
(2015) 02 RAJ CK 0177

In the Rajasthan High Court

Case No : Civil Writ Petition No. 7883 of 2013

Sunil Kumar Sharma and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 10-02-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 15(1), 16, 16(1)

Citation : (2015) 02 RAJ CK 0177

Hon'ble Judges : Veerender Singh Siradhana, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Veerender Singh Siradhana, J.—The petitioners, in the instant writ application, have staked their claim for grant of bonus marks while challenging the legality, validity and correctness of the order dated 11th March, 2013, which provides the guidelines for awarding bonus marks for appointment on the post of Dental Technician. The petitioners have approached this Court praying for the following relief(s):--

"i. By issuing an appropriate order, writ or direction the respondents may be directed to give bonus marks to the petitioners and discrimination shall be made between the government and the private dental colleges.

ii. Cost of the writ petition be also awarded in favour of the petitioner.

iii. Any other appropriate order which this Hon"ble Court may deem fit and proper be passed in favour of the petitioner in the larger interest of equity, justice and law."

2. Briefly, the indispensable material facts necessary for appreciation of the controversy raised herein, needs to be first noticed. It is pleaded case of the petitioners that they passed out their final year Dental Hygienist Examination from Jaipur Dental College in the year 2009. The petitioners submitted their

application for consideration of their candidature in response to the advertisement dated 26th February, 2013, inviting the applications from eligible candidates for appointment to the post of Dental Technician. It is further pleaded that Clause-8 of the advertisement provides for grant of ten marks for one year and maximum thirty marks for three years. The petitioners, since 1st April, 2009, have been working as Dental Hygienist in the Department of Conservative, Jaipur Dental College, Jaipur, and therefore, have acquired the required experience of three years, and thus, are entitled for grant of thirty bonus marks. The State-respondents while issuing the order dated 11th March, 2013, though permitted grant of such bonus marks to the candidates of Jhalawar Medical College and Hospital Society, but the same benefit has not been extended to the petitioners.

3. On 27th January, 2015, none appeared on behalf of the petitioners, and therefore, the matter was adjourned making it clear that if none appears on the next date, the matter will be proceeded with on the basis of pleadings. Today, neither the petitioner nor the counsel for the petitioner is present to prosecute the writ proceedings.

4. I have carefully considered the pleadings of the writ application and the materials available on record.

5. A glance at order dated 11th March, 2013, would reveal that the bonus marks/weightage has been allowed to the candidates of Jhalawar Medical College and Hospital Society, treating it to be a Government Establishment. No doubt that Jaipur Dental College is a recognized College, but it is not a Government Establishment.

6. In a batch of writ applications, lead case being D.B. Civil Writ Petition Number 10038 of 2013 (Atar Singh Gurjar and Ors. versus State of Rajasthan and Ors.) decided on 26th November, 2014, the Division Bench of this Court while examining somewhat similar controversy, considered the issue of taking into account the experience of only those employees, who have gained experience with the Establishments of the Government or under the control and supervision of the State Government while according the benefit of bonus marks. Relying upon the explanation of the scope of Article 14 and 16(1) of the Constitution, as observed by the Hon'ble Supreme Court under paragraphs 21, 24, 25, 27, 28 and 34. the Division Bench held thus:--

"27. Learned Additional Advocate General has relied on the explanation of the scope of Articles 14 and 16(1) in State of Kerala and Another Vs. N.M. Thomas and Others, AIR 1976 SC 490 : (1976) LabIC 395 : (1976) 1 LLJ 376 : (1976) 2 SCC 310 : (1976) 1 SCR 906 , where explaining the fundamental rights guaranteed under Articles 14 and 16(1) of the 34 Constitution of India, the Supreme Court held in paragraphs 21, 24, 25, 27, 28 and 34 as follows:--

"21. Articles 14, 15 and 16 form part of a string of constitutionally guaranteed rights. These rights supplement each other. Article 16 which ensures to all

citizens equality of opportunity in matters relating to employment is an incident of guarantee of equality contained in Article 14. Article 16(1) gives effect to Article 14. Both Articles 14 and 16(1) permit reasonable classification having a nexus to the objects to be achieved. Under Article 16 there can be a reasonable classification of the employees in matters relating to employment or appointment.

