
(2009) 10 RAJ CK 0060
In the Rajasthan High Court

Smt. Yashbala Rathore and Others

APPELLANT

Vs

State of Raj. and Others

RESPONDENT

Date of Decision : 23-10-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2009) 5 SLR 71 : (2010) 1 WLN 141

Hon'ble Judges : Prakash Tatia, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Prakash Tatia, J.—Heard learned Counsel for the parties.

2. These all writ petitions are decided by this common judgment as the petitioners on various grounds have challenged the process of selection initiated by issuing notification dated 18.7.2008 for appointment on the post of Rural Health Worker (Female). All the petitioners applied for the said post and faced the interview, but failed to succeed.

3. According to the petitioners they were appointed on sanctioned post of Addl. Female Health Worker on contract basis earlier and they are continuing in service of Addl. Female Health Worker in Rural areas without any break. The petitioners were initially paid fix pay of Rs. 3,500/-per month, which was subsequently increased by the respondents from time to time. The said appointments were given to the petitioners after inviting applications vide notification dated 2.4.2003, copy of which has been annexed and one of which is in the writ petition which is SBCWP No. 1794/2009. According to the petitioners their appointments on the said post were permissible even under the Rajasthan Medical & Health Subordinate Service Rules, 1965 (hereinafter referred to as the Rules of 1965). However, there is no reference of Rules of 1965 in the advertisement Annex.1 dated 2.4.2003 and said notification only conveys that looking to the difficult geographical conditions and conditions of the Schedule

Tribes, the Government of Rajasthan decided to appoint Addl. Female Health Worker on contract basis on fixed salary of Rs. 3,500/-per month and the appointment under the said advertisement shall be for one year. The procedure for appointment in the said selection process was only interview as mentioned in condition No. 6 of the advertisement and as admitted by the petitioners.

4. Then now Rajasthan Rural Medical and Health Subordinate Service Rules, 2008 (hereinafter referred to as the Rules of 2008) came into force in the year 2008 and under the Rules of 2008 initially 1228 posts of Rural Health Worker were advertised which was increased to 1435. the criteria for selection for appointment to the said post was given in the advertisement in column No. 6 of the general instructions. As per the said criteria, the candidates were to be appointed on the basis of interview. It has also been provided in condition No. 6 itself that in case there will be excessive applications then the candidates will be called for interview by preparing the merit on the basis of marks obtained in Secondary or equivalent examination.

5. All the petitioners applied for appointment to the said post of Rural Addl. Worker (Female) in response to the advertisement dated 18th July, 2008 and all the candidates were called for interview and they failed to succeed and, therefore, now have preferred these writ petitions to challenge the entire process of selection on various grounds.

6. According to learned Counsel for the petitioners Sh. PR Mehta appearing for number petitioners in number of writ petitions that there was no transparency in the process of appointment made by the respondents and the rules have not been followed resulting into total arbitrary appointments and also contrary to the Rules of 2008 and as per the Rule 25 of the Rules of 2008 the appointing authority shall prepare a list of the candidates whom, they consider suitable for appointment to the posts concerned, arranged in order of merit and forward the same to the Government. The appointing authority was required to prepare a list also to the extent of 50% of the advertised vacancies in the light of proviso to Rule 25 so that if any need arises then the names may be recommended for appointment from the reserved list. In the present case, such lists of candidates either suitable for appointment or who were eligible to be put in reserved list have not been prepared and straightway list of selected candidates have been declared which is dated 18.2.2009 (Annex.4). Learned Counsel Sh. PR Mehta further submitted that in the list Annex.4 it has not been disclosed what was the criteria on the basis of which, the candidates have been selected. The petitioners tried to obtain the basis on which the candidates have been selected but no information was given to the petitioners about this fact. It has also been submitted that reservation was made for Tribal Sub-Plan Area (hereinafter referred to as the TSP Area) and persons who were not from the TSP Area have been given appointment, which is apparent from the select list Annex.4. Learned Counsel for the petitioners submitted that Jalore, Nagaur, Jaisalmer and Barmer are not the TSP Area, yet the candidates of these areas have been given

