
(2020) 11 RAJ CK 0082

In the Rajasthan High Court

Case No : Civil Writ Petition No. 8907, 10188 Of 2020

Sharda And Ors

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 24-11-2020

Acts Referred:

Citation : (2020) 11 RAJ CK 0082

Hon'ble Judges : Dinesh Mehta, J

Bench : Single Bench

Advocate : Manoj Bhandari, Bhavit Sharma, Shreyansh Mehta, Vinit Sanadhya

Judgement

1. Learned counsel for the petitioners submitted that the issue involved in the present writ petition is covered by adjudication made in para-11 and 12

(Issue No.G and H) of the judgment dated 23.10.2020 rendered by Jaipur Bench of this Court in SB Civil Writ Petition No.8908/2020 (Lalit Kishore

Vs. State of Rajasthan & Ors.) wherein the following conclusion was drawn by the Court :-

11. ISSUE NO.G - The candidates who have obtained the Diploma from other Universities outside the State and have been refused registration by the Rajasthan Para Medical Council.

11.1 So far as issue No.G is concerned, namely, refusal of the Rajasthan Para Medical Council to register/rejection of candidature of persons who

have done diploma course from other States is concerned, it is noticed that the Rajasthan Para Medical Council has been found under the Rajasthan

Para Medical Council Act, 2008, which governs the Para Medical Courses and Para Medical Services in the Rajasthan. Thus, even if, a person may

have done Para Medical Course from any University in any other State, as per the

Schedule to the Rules of 1965 as amended in 2013, a person is required to be registered with the Rajasthan Para Medical Council and then alone he/she is eligible.

11.2 None of the counsels for the petitioners have argued with regard to challenge to the eligibility criteria laid down under the Schedule to the Rules of 1965, which only allows registration with the Rajasthan Para Medical Council. Hence, this court would not deal with it in the present petitions. It is, therefore, held that only after having been registered with the Rajasthan Para Medical Council, which I am told follows the procedure of receiving NOC from other States before registering a candidate, can a candidate be treated as eligible. Accordingly, the writ petitions are partly allowed.

12. ISSUE NO.H - Candidates who are registered with the Rajasthan Para Medical Council after 30.07.2020 have been held ineligible on account of the order issued on 21.09.2020.

12.1 In *K. Manjusree Versus State of Andhra Pradesh & Anr.*, reported in (2008) 3 SCC 512, the Supreme Court held that the rule of game cannot be changed. In *K. Manjusree* (supra), the Supreme Court held as under:

27. But what could not have been done was the second change, by introduction of the criterion of minimum marks for the interview. The minimum

marks for interview had never been adopted by the Andhra Pradesh High Court earlier for selection of District & Sessions Judges, (Grade II). In

regard to the present selection, the Administrative Committee merely adopted the previous procedure in vogue. The previous procedure as stated

above was to apply minimum marks only for written examination and not for the oral examination. We have referred to the proper interpretation of

the earlier resolutions dated 24.7.2001 and 21.2.2002 and held that what was adopted on 30.11.2004 was only minimum marks for written examination

and not for the interviews. Therefore, introduction of the requirement of minimum marks for interview, after the entire selection process (consisting of written examination and interview) was completed, would amount to changing the rules of the game after the game was played which is clearly

impermissible. We are fortified in this view by several decisions of this Court. It is sufficient to refer to three of them *P.K. Ramachandra Iyer v.*

Union of India MANU/SC/ 0395/1983 : (1984)ILLJ314SC , *Umesh Chandra Shukla v. Union of India* MANU/SC/0050/1985 : AIR1985SC1351 , and

Durgacharan Misra v. State of Orissa.

12.2 The aforesaid view was reiterated in Hemani Malhotra Versus High Court of Delhi, reported in (2008) 7 SCC 11 by the Supreme Court holding

as under:

15. There is no manner of doubt that the authority making rules regulating the selection can prescribe by rules the minimum marks both for written

examination and vive-voce, but if minimum marks are not prescribed for vive-voce before the commencement of selection process, the authority

concerned, cannot either during the selection process or after the selection process add an additional requirement/qualification that the candidate

should also secure minimum marks in the interview. Therefore, this Court is of the opinion that prescription of minimum marks by the respondent at

vive-voce, test was illegal.