24. Discrimination is the essence of classification. Equality is violated if it rests on unreasonable basis. The concept of equality has an inherent limitation arising from the very nature of the constitutional guarantee. Those who are similarly circumstanced are entitled to an equal treatment. Equality is amongst equals. Classification is, therefore, to be founded on substantial differences which distinguish persons grouped together from those left out of the groups and such differential attributes must bear a just and rational relation to the object sought to be achieved.

25. The crux of the matter is whether Rule 13AA and the two orders Exhibits P-2 and P-6 are unconstitutional violating Article 16(1). Article 16(1) speaks of equality of opportunity in matters relating to employment or appointment under the State. The impeached Rule and orders relate to Promotion from Lower Division Clerks to Upper Division Clerks. Promotion depends upon passing the test within two years in all cases and exemption is granted to members of Scheduled Castes and Scheduled Tribes for a longer period namely, four years. If there is a rational classification consistent with the purpose for which such classification is made equality is not violated. The categories of classification for purposes of promotion can never be closed on the contention that they are all members of the same cadre in service. If classification is made on educational qualifications for purposes of promotion or if classification is made on the ground that the persons are not similarly circumstanced in regard to³⁵ their entry into employment, such classification can be justified. Classification between direct recruits and promotees for purposes of promotion has been held to be reasonable in C.A. Rajendran v. Union of India.

27. There is no denial of equality of opportunity unless the person who complains of discrimination is equally situated with the person or persons who are alleged to have been favoured. Article 16(1) does not bar a reasonable classification of employees or reasonable tests for their selection State of Mysore v. V.P. Narasinga Rao.

28. This equality of opportunity need not be confused with absolute equality. Article 16(1) does not prohibit the prescription of reasonable rules for selection to any employment or appointment to any office. In regard to employment, like other terms and conditions associated with and incidental to it, the promotion to a selection post is also included in the matters relating to employment and even in regard to such a promotion to a selection post all that Article 16(1) guarantees is equality of opportunity to all citizens. Articles 16(1) and (2) give effect to equality before law guaranteed by Article 14 and to the prohibition of discrimination guaranteed by Article 15(1). Promotion to selection post is

covered by Article 16(1) and (2).

34. The equality of opportunity takes within its fold all stages of service from initial appointment to its termination including promotion but it does not prohibit the prescription of reasonable rules for selection and promotion, applicable to all members of a classified group. *Ganga Ram v. Union of India*."

7. In the case of *Om Kumar and Others Vs. Union of India*, (2000) 3 JT 92 : (2000) 7 SCALE 524 : (2001) SCC(L&S) 1039 : (2000) 4 SCR 693 Supp , the Hon"ble Supreme Court while dealing with the classification based on intelligible differentia, held thus:--

"32. So far as Article 14 is concerned, the courts in India examined whether the classification was based on intelligible differentia and whether the differentia had a reasonable nexus with the object of the legislation. Obviously, when the courts considered the question whether the classification was based on intelligible differentia, the courts were examining the validity of the differences and the adequacy of the differences. This is again nothing but the principle of proportionality. There are also cases where legislation or rules have been struck down as being arbitrary in the sense of being unreasonable. [see *Air India v. Nergesh Meerza* (SCC at pp.372-373)]. But this latter aspect of striking down legislation only on the basis of "arbitrariness" has been doubted in *State of A.P. v. McDowell and Co.*"

8. It is trite law that Article 14 forbids class legislation but permits reasonable classification provided the classification is founded on an intelligible differentia, which distinguishes persons or things that are grouped together from those that are left out of the group. In *re the Special Court Bills, 1978* (1979) I SCC 380, after a survey of several previous judicial proceedings involving interpretation of Article 14 of the Constitution culled out several propositions holding thus:--

"72.(2) The State, in the exercise of its governmental power, has of necessity to make laws operating differently on different groups or classes of persons within its territory to attain particular ends in giving effect to its policies, and it must possess for that purpose large powers of distinguishing and classifying persons or things to be subjected to such laws.

