

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Writ Petition No. 2328/2022

Hari Singh Meena

----Petitioner

Versus

1. State Of Rajasthan, Through Its Secretary, Ayurved And Bhartiya Chikitsa Department, Govt. Secretariat, Jaipur (Raj.).
2. Registrar, Dr. Radhakrishnan Ayurved Vishwavidyalay, Prashasnik Khand, Nagor Road, Jodpur (Raj.).
3. Director, Ayurved Department, Rajasthan Ajmer (Raj.).

----Respondents

For Petitioner(s) : Mr. O.P. Sangwa.
For Respondent(s) : Mr. Anil Kumar Gaur, AAG.
Mr. Suniel Purohit.

HON'BLE MR. JUSTICE ARUN BHANSALI

Order

17/02/2022

This writ petition has been filed by the petitioner seeking a direction to the respondents to treat the experience gained by the petitioner from the State of Gujarat as eligible for award of bonus marks for recruitment to the post of Compounder / Nurse Junior Grade pursuant to the advertisement dated 17.6.2021 (Annex.1).

The advertisement dated 17.6.2021 was issued in terms of provisions of Rajasthan Ayurvedic, Unani, Homoeopathy and Naturopathy Subordinate Service Rules, 1966 ('the Rules'). In terms of Rule 19 of the Rules, as amended lastly on 12.6.2021, the requisite in Clause-7 of the advertisement, reads as under:-

"राजस्थान आयुर्वेद, यूनानी, होम्योपैथिक एवं प्राकृतिक चिकित्सा अधीनस्थ सेवा नियम, 1966 एवं संशोधित नियम 2013 व संशोधित नियम 2021 के नियम 19 के प्रावधानों के तहत अभ्यर्थियों को बोनस अंक देय है।

1. इन विज्ञापित पदों के लिए राज्य सरकार, मुख्यमंत्री बीपीएल, जीवन रक्षा कोष, राष्ट्रीय स्वास्थ्य मिशन, डॉ. सर्वपल्ली राधाकृष्णन् राजस्थान आयुर्वेद विश्वविद्यालय, जोधपुर या सरकार द्वारा राजस्थान राज्य में संचालित कोई आयुष परियोजना के अन्तर्गत विज्ञापित पद के समान कार्य (Similar Work) पर कार्य करने की अवधि के आधार पर अनुभव प्राप्त अभ्यर्थियों को प्रत्येक पूर्ण वर्ष के अनुभव पर 10 प्रतिशत बोनस अंक एवं अधिकतम 30 प्रतिशत बोनस अंक देय होंगे। एक वर्ष से कम अवधि के लिये कोई बोनस अंक देय नहीं होगा।"

The petitioner, who is working with the Regional Ayurveda Research Institute, Ahmedabad (Gujarat), based on his experience certificate dated 1.7.2021 (Annex.4), applied for the post and sought bonus marks for the experience as depicted in the experience certificate.

The respondents apparently did not award the bonus marks for experience and consequently, the name of the petitioner did not appear in the list of candidates qualified for Nurse / Compounder vacancy for unreserved category.

Feeling aggrieved, the present petition has been filed.

Learned counsel for the petitioner submitted that the respondents are not justified in denying the requisite marks to the petitioner, inasmuch as, the experience gained by the petitioner at Ahmedabad, cannot be denied to be counted in terms of the experience certificate.

Submissions were made that the respondents apparently have denied the grant of bonus marks on account of the fact that experience was gained by the petitioner at Ahmedabad (Gujarat), which is based on wrong interpretation of the provisions and as such the action deserves to be quashed and set aside.

Reliance has been placed on judgment in *Jagdish Prasad & Ors. v. State of Rajasthan & Ors.: D.B. Civil Writ Petition No.12942/2015*, decided on 9.2.2016.

Learned counsel for the respondents vehemently opposed the submissions. It was *inter alia* submitted that the plain reading of the stipulation made in the advertisement would reveal that it is only the experience which is gained within the State of Rajasthan, which is eligible for award of bonus marks and as admittedly, the petitioner has produced the experience of having worked outside the State of Rajasthan, he is not entitled for award of bonus marks.

Submissions have been made that the plea is no more *res integra* as Division Bench of this Court in *State of Rajasthan & Ors. v. Satya Dev Bhagaur & Ors.: D.B. Special Appeal Writ No.837/2019*, decided on 13.8.2019, regarding *pari materia* provisions of Rajasthan Medical & Health Subordinate Service Rules, 1965 has laid down that benefit of award of bonus marks cannot be given to candidates who gained experience outside the State of Rajasthan and, therefore, the petition deserves to be dismissed.

I have considered the submissions made by learned counsel for the parties and have perused the material available on record.

The facts are not in dispute, wherein, the petitioner has produced the experience certificate of having worked with Regional Ayurveda research Institute, Ahmedabad.

