
(2008) 07 RAJ CK 0006
In the Rajasthan High Court

Sulochna (Smt.)	Vs	APPELLANT
State of Rajasthan and Another		RESPONDENT

Date of Decision : 31-07-2008

Acts Referred:

Citation : (2009) 120 FLR 471 : (2009) 1 RLW 181

Hon'ble Judges : Narayan Roy, C.J.; Mohammad Rafiq, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Mohammad Rafiq, J.—The appellant has preferred this special appeal aggrieved by the judgment of the learned Single Judge dated 27.5.08. The learned Single Judge in the aforesaid judgment has dismissed her writ petition wherein she challenged the order dated 26.7.2001 cancelling her appointment order dated 31.8.1998 and also the consequential order dated 31.7.2001, which is to the same effect.

2. The appellant passed senior secondary examination in 1990 and thereafter joined the diploma course in Nursing in 1991. She completed her diploma course in 1994 as is evident from the mark sheet dated 27.6.1994 which is on record. The appellant upon completion of two and a half years diploma course of Nursing applied for appointment on the post of Ayurved Junior Compounder/Nurse. She was appointed vide order dated 31.8.1998. One Smt. Vimla Purohit filed a writ petition before the Principal Seat of this Court being S.B. Civil Writ Petition No. 704/2000 claiming that since she, like the petitioner, had also completed the internship course of Nursing on 15.2.1995, she should also be appointed. The respondents contended before the Court that since the internship of the appellant herein, was completed on 15.2.1995 whereas she wrongly stated the same to have been completed on 27.6.1994, her Nursing diploma course would therefore be taken to have been completed in 1995 and not in 1994 thus rendering her ineligible for appointment in the selection in question. It was thereafter that the appellant was served with a notice to show cause on 2.1.2001 as to why her

appointment may not be cancelled, to which she submitted reply on 11.6.01 and ultimately the respondents by order dated 26.7.01 cancelled the appointment of the appellant and the writ petition of Vimla Purohit was dismissed.

3. The learned Single Judge while dismissing the writ petition of the appellant herein held that since she secured appointment by wrong and fraudulent declaration, it could be cancelled without there being any regular enquiry or disciplinary action.

4. Shri Tarun Choudhary, learned Counsel for the appellant has argued that the learned Single Judge was not justified in not examining the eligibility criteria prescribed by Rajasthan Ayurved Unani Homeopathic and Naturopathy Subordinate Service Rules, 1966 (for short - "the Rules of 1966"). It was argued that the qualification that has been prescribed in the schedule appended to the Rules of 1996 merely provides that for appointment on the post of Compounder/Nurse Junior Grade, a candidate is required to possess Bhishagwar (Rajasthan) or its equivalent qualification in Ayurved or Tabib Fazil (Jaipur) or its equivalent qualification in Unani or Matriculation with Department Training of either 2-1/2 years or 1 year. The appellant was having requisite qualification for the post of Compounder/Nurse Junior Grade at the time of selection and she did not conceal this either. Even in the reply to the notice served upon her which is submitted on 11.6.2001, she produced the certificates and the mark sheets to show that the appellant had already completed the nursing course of two and a half years on 24.6.1994. The advertisement pursuant to which the appellant was appointed was itself issued on 2.8.1997. The appellant had in any case, completed not only the diploma course but also the internship course much before the issue of the aforesaid notification inviting applications for appointment. It was argued that having been appointed on 31.8.98, the appellant has by now served for almost a decade because immediately after her appointment was cancelled vide order dated 31.7.2001 she filed writ petition in which operation of the aforesaid order was stayed. It was submitted that even for that technical reason, the appellant is now removed from service, she would face grave hardship inasmuch as she has by now become overage and cannot even secure another appointment on the post of Compounder/Nurse Junior Grade, though she is otherwise qualified.

5. Shri B.L. Avasthi, the learned Additional Government Counsel opposed the appeal and submitted that the appointment having been secured by the appellant by fraud, it was rightly cancelled. This matter came to light when Vimla Purohit filed writ petition before this Court and papers were scrutinized. It was argued that at the relevant time when the advertisement dated 2.8.1997 was issued, the candidates were required to indicate their year of completion of internship course according to Government Circular dated 16.11.1989, which provided appointments were to be given to the candidates batch wise. Those completing internship earlier in point of time were given preference over the next batch and selection used to be made on the basis of year of passing of the batch of qualifying examination and completion of internship. It was argued that neither

any regular enquiry nor any disciplinary proceedings were required to be held prior to cancelling the appointment of the appellant because it was not a case of removal or dismissal but a simple case of cancellation of appointment. Earned Counsel submitted that the appointment secured on the strength of fraud could be cancelled by simple notice as was done in the present case.

6. Earned Counsel for the appellant rejoined and submitted that the Circular dated 16.11.1989 which provided for batch wise appointment has been held to be ultra vires of Rules of 1966 by a judgment of this Court in Mahesh Chand Sharma and Ors. v. State of Rajasthan and Ors. 2000(1) WLC 629 : RLW 2000(1) 652 and in view of that judgment, when the Circular has been held to be illegal, the appointment, which has otherwise been secured by the appellant on her own merit even according to the respondents, cannot be cancelled.

7. We have given our anxious consideration to the rival submissions and perused the impugned judgment and other material forming part of record.

