

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Civil Writs No. 12332/2018

1. Rohit Sharma S/o Sumer Chand Sharma, Resident Of Near Railway Phatak, Krishnapuri, Kishangarh, Ajmer, Rajasthanpursuing Diploma In Radiation Technology, J L N Medical College, Ajmer
2. Kamal Kishore S/o Tikam Chand Garoda, Resident Of F-67, Ambuja Township Rabriyawas, Tehsil Jaitaran, Distt. Pali, Rajasthan.pursuing Bachelor Decree In Radiation Technology, J L N Medical College, Ajmer
3. Rishabh S/o Ram Prakash, Resident Of Todaraisingh, Tonk, Rajasthan.pursuing Diploma In Radiation Technoligy, J L N Medical College, Ajmer
4. Mukesh Sharma S/o Dwarka Prasad Sharma , 83 Premnagar, Gopal-Vihar, Agra Road, Jaipur, Rajasthan.pursuing Bachelor Decree In Radiation Technology, J L N Medical College Ajmer
5. Prateek Kumar S/o Suresh Kumar, Resident Of Ward No.42 Suryanagar, Pepraliroad, Sikar.pursuing Bachelor Decree In Radiation Technology, J L N Medical College, Ajmer
6. Rakesh Kumawat S/o Devaram Kumawat, Resident Of Kasidokaamohalla Ward No. 7, thavla, Nagore, Rajasthan.pursuing Diploma In Radiation Technology, J L N Medical College, Ajmer
7. Shabash Ahmad S/o Khalil Ahmad, Resident Of Pisangan.pursuing Diploma In Radiation Technology, J L N Medical College Ajmer
8. Jayed Hussain S/o Zakir Hussain, Resident Of Medta City, Nagore.pursuing Diploma In Radiation Technology, J L N Medical College Ajmer
9. Sanjay Choudhary S/o Teja Ram Choudhary, Resident Of Behind Rishnal Collage, Ganpatinagar, Pushkar Road, Ajmerpursuing Diploma In Radiation Technology, J L N Medical College, Ajmer
10. Doongaram Bhakar S/o Ramdev, Resident Of Candawala, Degana, Nagor.pursuing Diploma In Radiation Technology, J L N Medical College, Ajmer

11. Nilesh Jeengar S/o Trilok Chand, Resident Of Mochimohhalla Antali.asind, Bhilwara.pursuing Diploma In Radiation Technology, J L N Medical College Ajmer
12. Mukesh Yadav S/o Babulal Yadav, Resident Of Hathnada, Chomu, Jaipur.pursuing Diploma In Radiation Technology, J L N Medical College, Ajmer
13. Surbhi D/o Kailash, Kangwamohalla, Kalseravia Pisangan Ajmer.pursuing Bachelor Decree In Radiation Technology, J L N Medical College. Ajmer
14. Himanshi Sankhla D/o Badrilal, Resident Of 154, Labour Mill Colony, Near Railway Station, Beawer, Ajmerpursuing Bachelor Decree In Radiation Technology, J L N Medical College, Ajmer
15. Wasim S/o Kurshid Ahmad, Resident Of Qureshi Mohalla. Ajmer Road, Padukalatahsil, Medta City, Nagore pursuing Bachelor Decree In Radiation Technology, J L N Medical College , Ajmer

-----Petitioners

Versus

1. State Of Rajasthan Through Principal Secretary, Department Of Medical And Health, Govt. Secretariat, Rajasthan, Jaipur.
2. Director Public Health, Department Of Medical And Health, Tilak Marg, C-Scheme, Jaipur Rajasthan
3. Rajasthan University Of Health Sciences, Through Registrar, Sector-18, Kumbha Marg, Pratap Nagar, Jaipur, Rajasthan

-----Respondents

Connected with

S.B. Civil Writs No. 13236/2018

Vikram Singh Shekhawat & Ors.

-----Petitioner

Versus

State Of Rajasthan And Ors.

-----Respondent

Connected with

S.B. Civil Writs No. 13238/2018

Amit Sharma And Ors

----Petitioner

Versus

State Of Raj And Ors

----Respondent

Connected with

S.B. Civil Writs No. 13310/2018

Mamta Choudhary & Anr.

----Petitioner

Versus

State Of Raj Through Principal Secretary

----Respondent

Connected with

S.B. Civil Writs No. 12506/2018

Kaushal Sharma And Ors.

----Petitioner

Versus

State Medical And Health & Ors.

