
(2020) 08 RAJ CK 0075
In the Rajasthan High Court
Case No : Civil Writ Petition No. 7611 Of 2020

Syed Mohammed Zaid

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 07-08-2020

Acts Referred:

Citation : (2020) 08 RAJ CK 0075

Hon'ble Judges : Inderjeet Singh, J

Bench : Single Bench

Advocate : Laxmi Kant Mampura, Tanveer Ahamad, Bharat Saini

Final Decision : Dismissed

Judgement

Counsel for the parties submitted that the issue involved in these writ petitions has already been considered and decided by this court in the matter of Sanjay Kumar Vs. State of Rajasthan and others (S.B. Civil Writ Petition No.8244/2020 and other connected petitions) wherein on 04.08.2020 it has been held as under:-

"In all these writ petitions since the issues are similar in nature, hence, these writ petitions have been heard together and are being decided by the present common order.

Brief facts of the case are that the respondents issued an advertisement on 12.06.2020 for appointment on the post of Lab Technician/Assistant Radiographer and the last date for submitting the application form was 30.07.2020. Admittedly, all the petitioners in these writ petitions are pursuing their studies of second year Diploma Course of Lab Technician/Assistant Radiographer and their results is awaited and some of the petitioners are appearing in their due papers of the said course.

Counsel for the petitioners submitted that due to Covid-19 problem their examination could not be conducted by the Examination Agency, therefore, they

are not at fault for their non-appearance in the selection process. Counsel further submits that vide order dated 05.07.2020 the State Government has also taken a decision not to conduct the examination and lastly prayed that the petitioners be allowed to participate in the selection process.

Counsel appearing on behalf of the respondents submitted that they have filed reply today in the office and a photocopy of the reply is taken on record and in para No.3 of their reply they have mentioned about the scheme of 'The Rajasthan Medical & Health Subordinate Service Rules, 1965 (hereinafter to be referred as 'Rules of 1965) which provides about the qualifications required for the post of Lab Technician/Assistant Radiographer which reads as under:-

3. That in order to apply for the above said posts, Applicant must have the requisite qualification as per the schedule of The Rajasthan Medical & Health Subordinate Service Rules, 1965 (as amended time to time) (referred to the "Rules of 1965"). The Department of Personnel, Government of Rajasthan vide amendment notification dated 30.08.2013 prescribe the following qualification:

(a) Lab Technician:

Name of the Post Educational Professional and Post Qualification Lab Technician

1. Senior Secondary in Science with either Biology or Mathematics or its equivalent with diploma in Medical Lab Technician from an institute recognized by the State Government/ Central Government/ Rajasthan Para Medical Council; and

2. Registered with Rajasthan Para Medical Council

(b) Assistant Radiographer:

Name of the Post Educational and Professional Qualification Assistant Radiographer

1. Senior Secondary in Science with Biology or Mathematics or its equivalent with Radiography course passed from an institute recognized by the State Government/Central Government/ Rajasthan Para Medical Council.

(The copy of the notification dated 30.08.2013 are marked and enclosed herewith as "Annexure-R1")"

Counsel further submits that the controversy for the previous selection for the post of Nurse Grade-II has already been considered and decided by the Co-ordinate Bench of this court in the matter of 'Suman Jat and others Vs. The State of Rajasthan and others' (S.B. Civil Writ Petition No.15115/2018 and other connected petitions) wherein while considering the eligibility criteria the Co-ordinate Bench of this court in para Nos.23 to 27 has held as under:-

"23. Looking at the issue from another angle, if the examination of merit is to be considered, the same is based on the marks which a candidate mentions in this on-line application form. For such selections where there is no interview or written examination, a presumption is that the candidates, who already fulfilled the qualification on the last date of application form, they are a separate class from those, who are appearing or have appeared in the final year examination of

the course. In view thereof, the candidates of second category cannot claim parity with those who have already appeared and cleared their qualifying examination of the course and have also been registered with the Rajasthan Nursing Council before the last date of submission of the application form.

24. It also needs to be noted that the advertisement specifically mentioned the eligibility of only those candidates who have already been registered with the Rajasthan Nursing Council before the last date of the submission of the application form. Thus, the intention of the employer was clear and unambiguous. Due to this condition, there would be many persons who may not have applied knowing themselves to be not qualified. Merely because this Court, by an interim order, has allowed some candidates to participate in the selection process, would cause discrimination between the similarly situated persons and gives advantage to those alone who have approached this Court. The same would, therefore, be violative of the doctrine of equality.

25. The contention of learned counsel for the petitioners that as the order passed in *Bhanwari & Ors. Vs. State of Raj. & Ors.* (supra) has not been challenged before the Division Bench, the same would apply to the candidates, is also found to be misconceived. It is noticed that the order passed in *Bhanwari & Ors. Vs. State of Raj. & Ors.* (supra) relies on the earlier order passed in *Zaiba & Ors. Vs. The State of Raj. & Ors.* (supra), once the effect and operation of the judgment passed in *Zaiba & Ors. Vs. The State of Raj. & Ors.* (supra), has been stayed, all the consequential judgments which rely upon the order passed in *Zaiba & Ors. Vs. The State of Raj. & Ors.* (supra), by principles of constructive interpretation, shall remain stayed.

