale) of 375 850 and 300 800 and 275 650 from the old pay scale of 285-540. The suggestion being that as the grade of 285 540 has been upgraded to higher grades the petitioner is also entitled to the said grade. I am afraid the petitioner has misconceived his remedy. This Court obviously cannot be in a position to

quantify or identify the various duties the nature of work to be able to fix the pay grades. It may be that it was unfortunate that the post of Electro Medical Technician and the Senior Foreman were not the subject matter before the Ranawat Pay Commission. The petitioner has already by representing got some relief and if he feels that full justice has not been given to him it is still open to him to approach the appropriate authority which I have no doubt will look into all aspects of it and if any relief is permissible to the petitioner the same will be given to him. So far as this Court is concerned it is not possible to give the relief because the petitioner is not asking nor is able to show any violation of the statute or any statutory rule.

7. The next grievance of the petitioner is that the post of the State Health Transport Officer cannot be filled up by direct recruitment. He refers me in that connection to the schedule to the rules where the method of recruitment is 100% by promotion. The State however seeks to rely on the proviso to Rule 6(1) which lays down the method of recruitment (a) by direct recruitment and (b) by promotion and provides that if the Government is satisfied in consultation with the Commission that suitable persons are not available for appointment by either method of recruitment in a particular year appointment by either method in relaxation of prescribed (sic) may be made in the same manner as specified in these rules. The State has in its reply taken the position that on being advised by the Commission action was taken under Rule 6(1) and the Commission was advised that this action is being taken because there was no suitable candidate in the department available for the said post. The communication from the Commission dated 10-2-75 pointed out to the State Government that it could not advertise the posts unless action was taken under Rule 6. The Government in its reply dated 10-3-75 stated that as the post of State Health Transport Officer was by promotion 100% from Deputy State Health Transport Officer and Works Manager, and as these posts were lying vacant, it was not possible to fill up the said post by promotion, it had been decided to proceed under proviso to Rule 6(1) and to fill up the post by direct recruitment. The counsel for the petitioner however urges that the proviso to Rule 6(1) only applies where both the methods of recruitment i.e. by direct recruitment and by promotion are provided in the schedule and as by the schedule only one method of recruitment i.e., by promotion is provided for the post of State Health Transport Officer the proviso is inapplicable. I cannot agree. The reference in the proviso that where the Government is satisfied that suitable persons are not available for appointment by either method of appointment in a particular year may be filled by other method does not limit its applicability to cases covering only where both the methods of recruitment are provided in the rules. All that the proviso means is that if both the methods i.e. direct recruitment and promotion are mentioned and if the suitable persons are not available for the particular vacancy arising in the quota of the other method i.e. if vacancy is by promotion, and if no suitable candidate is available, it may fill the vacancy in that year by the direct recruitment and vice versa. On a parity of reasoning if only one method is

provided like in the present case by promotion and the Government if it is of the view that it is not possible to fill up the post by per motion i.e. by the method prescribed it may in relaxation of prescribed proportion appoint by the other method so that if as in the present case the method provided is by promotion on the Government's being satisfied that suitable persons are not available it may resort to the other method i.e. by direct recruitment. To accept the argument of counsel for the petitioner will make this rule unworkable & create hardship in the day to day working. A reference to the schedule will show that very substantial number of posts are to be filled up 100% by promotion. Now if the argument of counsel for the petitioner is correct it would mean that there would be no rule which would permit the Government to fill up these posts by direct recruitment even if it was satisfied that there was no suitable person available in the department. It is well settled that where the language of a statutory provision is susceptible of two interpretations, the one which promotes the objects of the provision, comports beat with its purpose and preserves its smooth working, should be chosen in preference to the other which introduces inconvenience and uncertainty in the working of the system. This rule will apply in full force where the provision confers ample discretion on the Government for a specific purpose to enable it to bring about an effective result. (See The State of Gujarat Vs. Chaturbhuj Maganlal, . I am therefore satisfied that Rule 6(1) does permit the Government to seek to have the appointment to the post of State Health Transport Officer by direct recruitment but only on its being satisfied that suitable persons are not available by the method of promotion.

8. Mr. Calla has informed me that the Commission had advertised this post of State Health Transport Officer but that yet no dates have been fixed for interviews for selection of the post. The petitioner has urged in the petition the if he was selected (& he claims that he has every reason that be will be selected by the Departmental Promotion Committee.) as the Deputy Health Transport Officer or Works Manager he would be eligible for the post of State Health Transport Officer. This of course is disputed by the respondents who point out that the petitioner does not have other qualifications laid down for being considered for the post of Stats Health Transport Officer. It is not necessary to determine that a pact. It is common ground that unless the petitioner first crosses the hurdle of being selected for the post of either a Deputy State Health Transport Officer or the Works Manager he can not be considered for the post of State Health Transport Officer Now the position is that though the ban had been removed since December 1975 for filling the posts of Deputy Health Transport Officer Works Manager and the post have not been abolished, the department has not chosen to select persons for the said two posts. I have already directed that the decision about the said posts should be made up within a period of three months. I therefore feel that it will be only in the interest of justice if respondent Commission is restrained from selecting candidates for the post of State Health Transport Officer for a period of three months till the Departmental Promotion Committee finalises its decision. This is all the more necessary because the

Government in its letter of 10-3-75 to the Commission for acting under Rule 6 had given the justification that the post of State Health Transport Officer being 100% by promotion from the posts of Deputy Health Transport Officer/Works Manager, and the said two posts being vacant it was not possible to fill the said post by the promotion, and requesting for advertising by direct recruitment. I would restrain Selection by the Commission for this limited period so that the Government will have the deliberation of Departmental Promotion Committee before it by then and will be in a better position to act. I cannot anticipate as to what the decision of the Departmental Promotion Committee will be or what exactly the situation will be or even if elected by Departmental Promotion Committee, the petitioner will be eligible or not for being considered for the post of State Health Transport Officer. All these matters will be considered by the Govt. at that relevant time I would therefore direct the Commission not to select the State Health Transport Officer for a period of four months I understand that the matter of giving concurrence to the continued appointment of respondent 5 has been referred by the State Government to the Commission. I may make it clear that there is no stay against the Commission to deal with that matter.

9. The petitioner had also challenged the appointment of respondent 5 as according to him, he could not be appointed under the rules. The State has relied on Rule 26 in support of its action. The counsel for the petitioner wanted to urge that Rule 26 does not permit the appointment of respondent No. 5. I am not inclined to go into this aspect for the reason that respondent 5 was appointed on 1-3-74 and has been continuing ever since by getting Sub-sequent extensions number of times. The present petition was filed on 4-9-75. The grievance, if any, which the petitioner has for temporary continuation of respondent 5 arose to him then. It has taken him a year and half to challenge the same and I do not find that the delay has been sufficiently explained and will refuse in the exercise of my discretion to allow him to raise this point. I may note that the State has already stated in its reply that there is no intention to allow respondent 5 to continue as State Health Transport Officer after regular selection of a candidate by the Commission. This is another reason why I think it is not necessary to go into this matter at this stage when the matter of regular selection of an incumbent to the posts of State Health Transport Officer is also for consideration before the Commission.

10. The result is that the writ petition is partly allowed as indicated above but there will be no order as to costs.