

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR

O R D E R1. D.B.CIVIL WRIT PETITION NO.3196/2013Mahipal Singh & Ors.Vs.State of Rajasthan & Ors.2. D.B.CIVIL WRIT PETITION NO.3198/2013Deva Ram Choudhary & Ors.Vs.State of Rajasthan & Ors.3. D.B.CIVIL WRIT PETITION NO.5743/2013Mohan Ram Potliya & Ors.Vs.State of Rajasthan & Ors.4. D.B.CIVIL WRIT PETITION NO.9071/2013Hanumana Ram & Ors.Vs.State of Rajasthan & Ors.5. D.B.CIVIL WRIT PETITION NO.12127/2013Sanjay Kumar Dhaker & Ors.Vs.State of Rajasthan & Ors.6. D.B.CIVIL WRIT PETITION NO.12355/2013Navin Patidar & Ors.Vs.State of Rajasthan & Ors.7. D.B.CIVIL WRIT PETITION NO.11502/2013Mukesh KumarVs.State of Rajasthan & Ors.

Date of order : 28th February, 2014

PRESENT

HON'BLE THE CHIEF JUSTICE MR AMITAVA ROY

HON'BLE MR JUSTICE VIJAY BISHNOI

Mr Ravindra Singh]
Mr Hanuman Singh Choudhary]
Mr Deepak Nehra]
Mr S.R.Paliwal]
Mr Sunil Purohit]
Mr B.S.Tanwar] for petitioners

Ms Varsha Bissa for]
Mr Anil Bissa]
Ms Kusum Rao,] for respondents

BY THE COURT: (PER HON'BLE BISHNOI, J.)

The petitioners, in these writ petitions, have challenged the validity of the amended proviso to Rule 19 of the Rajasthan Medical & Health Subordinate Service Rules, 1965 (for short 'the Rules of 1965' hererinafter) vide notification dated 06.02.2013, whereby benefit of bonus marks, on the basis of experience gained, has been extended to the candidates working under the Government, National Rural Health Mission and Medicare Relief Society.

The petitioners, who are working as Nursing Staff in the private hospitals run by private medical colleges or the hospitals run by the Co-operative Societies have claimed

that they are also discharging similar kind of duties as discharged by the Nursing Staff, working under the Government, National Rural Health Mission and Medicare Relief Society but the Government has discriminated with them by restricting the benefit of bonus marks to those persons only, who are working under the Government, National Rural Health Mission and Medicare Relief Society while excluding the petitioners. It is contended on behalf of the petitioners that they are also discharging similar kind of duties as performed by the Nursing Staff working under the Government, National Rural Health Mission and Medicare Relief Society and, therefore, they are also entitled for bonus marks on the similar lines against the experience gained by them while working in private hospitals. It is also contended that there is no justification to deny the bonus marks to the candidates having experience of working as Nursing Staff with the private hospitals.

Per contra, learned counsels for the respondents-State have argued that there is no illegality in making provisions for

awarding benefit of bonus marks to the persons having experience of working under the Government, National Rural Health Mission and Medicare Relief Society vis-a-vis the persons working as Nursing Staff in the private hospitals. It is also contended that the said classification is permissible under the law because the same has been done in view of the fact that the persons serving as Nursing Staff under the Government, National Rural Health Mission and Medicare Relief Society have additional responsibility, sensitivity and liability, which the petitioners are lacking. The learned counsels for the respondents have placed reliance on the decision passed by a Co-ordinate Bench of this Court in *Mool Chand Jat & Anr. vs. State of Rajasthan & Ors. (D.B.Civil Writ Petition No.12346/2012)*, wherein the Co-ordinate Bench of this Court has rejected the similar kind of challenge to the proviso to Rule 19 of the Rules of 1961 made by the Pharmacists working in different private institutes vis-a-vis Pharmacists working under the Government, Chief Minister BPL Jeevan Raksha Kosh,

National Rural Health Mission and other projects of the State Government or the Sahakari Upbhokta.

Heard the learned counsel for the rival parties and perused the material placed on record.

The amended proviso to Rule 19 of Rules of 1965, which is under challenge, is reproduced hereunder:

“Provided that in case of appointment to the posts other than Pharmacist, which are not in the purview of the Commission, merit shall be prepared by the Appointing Authority on the basis of marks obtained in such qualifying academic examination or profession examination or both as specified in the schedule appended to these rules and such bonus marks as may be specified by the State Government having regard to the length of experience on similar work under the Government, National Rural Health Mission Medi Care Relief Society.”

The benefit of bonus marks has been given under amended proviso to Rule 19 to the Nursing Staff, who obtained the experience, while working under the Government, National Rural Health Mission or

under the Medicare Relief Society.

Experience gained in the private job has not been included for grant of bonus marks.

We are of the opinion that the persons working as Nursing Staff in the private hospitals cannot be treated similar to the persons working under the Government, National Rural Health Mission and Medicare Relief Society. There is a difference in requirement of job and liabilities, and the persons working as Nursing Staff in the private hospitals cannot take plea of discrimination. Working in the private hospitals stand on different footing and cannot be said to be on similar terms and conditions as rendered in the Government, National Rural Health Mission or the Medicare Relief Society.