(3) The constitutional command to the State to afford equal protection of its laws sets a goal not attainable by the invention and application of a precise formula. Therefore, classification need not be constituted by an exact or scientific exclusion or inclusion of persons or things. The courts should not insist on delusive exactness or apply doctrinaire tests for determining the validity of classification in any given case. Classification is justified if it is not palpably arbitrary.

(4) The principle underlying the guarantee of Article 14 is not that the same rules of law should be applicable to all persons within the Indian territory or that the same remedies should be made available to them irrespective of differences of

circumstances. It only means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Equal laws would have to be applied to all in the same situation, and there should be no discrimination between one person and another if as regards the subject-matter of the legislation their position is substantially the same.

(5) By the process of classification, the State has the power of determining who should be regarded as a class for purposes of legislation and in relation to a law enacted on a particular subject. This power, no doubt, in some degree is likely to produce some inequality; but if a law deals with the liberties of a number of well defined classes, it is not open to the charge of denial of equal protection on the ground that it has no application to other persons. Classification thus means segregation in classes which have a systematic relation, usually found in common properties and characteristics. It postulates a rational basis and does not mean herding together of certain persons and classes arbitrarily.

(6) The law can make and set apart the classes according to the needs and exigencies of the society and as suggested by experience. It can recognise even degree of evil, but the classification should never be arbitrary, artificial or evasive.

(7) The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and (2) that that differentia must have a rational relation to the object sought to be achieved by the Act."

9. The action of the State-respondents in making a classification on the basis of Private and Government Establishment cannot be faulted as violative of the mandate of Article 14 of the Constitution of India. Moreover, the petitioners after having participated in the recruitment process are precluded from challenging the selection criterion as has been reiterated by the Hon"ble Supreme Court in the case of Dhananjay Malik and Others Vs. State of Uttaranchal and Others, AIR 2008 SC 1913 : (2008) 1 CLT 753 : (2008) 3 JT 611 : (2008) 3 SCALE 425 : (2008) 4 SCC 171 : (2008) 1 SCC(L&S) 1005 : (2008) AIRSCW 2158 : (2008) 2 Supreme 328 , wherein the Hon"ble Apex Court of the land observed thus:

"7. It is not disputed that the writ petitioners-respondents herein participated in the process of selection knowing fully well that the educational qualification was clearly indicated in the advertisement itself as B.P.E. or graduate with diploma in physical education. Having unsuccessfully participated in the process of selection without any demur they are estopped from challenging the selection criterion inter alia that the advertisement and selection with regard to requisite educational qualifications were contrary to the Rules.

8. In *Madan Lal and Others Vs. State of Jammu and Kashmir and Others*, AIR 1995 SC 1088 : (1995) 2 JT 291 : (1995) LabIC 1575 : (1995) 1 SCALE 494 : (1995) 3 SCC 486 : (1995) 1 SCR 908 : (1995) 2 SLJ 161 : (1995) 2 UJ 817 , this Court pointed out that when the petitioners appeared at the oral interview conducted by the Members concerned of the Commission who interviewed the petitioners as well as the contesting respondents concerned, the petitioners took a chance to get themselves selected at the said oral interview. Therefore, only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed writ petitions. This Court further pointed out that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted. In the present case, as already pointed out, the writ petitioners- respondents herein participated in the selection process without any demur; they are estopped from complaining that the selection process was not in accordance with the Rules. If they think that the advertisement and selection process were not in accordance with the Rules they could have challenged the advertisement and selection process without participating in the selection process. This has not been done."

10. For the reasons and discussions herein above, the writ petition is devoid of any substance, and lacks in merit, and therefore, deserves to be dismissed.

11. Ordered accordingly.

12. In view of the final adjudication on the writ application, the stay application stands closed.

13. However, in the facts and circumstances of the case, there shall be no order as to costs.