appointment under the category of TSP Area and in the reserved category of the seats. Learned Counsel Sh. Mehta also submitted that the respondent-department itself issuing merit list of the General Nurse Male on contract basis under the NRHM Scheme showing percentage of marks obtained by the candidates, but in the present process of selection they did not disclose the percentage of marks obtained by the candidates and that has been done deliberately to give appointment arbitrarily. It is also submitted that petitioners are working continuously for number of years and discharging the same duties which are required to be discharged by the appointee appointed in the process of selection initiated by the advertisement dated 18.7.2008 and the petitioners are having experience of 4 to 6 years, yet they have not been regularized nor have been given appointment to the post referred above, whereas the petitioners are entitled to be regularized on the post concerned. Learned Counsel for the petitioners submitted that in other fields, the State Government regularized the services of the contract teachers and particularly, who have been appointed under the Rajasthan Panchayati Raj Prabodak Service Rules, 2008, then there is no reason for not regularizing the petitioners by way of absorption under the Rules of 2008.

7. Learned Counsel for the petitioners Sh. RS Saluja appearing in SBCWP No. 4033/2009 in addition to the arguments referred above submitted that under the Rules of 1965 though under Rule 19 it has been provided that the appointment shall be made on the sole basis of interview, yet the appointments were given by adjudging the suitability of the candidates by taking into account the service experience of the candidates etc and interview was only for the purpose of verification of the original documents which were required to be submitted to prove the eligibility of the candidates. The petitioners who were given appointment even on contract basis were also faced the interview in the year 2003 even for appointment for short period and that too, on contract basis wherein also, their documents were examined in the interview and they were given appointment on the basis of their merit adjudged by taking into account their educational qualification and experience in the trade. The petitioners believing that the same procedure will be adopted by the respondent-department while making appointment under Rule 2008, but this time, altogether different procedure was adopted by the respondents for giving appointment to the post of Ruler Health Worker (Female) under the Rules of 2008. Learned Counsel for the petitioners Sh. RS Saluja relied upon the judgment of the Hon''ble Apex Court delivered in the case of Ashok Kumar Yadav and Others Vs. State of Haryana and Others, wherein the high percentage marks of 33.3% and 22.2% marks for ex-service officer for viva voce test were declared unduly high and declared suffering from vice of arbitrariness. The Hon''ble Apex Court held that allocation of such a high percentage of marks as 33.3% opens the door wide for arbitrariness and in order to diminish, if not eliminate, the risk of arbitrariness, this percentage needs to be reduced, but here in this case, the sole criteria for appointment is interview and, therefore, the criteria adopted by the respondents

is totally arbitrary and because of that arbitrariness, the petitioners have been discriminated by picking and choosing the candidates.

8. Learned Counsel for the petitioners Sh. RS Saluja also submitted that there may be large number of candidates and in short time they could not have been interviewed so as to judge the suitability of the candidates for the post.

9. Learned Counsel for the petitioner Sh. NS Charan appearing in SBCWP No. 1847/2009 raised a different argument. According to him, the interview was not the sole criteria for appointment in the selection process initiated by the advertisement dated 18.7.2008 as in the opening language of the advertisement itself it has been mentioned that the appointment will be given on the basis of seniority/interview and that procedure has not been followed by the respondents.

10. Learned Counsel for the petitioners Sh. NS Charan in addition to the above also submitted that before preferring the writ petition, the petitioners gave notice to the respondents demanding disclosure of criteria adopted in process of selection, but respondents did not disclose the criteria.

11. This Court vide order dated 15th July, 2009 passed in SBCWP No. 1537/2009 consolidated all the matters relating to the same subject referred above and, therefore, one reply filed by the State was accepted as reply for all the cases and the petitioners were permitted to file counter affidavit in case any occasion arises and this Court directed the State to produce the record for perusal of the court, which has been produced by learned Addl. Advocate General Sh. Anand Purohit.

12. It has been contended by the State that the petitioners who were given appointment in earlier process of selection initiated by the advertisement Annex.1 dated 2nd April, 2003 were given appointment on the contract basis under RCH Project and such contractual engagement has to continue till the completion of project only and has not created any right in favour of the petitioners for seeking regularization or absorption against posts notified for direct recruitment under the Rules of 2008. The post of Rural Health Worker (Female) is a post mentioned in column No. 2 of Schedule-II appended to the Rules of 2008 and as per rules these posts are required to be filled in 100% by direct recruitment and qualification for same is Secondary standard with Health Worker Female Course passed. Thus, when a post is to be filled in 100% by direct recruitment then plea of regularization by absorption is not available.

