



1. State Of Rajasthan, Through Principal Secretary, Department Of Medical And Health, Government Secretariat, Jaipur.
2. Director, (Public Health) Directorate, Medical And Health Services, Jaipur.
3. Rajasthan University Of Health Sciences, Through Its Registrar, Sector 18, Kumbha Marg, Pratap Nagar, Jaipur.

----Respondents

For Petitioner(s) : Mr. Ram Pratap Saini with
Mr. Aamir Khan
Mr. Ashwinee Kumar Jaiman
Mr. Tanveer Ahamad
Mr. Himanshu Jain
Mr. Manvendra Singh Choudhary

For Respondent(s) : Dr. V.B. Sharma, AAG
Mr. Virendra Lodha, Sr. Adv. asst. by
Mr. Shashank Pancholi,
Mr. Raunak Singhvi &
Mr. Rachit Sharma

HON'BLE MR. JUSTICE SUDESH BANSAL

Order

11/10/2023

1. All writ petitions are based on similar set of facts and relief prayed for is identical in nature, therefore, with consent of learned counsel for both parties, the writ petitions have been heard together finally and would stand decided by this common Order.
2. The relevant facts are that writ petitioners submitted online application forms, for seeking appointment on the post of Medical Officer pursuant to recruitment notification dated 13.10.2022 issued by the Rajasthan University of Health Sciences (RUHS), notifying 840 posts of Medical Officer (Medical) to be recruited under the Rajasthan Medical and Health Service Rules-1963 (hereinafter for short "the Rules of 1963") as amended from time to time. The number of vacant posts was later on increased vide amended advertisement dated 05.11.2022. As per scheme of



examination, the process of recruitment is based on online written examination, comprising 100 multiple choice questions of one mark each. Petitioners have appeared in the written examination and after declaration of result, preferred present writ petitions.

3. In these writ petitions, petitioners have raised a common grievance that the respondent State Government has not provided benefit of bonus marks to the petitioners in the present recruitment of Medical Officer-2022 and such action/inaction of respondent State Authorities is arbitrary as well as discriminatory and violative to Article 14 of the Constitution of India.

4. Learned counsel appearing on behalf of writ petitioners have urged that respondent-State Authorities be directed to extend benefit of bonus marks and to give preference to the writ petitioners for appointment on the post of Medical Officer in present recruitment-2022 and have raised following grounds:-

(I) During the outbreak of pandemic Covid-19, the State Government undertook services of petitioners as Covid Health Consultants (Medical Officer). Since the pandemic Covid-19 was unprecedented situation, which spread in all over the nation, therefore, in order to encourage the Health Professionals and to engage their services, for the benefit of public at large, the Government of India, Ministry of Health and Family Welfare issued a letter dated 3rd May 2021 in the name of Additional Chief Secretary/Principal Secretary Health/Medical Education of All States/Uts, whereunder, recommendations were made to the State Governments to consider those health personnel, who have rendered services in the special scheme of covid related duties, for giving preference in regular government appointments of Health



Professionals. The relevant Clause 17 of the letter, reads as under:-

"17. The Central Government recommends to State/UT Governments to consider giving preference in regular Government appointments of Health professionals through the respective Public Service Commission/ other recruitment bodies, for those Health Professionals under this special scheme, who complete a minimum of 100 days of Covid related duty."



(II) On behalf of the Government of Rajasthan, the Chief Minister also made declaration that all the personnel, including medical officers and para medical staff like Nursing Officer, Pharmacist, Women Health Worker, Assistant Radiographer, Lab Assistant etc. who have rendered services during the period of pandemic Covid 19 would be given preference and benefit of bonus marks in the upcoming recruitments related to such services.

(III) The State Government has given benefit of bonus marks to the para medical staff like Covid Health Assistants in their recruitment by issuing a circular, but no such benefit has been giving to the Covid Health Consultants (Medical Officers) like petitioners. Therefore, the action of State is discriminatory with petitioners and violative to Article 14 of the Constitution of India.

(IV) Petitioners have a legitimate expectation from the State Government, being a welfare state to honour its assurance for giving preference in the government upcoming recruitment to Medical Officers, who rendered support of the State Government to tackle the serious situation of corona virus during the pandemic.

5. Learned Additional Advocate General appearing on behalf of State Authorities and learned Senior Counsel appearing on behalf



of RUHS, submit that the matter of grant of benefit of bonus marks is a policy decision of the State Government, and in such matters, petitioners have no vested and legal right so as to invoke the jurisdiction of judicial review of the High Court under Article 226 of the Constitution of India. In the advertisement itself, no scheme for extending any benefit of bonus marks to aspirant candidates for Medical Officer was given and the writ petitioners, after participation in the recruitment process in terms of the advertisement and after appearing in the written examination, are not entitled to claim for the benefit of bonus marks as of right, therefore, writ petitions are not liable to be entertained and be dismissed.

6. Heard. Considered.

7. At the outset, it is not in dispute that the Government of India vide its letter dated 3rd May 2021 made recommendations to the State Government/Union Territories to consider giving preference in regular government appointments of Health Professionals, for those health professionals, who have completed minimum of 100 days services in covid related duties under the special scheme. A copy of letter dated 3rd May 2021 has been placed on record and the relevant Clause 17 of the letter as extracted hereinabove, is not in dispute. A perusal of the Clause 17 reveals that the Government of India made recommendations to the State Governments, including the Government of Rajasthan and it is within the realm/jurisdiction of the State Government to consider for giving preference in the manner, State Government decides, pursuant to such recommendations.



8. The contention of writ petitioners that the Government of Rajasthan through Chief Minister also gave assurance to give preference and benefit of bonus marks to the Health personnel, who have rendered medical and health related services during the pandemic Covid 19 to give the benefit of bonus marks, has not been refuted from the side of respondents, nor any reply to the writ petitions has been filed, denying such averments pleaded in the writ petitions.

9. However, considering the scope of judicial review within Article 226 of the Constitution of India, this Court is of considered opinion that although it is the duty and obligation on the part of State Government, being a welfare State, to consider the grievances of writ petitioners in respect of not awarding the benefit of bonus marks and for not giving any preference in appointment, on the post of Medical Officer, on account of taking their services during pandemic Covid-19, but at the same time, the writ petitioners do not have any such legal and vested right to claim the benefit of bonus marks from the State Government, which can be sought to enforce before the Court of law. The matter related to grant of benefit of bonus marks is a policy decision of the concerned government and petitioners are not entitled to claim grant of benefit of bonus marks as of right. Therefore, this Court in exercise of its power of judicial review, is not inclined to issue any directions to the respondent-State to award the benefit of bonus marks by following the recommendations of the Government of India so also in furtherance to its own assurances, rather it is a matter of pure pious obligations, on the part of the State Government to consider



the issue in question. This Court does not want to interfere in this respect and no writ of mandamus can be issued for this purpose.

10. In addition to above, it may also be noted that it is an undisputed fact that writ petitioners have already appeared in the written examination and participated in the present recruitment of Medical Officer pursuant to terms and conditions of the advertisement dated 13.10.2022 and thereafter, when could not selected in the merit list, on the basis of result of written examination, are claiming to grant benefit of bonus marks, at this stage. Indisputably, in the advertisement, there is no clause for giving benefit of bonus marks, thus when the petitioners participated in the recruitment process, accepting terms and conditions of the advertisement, claiming any additional benefit of bonus marks in the midst of the selection process, is not permissible in law. In this view also, the claim of petitioners for grant of benefit of bonus marks may not be held justified before the Court of law.

11. As far as claiming equality and parity with other persons, belonging to para medical staff is concerned, it is true that in the recruitment of Nursing Officer, Pharmacist, Women Health Worker, Assistant Radiographer, Lab Assistant etc, the State Government has extended benefit of bonus marks to the candidates, whosoever have worked in the covid period, by virtue of and invoking the Rule 19 of the Rajasthan Health & Medical Subordinate Service Rules, 1965 (hereinafter for short "the Rules of 1965"), which permits to provide benefit of bonus marks, but as far as petitioners are concerned, they are claiming recruitment on the post of Medical Officer, which is being made under the Rules of



1963. In the Rules of 1963, learned counsel for petitioners do not dispute that there is no rule for providing benefit of bonus marks. Thus, in absence of any statutory rule in favour of petitioners, which indeed is available for the para medical employees under Rule 19 of the Rules of 1965, the case of petitioners for discrimination is not made out. In absence of having any legal right to claim the benefit of bonus marks, the action/inaction on the part of the State Authorities for not awarding bonus marks, may not be held as violative to Article 14 of the Constitution of India.

12. In view of aforesaid discussions, this Court while exercising its powers under Article 226 of the Constitution of India, is not inclined to issue any directions against the respondents to award the benefit of bonus marks to writ petitioners, nevertheless, it shall remain open to the respondent-State Authorities, being a welfare State, to consider the issue in question to meet out the legitimate expectations of the writ petitioners and alike situated candidates, in the light of assurance given by the Chief Minister, Government of Rajasthan as also in the light of recommendations made by the Government of India in the letter dated 3rd May 2021.

13. Thus, the writ petitions stand disposed of with the aforesaid observations.

14. Stay applications and other pending application(s), if any, stand disposed of.

15. A copy of this Order be placed in each connected file.

(SUDESH BANSAL),J

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