
(2015) 04 RAJ CK 0152
In the Rajasthan High Court
Case No : Civil Writ Petition No. 15956 of 2011

Suwa Lal Gupta and Others	Vs	APPELLANT
State of Raj. and Others		RESPONDENT

Date of Decision : 22-04-2015

Acts Referred:

Citation : (2015) 04 RAJ CK 0152

Hon'ble Judges : Veerender Singh Siradhana, J

Bench : Single Bench

Advocate : Virendra Lodha, Senior Counsel and Jai Lodha, for the Appellant;
Parikshit Singh, Dy. G.C., Advocates for the Respondent

Final Decision : Allowed

Judgement

Veerender Singh Siradhana, J.

1. The matter comes up on an interim application with a prayer to dispose of the writ application in view of the opinion of the Coordinate Bench of this Court in SBCWP No. 9015/2009 (Dr. Abhishek Goyal and Ors. v. State of Raj. and Ors.) and other similar cases. The matter was taken up for final disposal, with the consent of the learned counsel for the parties, since the pleadings are complete and the controversy has already been set at rest in the case of Dr. Abhishek Goyal (supra).

2. The petitioners, in the instant writ application, after having offered their candidatures for appointment to the posts of "Ayurved Chikitsadhikari", in response to the advertisement dated 16th June, 2010, have approached this Court praying for the following relief(s):--

"i) It is, therefore, prayed that the Hon'ble High Court may kindly call for the entire record and after examining the same be pleased to declare the impugned action of respondent No. 2 in not recommending the case of the petitioners for the purpose of appointment on the post of Ayurved Chikitsadhikari to Respondent No. 1 in the light of Note No. 1 appended to Advertisement dated 16.6.2010,

Corrigendum dated 27.8.2010 and circular dated 22.6.2004 to that extent the action of the official respondent be declared null and void and be quashed and set aside.

ii) by further appropriate order or direction the respondents be directed precisely Respondent No. 2 to recommend the name of the petitioners for the purpose of appointment on the post of Ayurved Chikitsadhikari in the light of Note No. 1 appended to the advertisement dated 16.6.2010, corrigendum dated 27.8.2010 and circular dated 22.6.2004 and thereupon the Respondent No. 1 be directed to issue order of appointment in favour of the petitioners on the post of Ayurved Chikitsadhikari as per their merit position in the reserve list dated 4.11.2011 (as pasted on the notice board of the RPSC) against the vacancies remained unfilled forthwith.

iii) By further an appropriate order or direction the life of the reserve list dated 4.11.2011 (as pasted on the notice board of the RPSC) be kept alive during the pendency of the writ petition and in case if the writ petition is not decided within a period of six months from the date of issuance of reserve list dated 4.11.2011, the case of the petitioners be not jeopardized on account of life of the reserve list coming to an end.

iv) By further appropriate order or direction the respondents be directed to issue appointment order on the post of Ayurved Chikitsadhikari in favour of the petitioners with all consequential benefits thereto including seniority and all consequential benefits as has been given to all their counter parts who have been given appointment on the post of Ayurved Chikitsadhikari during the pendency of the writ petition in pursuance to advertisement dated 16.06.2010.

v) any other order or direction, which the Hon"ble Court deems fit and proper, may kindly be passed in favour of the petitioners.

vi) Cost of the writ petition may kindly be awarded to the petitioners."

3. The controversy raised herein is no more res-integra in view of the opinion of the Coordinate Bench of this Court in SBCWP No. 6333/2008 (Amena Fatima and Ors. v. The State of Raj. and Ors.), decided on 6th March, 2009, as well as in the case of Dr. Abhishek Goyal and Ors. (supra), decided on 18th January, 2012.

4. Learned Senior Counsel, reiterating the pleaded facts and grounds of the writ application, asserted that the amendment dated 10th October, 2002, cannot be held to have retrospective operation, as has been opined by this Court in the cases aforesaid.

5. Learned counsel appearing on behalf of the State-respondents and R.P.S.C. have filed reply to the Misc. Application. They also did not dispute the opinion of the Coordinate Bench of this Court in the cases already adjudicated upon on the similar controversy. It is further given out that the State as well as R.P.S.C. have not preferred any intra court appeal against the judgments and orders rendered by the Coordinate Bench of this Court in the case of Dr. Abhishek Goyal and Ors.

(supra) and connected matters.

6. In the case of Amena Fatima and Ors. a Coordinate Bench of this Court relied upon the judgment dated 22nd May, 2008 rendered in SBCWP No. 8650/2007 (Vijay Choudhary and Anr. v. State of Rajasthan and Ors.), observing thus:

"Before proceeding further, the aforesaid judgment dated 22.05.2008 passed in S.B. Civil Writ Petition No. 8650/2007 titled as Vijay Choudhary and Anr. v. State and Ors. is as follow:--

"Consequently both the writ petition stand allowed. Respondents are directed to consider the petitioners except petitioner No. 2 Gopal Choudhary in CW No. 8650/07 for appointment on the basis of advertisement Annex. 1 dated 18th August, 2004 on the post of School Lecturer (English) against 77 vacancies reserved for SC/ST which could not be filled on account of non-availability of suitable candidates by adopting general procedure. However, it is made clear that they will be entitled for seniority as per their placement in the order of merit and will get notional fixation of pay, but no pecuniary benefits for the intervening period. Respondents are further directed to comply with the order within three months. No order as to costs."

The present writ petition is decided in terms of the aforesaid judgment. The petitioners will also be entitled for the same benefit.

The writ petition stands allowed."

7. The controversy has again been dealt with by another Coordinate Bench of this Court in the case of Dr. Abhishek Goyal and Ors.(supra), in affirmative in favour to the petitioners therein.

8. In the instant case at hand, there are 25 vacant posts of SC/ST categories, which have been indicated as backlog vacancies prior to 10.10.2002, as reflected from the advertisement dated 16th June, 2010 (Annexure-6).

9. In view of the opinion of the Coordinate Bench of this Court in the cases referred to hereinabove, the vacancies of SC/ST, are to be filled up by normal procedure, by application of the rules, applicable at the relevant time, as has been clarified by the State-respondents vide circular dated 22nd June, 2004.

10. For the reasons and discussions hereinabove and in view of the opinion of this Court in the case of Amena Fatima and ors.(supra) as well as in the case of Dr. Abhishek Goyal (supra), the writ application merits acceptance.

11. The respondents are directed to fill up the vacancies of SC/ST from amongst the meritorious candidates by applying normal procedure.

12. Accordingly, the writ petition succeeds and is hereby allowed in terms of the judgment in the cases aforesaid. However, it is made clear that the petitioners will be entitled for seniority as per their placement in the year of merit and will also be entitled to notional fixation of pay. No monetary benefits shall be

admissible for the intervening period.

13. The exercise aforesaid should be completed within a period of two weeks from the date of receipt of a certified copy of this order.