13. So far as challenge to the process of selection by the petitioners is concerned, it has been contended that the petitioners were fully aware that what will be the procedure for giving appointment to the post advertised vide advertisement dated 18th July, 2008 and, thereafter, they took a chance of their selection without there being any objection and, thereafter, when they failed, they have preferred the writ petitions to challenge the selection process. Once the candidate takes a chance of selection and appeared in the interview and declared unsuccessful then such candidate cannot challenge the process of selection on any ground. Learned Counsel for the State relied upon the judgment

of the Hon''ble Apex court delivered in the case of Madan Lal and Others Vs. State of Jammu and Kashmir and Others, wherein the Hon''ble Apex Court held that allegation of the petitioners that they had fared better in the written test but were pushed down at interview, as based on merely suspicion having no factual basis particularly when there was no allegation of bias or mala fides against the member of the interview committee.

14. In addition to the above legal objection, the respondents in reply submitted that for total 1435 vacancies, as many as 5228 candidates were called for interview and after interview select list of 1427 candidates was prepared. 7 posts meant for the Sahariya candidates could not be filled in, whereas one post was kept vacant as per the order of the High Court. Out of remaining 1314 posts, select list of 672, general candidates, 210 of SC candidates, 157 of ST candidates, 276 of OBC candidates, 43 of disabled persons, 179 of Ex-military personnel, 29 of outstanding players and 72 of widow candidates was prepared. Total 114 posts were kept for the candidates of tribal area, out of which as per the Government circular 45% for ST candidates of tribal area and 5% of SC candidates of tribal area and rest 50% for general candidates of tribal area has been kept and accordingly out of 114 posts, select list of 57 for general candidates, 51 for the ST candidates for tribal area and 6 for SC candidates of tribal area was prepared. According to the respondents, this select list has been prepared strictly in accordance with the procedure laid down in Rules 24, 25 and 26 of the Rules of 2008. It is also submitted that candidates who secured equal marks in the interview, the select list in the descending order of their age has been prepared. Then during course of interview, the candidature of each of the candidates was scrutinized and those who were found meritorious were given appointment.

15. Detailed rejoinder has been filed by the petitioners in SBCWP No. 1794/2009 raising a further ground that no guideline for interview by the selection committee has been laid down and as such there is every scope of arbitrary action on the part of the selection committee and it is not known as to what weightage, the selection committee had given to the general qualifications. One counter affidavit has been filed in SBCWP No. 1794/2009 showing total number of persons appointed against the post of TSP area and who are not belonging to that TSP area.

16. Few selected candidates moved applications for being impleaded as party, but they have been allowed to intervene and they opposed the writ petitions and supported that their appointment orders and raised similar arguments as raised by the learned Counsel for the State.

17. I considered the submissions of learned Counsel for the parties and perused the record of the petitions as well as the record produced by the State for perusal of this Court showing allocation of the marks to the candidates and also considered the judgments relied upon by learned Counsel for the parties.

18. It will be appropriate to consider the preliminary objection raised by learned Counsel for the State that once the petitioners applied for the post in pursuance to the advertisement dated 18th July, 2008 and appeared in the interview and when they failed, they have challenged the process of selection, which is improper in view of the judgment of the Hon''ble Apex Court delivered in the case of Madan Lal (supra). The facts which are not in dispute are that the petitioners were well aware about all the conditions of the advertisement dated 18th July, 2008 and they applied for their selection on the posts concerned, took chance of selection and when they failed then only they challenged the procedure adopted for selecting the candidates for appointment to the posts. If they would have been selected in the same process, which they are challenging now, they would not and could not have challenged. Recently the Division Bench of this Court in D.B. Civil Special Appeal No. 180/2009-Baroda Rajasthan Gramin Bank v. Meth Raj Soni and Ors. and decided on 26.5.2009 (in which I was party to the judgement), after considering the several judgments of Hon''ble Supreme Court, dismissed the writ petitions filed by the candidates who after taking part in selection process challenged the selections.