26. Any judgment, which has been stayed by a Division Bench or by a higher Court, cannot be looked into or relied upon for arriving at conclusions as it remains stillborn.

27. In *Bedanga Talukdar Vs. Saifudaullah Khan & Ors.*: (2011) 12 SCC 85, the Supreme Court has held as under:-

"32. In the face of such conclusions, we have little hesitation in concluding that the conclusion recorded by the High Court is contrary to the facts and materials on the record. It is settled law that there can be no relaxation in the terms and conditions contained in the advertisement unless the power of relaxation is duly reserved in the relevant rules and/or in the advertisement. Even if there is a power of relaxation in the rules, the same would still have to be specifically indicated in the advertisement. In the present case, no such rule has been brought to our notice. In the circumstances, the High Court could not have issued the impugned direction to consider the claim of respondent 1 on the basis of identity card submitted after the selection process was over, with the publication of the select list."

28. In view of above discussions, the questions are answered as under:-

(a) the candidates who are appearing or have appeared for examination for Auxiliary Nurse Midwifery Training Course on the last date of filling up of the application form would not be eligible for consideration for appointment on the post of Female Health Worker;

(b) the qualification as required under the advertisement are to be examined on the last date of submission of application forms as fixed under the advertisement in the cases where the selection is to be done only on the basis of marks obtained in the qualifying examination, as mentioned in the application form.

27. All the writ petitions are accordingly dismissed. All pending applications also stand dismissed. No costs."

Counsel further relied upon the judgment passed by the Division Bench of this court in the matter of 'The State of Rajasthan and others Vs. Zaiba and others' (D.B. Special Appeal Writ No.252/2019) wherein para Nos. 24 to 27 has been held as under:- "24. Indubitably, the writ petitioners were not holding the requisite qualification as on the date of submission of the application forms online inasmuch as, at the relevant time, they were pursuing their internship and had not acquired the registration with RPMC after completion of the professional course. Merely because, they were permitted to fill up the application form, notwithstanding that they were not holding the requisite qualification as on the date of the submission of application form online, pursuant to an interim order passed by this Court, no right is created in their favour. The requirement of the eligibility qualification as on the date of the submission of the application form as specified in the advertisement, cannot be relaxed inasmuch as there is no provision in the Rules of 1965 permit such relaxation. Moreover, many more persons who were not having the qualification as on the date fixed for submission of the application form but were in position to obtain the requisite qualification subsequent thereto, might not have even applied for appointment to the post. That apart, if the writ petitioners who are not otherwise eligible to apply for the post, are permitted to participate in the selection process and stand in merit, other persons who were having the requisite qualification as on the date of submission of the application form, may be deprived of the appointment. In the considered opinion of this Court, the cut-off date fixed for the eligibility qualification while initiating the recruitment process needs to be adhered to strictly so as to maintain transparency and fairness in the recruitment process undertaken for public employment.

25. At this stage, it is noticed that the learned Single Judge has declared Condition No.6 (ii) of the advertisement as contrary to the Rules of 1965 as amended by Rules of 1999, but then, a perusal of the advertisement reveals that there exists no Condition No. 6 (ii) in the advertisement issued, rather, Clause 6 of the advertisement deals with eligibility and academic qualification, wherein, at serial no.2 the academic/ professional qualification and other eligibility required for the recruitment to the post of Lab Technician is mentioned. However, it is apparent that the learned Single Judge intended to declare that part of Clause 6

as illegal and void, which prescribes that the person applying for recruitment to the post must possess the eligibility qualification as on the date of submission of the application form, which is not found to be correct and justified by us for the reasons mentioned hereinabove.

26. In view of the discussion above, the special appeal deserves to be allowed.

27. Accordingly, the special appeal is allowed. The order under appeal dated 7.5.18 passed by the learned Single Judge is set aside. The writ petition preferred by the respondents-writ petitioners is dismissed. No order as to costs."

Heard counsel for the parties and perused the record.

These writ petitions filed by the petitioners deserve to be dismissed for the reasons; firstly, admittedly, the petitioners were not having the requisite qualification on the last date of submission of the application form i.e. 30.07.2020 for the post in question as required under the Rules of 1965; secondly, the same controversy has already been considered and decided by the Co-ordinate Bench of this court in the matter of Suman Jat (supra) and also at Principal Seat, Jodhpur in the matter of The State of Rajasthan (supra); thirdly, according to the scheme of Rules the applicant must be registered with Rajasthan Para-Medical Council and none of the petitioners in these writ petitions is registered with the Rajasthan Para-Medical Council.

In that view of the matter, these writ petitions fail and are hereby dismissed."

In that view of the matter, these writ petitions stand dismissed in view of the judgment passed by this court in the matter of Sanjay Kumar (supra). However, the petitioners will be at liberty to file application for recalling of this order, if required.