SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Amit Kumar Jhamb Vs. State of Raj. and ors

Amit Kumar Jhamb Vs. State of Raj. and ors

SooperKanoon Citation : sooperkanoon.com/1118410

Court : Rajasthan Jodhpur

Decided On : Dec-17-2013

Appellant : Amit Kumar Jhamb

Respondent : State of Raj. and ors

Advocate for Pet/Ap. : Mr. H.S. Sidhu, Mr. R.S. Choudhary

Judgement :

S.B.C.W.P. No.8909/2009 Amit Kumar Jhamb Vs. State of Rajasthan & Ors. Along-with 7 connected writ petitions. Order dt:

17. 12/2013 1/34 IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

JUDGMENT
S.B. CIVIL WRIT PETITION No.8909/2009 Amit Kumar Jhamb Vs. State of Rajasthan & Ors. & Along-with connected 7 writ petitions, shown in the SCHEDULE. Date of Judgment:

17. 12/2013. PRESENT HON'BLE Dr. JUSTICE VINEET KOTHARI REPORTABLE Mr. R.S. Choudhary, Mr. P.R. Mehta, Mr. H.S. Sidhu, Mr. Mukesh Vyas, for the petitioners. Mr. Sundeep Bhandawat]. Mr. Y.P. Khileree].- for respective respondents. -- BY THE COURT (ORAL):

1. This batch of 11 writ petitions involving similar controversy is being decided by this common judgment. The facts are illustratively taken from S.B.C.W.P. No.8909/2009 Amit Kumar Jhamb Vs. State of Rajasthan & Ors. and S.B.C.W.P. No.1187/2011 Lokesh Vs. State of Rajasthan & Anr.

2. The petitioners applied for the post of Rural Laboratory Technician in pursuance of Advertisement (Annex.1) dated 07.07.2008 issued by Medical & Health Services, Department, S.B.C.W.P. No.8909/2009 Amit Kumar Jhamb Vs. State of Rajasthan & Ors. Along-with 7 connected writ petitions. Order dt:

17. 12/2013 2/34 Rajasthan, Jaipur. The eligibility qualification as given in Clause (6) of the said Advertisement for the said post of Rural Laboratory Technician was as under: - :- 1. 9 ! 2. ( ) + 1 23 " English Translation: - Eligibility:

1. Secondary or its equivalent qualification with nine months' Laboratory course from Government recognized Institution.

2. Practical Knowledge of written Hindi in 'Devnagri' language and knowledge of culture of Rajasthan.. 3. The petitioner, Amit Kumar Jhamb, has produced copy of the mark-sheet of having passed with 1st Division of P.G. Diploma Laboratory Technology & Instrumentation Examination, 2007 vide Annex.5 dated 14.12.2007 from University of Bikaner, a Government College affiliated to Rajasthan University, however, his candidature was rejected by the Additional Director (Adm.), Medical & Health Department, Government of Rajasthan, Jaipur, vide impugned order dated 29.05.2009 (Annex.10) on the ground that the respondent, Dungar Mahavidhyalaya, Bikaner, was not recognized by the Technical Education Department of the State Government and, S.B.C.W.P. No.8909/2009 Amit Kumar Jhamb Vs. State of Rajasthan & Ors. Along-with 7 connected writ petitions. Order dt:

17. 12/2013 3/34 therefore, the qualification of P.G. Diploma in Lab Tech. & Instrumentation passed by the petitioner from the said College cannot be said to be recognized by the State Government and, therefore, the petitioner is not eligible for being considered for the said post.

4. Learned counsel for the petitioners, Mr. R.S. Choudhary and Mr. H.S. Sidhu, submitted that the Dungar Mahavidhyalaya, Bikaner is a Government College and the Commissioner of College Education, Government of Rajasthan, Jaipur, had himself given the administrative sanction for starting the aforesaid course from Session 2006-07 vide its communication (Annex.6) dated 10.10.2006 and the petitioner having passed the said course after such approval by the Government of Rajasthan, therefore, the respondent-Medical & Health Department could not say that the course conducted by Dungar Mahavidhyalaya, Bikaner, is not recognized by the State Government and, therefore, the petitioner could not be considered on the post of Lab Technician. Learned counsel for the petitioners also drew the attention of the Court towards the communication of the Technical Education Department, Government of Rajasthan vide Annex.8 dated 24.01.2007, addressed to said Dugar Mahavidhyala, Bikaner, with reference to their letter dated 07.12.2006 that the said course of P.G. Diploma in Lab Tech. & Instrumentation, was not covered by the Courses of A.I.C.T.E. (All Indian Council of Technical Education), which is constituted under All India Council for Technical S.B.C.W.P. No.8909/2009 Amit Kumar Jhamb Vs. State of Rajasthan & Ors. Along-with 7 connected writ petitions. Order dt:

17. 12/2013 4/34 Education Act, 1987 (an Act enacted by the Parliament), which defines vide Clause 2 (g) the word 'Technical Education', to mean programmes of education, research and training in engineering technology, architecture, town planning, management, pharmacy and applied arts and crafts and such other programmes or areas as the Central Government may, in consultation with the Council, by notification in the Official Gazette declare.

5. Learned counsel for the petitioners, therefore, urged that on the basis of said communication dated 24.01.2007 since the present course of Lab Technician in question was not covered within ambit and scope of A.I.C.T.E., and the Department of Technical Education, Government of Rajasthan, had itself communicated this fact to the Dungar Mahavidhyalaya, Bikaner, with a further request to the said College to consult Rajasthan Medical Science & Health University in this regard, therefore, the Medical & Health Department of Government of Rajatshan, could not reject the candidature of the petitioner on this

ground that the petitioner/s are not holding the requisite diploma of 9 months as required in the Advertisement on the ground that said Dungar Mahavidhyalaya, Bikaner is not recognized by the State Government, particularly, in view of the fact that the Commissioner, College Education vide the communication (Annex.6) dated 10.10.2006 had himself given the administrative sanction to Dungar Mahavidhyalaya, Bikaner for commencement of the said course along with some other courses. S.B.C.W.P. No.8909/2009 Amit Kumar Jhamb Vs. State of Rajasthan & Ors. Along-with 7 connected writ petitions. Order dt:

17. 12/2013 5/34 6. Mr. H.S. Sidhu, learned counsel for the petitioner, Lokesh (CW No.1187/2011), submitted that similarly the petitioner, Lokesh Sharma, had passed the course of Medical Laboratory Technician, 2001, from Rajasthan Vidhyapeeth, Udaipur (deemed University under the University Grants Commission Act, 1956) and, therefore, there was no need to any further recognition by the State Government for the said course. The petitioner's case also could not be rejected on similar grounds. He relied upon the decision of this Court in the case of Mrs. Madhu Santosh Vs. State of Rajasthan & Anr. (SBCWP No.2502/1989) decided on 21.02.1991 and the Division Bench decision in the case of State of Rajasthan & Ors. Vs. Karan Singh Rathore reported in 2003 (1) RLW511and the decision of Hon'ble Supreme Court in the case of Dr. B.L. Asawa Vs. State of Rajasthan & Ors. reported in AIR 1982 SC933 7. Mr. R.S. Choudhary, learned counsel for the petitioners also submitted that the petitioners having passed the said course from Dungar Mahavidhyaya, Bikaner, had also undergone 3 months' training from the Gvernment Hospital, namely, 'Sardar Patel Medical College, Bikaner and, therefore, the petitioner had also taken practical training of the said course, as would appear from the communication dated 05.05.2007 (Annex.10).

8. Both the learned counsel for the petitioners also submitted that some of these petitioners are also appointed as Lab Technician through NGO/s or private placement agencies and are S.B.C.W.P. No.8909/2009 Amit Kumar Jhamb Vs. State of Rajasthan & Ors. Along-with 7 connected writ petitions. Order dt:

17. 12/2013 6/34 working in the Government hospitals on contract basis as Lab Technician only; and therefore, there was no good reason for rejecting their candidature on the ground of their respective institutions not being allegedly recognized by the State Government in terms of Advertisement under the provisions of Rajasthan Rural Medical & Health Sub-ordinate Service Rules, 2008 (for short, hereinafter referred to as 'Rules of 2008') under which the said recruitment process was undertaken by the State Government and in the Schedule-IV (Medical Side) of the said Rules of 2008 for Laboratory Technical (Rural) for which 100% recruitment was to be made by the said direct recruitment process. The qualification as prescribed is 'secondary standard with 9 months laboratory technician course passed from the institute recognized by the Government', which the petitioners fulfill.

9. Mr. R.S. Choudhary, therefore, urged that the rejection of petitioner's candidature by the Additional Director (Adm.) of Medical & Health Department, even after noticing the communication dated 24.01.2007 by the Department of Technical Education that the course in question is not covered by the courses governed by the A.I.C.T.E. on the ground that since the institution is not recognized by the Technical Education Department, is a contradiction in the stand of the respondents and, therefore, the impugned order 29.05.2009 (Annex.5) deserves to be quashed and the petitioners, being eligible, deserves to be considered for the said post of S.B.C.W.P. No.8909/2009 Amit Kumar Jhamb Vs. State of Rajasthan & Ors. Along-with 7 connected writ petitions. Order dt:

17. 12/2013 7/34 Laboratory Technician and by an interim order of this Court, even one post for the petitioner was kept vacant vide the order dated 11.08.2009 of a coordinate bench of this Court, which is still continuing.

10. On the other hand, Mr. Sundeep Bhandawat, learned counsel for the Technical Education Department and Mr. Y.P. Khileree, appearing for the Medical & Health Department, vehemently opposed the submissions made by the learned counsel for the petitioners and drawing the attention of the Court towards the recent judgments of this Court, which are narrated below, they have urged that except the few specified colleges, where such courses were provided, which were attached

with the Government Hospitals, the petitioners courses passed from the institutions, like, Dungar Mahavidhyalaya, Bikaner or the Rajasthan Vidhyapeeth, Udaipur, as aforesaid, were not so recognized by the State Government specifically, therefore, the Additional Director of Medical Health Department, was justified in rejecting the candidature of the petitioners on the said ground.

11. The learned Govt. counsels relied upon the decision of learned Single Judge of this Court in the case of Lohade Ram Meena & 30 Others Vs. State of Rajasthan & Ors. reported in 2012 (3) WLC (Raj.) 214 and also the Division Bench decision of this Court in the case of Nawal Kishore Sharma Vs. State of Rajasthan & Ors. along with connected cases (D.B. Civil Special S.B.C.W.P. No.8909/2009 Amit Kumar Jhamb Vs. State of Rajasthan & Ors. Along-with 7 connected writ petitions. Order dt:

17. 12/2013 8/34 Appeal (W) No.802/2011) decided on 19.10.2011, by a Bench headed by the then Chief Justice and also subsequent decisions following aforesaid judgment in the case of Bhagirath Tanwar Vs. State of Rajasthan & Ors. (S.B.C.W.P. No.1131/2012) decided on 05.02.2013 and in the case of Anuj Kumar Vs. State of Rajasthan & Ors. along with connected 8 writ petitions (S.B.C.W.P. No.3432/2013) decided on 09.05.2013, and in the case of Shiv Raj Singh Vs. State of Rajasthan & Anr. (SBCWP No.7378/2011) decided on 07.02.2012 by the coordinate benches of this Court. Therefore, they urged that the petitioners were not entitled to be considered against the said post and their candidature was rightly rejected by the Medical & Health Department of the State Government.

12. I have heard the learned counsel for the parties at length and perused the record and the case laws cited at the bar.

13. At the outset, it will be appropriate to discuss the case- laws cited at Bar in the present case.

14. In the case of Lohade Ram Meena (supra), the learned Single Judge was dealing with the appointment process for the post of Laboratory Technician, filed by the petitioners, the majority of whom were Diploma in Medical Laboratory Technology from the Janardan Rai Nagar Rajasthan Vidhyapeeth, Udaipur, (for

short, hereinafter referred as 'J.R.N. University') and the appointment process vide the Advertisement dated 25.05.2011 for the post of Lab S.B.C.W.P. No.8909/2009 Amit Kumar Jhamb Vs. State of Rajasthan & Ors. Along-with 7 connected writ petitions. Order dt:

17. 12/2013 9/34 Technician was being undertaken under the provisions of Rajasthan Medical & Health Sub-ordinate Service Rules, 1965 and for Rural Lab Technicians, under the Rules of 2008. By a detailed judgment, the learned Single Judge held against the petitioner that the State Government had not recognized the Diploma Course passed by the petitioners from various private colleges like, J.R.N. University, Sanford Institute of Paramedical Sciences, Balgalore, VMRF Deemed University Salem (Tamilnadu) etc. It would be relevant to reproduce from the following paras of the judgment, wherein the discussion of relevant provisions of UGC Act, 1956 and Government Circulars, have been made by the learned Single Judge:

39. In view of above, the argument of learned Additional Advocate General carries weight. This is moreso when, the Rules of 2008 and 1965 requires Laboratory Technician Course from an institution recognized by the Government and the word Government. as defined under the Rules indicates the Government of Rajasthan.

40. It is admitted case of all the parties that State Government had never granted recognition to the JRN University for the course in question though a reference of Circular dated 03rd November, 1999 has been made to show that no separate recognition was not (sic!) required for a course provided by deemed to be University. For ready reference, relevant part of the aforesaid Circular is quoted hereunder to show as to whether every course provided by deemed to be University has been S.B.C.W.P. No.8909/2009 Amit Kumar Jhamb Vs. State of Rajasthan & Ors. Along-with 7 connected writ petitions. Order dt:

17. 12/2013 10/34 recognized or not :) (2 : . 8.7.88 (< ?. (?. A ! D (FD F) 1) 2 ?. (F F D ! (: (?.: (L 3 2 (2 26.5.52 ! . 30.9.52) (2 :

6. 7.62 2 ! . 4.7.1962 2 F (O / F (?. L 1 F 3 (1956) 2 R (FD (! 2 2 (FD 1 1 2 (1 ! (!/ F D \ ((. S.B.C.W.P. No.8909/2009 Amit Kumar Jhamb Vs. State of Rajasthan

& Ors. Along-with 7 connected writ petitions. Order dt:

17. 12/2013 11/34 41. Perusal of the para quoted above shows that it makes a reference only of degrees provided by deemed to be University and not for any other course like the Diploma or Certificate Course. The aforesaid Circular of the Government has been misinterpreted by the petitioners to show recognition of Diploma or Certificate Course thereunder. Last para of the aforesaid Circular does not recognize Diploma Course but calls upon details of degree/diploma courses provided by the University. The aforesaid Circular is further required to be looked into in reference to Section 22 of the UGC Act of 1956 because a deemed to be University can provide degree as defined under Sub- section (3) of Section 22 of the UGC Act. There is nothing on record to show a Gazette Notification by UGC to include the course in question. In the aforesaid background, the Circular dated 03rd November, 1999 cannot be treated for recognition of Laboratory Technician Course by the State Government and otherwise requirement of Rules of 1965 and 2008 is for recognition of the institutions and not of the courses. Therefore, aforesaid Circular is of no assistance to the petitioners.

48. The position of facts for other institutions is not better than JRN University. They are not having approval by a statutory body having competence for the aforesaid and it is not under a deemed to be University. The fact further remains that recognition of the S.B.C.W.P. No.8909/2009 Amit Kumar Jhamb Vs. State of Rajasthan & Ors. Along-with 7 connected writ petitions. Order dt:

17. 12/2013 12/34 institution has to be the State Government as per the Rules of 1965 or 2008.

49. The name of institutions have been given along with the bodies from which it is either registered or recognized. None of those bodies are shown to have authority under the law to recognize diploma course of the nature involved herein. This is apart from the fact that position of deemed university Salem (Tamilnadu) is not different than of the case of the deemed university discussed in the preceding para. The Sanford Institute of Paramedical Sciences Bangalore may be approved by AICTE but it needs recognition by the body having competence to do so. It has already been noticed that Para-medical Institution needs recognition from the

State Government for service under Rules of 1965 or 2008 and none of the institutions from which other petitioners have obtained qualifications are recognized institution by the State Government. The factual position of each institution is not required to be discussed in absence of argument for their recognition from competent body.

50. None of the learned counsel for petitioners could show authority of any of the society/body to either register those institutions or approve it, thus facts pertaining to other institutions are not required to be elaborated in absence of arguments. However, their cases are covered by the ratio propounded in regard to the JRN University, thus applying the issues discussed therein, even the candidates taken course of Lab S.B.C.W.P. No.8909/2009 Amit Kumar Jhamb Vs. State of Rajasthan & Ors. Along-with 7 connected writ petitions. Order dt:

17. 12/2013 13/34 Technician from other institutions cannot be held to be in possession of required qualification.

51. In the aforesaid background, I do not find any merit in arguments of learned counsel for petitioners. Accordingly, all the writ petitions so as the stay applications are dismissed.. 15. The State Government through the Additional Advocate General, took a categoric stand before the learned Single Judge of this Court in the aforesaid case in para 11 of the judgment that apart from the Government Hospitals, two more institutions were recognized vide order dated 25.07.1995, namely, (i) Santokba Durlabji Hospital, Jaipur and (ii) B. Sc. (Biology) from Mehrishi Dayanad Saraswati University, Ajmer, with practical training from the J.L.N. Hospital, Ajmer. Besides this, the list of various Government Medical Colleges, which was given in para 11 of the said judgment, is also quoted below for ready reference:

11. Learned Additional Advocate General, Mr.R.P.Singh appearing on behalf of the State Government submitted that none of the petitioners are having requisite qualification from a recognized institution. As per Rules of 2008 so as the Rules of 1965, one is required to possess qualification of Secondary with nine months Laboratory Technician Course from an institution recognized by the Government. The word Government. has been defined under the rules, which means

Government of Rajasthan. None of the institutions have been recognized by the State S.B.C.W.P. No.8909/2009 Amit Kumar Jhamb Vs. State of Rajasthan & Ors. Along-with 7 connected writ petitions. Order dt:

17. 12/2013 14/34 Government for imparting education for Laboratory Technician/Technology courses. In absence of it, none of the petitioners can be held eligible for appointment to the post of Laboratory Technician/Rural Laboratory Technician. The training course of Laboratory Technician is required to be undertaken with the required standard, therefore recognition of the institution are given by the Government keeping in mind that it is attached with the hospital. Apart from government hospitals, two more institutions were recognized vide the order dated 25.07.1995, which are, namely, (A) Santokba Durlabji Hospital, Jaipur and, (B) B.Sc. (Biology) from Mahrishi Dayanand Saraswati University, Ajmer with practical training from J.L.N. Hospital, Ajmer. This is apart from recognition of various Government Medical Colleges, namely: (i) SMS Medical College, Jaipur (ii) J.L.N.Medical College, Ajmer (iii) S.N.Medical College, Jodhpur (iv) Government Medial College, Kota and two more private college, namely: (i) Institute of Medical Technology and Nursing Education, Jaipur, and; (ii) Smt. Dakuben Sharemaiji Sancheti Paramedical Institute, Sumrepur (Pali).

12. The petitioners have not obtained qualification from recognized institutions, accordingly their representations were rejected.

. S.B.C.W.P. No.8909/2009 Amit Kumar Jhamb Vs. State of Rajasthan & Ors. Along-with 7 connected writ petitions. Order dt:

17. 12/2013 15/34 The aforesaid judgment came to be followed by different coordinate benches of this Court in the case of Bhagirath Tanwar (supra), Anuj Kumar (supra) and Shiv Raj Singh (supra).

16. The Division Bench of this Court at Jaipur Bench, headed by the then Chief Justice, in the case of Nawal Kishore Sharma (supra) while deciding a batch of intra-court appeals for the controversy arising under the Rajasthan Medical & Health Subordinate Service Rules, 1965, for the post of Lab Technician, for which the qualification as aforesaid was 'secondary' or its equivalent with 9 months

training certificate from the institution recognized by the Government', dealing-with appeals filed by the appellants, who had passed two years course from the Universities duly approved by the U.G.C. held that such two years' degree holders, had secured more than 9 months period course, therefre, they could not be excluded from the zone of consideration for the said post of Lab Technician; and in para 11 of the judgment, the Division Bench of this Court also noted that the State Government has stopped recognising the 9 months training certificate course with effect from 2002 and such 9 months training course is not provided by any recognized institution and only course of Laboratory Technology, which is being run by institutions recognized by the State Government w.e.f. 2002, is of duration of two years and such incumbents are not to be ousted from the zone of consideration. It would be relevant to reproduce the para 11 and 12 of the said judgment as under: - S.B.C.W.P. No.8909/2009 Amit Kumar Jhamb Vs. State of Rajasthan & Ors. Along-with 7 connected writ petitions. Order dt:

17. 12/2013 16/34

11. Apart from what has been discussed above, as the State Government has stopped recognising nine months training certificate course with effect from 2002, nine months training certificate is not being provided by any recognized institution and only course of Laboratory Technology, which is being run by institutions recognised by the State Government with effect from 2002, is of duration of two years and such incumbents are not to be ousted from the zone of consideration. The intention was not to appoint only those incumbents, who were having nine months training certificate obtained before 2002 and oust those who have obtained prevailing better qualification in last 9 years. An interpretation to contrary would make provision to be harsh, oppressive and violative of protection conferred under Articles 14 and 16 of the Constitution of India. Interpretation has to be purposive. The incumbents, who are having training certificate or diploma of longer duration of more than nine months, are also eligible for consideration. They are better trained incumbents.

12. However, apprehension has also been expressed by learned counsel appearing on behalf of the appellants that incumbents, who have obtained

Diploma Certificate from institutions which are not recognised by the State Government, may also be appointed. Mr. S.N. Kumawat, learned Additional Advocate General has rightly stated that they would not appoint even a single candidate, who has obtained qualification from S.B.C.W.P. No.8909/2009 Amit Kumar Jhamb Vs. State of Rajasthan & Ors. Along-with 7 connected writ petitions. Order dt:

17. 12/2013 17/34 institution which is not recognised by the State Government. That takes care of the apprehension raised by learned counsel for the appellants and we hold that incumbents who are not holding the qualification recognised by State Government cannot be appointed.. 17. The concluding portion of the judgment of Division Bench of this Court in para 15 is also quoted below for ready reference:

15. We are afraid that we can (sic! not) accept the submission raised by learned Senior Counsel, firstly for the reason that ex-parte interim stay order to give priority to 9 month candidates, which was passed by the Single Bench, was not proper and it was ultimately not found to be correct and the incumbents had been appointed on the basis of faulty list prepared as per interim order passed by the Single Bench in S.B. Civil Writ Petition No.14873/2010 and wrong order of the Court cannot come to the shelter of some incumbents and cause prejudice to others. The Single Bench, while passing the interim order, had not considered the aspect that nine months training certificate course had been stopped in the State with effect from 2002 and it would not be appropriate to interpret the rules in such a manner, so as to oust the candidates having longer duration better training and certificate than nine months training certificate course. No fruits can be allowed to be ripened on the basis of faulty list prepared under interim order, which order was uncalled for. S.B.C.W.P. No.8909/2009 Amit Kumar Jhamb Vs. State of Rajasthan & Ors. Along-with 7 connected writ petitions. Order dt:

17. 12/2013 18/34 Thus, the appointments so made cannot be saved. An incumbent has to stand on the merit, which he/she has obtained on proper appreciation of provisions of law and amongst eligibles. Resultantly, we find no ground to interfere in the order passed by the Single Bench. The appeals are liable

to be dismissed, they are hereby dismissed. Stay applications also stand dismissed. Parties to bear their own costs as incurred. Sd/- Sd/- (NARENDRA KUMAR JAIN-I),J.

(ARUN MISHRA),CJ.. 18. The judgment relied upon by the learned counsel for the petitioners, Mr. H.S. Sidhu, may also be dealt with hereunder, in the caes of Mrs. Madhu Santosh Vs. State of Rajasthan & Anr. (SBCWP No.2502/1989) decided on 21.02.1991, wherein the learned Single Judge of this Court dealing with a course of B. Ed. Correspondence Course Degree of Meharshi Dayanand University, Rohtak, held qualified for appointment in the State of Rajasthan, held that since the petitioner had obtained the degree from the University established under the U.G.C. Act, 1956, normally this degree shall be treated as equivalent in Rajasthan and the appointment cannot be denied to such candidate on the basis of such degree obtained from other University. However, this was so decided on the basis of a communication of the State of Rajasthan dated 08.07.1998, wherein the State Government itself construed that any degree obtained from any other university will be recognized and no separate recognition S.B.C.W.P. No.8909/2009 Amit Kumar Jhamb Vs. State of Rajasthan & Ors. Along-with 7 connected writ petitions. Order dt:

17. 12/2013 19/34 shall be issued. The operative portion of the said judgment is also quoted below for ready reference: - However, the fact remains that the petitioner has obtained a degree from a University established under the Act of Parliament. Then in that case, normally that degree shall be treated as equivalent in Rajasthan and the appointment cannot be denied to such candidate on the basis of such degree from other university. More-so, the communication of the State of Rajasthan dated 8.7.1988 makes it clear that any degree obtained from any other university will be recognised and no separate recognition shall be issued. The communication dated 14.7.1988 has been based on a query raised by the State of Rajasthan, but that has no relevance in the present context for the simple reason that under the Rules of 1971 there is no provision that the degree of other universities if they are recognised as equivalent by the University of Rajasthan, shall only be recognised by the Government of Rajasthan for appointment. Therefore, the order passed by the Government of Rajasthan dated

14.7.1988 cannot come in the way of the petitioner as that is not relevant in view of the provisions of the Rules of 1971 and the same is quashed. In the result, both the writ petitions are allowed.. 19. The Division Bench of this Court in the case of State of Rajasthan & Ors. Vs. Karan Singh Rathore (supra) was again concerned with question whether the B. Ed. (Child Development) followed by a bridge course awarded by Rajasthan Vidhya Peeth, S.B.C.W.P. No.8909/2009 Amit Kumar Jhamb Vs. State of Rajasthan & Ors. Along-with 7 connected writ petitions. Order dt:

17. 12/2013 20/34 Udaipur, a deemed University, the Degree in Education or Montessori for the purpose of appointment as Senior Teacher Gr. II under the Rajasthan Educational Subordinate Service Rules, 1971 held following the decision of Hon'ble Supreme Court in the case of Dr. B.L. Asawa Vs. State of Rajasthan & Ors. reported in AIR 1982 SC933that no separate recognition was required once the B. