
(2020) 02 RAJ CK 0572

In the Rajasthan High Court

Case No : Civil Writ Petition No. 14693 Of 2019

Sandeep Kumar And Ors

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 26-02-2020

Acts Referred:

Constitution of India, 1950 — Article 226(3)

Citation : (2020) 02 RAJ CK 0572

Hon'ble Judges : Dinesh Mehta, J

Bench : Single Bench

Advocate : Ankur Mathur, Rajat Arora, K.S. Rajpurohit, B.S. Sandhu

Final Decision : Allowed

Judgement

I.A. No.3/2020

1. After filing of the writ petition, an additional affidavit has been filed by the petitioner on 14.02.2020, inter alia bringing on record order dated 27.02.2019.

2. Though no amendment has been sought in prayer clause, but a challenge to order dated 27.02.2019 has been laid.

3. Having regard to the facts and circumstances of the case, additional affidavit dated 14.02.2020 is taken on record. The petitioners are permitted to lay challenge to the order dated 27.02.2019, which though was passed prior to filing of the writ petition, but has come to the notice of the petitioners after they have filed the present writ petition.

I.A. No.1/2020

1. An application has been filed by the applicants seeking their impleadment in the writ petition.

2. Mr. Sandhu, learned counsel for the applicants, seeking impleadment, submitted that the applicants have been selected and if the petition filed by the petitioners is allowed, they will be ousted from the select list, hence they are necessary parties.

3. Before deciding the application at hand, it would be worthwhile to have a bird's eye view of the controversy involved in the present case.

4. The petitioners, in the present case, have preferred the present writ petition, inter alia raising a grievance that notwithstanding the order dated

29.08.2018, passed by this Court in petitioners' earlier writ petition (SBCWP No.8826/2018), the respondents have not complied with the

directions and without giving credit of the period during which, despite the interim order in their favour, the respondents did not permit them to join and,

they have proceeded to finalize the merit/ select list.

5. The petitioners have challenged the order dated 27.02.2019, whereby the Additional Director, Medical & Health Services, Rajasthan, Jaipur has

rejected petitioners' claim, inter alia, observing that their case is not identical to that of Sangeeta Choudhary.

6. In considered opinion of this Court, looking to the controversy involved in the case, the applicants, who by fortuitous circumstances, have been

included in the select list, cannot be impleaded as parties.

7. May be, in the event of acceptance of present writ petition, they are likely to be scooped out from the select list, but that cannot be a reason to give

them audience.

8. The correctness or validity of the order under challenge, i.e. order dated 27.02.2019, is purely a lis between the petitioners and the respondents in

Medical & Health Department.

9. In considered opinion of this Court, the applicants are only having a cause of concern but not a cause of action. Merely because the applicants will

be ousted from the select list, they cannot be permitted to intermingle in the lis, which is otherwise purely a lis between the petitioners and the

respondents. The applicants can neither oppose the petitioners' prayer nor can they defend the order dated 27.02.2019, passed by the respondent

No.2. It has to be tested on its own merit subject - for which only the author of the order or other Officers of the department have right to defend.

10. Needless to observe that the order dated 27.02.2019 was neither passed to

serve the interest of the applicants nor was the same passed at their behest.

10. The application (I.A. No.1/2020) filed by the applicants is misconceived, and hence, dismissed.

I.A. No.2/2020

1. The applicants who have filed above impleadment application (I.A. No.01/2020) have also filed a reply to the Writ Petition and present application under Article 226(3) of the Constitution of India.

2. As a natural corollary to the order rejecting their impleadment application, present application seeking vacation of the interim order is dismissed, as not maintainable.

3. The reply filed by them is also taken off the record.

SBCWP No.14693/2020

1. The present writ petition lays challenge to the orders dated 27.02.2019, passed by the respondent No.2.

2. Mr. Mathur, learned counsel for the petitioners, informing that petitioners' earlier Writ Petition was allowed by this Court, contended that the

order dated 29.08.2018, passed in petitioners' earlier round of litigation (SBCWPs Nos.8826/2018 and 9058/2018), was clear and explicit. The

Court had given a clear finding after hearing learned counsel for the respondents that petitioners' case is squarely covered by the judgment dated

05.12.2016 passed by this Court in Sangeeta Choudhary's case (SBCWP No.2998/2016).

3. Informing that the said order has attained finality, as the State has not filed any appeal against such order, learned counsel argued that once this

Court has held petitioners' case to be covered by the case of Sunita Choudhary (supra), the respondent No.2 had no authority or jurisdiction to

distinguish petitioners' case from the case of Sangeeta Choudhary. He argued that the orders impugned deserve to be quashed and set aside.

4. Mr. Rajat Arora, learned counsel for the respondents was not in a position to dispute the above position of facts and law.

5. Having heard learned counsel for the parties and upon perusal of the order dated 29.08.2018, passed by this court in petitioners' earlier writ

petitions, more particularly, the directions contained in para No.6 of the

judgment, this Court is of the clear view that the respondent No.2 was not justified in passing the order impugned. The order dated 27.02.2019 is like sitting over the judgment of this Court and giving/substituting his own finding regarding petitioners' entitlement of inclusion of the contentious period - during which they were not permitted to join, regardless of the interim order in their favour.

6. Respondent No.2 has no jurisdiction to pass impugned orders which are clearly contrary to the finding recorded by this Court in its order dated 29.08.2018.

7. The writ petition is, therefore, allowed. Order dated 27.02.2019 is quashed.

8. The respondents are directed to pass formal order of counting their period of non joining in their experience within a period of 7 days from today, while giving appropriate bonus marks to the petitioners.

9. In case petitioners find place in the merit list, they shall be issued appointment orders within a period of two weeks thereafter.

10. The stay application also stands disposed of accordingly.