----Respondent

Connected with

S.B. Civil Writs No. 13311/2018

Mohan Lal Choudhary And Ors.

----Petitioner

Versus

State Of Raj And Ors.

----Respondent

Connected with

S.B. Civil Writs No. 12814/2018

Jeevan Prakash Tyagi And Ors

----Petitioner

Versus

State Of Raj And Ors

----Respondent

Connected With

S.B. Civil Writs No. 13818/2018

Munesh Kumar S/o Shri Sugnaram

----Petitioner

Versus

State Of Rajasthan Through Its Secretary, Medical And Health Department, Government Of Rajasthan.

----Respondent

Connected With

S.B. Civil Writs No. 16603/2018

Rohit Kumar Nagar S/o Shri Balram Nagar & Ors.

----Petitioner

Versus

State Of Rajasthan Through Its Additional Chief Secretary

----Respondent

Connected With

S.B. Civil Writs No. 16606/2018

Bhawana Jain D/o Shri Rajesh Jain & Ors.

----Petitioner

Versus

State Of Rajasthan Through Its Additional Chief Secretary

----Respondent

Connected With

S.B. Civil Writs No. 12716/2018

Gopal Singh Thakar And Ors

----Petitioner

Versus

State Of Raj And Ors

----Respondent

Connected With

S.B. Civil Writs No. 12321/2018

Bhawana Jain & Ors.

----Petitioner

Versus

State Of Rajasthan And Anr.

----Respondent

For Petitioner(s) : Mr. Vikas Kabra, Adv., Mr Raj Sharma

Mr. Anshuman Saxena, Mr Kuldeep
Kumar Sharma, Mr. Vinod Kumar
Gupta, Mr. Arun Singh Shekhawat

For Respondent(s) : Mr. Shyam Arya, AAG.

HON'BLE MR. JUSTICE VEERENDR SINGH SIRADHANA

Order

31/07/2018

Batch of writ applications noted hereinabove, projects identical questions of law and facts for adjudication and therefore, the matters have been taken together for final adjudication as prayed and consented by the counsel for the parties.

Briefly, the essential skeletal materials facts necessary for appreciation of the controversy are that the petitioners submitted their application form for consideration of their candidature for the post of "Assistant Radiographer", in response to advertisement dated 25th March, 2018. It is pleaded case of the petitioners that their candidature has been declined by the State respondents contrary to proviso inserted vide Rajasthan Various Service (Amendment) Rules, 1999 [for short, (Amendment) Rules, 1999], which contemplated eligibility on the candidates, who '*have appeared or are appearing*' for the final year examination of the course, which is the requisite educational qualification for the post as contemplated under the relevant recruitment Rules.

Mr. Anshuman Saxena, learned counsel for the petitioners reiterating the plead facts and grounds of the writ application(s) argued that the petitioners are students of final years of Diploma in Radiation Technology (DRT), Bachelor Radiation Technology (BRT). Learned counsel further added that the respondents have committed serious illegalities not

incorporating the specific text of the amendment carried out vide (Amendment) Rules, 1999 (supra). Thus, several other candidates, who could have applied in the backdrop of contemplation conferring eligibility on the candidates, who '*appeared or are appearing*' in the final year examination of the course.

It is further urged that this court while considering the matters at the motion stage on 20th June, 2018, made an interim order, permitting the petitioners provisionally to participate in the recruitment process, affording an opportunity of hearing to the counsel for the State-respondents as would be evident from interim order dated 20th June, 2018.

Endorsing the arguments, Mr. Vinod Gupta, Advocate, urged that according to the Academic Calendar, Rajasthan University of Health Sciences, was required to adhere to academic calendar and the examination of the final year which ought to have commenced in the month of July, 2018, have not commenced till date. Therefore, for the University has failed to adhere to its Academic Calendar, the inaction/omission of the University cannot be a punishment for the participating of candidates, who otherwise would have been eligible, had the University initiated the process of holding the examination of the final year of the Diploma in Radiation Technology (DRT), Bachelor Radiation Technology (BRT) as per prescribed Academic Calendar.

Mr. Vikas Kabra, learned counsel for the petitioners, in addition, asserted that somewhat identical controversy has already entertained at Principal Seat, Jodhpur, in a batch of writ applications, leading case being S.B.C.W.P. No.14884/2016 (Zaiba & Ors. Vs. State of Rajasthan & Ors.), decided on 07th May, 2018.

According to learned counsel the interpretation of the text of proviso as amended vide (Amendment) Rules of 1999 (supra), would confer eligibility on the candidates, who have appeared or are appearing, in the final year examination of the course, which is requisite educational qualification for the post. Petitioners are to write their examination of the final year in the month of July/August, 2018; hence, they are entitled for participation in the recruitment process involved herein. Ms. Raj Sharma, Learned counsel further added that restricting the meaning of phrase '*appeared or is appearing*' in the final year examination of the course, which is requisite educational qualification, would be detrimental to the interest of the petitioners for the recruitment processes are often strached over years, as it happened in the previous recruitment process wherein the process was concluded in two years.

In response to the notice of the writ applications, the State-respondents have filed their counter affidavit. Mr. Shyam Arya, learned AAG, supporting the stand in the counter-affidavit resisting the claim of the petitioners, pointed out that a glance of (Amendment) Rules of 1999 (supra), would reflect that the candidates who had acquired eligibility would be the candidates who have '*appeared or are appearing*' for the final year examination of the course which is requisite educational qualification for the post as mentioned in the Rajasthan Medical and Health Subordinate Service Rules, 1965 (for short, Rules of 1965).

According to learned Additional Advocate General, the petitioners have neither '*appeared nor are appearing*' in the final year examination of the course, which is essential qualification for

the post involved herein, and therefore, the writ applications merit rejection on that count alone.

Heard the learned counsel for the parties and with their assistance perused the relevant materials available on record as well as gave my thoughtful consideration to the rival submissions at Bar.

Indisputably, while considering the matter for the grant of interim relief at motion stage on 20th June, 2018, this court made the following order:-

“याचीगण एवं अयाचीगण की ओर से उपस्थित पक्ष को सुना गया।

याचीगण की ओर से सहायक रेडियोग्राफर के पद पर नियुक्ति के क्रम में जारी विज्ञप्ति वर्ष 2018 में शैक्षणिक एवं व्यवसायिक योग्यता के क्रम में अंकित शर्त संख्या-1 व 2 की अनिवार्यता को समाप्त कर, याचीगण को संबंधित पद के लिये आवेदन करने की अनुमति दिये जाने की प्रार्थना की गई है।

दोनों पक्षों की ओर से इस क्रम में संबंधित नियमों की ओर न्यायालय का ध्यान आकर्षित किया गया।

योग्य अधिवक्ता याचीगण का कथन रहा कि संबंधित पद पर नियुक्ति के लिये जारी विज्ञप्ति में जो शर्तें अधिरोपित की गई हैं, वे शर्तें **The Rajasthan Various Service (Amendment) Rules, 1999** के प्रोविजो के विपरीत हैं। उनका कथन रहा कि वर्तमान याचीगण संबंधित कोर्स-पाठ्यक्रम के अन्तिम वर्ष में अध्ययन कर रहे हैं तथा अध्ययनरत अभ्यर्थियों को भी नियमानुसार संबंधित पद की परीक्षा में भाग लेने का अधिकार है। इस क्रम में उनकी ओर से राजस्थान उच्च न्यायालय, जोधपुर द्वारा एकलपीठ सिविल रिट याचिका संख्या-14884/2016 एवं अन्य में पारित आदेश दिनांक 07.05.2018 एवं राजस्थान उच्च न्यायालय, जयपुर पीठ जयपुर द्वारा एकलपीठ सिविल रिट याचिका संख्या-12332/2018 में पारित आदेश दिनांक 08.06.2018 की प्रति प्रस्तुत की।

योग्य अतिरिक्त महाधिवक्ता का कथन रहा कि संबंधित नियम में मात्र यही व्याख्या दी गई है कि अंतिम वर्ष में जो अभ्यर्थी/विद्यार्थी परीक्षा में उपस्थित हो चुके हैं अथवा जिनकी परीक्षा चल रही है, वे ही संबंधित पद के लिये आवेदन करने के हकदार हैं। उनके अनुसार वर्तमान याचीगण मात्र अन्तिम वर्ष में अध्ययन कर रहे हैं। अतः याचीगण को इस प्रक्रम पर कोई उपचार प्रदान नहीं किया जा सकता है।

विचार किया गया। संबंधित नियम निम्न प्रकार है। 77.

The Rajasthan Various Service(Amendment) Rules, 1999- Proviso in the rule of the Service Rules mentioned against them-Added.