12.3 Keeping in view the settled law, the condition laid down in the notifications dated 21.09.2020 and 01.09.2020 is held to be illegal and unjustified

and all the candidates who possess the registration with the Rajasthan Para Medical Council upto the last date of document verification i.e. 14.10.2020

shall be treated as eligible for consideration for appointment and if they have been denied consideration on the ground that they did not possess

registration with the Rajasthan Para Medical Council upto 30.07.2020 shall be treated as eligible and shall be considered for appointment as per their

merit. The writ petitions in this regard stand allowed.

12.4 The question, however, remains as to whether candidates, who have been directed to be registered by this Court, can be said to be eligible to

participate in the selection process and should be given a chance to get their document verification done after the Rajasthan Para Medical Council

registers them. So far as the State Government is concerned, it has been argued on their behalf that as the last date for document verification was

fixed upto 14.10.2020 and in the notification dated 21.09.2020, it was mentioned that the registration must be done before 30.07.2020, therefore, even

if, the Rajasthan Para Medical Council registers the candidates now, they are to be treated as ousted from participation in the selection process. The

grievance with the Rajasthan Para Medical Council is to be treated separately than the eligibility for the posts under advertisement dated 12.06.2020.

12.5 Learned counsel for the petitioners on the other hand have pointed out that

under the advertisement, it was provided that the document regarding registration with the Rajasthan Para Medical Council shall be examined at the stage of document verification of a candidate. It has also come on record that the last date for document verification was changed by the State and earlier the last date fixed was 30.09.2020 vide notification dated 01.09.2020. Later on, another notification was issued on 21.09.2020 increasing the date of document verification upto 14.10.2020.

12.6 The question arises whether 14.10.2020 should be treated as the final date for document verification or the candidates who have now been directed to be registered with the Rajasthan Para Medical Council be allowed to submit their document for the purpose of selection after 14.10.2020.

12.7 In the opinion of this Court, the State itself has not fixed a particulate date of document verification. It has been extended twice vide notifications dated 01.09.2020 and 21.09.2020. The court also notices that several sets of candidates were called on different dates for document verification.

Hence, date of document verification is a flexible date depending on each individual candidate, who has been called on a particular date. Thus, in view of this Court, date of 14.10.2020 cannot be treated as sacrosanct.

12.8 In SB Civil Writ Petition No.11502/2020, this court had taken earlier a view without examining the aforesaid aspect and treated the date of

14.10.2020 as sacrosanct and dismissed the petition. However, the said order has been recalled suo motu on 22.10.2020. This court finds that the

petitioner therein has already been registered with the Rajasthan Para Medical Council on 14.10.2020, but she was called on 10.10.2020 resulting in

her being ousted from the selection process. As this court has now reached to the conclusion that the date of 14.10.2020 i.e. last date of document

verification for particular set of candidates cannot be treated as sacrosanct, the petitioner would be entitled for consideration. SB Civil Writ Petition

No.11502/2020 stands allowed.

12.9 Keeping in view the controversy which this Court has decided in the foregoing Issue Nos.E, G and H, it is apparent that the petitioners therein

possess the requisite qualification having passed Diploma from University duly recognized with the UGC and recognized by the State Government, but

their registration was not done by the Rajasthan Para Medical Council. As this Court had already directed the Rajasthan Para Medical Council to

register the candidates within a period of 15 days henceforth, the natural corollary is that such candidates must be allowed to submit those registration before the appointing authority for the purpose of consideration of their candidature for appointment as per their merit on the posts of Lab Technician and Assistant Radiographer.

12.10 The State Authorities are, therefore, directed to conduct a fresh document verification after a period of three weeks henceforth i.e. from

18.11.2020 onwards and all the candidates who possess the registration on or upto 18.11.2020 shall be considered for the purpose of appointment as

per their merit. Even such candidates who are able to receive NOC from other Universities and get themselves registered with the Rajasthan Para

Medical Council shall also be considered for the purpose of appointment. Accordingly, the writ petitions of such candidates are allowed.

