
(2013) 12 AHC CK 0178

In the Allahabad High Court

Case No : Special Appeal (Defective) No. 848 of 2013

State of U.P. and Others

APPELLANT

Vs

Reena Kumari and Others

RESPONDENT

Date of Decision : 17-12-2013

Acts Referred:

Citation : (2014) 1 ADJ 148 : (2014) 102 ALR 495

Hon'ble Judges : Uma Nath Singh, J;Mahendra Dayal, J

Bench : Division Bench

Advocate : Vidhu Bhushan Kalia and Saurabh Lavania, for the Respondent

Final Decision : Dismissed

Judgement

Uma Nath Singh, J.—We have heard learned counsel for parties and perused the pleadings of Special Appeal. This Special Appeal has been filed assailing Judgment and order dated 21.10.2013 passed in Review Petition No. 92 of 2013 (Reena Kumari and others v. State of U.P. and others).

2. The main grounds of challenge are that the learned Single Judge, while deciding the Review Petition, has considered new pleas taken for the first time in the Review Petition. The same were not pleaded in the averments, nor argued during the course of hearing of the Writ Petition. It is also a ground that the Respondents did not possess the minimum educational qualification prescribed under the relevant rules namely, U.P. Medical Health and Family Welfare Department, Health Workers and Health Supervisor (Male and Female) Rules of 1997 (for short the Rules, 1997). The Respondents are only High School and Intermediate without Science, although they were trained as Auxiliary Nurse and Midwife (ANM) between the years 1998 to 2007. Thus, by permitting the Respondents to participate in the selection process of Health Workers (Female) there would be violation of the provisions of Statutory Rules, 1997. Learned Single Judge has left the question of vires of Rules, 1997 open to be decided by the appropriate authority, and moreover, the same not being questioned, even

then the Court has permitted the Respondents to participate in the selection process.

3. The learned Single Judge, while deciding the Review Petition has enumerated the reasons like:

(i) The work and duty performed by the Respondents as ANMs are the same as assigned to Health Workers (Female), and they deserve to be appointed on the post in question by grant of relaxation in qualification relating to training and age etc.,

(ii) while passing the Judgment under review before the Court, advertisement issued in the year 2002/2003 for the districts Agra, Sitapur, Meerut and Varanasi for imparting training as Midwife, the qualification prescribed was High School and this has escaped the notice of the Court in pronouncing the judgment in the petition,

(iii) such persons who were imparted training in Nursing just after 10th Class qualification, were also appointed on completion of training as ANMs and have been functioning and discharging duties, which are same as assignable to the post of Health Worker (Female),

(iv) the advertisement to admit for training after relaxing the qualification was a conscious decision of the State Government through such innovations in Family Planning Services Project Agency, a State owned, managed and controlled agency, vide communication dated 20.12.2002,

(v) moreover, it is also admitted by the State Government that the work and duties of ANMs and the duties assigned to the post of Health Worker (Female) are same, and

(vi) the prescribed qualification of Intermediate with Science for selection as trainee was relaxed during the period 3rd December 2007 to 12th November 2012 even prior to 10th September 1998 when the proviso to Rule 8(2) was added to the 1997 Rules whereby the persons having qualification of High School or Intermediate (without Science) had undergone training as ANMs, and thereafter having been working as such.

4. Learned counsel for the State contends that unless the aforesaid Rules were challenged and the vires was upheld, it would be difficult for the State Government to accommodate the Respondents by accepting their applications against the advertisement. It is also a submission that Respondents were admitted to training for a particular purpose-that after training they will work privately as Community Midwife and deal with such patients. Learned counsel for the State referred to the advertisement issued by the Chief Medical Officer, Sitapur, in support of his submissions. Learned counsel relying on such advertisement also contends that the advertisement provided that the trainee will not claim appointment in the department of Family Welfare, Government of U.P., after successful completion of training. Learned counsel also referred to

advertisement dated 10th May, 2013 wherein it has been clearly provided that the selection will be conducted in accordance with Rules of 1997 (as amended in 1998). It is also a submission of learned counsel that as per Notification dated 10th September, 1998, qualification for appointment as Health Worker (Female) has been provided as:

5. On the other hand, Shri S.K. Kalia, learned Senior Counsel, contends that it was already argued before learned Single Judge that in the year 2005, vide paragraph 38 of the writ petition, 7324 posts of Health Worker (Female) were advertised and those who had obtained training and had qualification of High School or Intermediate with Science and coming from the batch of 1991 were appointed. Thus, according to Shri Kalia, the State Government has been relaxing the Rules as per exigency of service. It has also relaxed the Rules for admitting candidates to training. Moreover, the Respondents were provided training from the State Exchequer and even during the training period, they were given stipend of Rs. 1000/- per month. After training they have been appointed in National Rural Health Mission (NRHM) in 2006 and since then they have been successfully discharging the duties of Health Worker (Female). Shri Kalia also referred to the discussion in the writ judgment dated 1.2.2013 wherein it has been held that since the work and duties performed by the writ petitioners (Respondents herein) are one and the same, as required for the post in question and also taking into consideration the fact that the definition as provided in Rule of 1997 for Basic Health Worker (Female) includes persons working as a Nurse, Midwife and Female Health Worker, who were working as such on or after 23.7.1981, the Respondents are entitled to be considered for appointment against the existing vacancies for the post of Basic Health Worker (Female) and for that purpose they are entitled to be given relaxation in case they have completed training of one and half years from the Departmental Divisional Training Centre. Shri Kalia also referred to academic qualification required for appointment as Health Worker (Female) under Rule 8 of the Rule of 1997 (as amended in 1998).

6. According to Shri Kalia, the only essential qualification required is training course in basic health conducted by U.P. Nurses and Midwife Council, Lucknow. They are also required to be duly registered in the U.P. Nurses and Midwife Council, Lucknow. Shri Kalia contends that the Respondents have successfully completed the training and are registered with Council as per requirement of the Rules and since 2006 they are also working in NRHM. Shri Kalia also referred to Rule 5(2) of the Rules of 1997 which provides for source of recruitment of Health Worker (Female). Shri Kalia took us through the advertisement regarding the appointment of Health Worker (Female) dated 10th May, 2013 which provides for preference to those who have experience of working in Projects and Schemes etc. The Respondents have experience of working with NRHM since 2006 to the satisfaction of their employer, on contractual basis or otherwise, and on that count as well, they deserve to be given preference. It is also a submission of Shri Kalia that the basic qualification required for admission to the training would be

irrelevant at this stage when the Respondents have received their training successfully and are working as Health Worker (Female) as detailed in the Rules of 1997.

7. Dr. L.P. Mishra, who argued the review petition before learned Single Judge and appears for some of the Respondents in the Special Appeals, also supports the contentions of Shri S.K. Kalia.

8. On due consideration, we do not find any fault with the judgment of learned Single Judge. He has enumerated and given detailed reasons while deciding the Review Petition. He has only considered and the position in law, which were left from the purview of consideration at the time of deciding the writ petition. In the year 2005, 7324 posts of Health Worker (female) were advertised. Those who had obtained training and possessed qualification only of High School or Intermediate with Science and came from the batch of 1991 were appointed. The fact remains that even if it was a batch of 1991, they were appointed after coming into force of the Rules 1997 (as amended in 1998). Thus as per exigency of service, the State Government had relaxed the Rules even for training purpose. As per requirement, Rules were relaxed regarding the eligibility qualification. The respondents were imparted training from the State Exchequer and were paid Rs. 1000/- stipend per month. They are also working in National Rural Health Mission (NRHM) since 2006 and they have been found to be discharging their duties as such to the satisfaction of the employer. Needless to say that the NRHM is a Government Scheme and the experience acquired also required to be given preference. Besides, the nature of work and duties performed by the respondents are the same as required for the posts in question and they are covered within the definition of Basic Health Worker as provided in the Rule 1997. They would thus be well within right to apply for consideration against the vacancies in question.

9. In the premises as above, denying equality of opportunity only on the ground of not being Intermediate with Science, a qualification which had been relaxed earlier by the State Government in respect of appointments provided in the year 2005 would amount to doing injustice to the Respondents. They have been given training course in Basic Health conducted by the U.P. Nurses and Midwife Council, Lucknow. They are also duly registered with the Council after having successfully completed the training. Moreover, the advertisement dated 10.5.2013 provides for preference to those who possess working experience in the Projects and Schemes of the Government, whether it is on contractual basis or otherwise. Besides, at this stage when the Respondents have completed training and also acquired working experience, it would be irrelevant to inquire into the initial qualification because now what is required is only the essential training, which the Respondents have already completed. Thus, we do not find any merit in the Special Appeal and while condoning the delay, the same is hereby dismissed.