
(2019) 05 RAJ CK 0118
In the Rajasthan High Court
Case No : Civil Writ Petition No. 13034 Of 2018

Varsha Narwani

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 14-05-2019

Acts Referred:

Rajasthan Medical & Health Subordinate Service Rules, 1965 — Rule 13

Citation : (2019) 05 RAJ CK 0118

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Advocate : Abhishek Sharma, Shailendra Rathore, K.S. Rajpurohit, Rajat Arora

Final Decision : Allowed

Judgement

This writ petition has been filed by the petitioner seeking a direction to the respondents to consider the candidature of the petitioner for the post of Assistant Radiographer pursuant to the advertisement dated 25.05.2018 (Annex.-6).

It is indicated in the writ petition that the petitioner is 40% visually handicapped since her childhood.

It is further indicated that the petitioner passed her Senior Secondary Examination in Science/Biology Stream in the year 2013 with first division marks, she was selected and given admission in three years' bachelor's degree in Radiation Technology in Rajasthan University of Health Sciences, Jaipur, which also she passed with first division marks and got registered with Rajasthan Para-Medical Council.

In the recruitment vide advertisement dated 25.05.2018 as the reservation for physically disabled candidates was confined for OL and HI, the petitioner applied as a general candidate. The petitioner based on her qualification stood in merit as general candidate and was called for document verification. However, in the final list issued by the respondents, name of the petitioner was not reflected.

In response to the writ petition, the State has produced document (Annex.-R/1) dated 03.08.2018, which pertains to the verification of physically disabled candidates, wherein the petitioner's disability has been indicated as 40%. However, it appears that subjecting the petitioner to the said verification before the medical board pertaining to her disability was misplaced as the petitioner had not claimed reservation under the physically disabled category as her disability was not eligible for reservation.

From the response to the writ petition, it appears that on account of petitioner's physical disability i.e. 40% visual disability, she has been denied appointment.

Provisions of Rule 13 of the Rajasthan Medical & Health Subordinate Service Rules, 1965 reads as under:-

"13. Physical Fitness :- A candidate for direct recruitment to the Service, must be in good mental or bodily health and free from any mental or physical defect likely to interfere with the efficient performance of his duties as a member of service and if selected must produce a certificate to that effect from a Medical Authority notified by the Government for the purpose. The Appointing Authority may dispense with production of such certificate in the case of candidate promoted in the regular line of promotion, or who is already serving in connection with the affairs of the State if he has already been medically examined for the previous appointment and the essential standards of medical examination of the two posts held by him are to be comparable for efficient performance of duties of the new post and his age has not reduced his efficiency for the purpose."

(emphasis supplied)

A perusal of the above reveals that a candidate for recruitment must be in good mental and bodily health and the defect, if any, must not be such which is likely to interfere with the performance of duties as a member of service.

In view of the fact that the petitioner had, despite her disability, acquired the requisite qualification i.e. graduation in radiation technology, the issue as to whether her disability would interfere with efficient performance of her duties was required to be examined by the State before coming to any conclusion pertaining to petitioner's candidature on account of lack of physical fitness.

As whether the petitioner's disability would interfere with efficient performance of her duties, had not been examined at any stage and she was wrongly subjected to examination by the medical board for the purpose of assessing her physical disability, by order dated 26.04.2019, it was directed by this Court as under:-

"In view of the above, it is considered appropriate to call for an expert opinion from a team of experts consisting of three Senior Members of the concerned Departments of Dr. Sampurnanand Medical College, Jodhpur ('the Medical College'). The team shall submit a report with respect to 'whether the petitioner with the kind of disability she is suffering, is fit to perform her duties as Assistant Radiographer'.

A certified copy/web copy of this order be produced by the petitioner before the Principal, Medical College by 01.05.2019 and he would constitute an appropriate team and do the needful as directed hereinbefore.

The petitioner shall appear before the team of experts on 03.05.2019 at the time fixed by the Principal of the Medical College.

The report be produced in a sealed cover before this Court by 08.05.2019."

Pursuant to the order dated 26.04.2019, the medical board was constituted by the Principal, Medical College and a report in sealed cover alongwith DVD etc. has been produced by the learned Additional Advocate General.

The report alongwith DVD etc. is taken on record.

A perusal of the report dated 04.05.2019 of the medical board constituted under the directions of this Court inter alia indicates the following findings:-

"Her competency as assistant radiographer was assessed by observing and video recording of the activity of taking X rays of patients from positioning of patient, exposing x-ray upto processing of image and printing of X-Ray plate. She was able to do all above activities normally and able to generate x ray of patient efficiently on the day of examination(3-5-2019)

Hence we the Medical Board Members are of the opinion that

1. Miss Varsha Narwani is competent to do work as Assistant Radiographer and visual disability did not interfere with efficient performance of her duties as Assistant Radiographer.

2. With the kind of visual disability that Miss Varsha Narwani is suffering, she is fit to perform her duties as Assistant Radiographer."

Learned Additional Advocate General after report was shown to him, fairly submitted that State has no objection to the report of the medical board.

From the above, it is apparent that the petitioner, though suffering from 40% visual disability, is physically fit insofar as the performance of her duties as Assistant Radiographer is concerned and in those circumstances, apparently the action of the respondents in denying appointment to the petitioner by treating her physically unfit, cannot be sustained.

Consequently, the writ petition filed by the petitioner is allowed. The action of the respondents in holding the petitioner ineligible on account of her visual disability is quashed and set aside. The respondents are directed to accord appointment to the petitioner on the post of Assistant Radiographer pursuant to the advertisement dated 25.05.2018 (Annex.-6) with all consequential benefits from the date person lower in merit to the petitioner was granted appointment by the respondents, if she is otherwise eligible.

However, the petitioner would be entitled to monetary benefits only from the

date, the appointment is accorded to her.

Needful may be done by the respondents within a period of four weeks from the date of this order.