19. In the case of Baroda Rajasthan Gramin Bank(suupra), this Court considered the judgement of Hon''ble Supreme Court of Amlan Jyoti Borooah Vs. State of Assam and Others, Dhananjay Malik and Others Vs. State of Uttaranchal and Others, and this Court's earlier judgement delivered in the case of Dr. M.C. Mehta v. State of Rajasthan and Ors. 22 ILR Raj. 711 and observed that Hon''ble the Supreme Court in Dhanjay Malik's case held that after participation in the selection process, the unsuccessful candidates posing challenge that the recruitment was not according to the statutory Rules and prescribed education qualifications were not adhered to, then those candidates who unsuccessfully participated in the process of selection, they are estopped from challenging selection criteria, even if they had any valid objection. The Division Bench also considered the observations of the Hon''ble Supreme Court delivered in the case of Union of India and Another Vs. N. Chandrasekharan and Another, that the candidates were aware of the procedure for promotion before they appeared for written test and before departmental promotion proceeded, then subsequently their plea that the marks allotted to interview and ACR was unduly disproportionate or that authorities cannot fix minimum marks to be secured at interview or in ACR, cannot be entertained. In M.C. Mehta's case, even where criteria laid down in the Rules was void or in principle nullity, then also the writ petition was dismissed by this Court holding that after participating in the process of selection, the candidates cannot challenge the selection criteria. In view of the above reasons, the writ petitions of the petitioners deserve to be dismissed on this ground.

20. In the present case, the arguments advanced by the counsel for the petitioners further suggests that the petitioners themselves are the beneficiaries of their selection made by the same process and procedure and they got the appointment on the post earlier under the Rajasthan Medical & Health

Subordinate Service Rules, 1965 and when this time, they are not selected and other are selected they are finding fault in the procedure. It is worthwhile to mention here that rule under which present advertisement was issued is the verbatim same rule which is in force since 1965 and the petitioners are beneficiaries of the same rule. These two rules are:

21. Sub-rule (1) of Rule 20 of the Rules of 1965 is as under:

(20) Recommendations of the Commission or the Appointing Authority:

(1) The Commission or the Appointing Authority, as the case may be, shall prepare a list of the candidates whom they/it consider/considers suitable for appointment to the posts concerned, arranged in the order of merit. The Commission shall forward the list to the Appointing Authority.

Provided that the Commission or the Appointing Authority, as the case may be, may, to the extent of 50% of the advertised vacancies, keep, names of suitable candidates on the reserve list. The names of such candidates may, on requisition be recommended in the order of merit to the Appointing Authority within six months from the date on which the original list is forwarded by the Commission to the Appointing Authority.

22. Rule 25 of the Rajasthan Rural Medical and Health Subordinate Service Rules, 2008 is as under:

(25) Recommendations of the Appointing Authority:-(1) The Appointing Authority shall prepare a list of the candidates whom it consider suitable for appointment to the posts concerned, arranged in the order of merit and forward the same to the Appointing Authority.

Provided that the the Appointing Authority, to the extent of 50% of the advertised vacancies, keep names of suitable candidates on the reserve list. The names of such candidates may, on requisition, be recommended in the order of merit to the Appointing Authority within six months from the date on which the original list is forwarded to the Appointing Authority.

23. It has been specifically pleaded by the writ petitioners in S.B. Civil Writ Petition No. 4033/09 and the writ petition preferred by the similar persons that Rule 20 of the Rules of 1965 is analogous to Rule 25 of the Rules of 2008. In that situation, it is very clear that the petitioners knowing well that by this very procedure they got the appointment and if that was faulty then it has denied the benefit to those who in fact were entitled to the post on earlier occasion and the petitioners after obtaining benefit under the Rules of 1965, are challenging the procedure adopted by the respondent's authorities. The petitioners' this conduct itself dis-entitled them to invoke equitable writ jurisdiction of this Court under Article 226 of the Constitution of India.

24. The petitioner also pleaded that the selection has been made absolutely on the basis of the marks obtained in interview, whereas the record produced by the