2. Mr. Bhandari, learned counsel appearing for the petitioners submitted that an additional affidavit has been filed by the petitioners and various facts

have been brought on record, which go to show that the adjudication made by Jaipur Bench of this Court in case of Lalit Kishore (supra) particularly

qua Issue No.G and H requires reconsideration.

3. Mr. Bhandari argued that Jaipur Bench of this Court has held that a candidate possessing educational qualification from the State other than State

of Rajasthan has to produce NOC, whereas the basic argument that neither the Rajasthan Para-medical Council Act, 2008 nor the Rajasthan Para-

medical Council Regulations, 2014 stipulates the requirement of NOC, was not advanced before the Bench at Jaipur and hence was not dealt with and

pronounced upon.

4. It has also been argued by Mr. Bhandari that Para Medical Council of State of Jharkhand vide notification dated 09.10.2020 has observed that they

will conduct an examination and thereafter will grant recognition to the petitioners and other candidates having acquired educational qualification from

YBN University, Ranchi. According to Mr. Bhandari, conducting of examination will take substantial time and if the petitioners are denied

appointment on the ground of not having NOC, their rights will be seriously prejudiced.

5. Mr. Bhavit Sharma, learned counsel for the respondents argued that since Jaipur Bench of this Court in its detailed adjudication in case of Lalit

Kishore (supra) has unequivocally held that a candidate acquiring the diploma in Medical Lab Technician from other State will have to obtain NOC

from concerned State, this Court sitting singly cannot take a view different than what has been taken by the Bench at Jaipur.

6. It has also been argued by Mr. Sharma that may be specific provision of NOC is not given in the Act of 2008, but there is a separate provision

(Section-32) for granting recognition to the Course conducted by a University or Institution situated in other States. It is, however, with a view to give

advantage to the students, acquiring qualification course from the States other than State of Rajasthan, a via media has been adopted by the Council

and a requirement of obtaining NOC from the States or other Para Medical Councils has been prescribed.

7. Having regard to facts and circumstances of the case, including what has been noticed above, this Court is of the view that since the matter has

already been adjudicated by a Coordinate Bench of this Court in case of Lalit Kishore (supra), no fresh adjudication even in light of additional

arguments can be made by a Bench of co-equal strength.

8. The writ petitions are, therefore, disposed of in terms of the adjudication made in case of Lalit Kishore (supra).

9. Learned counsel for the petitioners submitted that some of the candidates out of the present batch of writ petitions have got registration certificate.

10. In view of above, these writ petitions are disposed of in terms of adjudication made in Para No.11 and 12 qua Issue No.G and Issue No.H of the

aforesaid judgment in case of Lalit Kishore (supra).

11. Petitioner(s) will have to obtain 'NOC' from concerned State and submit the same before the Rajasthan Para Medical Council by 27.11.2020.

12. Each petitioner shall furnish a representation before the respondent-Council on or before 24 th November, 2020 indicating clearly the date of

filing/sending application for registration alongwith the date and particulars regarding payment of fee.

13. It will be required of each of the petitioner to ensure that his/her application, which has been filed prior to 30.07.2020, is complete in all respects by

27.11.2020. The respondent-Council will not be obliged to intimate the petitioners about the discrepancies in a candidate's application.

14. The respondent-Council will process the applications of the petitioners and

grant them registration by 10.12.2020 in accordance with law.

15. While considering the applicants' application, the respondent-Council will take into account as to whether the concerned candidate had remitted the requisite fee or had got the Demand Draft prepared on or before 30.07.2020. In case the same was done by 30.07.2020, the concerned candidate shall be deemed to have applied before 30.07.2020.

16. The State authorities shall conduct a fresh document verification from 14.12.2020 onwards.

17. The State shall issue a notice in this regard and all the candidates who possess the requisite registration on the date of document verification shall be considered for the purpose of appointment subject of course if they are otherwise eligible.

18. The petitioners, who have got their registration with Rajasthan Para Medical Council, will appear in the counselling/document verification and their candidature shall also be considered as per Para-17 hereinabove.

19. The stay applications also stand disposed of.