

(2015) 01 RAJ CK 0085

In the Rajasthan High Court

Case No : Civil Special Appeal Nos. 1263, 1265, 1324, 1336, 1338, 1524 and 1808/2014

State of Rajasthan and Others

APPELLANT

Vs

Deepika Sharma and Others

RESPONDENT

Date of Decision : 30-01-2015

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (2015) 01 RAJ CK 0085

Hon'ble Judges : Jaishree Thakur, J.; Govind Mathur, J.

Bench : Division Bench

Advocate : Pratistha Dave, Government Counsel, for the Appellant

Final Decision : Dismissed

Judgement

1. The office has pointed out certain defects in these appeals but with consent of learned counsel we heard the same on merits ignoring the minor defects.
2. This batch of appeals is preferred to challenge the judgment dated 7.5.2014 passed by learned Single Bench accepting a batch of petitions for writ.
3. The facts necessary to be noticed are that the Governor of Rajasthan while exercising powers under proviso to Article 309 of the Constitution of India enacted the Rajasthan Rural Ayurvedic, Unani, Homeopathy and Naturopathy Subordinate Service Rules, 2008 to regulate recruitment to posts in, and the conditions of service of persons appointed to the Rajasthan Rural Ayurvedic, Unani, Homeopathy and Naturopathy service. A process of selection was initiated under the Rules aforesaid for recruitment to the post of Ayurvedic Chikitsak by advertisement dated 21.7.2008 against 378 existing vacancies. A challenge to the same was given by several persons by invoking extraordinary jurisdiction of this Court. The petitions for writ preferred by such persons came to be accepted and the process of selection including appointments already made were declared illegal and a direction was given to the respondent State to hold fresh selection

after determining reasonable criteria for that. Learned Single Bench observed that the selections may be held by awarding marks to determine comparative merit.

4. The respondent State in view of the directions given by learned Single Bench in the writ petitions aforesaid reinitiated the process of selection under an advertisement No. 1/12 dated 30.4.2012. In the advertisement aforesaid it was made necessary for the aspirants for selection to establish that they acquired qualification eligibility prior to 15.9.2008. Being aggrieved by this condition the instant litigation germinated.

5. The persons aggrieved asserted before the writ Court that no restriction for having qualification prior to 15.9.2008 could have been imposed as the selection by way of direct recruitment is to be made and the vacancies pertaining to such criteria are always open for all the persons eligible at the time of initiating the process of selection. It was also submitted that the right to be considered for appointment against the specific year of vacancies can be a valid criteria while making appointments by way of promotion but not for direct recruitment.

6. The respondent State defended the restriction imposed with assertion that the process of selection initiated in the year 2008 was pertaining to the vacancies then existing and, therefore, only the persons then eligible could have been considered for appointment as Ayurvedic Chikitsak.

7. Learned Single Bench by the judgment impugned while negativating the stand taken by the respondents arrived at the conclusion that "there is no rational or force of law behind such decision whereby, the right of consideration of eligible candidates are curtailed who acquired qualification upto the last day of submission of application form fixed in the advertisement i.e. 30.4.2012".

8. In appeals, the argument advanced by learned counsel for the appellants is that learned Single Bench failed to appreciate that the selection process initiated under the advertisement No. 1/12 was nothing but reinitiation of the process of selection initiated under the advertisement No. 1/2008, as such the persons who were eligible as on 15.9.2008 were called for to participate in the process of selection. According to learned counsel the vacancies existing prior to 15.9.2008 could have not been filled-in from among the candidates who acquired eligibility subsequent thereto.

9. We do not find any merit in the argument advanced.

10. It is not in dispute that the process of selection in question is for appointment to the post of Ayurvedic Chikitsak by way of direct recruitment. The appellants though may be filling-in the vacancies of earlier years, but against these vacancies no aspirant can claim his right to be considered for appointment on basis of the date of occurrence of vacancies. While making appointments by way of direct recruitment the prime criteria for employer is to have best working hands available on the date of initiating the process of selection. In the cases in

hand the selection initiated under the advertisement No. 1/2008 was set aside by the Court and the fresh process of selection commenced in the year 2012 vide advertisement No. 1/12. The restriction imposed by the appellants to confine competition among the persons having eligibility upto 15.9.2008 would deprive a public service to have best available hands in service through a fair competition. The concept of right for appointment on basis of the date of occurrence of the vacancies is a valid criteria while making appointments by way of promotion but not through direct recruitment. A public service is always supposed to have meritorious hands and to satisfy this object, consideration of the persons eligible on basis of their merit on the date of initiation of selection is a well settled criteria.

11. For the reasons given above we are of the view that learned Single Bench did not commit any wrong while setting aside the restriction imposed. The appeals, thus, are bereft of merit, hence dismissed.