G.S.R.74-In exercise of the powers conderred by the proviso to Art. 309 of the Constitution of India, the Governor of Rajasthan hereby makes the following rules

further to amend the Various Service Rules, as specified in the schedule appended herewith, namely:-

1. Short title and commencement.-(1) These Rules may be called the **Rajasthan Various Service (Amendment) Rules, 1998.**

(2) They shall come into force with immediate effect.

2. Amendment- In the existing rule as mentioned in column Number 3 against each of the service rules as mentioned in column Number 2 of the Schedule appended herewith, the following proviso shall be added, namely:-

“provided that the person who has appeared or is appearing in the final year examination of the course which is the requisite educational qualification for the post as mentioned in the rules or schedule for direct recruitment, shall be eligible to apply for the post but he/she shall have to submit proof of having acquired the requisite educational qualification to the appropriate selection agency:-

- (i) before appearing in the main examination, where selection is made through two stages of written examination and interview;
- (ii) before appearing in interview where selection is made through written examination and interview
- (iii) before appearing in the written examination or interview where selection is made through only written examination or only interview, as the case may be”

उपरोक्त नियमों के अवलोकन से प्रकट होता है कि प्रकरण में याचीगण के अधिकारों एवं इस क्रम में सीधे साक्षात्कार के प्रावधान लागू होने के परिणामस्वरूप साक्षात्कार के समय तक शैक्षणिक योग्यता पूर्ण कर दस्तावेजात प्रस्तुत किया जाना अनिवार्य होना प्रथमदृष्ट्या प्रकट होता है।

उपरोक्त नियम की उक्त मन्त्रा को ध्यान में रखते हुए इस न्यायालय की राय में प्रथमदृष्ट्या याचीगण को संबंधित पद के लिये अंनतिम रूप से (**provisionally**) आवेदन प्रस्तुत करने हेतु अधिकृत समझा जाता है।

अतः अयाचीगण को अंतरिम रूप से निर्देशित किया जाता है कि सहायक रेडियोग्राफर के पद के क्रम में याचीगण के प्रार्थना पत्र प्रथमदृष्ट्या अंनतिम रूप से (**provisionally**) स्वीकार किये जावें। इस पद पर याचीगण की नियुक्ति रिट याचिका के निर्णय के अधीन **शासित (govern)** रहेगी।”

In the recruitment process involved herein, application forms of the eligible candidates have been scrutinized and a list has been drawn of eligible candidates for the purpose of document verification. The process of document verification is to commence with effect from 01st August, 2018.

At this juncture, it will be profitable to take note of the relevant text of Rajasthan Various Service (Amendment) Rules 1999, which reads thus:-

"Amendment-in the existing rule as mentioned in Column Number 3 against each of the Service Rules as mentioned in Column Number 2 of the Schedule appended herewith, the following proviso shall be added, namely:-

Provided that the person who **has appeared or is appearing** in the final year examination of the course which is the requisite educational qualification for the post as mentioned in the rules or schedule for direct recruitment, shall be eligible to apply for the post but he/she shall have to submit proof of having acquired the requisite educational qualification to the appropriate selection agency:-

(i) before appearing in the main examination, where selection is made through two stages of written examination and interview;

(ii) before appearing in interview where selection is made through written examination and interview.

(iii) before appearing in the written examination or interview where selection is made through only written examination or only interview, as the case may be."

Indisputably the case of the petitioners is covered by clause (iii). Further, a glance of proviso would reflect that it is applicable to the participating candidates, **who have appeared or are appearing**, in the final year examination of the course, which is requisite educational qualification for the post as mentioned in the Rules or scheduled for direct recruitment.

Admittedly, the petitioners have neither '**appeared or are appearing**', in the final year examination of the eligibility course under the relevant recruitment rules.

In the case of **Harbhajan Singh Vs. Press Council of India & Ors.**, (2002) 3 Supreme Court Cases 722, the Apex Court of the land, on survey of earlier opinions in no uncertain terms held that ordinary, grammatical and full meaning is to be assigned to the words used while interpreting a provision to

honour the Rule. At this juncture, it will be profitable to take note of the text of para 9 of the judgment in the case of *Harbhajan Singh (supra)*, which reads thus:-

9. Cross in Statutory Interpretation (Third Edition, 1995) states :

"The governing idea here is that if a statutory provision is intelligible in the context of ordinary language, it ought, without more, to be interpreted in accordance with the meaning an ordinary speaker of the language would ascribe to it as its obvious meaning, unless there is sufficient reason for a different interpretation.... Thus, an 'ordinary meaning' or 'grammatical meaning' does not imply that the judge attributes a meaning to the words of a statute independently of their context or of the purpose of the statute, but rather that he adopts a meaning which is appropriate in relation to the immediately obvious and unresearched context and purpose in and for which they are used. By enabling citizens (and their advisers) to rely on ordinary meanings unless notice is given to the contrary, the legislature contributes to legal certainty and predictability for citizens and to greater transparency in its own decisions, both of which are important values in a democratic society" (p.32 ibid).

The learned author cites three quotations from speeches of Lord Reid in House of Lords cases, the gist whereof is: (i) in determining the meaning of any word or phrase in a statute ask for the natural or ordinary meaning of that word or phrase in its context in the statute and follow the same unless that meaning leads to some result which cannot reasonably be supposed to have been the legislative intent; (ii) rules of construction are our servants and not masters; and (iii) a statutory provision cannot be assigned a meaning which it cannot reasonably bear; if more than one meaning are capable you can choose one but beyond that you must not go (p.40, ibid). Justice G.P. Singh in his celebrated work *Principles of Statutory Interpretation* (Eighth Edition, 2001) states (at page 54)

"The intention of the Legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. As a consequence a construction which requires for its support addition or substitution of words or which results in rejection of words as meaningless has to be avoided."

The learned author states at another place (at page 74, ibid) that the rule of literal construction whereby the words have to be assigned their natural and grammatical meaning can be departed from but subject to caution. The golden rule is that the words of statute must *prima facie* be given their ordinary meaning. A departure is permissible if it can be shown that the legal context in which the words are used or the object of the statute in which they occur requires a different meaning. To quote,

"Such a meaning cannot be departed from by the judges 'in the light of their own views as to policy' although they can 'adopt a purposive interpretation if they can find in the statute read as a whole or in material to which they are permitted by law to refer as aids to interpretation an expression of Parliament's purpose or policy'. A modern statement of the rule is to be found in the speech of Lord Simon of Glaisdale in *Suthendran v. Immigration Appeal Tribunal*, (1976) 3 All ER 611, 616 to the effect __ 'Parliament is *prima facie* to be credited with meaning what is said in an Act of Parliament. The drafting of statutes, so important to a people who hope to live under the rule of law, will never be satisfactory unless courts seek whenever possible to apply 'the golden rule' of construction, that is to read the statutory language, grammatically and terminologically, in the ordinary and primary sense which it bears in its context, without omission or addition. Of course, Parliament is to be credited with good sense; so that when such an approach produces injustice, absurdity, contradiction or stultification or statutory objective the language may be modified sufficiently to avoid such disadvantage, though no further'."

In view of the principles deducible from the law declared by the Apex Court of the land, now it is well settled that the legislature does not waste its words. Hence, while assigning ordinary, grammatical and full meaning to the words in the phrase "appeared or are appearing", are required to be considered in that light for 'golden Rule' of interpretation.

A coordinate Bench of this Court adjudicated upon somewhat similar controversy in a batch of writ applications, lead case being S.B. Civil Writ Petition No.4690/2016 (Monika Vs. State of Rajasthan & Anr.), observing thus:-

"In view of above, petitioners cannot be held eligible as neither they were appearing nor appeared in final year examination on or before last date of submission of application form. The controversy decided herein was before the Principal Seat at Jodhpur in the case of Manoj Kumar & Ors. (*supra*). Therein, the writ petition was dismissed vide order dated 16th August, 2016 thus judgment aforesaid also applies to the present writ petitions as it is for the same recruitment and on the same issue."

Having regard to the factual matrix of batch of writ applications, where petitioners have neither "appeared" nor "are appearing" for the final year examination of the course, which is essential educational qualification required for the post involved herein; are not entitled to participate in the recruitment process for they lack of basic eligibility for not having acquired the essential educational qualifications. The mere fact of non-inclusion of the amended added text of proviso of (Amendment) Rules, 1999 (Supra), cannot render the action of the State-respondents, as illegal arbitrary or bad in the eye of law.

In the view of the above, the instant batch of writ applications, is devoid of any substance and lacks in merit, and therefore, deserves to be dismissed.

Ordered accordingly.

Interim applications, if any, stand closed.

A copy of this order be placed in each of the connected file.

(VEERENDR SINGH SIRADHANA),J

Aks/-87-90,125,126,129,130,170,172,188/-1-complimentary