A Co-ordinate Bench in *Mool Chand Jat's* case (*supra*), while examining similar issue, has held as under:

“Experience gained in private job has not been included for grant of bonus marks. In our opinion, private job stands on different footing and cannot be said to be on similar terms and conditions as rendered in

Government Institutions etc. as provided in amended Rule 19. The private Pharmacists cannot be treated of same class, hence, they cannot take plea of discrimination. It is open to the State Government to give bonus marks to particular class of person. As there is difference in conditions, liabilities, requirement of job, the petitioners cannot claim similar treatment. The classification made by the Government cannot be said to be illegal or arbitrary. It is open to the Government to classify person for such purpose. Classification made cannot be said to be irrational. Article 14 permits classification on different bases. The responsibility of Government job/cooperative is different than private job. Since there is qualitative difference also in jobs, classification cannot be said to be arbitrary. We are not able to accept the submission that private work can be equated in all respects with the jobs enumerated in amended proviso to Rule 19 of the Rules of 1965. The condition of service responsibility differs from job to job, thus, private Pharmacists cannot claim part of the same class. Hence, plea of discrimination is not available to them.

Another Co-ordinate Bench of this Court in **D.B.Civil Writ Petition**

No. 10985/2013 (Dr. Ashutosh Parihar vs. State of Rajasthan & Ors.), while examining the validity of a similar provisions under the Rajasthan Ayurvedic, Unani, Homoeopathy and Naturopathy Service Rules, 1973 has observed as under:

“Having given anxious consideration to the submissions made and having examined the material placed on record, we are clearly of the view that this writ petition remains bereft of substance and does not merit admission.

The material placed on record makes it clear that before starting of the selection process in question, by the notification dated 13.05.2013, the existing provisions of Rule 19 of the Rules of 1973 were amended with insertion of the following proviso:

“Provided further that the Appointing Authority shall scrutinize the applications received by it to the posts of Ayurved Chikitsadhikari, Homoeopathy Chikitsadhikari, Unani Chikitsadhikari. The merit shall be prepared by the Appointing Authority on the basis of marks obtained in such qualifying examination as specified in the Schedule appended to these rules and such bonus marks as may be specified by the State Government having regard to the length of experience on similar work under the Government, Chief Minister BPL Jeevan Raksha Kosh and National Rural Health Mission, as the case may be. The decision of the Appointing Authority regarding the eligibility or otherwise of a candidates, shall be final.”

It appears that the Government had issued an order on 28.05.2013 specifying the bonus marks; and the stipulation in Clause 7 of the advertisement (Annex.5) came to be stated in accord therewith. We may observe that validity or otherwise of the provision for bonus marks is not in issue in the present case. The consideration herein is to the limited extent as to whether restriction of bonus marks only to the persons working in the referred organizations/projects suffers from any illegality.

It is noticed that in the case of Mool Chand Jat & 15 Anr. Vs. State of Rajasthan & Ors: 2013(1) WLC (Raj.) 239, a Division Bench of this Court has rejected similar nature contention in relation to the recruitment to the post of Pharmacist in the following:

“12. In view of the above, if benefit of bonus marks has been extended only to the Pharmacists, who have gained experience under the Government Institutions, Cooperative Department, Shahakari Upbhokta Bhandar etc. As enumerated in the amended Rule 19 of the Rules of 1965 and such benefit has not been made available to the private Pharmacists, who have gained experience in private institutes/shops, it cannot be said that action of the Government was arbitrary or violative of Article 14 or 16 of the Constitution of India. Classification made by the Government does not suffer from the vice of arbitrariness, rather it appears to be reasonable and rational one. No case of discrimination is made out.”

Then, in the case of Arvind Singh & Ors. Vs. State of Rajasthan & Ors :

D.B. Civil Writ Petition No.4709/2013, decided on 29.08.2013, in relation to the recruitment to the post of Pharmacist, an stipulation about grant of bonus marks to the persons working in referred organizations/projects only after the minimum experience of 1 year was put to question; and it was contended that total denial of bonus marks for the services rendered below 1 year was unconstitutional and the persons with lesser experience ought to have been provided proportionate benefit. This court rejected such contentions with the following observations:

“Having considered the rival submissions, we are unable to find any illegality or unconstitutionality in the provisions sought to be questioned. Awarding of bonus marks for the purpose of recruitment is itself a matter of concession; and cannot be considered to be a matter of right. As to how, and in what manner, the concession is, if at all, to be given, remains within the domain of the employer concerned. The Government has proceeded to recognize the experience on similar nature work in the specific schemes/organizations/projects and has provided for 10% bonus marks for every completed year of experience with maximum of 30% bonus marks. We are unable to find any basis for the claim made by the petitioners that such bonus marks ought to be provided for the experience of lesser duration too, or on proportionate basis. As to which, and how much, of the experience is to be treated to be the requisite is, again, a matter within the domain and jurisdiction of the employer concerned; and it cannot be claimed as a matter of right that if the petitioners have worked for about 8-9 months, they should be given some bonus marks on the so-called proportionate basis.

We are clearly of the view that on the claim as made, the petitioners have failed to

show any illegality or unconstitutionality in the provisions impugned or any illegality in the decision taken by the Government. “

The observations aforesaid directly apply to the present case too with necessary variations. If at all the bonus marks are to be given, which itself is a matter of concession, as to which particular experience is to be treated eligible for such concession is a matter within the domain of the respondents; and it cannot be claimed as a matter of right that the persons like the petitioner, who had allegedly rendered honourary services to the Charitable Project Society of Lions Club, be also treated as having the requisite experience.”

On an overall consideration of the relevant facts and the underlying objective of the amendment to Rule 19 of Rules of 1965, we subscribe to the proposition laid down by the Co-ordinate Benches as above.

Hence, the challenge of the petitioners to the amended proviso to Rule 19 of the Rules of 1965 is bereft of any merit and, therefore, all these writ petitions filed by the petitioners are hereby dismissed. No costs.

[VIJAY BISHNOI], J.

[AMITAVA ROY], CJ.

m.asif/-