8. What we have to examine is whether in the facts of the present case when it is not disputed that the notification inviting application for appointment was issued on 2.8.1997, at a time when the appellant had not only passed the diploma course of Compounder/Nurse Junior Grade for the duration of two and a half years as per requirement of the Rules, but also completed internship, could she be said to be ineligible for appointment and related question would be whether the appellant, who had admittedly passed the two and half years diploma course of Compounder/Nurse Junior Grade on 27.6.1994 as evident from the mark sheet, can be taken as ineligible for appointment only because she completed the intership on 15.2.1995 and yet in column No. 11 of the application form declared that she was a diploma holder of the batch of 1994 and not of 1995? The action of the respondents in marking appointment on the post of Ayurved Nurse as per batch wise merit list was founded on their Circular dated 16.11.1989. correctness of the aforesaid Circular was examined by this Court, albeit in the context of advertisement issued on 24.4.1999 for making appointment on the post of Ayurved Nurse/Compounder. This Court found that such a condition was dehors the scheme of the Rules especially Rule-9, 16, 20 and 22, which merely provided that the appointments should be made on the basis of common merit and all those eligible at the time when selection is made, are entitled to consideration for appointment. In para 9 to 11 of the judgment, it was held as under:

9. As is clear from the above scheme of Rules, there is no provision whatsoever to prepare the merit list batch wise basis. After advertisement been issued applications from all eligible candidates are received. Thereafter as per the criteria fixed by the Appointing Authority or the Selection Board, the merit list is prepared. Alongwith the merit list, reserve list is also prepared which is valid for 6 months and after expiry of 6 months the reserve list also does not survive.

10. In my opinion, the earlier Circular dated 16.11.1989 was absolutely dehors

the rules. Since it is well settled principle of law that selections have to be made strictly as per the provisions of the relevant Rules, in the present case, the Rules of 1966, even if some illegality or irregularity has been committed by the respondents earlier, in giving the appointments to some persons on batch-wise basis and the mistake having been rectified subsequently by withdrawing the earlier Circular in this regard, no illegality can be found in the order dated 19.4.99.

11. It is also well settled principle of law that there cannot be any estoppel against the statute. The syllabus or filing of bonds for completion of Ayurved Nurse/Compounder training is not provided in the Rules of 1966. It only provides for minimum qualification and experience for appointment to the post of Ayurved Nurse/Compounder. The merit list has to be prepared only as per the provisions of the above Rules of 1966 and appointments can also be made only on the basis of the merit list so prepared. In absence of any specific provisions under the Rules no preference can be given to the candidates on the basis of their higher merit in the merit list prepared in the earlier years and further by giving them preference on the basis of the year of batch when they completed the training course. The petitioners have to compete with all eligible persons in every selection and can be given appointment only as per their merit in each selection.

9. We are not persuaded to uphold the view taken by the learned Single Judge that since the appellant secured the appointment by making false declaration and thereby exercising fraud, her appointment was liable to be cancelled. Appointment to any post in a government service has necessarily to be made in accordance with the provisions contained in the Rules that governs the field. In the present case, the eligibility criteria provided for appointment on the post of Compounder/Nurse Junior Grade in the Rules of 1966 is as follows:

Bhishagwar (Rajasthan) or its equivalent qualification in Ayurved or Tabib Fazil (Jaipur) or its equivalent qualification in Unani or Matriculation with Department Training of either 2-1/2 years or 1 years.

10. Rule 9 of the Rules of 1966 provides for determination of year wise vacancies and Rule 16 provides that application for direct recruitment to the post in the services shall be invited, by the Commission or the Appointing Authority, as the case may be advertising the vacancies to be filled. Rule 20 provides that recommendations of the Commission or the appointing authority and Rule 22 provides for appointing those selected candidates who stand highest in the merit list prepared under Rule 20. Appointments are then required to be made under Rule 26 of the Rules of 1966. As rightly held by the learned Single Judge in Mahesh Chand Sharma, supra, none of the Rules provides for the method of batch wise appointments. Resultant situation that would emerge therefrom would be that when the advertisement was issued by the respondents for appointment on the post of Nurse/Compounder on 2.7.1998, the appellant was eligible for such appointment not only having passed out the Diploma course of nursing of two and a half years duration on 27.6.1994 but also having completed the

Intership course on 15.2.1995. Her Indicating the batch of 1994 Instead of 1995, which appears to be based on the final mark sheet of the diploma course Issued to her on 27.6.1994, may have been result of overzealous approach on her part to secure appointment but that single act could not be projected at such a high level of Irregularity as to be brandished fraud so as to seek her removal from service. It cannot be disputed that she secured the appointment on the basis of her merit pursuant to the process of selection In accordance with the Rules of 1966. Even otherwise, the petitioner has now completed almost a decade in service and having since attained the age of 36 years, become overage for any new appointment. But besides that point, we find that on merits of the case also, the appeal deserves to succeed.

11. In the light of the view that we have taken of the matter, we are inclined to allow the appeal. The appeal is accordingly allowed and the orders dated 26.7.01 and 31.7.01 passed by the respondents terminating service of the petitioner, being illegal and arbitrary are quashed and set aside. Consequently, the impugned order of learned Single Judge dated 27.5.08 is also set aside. Appellant would be entitled to all consequential benefits.