
(2001) 03 RAJ CK 0028

In the Rajasthan High Court

Case No : Civil Writ Petition No. 4297 of 1996

Satya Pal Chandrodaya and Others

APPELLANT

Vs

Reserve Bank of India

RESPONDENT

Date of Decision : 29-03-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2002) 1 RLW 355 : (2001) 4 WLC 707 : (2001) 4 WLN 475

Hon'ble Judges : J.C. Verma, J

Bench : Single Bench

Advocate : Ajay Rastogi, for the Appellant; S.B. Mathur and V.B. Srivastava, for the Respondent

Final Decision : Allowed

Judgement

Verma, J.—The petitioner is a graduate having another (1999 Lab. I.C. 2285)

3. Shankar v. Reserve obtained his B.A. Degree in the year 1996. A requisition was sent India (Writ Petition No. 2690/1999 decided on 26.4.2000) through Employment Exchange vide Annexure-5 for filling up the post of Pharmacist with a minimum eligibility qualification to be Matriculation or any other equivalent qualification with a certificate of Nursing Course or Diploma in Pharmacy. The petitioner was possessing all the qualifications. The name of the petitioner was also sponsored by the Employment Exchange for consideration, however, because of the condition in the requisition that the names of graduates were not to be considered and by the time interview letter was sent and at the time of appearing in the interview, he had cleared the degree examination, his interview was not taken on 11.9.1996 on the ground that he has now become the graduate. It is contended by the petitioner that at the time of his application or sponsoring the name of June 1996, he was not a graduate as the result was declared lateron. The petitioner is aggrieved of the action of the respondent in denying him the opportunity of being appointed as according to him out of three candidates who had appeared, two were not selected and the post of still lying

vacant. The petitioner is challenging the action Inter alia on the following grounds;

(i) that at the time of his name was sponsored, he was not a graduate till the last date of submission of application; (ii) he acquired graduation qualification subsequently i.e. in September 1996; (iii) even If the petitioner is a graduate, but the essential qualifications which are required for the post of Pharmacist is diploma in Pharmacy which he possesses and there is no reason to deny him the consideration.

2. In the reply filed by the respondent, it is stated that it has been specifically mentioned to the Employment Exchange that the graduates were not eligible for the post and only Matriculates with Diploma in Pharmacy were required to be interviewed. It is further pleaded by the respondent that even in the interview letter it was mentioned that in case any candidate has become graduate his name would not be considered and that the bank has decided on 30.6.1996 as a policy not to appoint a Pharmacist who was a graduate.

3. In the case of Mohd. Riazul Usman Gani and others v. District & Sessions Judge, Nagpur and others (1), it was held that the criterion adopted by the employer which has the effect of denying a candidate his right to be considered for the post on the principle that he is having higher qualification than prescribed cannot be rational. In the case of recruitment of peons, one of the criteria was that the applicant possessing minimum educational qualification of passing IVth Vernacular standard and/or educated upto passing of VIIth standard only should be considered for the interview to the post of Peons and those who have studied above VIIth vernacular standard may not take proper interest in the work of Peons. The Supreme Court had deprecated the policy observing as under-

"A criterion which has the effect of denying a candidate his right to be considered for the post on the principle that he is having higher qualification than prescribed cannot be rational. We have not been able to appreciate as to why those candidates who possessed qualifications equivalent to SSC Examination could also not be considered. We are saying this on the facts of the case in hand and should not be understood as laying down a rule of universal application."

"We do not think, therefore, that criterion four as laid by the Advisory Committee constituted under the Rules and upheld by the High Court is in any way reasonable or rational. By adopting such a course the High Court has not its stamp of approval to another type of reservation for recruitment to be service which is not permissible. A poor person can certainly acquire qualification equivalent to SSC Examination and not that he cannot go beyond Standard VII. Perhaps by restricting appointment to a candidate having studied only upto Standard VII the High Court may not be encouraging dropouts."

4. In the case of Jitendra Sharma v. Nuclear Power Corporation of India Ltd. and another (2), Allahabad High Court had held that the action of cancellation of appointment on ground that appointee is over qualified was arbitrary and violative of Article 14 of the Constitution of India. It was observed as under:-

"Learned counsel for the respondent stated that the qualification for Trainee was intermediate, but the petitioner had suppressed the fact that after doing Intermediate the petitioner has done, Diploma in Electrical Engineering.

In my opinion the stand of the respondent is wholly arbitrary and illegal. I can understand that if a person has less than the minimum qualification he is not eligible for appointment, but I cannot understand this argument that the petitioner is over qualified. When the minimum qualification for the post of Trainee is Intermediate and there is no dispute that the petitioner has done Intermediate, then in my opinion he cannot be disqualified merely because he is over qualified, rather the respondent he is over qualified, rather the respondent should have given weightage to the fact that the petitioner has got higher qualification. The stand of the respondent is arbitrary and illegal and hence it is violative of Article 14 of the Constitution. Hence the writ petition is allowed and impugned order is quashed. No order as to costs."

5. Counsel for the respondent relies on unreported judgments on Bombay High Court and Gujarat High Court. The Bombay High Court in the case of Shankar v. Reserve Bank of India (3), had given the following decision:-

(Full text of Judgment)

"The petitioner has been denied employment merely on the ground that he is more qualified than required one.

The respondent has placed a chart before this Court showing the persons who were and who were not considered for appointment. The classification does not seem to be unreasonable, arbitrary or illegal. Otherwise non-matriculate can never be employed, if such restriction on eligibility is not put, otherwise, also it is the policy matter of the respondent Bank.

Therefore, we do not find any merits in the petition. Same is dismissed."

6. It seems that the judgment of the Hon'ble Supreme Court was not brought to the notice of the Hon'ble Judge of the Bombay High Court. Even otherwise the conclusion is not supported by any reasons.

7. Gujarat High Court in Special Civil Application No. 3125/1994 decided on 21.2.1995 was seized of the matter in appointment of regular part-time bank medical officer. The facts of the case have no relevancy for the reason that the question involved in the case of Gujarat High Court related to the period of experience wherein it was found that the petitioner in that case had no experience of five years as a general practitioner.

8. Even otherwise, in the present case, for a post of Pharmacist even though the minimum qualification as prescribed was Matriculation or equivalent examination but being a post of technical nature which was an essential qualification of diploma in Pharmacy which the petitioner does possess and he was already working as Pharmacist, there is no nexus what-so-ever as to deny the

consideration for the post of Pharmacist to those persons who are in possession of the technical qualifications but are having higher academic qualifications. The action of the respondent to deny the consideration to such candidate cannot be sustained in the eyes of law and is positively arbitrary without having any nexus with the object to be achieved and is hit by Articles Hand 14 of the Constitution of India.

9. It has been stated at the bar that the post is still lying vacant and has not been filled because of the pendency of the writ petition. If it be so, the respondent is duty bound to consider the case of the petitioner for appointment to the said post for which his name was sponsored and to give appointment if he otherwise fulfills the qualifications.

10. With the above-said direction, the writ petition is allowed. No order as to costs.