The provisions of Rule 19 of the Rules of 1966, which reads as under:-

"19. Scrutiny of applications. - The Appointing Authority shall scrutinize the applications received by it and require as many candidates qualified for appointment under these rule as seem to it desirable for interview:

Provided that in case of appointment to the post of Nurse Compounder Junior Grade, the merit shall be prepared by the Appointing Authority on the basis of marks obtained in such qualifying examination specified in the Schedule appended to the rules and 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, National Rural Health Mission, National Health Mission, Dr. Sarvepalli Radhakrishnan Rajasthan Ayurveda University, Jodhpur or any Ayush Project in the State of Rajasthan run by the Government, as the case may be.

Provided further that the decision of the Appointing Authority, as to the eligibility or otherwise of a candidate, shall be final."

The stipulation made in the advertisement is only reproduction of the provisions of Rule 19. A bare look at the provision would reveal that award of bonus marks has been confined to similar work under the Government, Chief Minister BPL, Jeevan Raksha Kosh, National Rural Health Mission, National Health Missionas, Dr. Sarvepalli Radhakrishnan Rajasthan

Ayurveda University, Jodhpur or any Ayush Project in the State of Rajasthan run by the Government, as the case may be.

Interpreting the said provision, Division Bench in the case of Satya Dev Bhagaur (supra) after considering various Division Bench Judgments on the issue, *inter alia* laid down as under:-

"The learned Single Judge in this case allowed the respondents/writ petitioners' claim holding that the experience gained by them in a scheme - which fell within the National Rural Health Mission (NRHM) [though it was part of the Centralized Accident and Trauma Services (CATS), (an autonomous body of government of NCT of Delhi)] was covered under the proviso to Rule 19 (ii) of the Rajasthan Medical & Health Subordinate Service (Second Amendment) Rules, 2018. By those rules bonus marks are to be awarded to only few classes of employees, i.e. those working for NRHM, the Government of Rajasthan, the Chief Minister B.P.L.Jeevan Raksha Kosh, Medi Care Relief Society and AIDS Control Society. The writ petitioners had relied upon *Krishan Kumar Saini & Ors. Vs. State of Rajasthan & Ors.* [D.B. Civil Writ Petition No.13639/2018, decided on 09.08.2018] and submitted that if employees are made to work in many institutions but within the NRHM Scheme, such experience would be counted for award of bonus marks. The Division Bench in *Krishan Kumar Saini* (supra) held as follows:-

"As per the proviso in question a weightage in the form of bonus marks is given to the persons working with National Rural Health Mission, persons working with Government of Rajasthan Hospitals and other health related institutions and with Medi Care Relief Society. So far as the National Rural Health Mission is concerned, that is a nationwide scheme and, therefore, the persons working under this scheme are entitled to have weightage irrespective of the place of their working. All the persons working with National Rural Health Mission anywhere in country and discharging similar work to the work of Nurse Grade-II are entitled for weightage in the form of bonus marks."

The State argues that the recent judgment in *Ratan Singh & Ors. Vs. State of Rajasthan & Ors.* [D.B.Civil Writ Petition No.13131/2018, decided on 05.08.2019], covers the issue inasmuch as it was held that grant of benefit of bonus marks cannot be claimed as a matter of right.

This Court is of the opinion that the observation made in *Krishan Kumar Saini's Case* (supra) cannot be treated as binding precedent that the Rajasthan Medical & Health Subordinate Service (Second Amendment) Rules, 2018 specifically confined the grant of bonus marks, to enumerated categories of employees, who had gained experience while working in various institutions in Rajasthan or for the State of Rajasthan, in the concerned schemes. This view is also in accord with the previous Division Bench judgment in *Gaurav Kumar Sen & Ors. Vs. State of Rajasthan & Ors.* [D.B.Civil Writ Petition No.24245/2018, decided on 29.10.2018]. Besides, this Court notices that the rules were amended, having regard to the interpretation given by other Division Bench, after the introduction of the award of bonus marks scheme by the Rules of 2013.

In these circumstance, the intention of the State was to confine the benefit of award of bonus marks to those employed in the enumerated schemes within the State of Rajasthan and not others.

The appeal is accordingly allowed; the impugned order is hereby set aside. All pending applications are disposed of.” सत्यमेव जयते

(emphasis supplied)

The Division Bench clearly came to the conclusion that the intention of the State is to confine the benefit of award of bonus marks to those employed in the enumerated schemes within the State of Rajasthan and not others.

In view thereof, the plea raised by the petitioner apparently has no substance.

So far as the judgment in the case of Jagdish Prasad (supra) is concerned, the same is based on the unamended proviso of the Rajasthan Medical and Health Subordinate Service rules, 1965 and as such the interpretation placed therein, cannot be employed for the purpose of interpreting the amended provision, which as noticed hereinbefore, already stands concluded by Division Bench of this Court.

Consequently, there is no substance in the petition. The same is, therefore, dismissed.

(ARUN BHANSALI),J

211-Sumit/-



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