respondents reveals that the suitability of the candidates for appointment was adjudged after taking into account the technical knowledge, personality, general knowledge and marks obtained in interview. The procedure adopted by the respondents appears from the record to be a fair procedure. At this juncture, it will be relevant to mention here that the advertised posts were 1435. For taking interview, four committees were constituted by the separate order of the same date, i.e. dated 23.1.2009. Each committee had three members and the copies of these orders have been shown to the court when the court directed to produce the record for perusal. The interviews were held from 27.1.2009 to 13.2.2009. That means, the interviews were completed in 18 days and not in hot haste. The petitioners, if had any objection against the fairness in the interviews, then they had ample opportunity to challenge the process of selection in those 18 days, but they again took chance of their selection in the interviews and, thereafter, when they declared unsuccessful only, they are trying to build up a case of unfairness in the procedure of selection by taking help of the observations made in various judgements wherein appointment on the basis of marks obtained in viva voce test alone was held to be arbitrary and unreasonable, as held in *Praveen Singh v. State of Punjab and Ors.* (2000) 8 SCC 673) and relied upon the judgment of the Hon''ble Supreme Court delivered in the case of *Ashok Kumar Yadav and Others Vs. State of Haryana and Others*, , wherein Hon''ble the Apex Court held that allocation of high percentage of marks as 33.3% in case of ex-service officers and 22.2% in case of general candidates for viva voce test renders the selection process arbitrary on the ground that high percentage of marks for viva voce opens the doors for arbitrariness and further relied upon the judgment of this Court delivered in the case of *S.B. Civil Writ Petition No. 4410/91-Mahendra Pal and Ors. v. Rajasthan State Electricity Board and Anr.* decided on 17.6.1993, wherein the selection process was quashed holding to be bad and invalid, as the selection was based purely on oral interview after observing that no guidelines had been laid down for the selection committee and as such there was every scope of arbitrary action on the part of selection committee. From the facts of present case, it is clear that neither the appointment was given solely on the basis of marks obtained in interview nor high percentage of marks were fixed for interview. In Mahandra Pal's case (*supra*), admittedly, the respondents could not show the court what weightage was given to technical qualifications and what weightage was given to general qualifications. But here in this case, the record sought by the petitioners from the respondents and produced by the respondents clearly shows that weightage was given to these qualifications to adjudge the suitability of the candidates and the candidates have not been selected merely on the basis of arbitrarily adjudging the suitability of the candidates ignoring all materials which were sought from the candidates, like their marks obtained in the examination and other qualifications.

25. At this juncture it will be relevant to mention here that the writ petitions could have been dismissed only on the ground of preliminary objection referred and decided above but since the learned Counsel for the petitioner Shri Saluja

submitted that when the petitioners faced the interviews then they came to know about the procedure adopted in the interviews, therefore, before facing interviews, they could not challenge the procedure adopted in the interviews, therefore, to find out whether there was fairness in the procedure adopted by the selectors in preparing the select list, the record was examined. Otherwise, the petitioners failed to plead the material facts to demonstrate that procedure adopted for the interviews was not fair procedure and as stated above, they did not raise objection of unfairness in the procedure of interviews for selection till their candidature was rejected.

26. The learned Counsel Shri P.R. Mehta, with the help of rejoinder and additional affidavit and documents, tried to convince this Court that appointments have been given on the post reserved for Tribal Sub-Plan Area (RSP Area) to the candidates who were not belonging to TSP area and submitted that appointments have been given to the candidates of Jalore, Nagaur, Jaisalmer and Barmer, who are not the TSP, whereas the respondents produced the record to show that the candidates who were given appointments, were in fact residents of TSP area. Against their names, the place of residence has been given different but the certificates issued by the competent authority of resident of TSP area were considered and to demonstrate this fact, have shown certificate of one Sharda Devi and Indra Devi and Seema Bhagora, evidencing that they are resident of TSP area and belonging to a particular caste also. The petitioners themselves have not chosen to challenge the appointment of particular candidate, nor they have impleaded any selected candidate nor sought quashing of appointment of that particular candidate's appointment. Therefore, in all facts and circumstances, when large number of appointments were given by adopting a general procedure which clearly suggests that every care was taken to give appointment on the post by adopting a general method of appointment then such appointments cannot be interfered merely on the ground that some facts either were not made known to the candidates or the candidates could not get knowledge of those facts. What are the percentage of the marks and what is the effect of the past experience etc. have been examined on the basis of the documents and that could not have been altered by any candidate by his oral statement etc. At this juncture, it will be further worthwhile to mention here that there is no allegation of bias or mala fide against any member of the selection committee, then looking to the constitution of the committee, having three members in each committee, presumption of fairness can be drawn in their official working.

27. In view of the above reasons, the writ petitions of the petitioners deserve to be dismissed and hence the same are hereby dismissed.