

(2006) 04 RAJ CK 0042

In the Rajasthan High Court

Case No : Civil Writ Petition No. 7469 of 2004

Ravindra Yadav (Dr.) and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 03-04-2006

Acts Referred:

Constitution of India, 1950 — Article 136

Rajasthan Medical and Health Service Rules, 1963 — Rule 16, 19, 20, 26, 37

Citation : (2006) 2 RLW 1591 : (2006) 4 WLC 694

Hon'ble Judges : Asok Parihar, J

Bench : Single Bench

Advocate : S.P. Sharma, Bipin Gupta and Rajendra Prasad, for the Appellant; Raghav and S.N. Kumawat for RPSC and M. Rafiq, AGG, for the Respondent

Final Decision : Dismissed

Judgement

Ashok Parihar, J.—Since on similar set of facts, same relief has been claimed by the petitioners, all the writ petitions have been heard together and are being decided by this common order.

2. The petitioners working as Medical Officer on adhoc urgent temporary basis, are seeking exemption from appearing in the screening test held by the respondent-Commissioner for short listing the number of candidates to be called for interview for regular selection to the post of Medical Officer. Some of the petitioners have also claimed regularisation of their services on the basis of working on the post on adhoc temporary basis for the last so many years. In some writ petitions, notification dated 10.10.2002 has also been challenged by which certain amendments have been made in different Service Rules to the extent that vacancies reserved for Scheduled Caste and Scheduled Tribe candidates remaining unfilled shall be carried forward till suitable candidates of the above categories are available and shall not lapse with the time. Above writ petitions relates to two selections made by respondent-Commission for the same post one in pursuance to advertisement issued on 21.1.2004 and other issued

subsequently on 5.7.2005.

3. As per requisition received from the State Government, an advertisement was issued by the respondent-Commission on 21.1.2004 notifying vacancies to be filled for the post of Medical Officer. The last date for receipt of application forms was 10.3.2004. In view of conditions mentioned in the advertisement itself, a screening test was held for short listing the number of candidates to be called for interview on 1.8.2004. After declaration of result of the screening test, interviews were held from 15.10.2004 to 23.11.2004. The result was declared on 23.11.2004 itself. The select list was sent to the State Government on 6.12.2004 and appointments have also been made accordingly by the State Government to the selected candidates. After completion of the above process, another advertisement came to be issued by the respondent-Commission on 5.7.2005 notifying more vacancies for the post of Medical Officer. Last date for receipt of application forms was 20.8.2005. In view of large number of applications been received, a screening test was held on 20.11.2005 for short listing the number of candidates to be called for interview. After declaration of result of the screening test, interviews were held from 24.1.2006 till 28.2.2006 and result has also been declared on 28.2.2006 itself.

4. Learned Counsel for the petitioners while heavily relying on the judgment of this Court in the case of Dr. Rajendra Kumar Surekha v. State of Raj. and Ors. SB Civil Writ Petition No. 5424/1990 and another connected writ petition decided on 11.4.1994, have submitted that though no direction, as such, can be issued for regularisation, however, looking to the experience gained by the petitioners as ad-hoc temporary Medical Officers, they should be exempted from appearing in the screening test. All such candidates are entitled to call for interview directly. It has been submitted that the judgment of this Court in the case of R. Rajendra Kumar Surekha (supra) has been upheld upon the Supreme court. It has also been submitted by the learned Counsel for the petitioners that while relying on the judgment in the case of Dr. Rajendra Kumar Surekha, another bunch of writ petitions came to be allowed by this Court in the case of Dr. Bhanwar Singh and Ors. v. State of Rajasthan and Ors. SC Civil Writ Petition No. 446/1994 declared on 15.9.1995. The judgment in the case of Dr. Bhanwar Singh (supra) has also been upheld by the Division Bench of this Court vide order dated 3.5.2001.

5. Mr. Sanjeev Prakash Sharma, appearing on behalf of some of the petitioners, have even challenged the syllabus prescribed by the respondent-Commission for screening test. It has been submitted that the syllabus for the screening test is the same as provided for M.B.B.S. Degree course. Since, the petitioners have been working on urgent temporary basis as Medical Officers in remote areas, they may not be able to compete with the candidates who have acquired the qualification at much later stage.

6. Mr. M.S. Raghav, appearing on behalf of the respondent- Commission in some of the cases, has submitted that having appeared in the screening test, the petitioners now cannot be allowed to challenge the process of short listing. Mr.

S.N. Kumawat, learned Counsel also appearing on behalf of the respondent-Commission, while relying on the relevant provisions of the Rules and the conditions mentioned in the advertisement, has submitted that the screening test has been held strictly as per provisions of the rules and norms fixed by the respondent- Commission. It has also been submitted by Mr. Kumawat that in the case of Dr. Rajendra Kumar Surekha (supra) as also in the case of Dr. Bhanwar Singh (supra), the Supreme Court has held that directions issued by the High Court should not be taken as precedent and the respondent-Commission shall be free to make selections as per rules and norms, so fixed.

7. Having considered submissions of the counsel for the parties, I have carefully gone through the material on record, the provisions of the relevant rules as also the judgments cited at the Bar.

8. The selection to the post of Medical Officer is to be made under the provisions of the Rajasthan Medical & Health Service Rules of 1963. After determination of vacancies under Rule 9, procedure for direct recruitment is provided under Part-IV and procedure for recruitment by promotion is provided under Part-V . Under Rule 16, applications for direct recruitment are invited by the Commission by advertising the vacancies to be filled as per requisition received from the State Government. Under Rule 19, the Commission is required to scrutinize the applications received by them and require as many candidates qualified for appointment under the rules as seem to them desirable to appear before them for interview. Rule 20 provides for recommendation of the Commission as also preparation of reserve list. Rule 26 of the above Rules of 1963 provides for urgent temporary appointment with certain conditions. Rule 37 further provides power to relax the Rules in exceptional cases where the Administrative Department of the Government is satisfied that operation of the rules relating to age or regarding requirement of experience for recruitment causes undue hardship in any particular case with certain conditions. A bare reading of the Rules would show that recruitment is made only on the basis of interview. The discretion has been given to the Commission to restrict the number of candidates to be called for interview. As per condition mentioned in the advertisement itself, in case of large number of applications received as compared to vacancies notified when it will not be possible for the Commission to call every candidate for interview, the Commission may short list the number of candidates to be called for interview either on the basis of qualifications and experience or by way of screening test. In the present cases, the Commission decided to hold a screening test for short listing the number of candidates. All the petitioners had appeared in the screening test.

9. It may be pertinent to mention here that in the writ petitions filed by Dr. Rajendra Kumar Surekha and Dr. Sudhir Bhandari, their initial claim had been for regularisation on the post of Lecturer under the provisions of the Rajasthan Medical Service (Collegiate Branch) Rules 1962. It was only an alternative plea that in case of non-regularisation of services since they are already working on

the post of Lecturer on urgent temporary basis for number of years, they may at least be exempted from appearing in screening test and may be called for interview directly by the Commission. Rejecting the plea of regularisation, the above petitioners were, however, granted relief as prayed in the alternative plea. Since the Supreme Court in the case of Dr. Rajendra Kumar Surekha and others has not interfered with the directions issued by this Court while disposing the Special Leave Petitions filed on behalf of the Commission vide order dated 5.6.1995, the other writ petitions also came to be allowed by this Court for the post of Lecturer under the Rules of 1962 relying on the judgment passed by this Court in the case of Dr. Rajendra Kumar Surekha. However, subsequently the Supreme Court in the case of Rajasthan Public Service Commission v. Deepak Verma and Ors. vide order dated 7.8.1998, while not interfering with the directions issued by this Court, not interfering with the directions issued by this Court, however, observed and clarified that the directions issued by the Supreme Court on 5.6.1995 in the case of Dr. Rajendra Kumar Surekha should not be treated as laying down law regarding selection for appointment by the Rajasthan Public Service Commission, which has to be made in accordance with the relevant rules. It has clearly been observed by the Supreme Court that the orders passed in the case of Dr. Rajendra Kumar Surekha are on the facts and circumstances of those cases only. Though the judgment in the case of Deepak verma was referred by the Division Bench of this Court in the case of Dr. Bhanwar Singh and Ors. , however, again the Supreme Court in the case of Rajasthan Public Services Commission v. Bhanwar Singh and Ors. decided on 10.9.2001 made it clear that the orders passed by the High Court in those cases should not be treated as precedent.

10. Judgment of the Supreme Court in Special Leave to Appeal (Civil) No. 12740-12741/95 Rajasthan Public Service Commission v. Dr. Rajendra Kumar Surekha and Ors. decided on 5.6.1995 is reproduced here as under:

We have heard learned Counsel for the appellant and respondents Nos. 1 and 2. In so far as the direction given by the High Court dispensing with the requirement regarding screening test in respect of respondents Nos. 1 and 2 and other adhoc appointees who have rendered service for three years or more, in the facts and circumstances of the present case, we do not consider it appropriate to interfere with the direction given by the High Court. We are, however, of the view that in the matter of selection for the two vacancies for the post of Lecturers in Medicine for the year 1990-91, the appellant-Rajasthan Public Service Commission may consider the respondents Nos. 1 and 2 along with other applicants who are found eligible for appointment to the vacancies of the year 1990-1991 and who have submitted their applications.

While considering, the Commission will take into account the performance and service record of the applicants who are in Government service. Time for consideration is extended by four weeks. In the event of respondents Nos. 1 and 2 being selected, their seniority will have to be decided by the appropriate

authority in accordance with the relevant provisions of the Rules.

The appeals are disposed of accordingly.

11. The order passed by the Supreme Court in Special Leave to Appeal (Civil) No. 12599-12602/96 Rajasthan Public Service Commission v. Deepak Verma and Anr. decided on 7.8.1998 is also reproduced as under :

Having regard to the fact that the respondents have already been considered and selected for appointment on the post of Assistant Profession in respective specialities and they have also been appointed, we do not consider it a fit case to go into the question that has been raised by the petitioner in these special leave petitions. We, however, clarify that the directions contained in order dated June 5, 1995 in Civil Appeals arising out of special leave petitions Nos. 12740-41/95 were given in the facts and circumstances of those cases only and the said directions cannot be treated as laying down the law regarding selection for appointment by the Rajasthan Public Service Commission which has to be made in accordance with the relevant rules. The special leave petitions are disposed of accordingly.

12. Finally the directions issued by the Hon"ble Supreme Court in special Leave to Appeal (Civil) No. 14821/2001 Rajasthan Public Service Commission v. Bhanwar Singh and Ors. decided on 10.9.2001 is also referred here as under :

Considering the facts and circumstances of the cases, particularly, the fact that some of the respondents are in service for more than ten years, the impugned order does not call for any interference under Article 136 of the Constitution of India. However, we make it clear that the order passed by the High Court it is not to be treated as precedent.

Special leave petitions are dismissed.

13. All the judgments referred by the learned Counsel for the petitioners have been under the provisions of the Rajasthan Medical Service (Collegiate Branch) Rules of 1962, whereas the present selections are made under the provisions of a different set of Rules, i.e. the Rajasthan Medical & Health Service Rules, 1963 for the post of Medical Officer. Having considered entire facts and circumstances and further in view of observations made by the Supreme Court, in absence of any rule providing exemption to urgent temporary appointees from appearing in the screening test, prayers as made by the petitioners cannot be accepted. It is total discretion of the Commission to restrict the number of candidates to be called for interview by any method. The criteria, so adopted by the Commission as an expert body, cannot be questioned by the candidates before this Court. Apart from validity of screening test for short listing the number of candidates to be called for interview has been upheld not only by this Court but the Supreme Court as well, even the other criteria so fixed by the Commission for short listing have time and again been upheld by this Court. Division Bench of this Court in the case of Dr. Ram Narain Sharma v. R.P.S.C. Ajmer and Ors. DB Civil Special

Appeal No. (Defect) 423/95 vide order dated 27.4.1995 has categorically held that it is for the experts' body determining the criteria for screening the candidates while short listing, to lay down particular norms. If the norms laid down is relevant, then the scope of judicial review ends. The court further observed that there may be other better methods, but it is not for the court to select one or the other method.

14. The ad-hoc temporary employees cannot be treated as a class apart so as to seek special protection at the time of regular selections until and unless some relaxation, If permissible, is grant by the State Government under Rule 37. The nature, duration and circumstances of each temporary appointment may be different. Any directions for calling such ad-hoc temporary employees directly for Interview will negate the whole discretion of the Commission as provided under the Rules. There cannot be two class of persons to be called for Interview i.e. ad-hoc temporary employees and the other short listed by way of screening test. In given circumstances, the ad-hoc temporary employees may out number other candidates from open market and it may be difficult for the Commission to restrict the number of candidates to be called for Interview. The submission of Mr. Sanjeev Prakash Sharma that the petitioners may not be able to compete with the fresh candidates who have acquired minimum qualification at the later stage is wholly misconceived and such pleas have time and again been rappedelled by the Supreme Court. The syllabus of screening test has been provided only as per the syllabus for minimum qualification required for the post in question. The past experience can only be one of the considerations for adjudging suitability at the time of interview. However, such experience is not relevant for appearance in the screening test. The Commission is expected to choose the best. If the persons not even coming in the merit at the time of screening, certainly they cannot march over the persons not even coming in the merit at the time of screening, certainly they cannot march over the persons so coming in merit.

15. As has been referred above, the courts inspite of observations made by the Hon'ble Supreme Court in cases of Lecturers in Medical College have been creating precedents. But mistaken sympathies and human considerations sometimes create not only bad law, but unhealthy and wrong precedents also. At times precedents in one service may create lot of confusion and complications affecting regular selections in other services and the whole discretion and process of selection undertaken by the Public Service Commission can be frustrated.

16. Having considered entire facts and circumstances, the relief as claimed in the above writ petitions, cannot be granted by this Court. All the writ petitions are dismissed accordingly as having no merits.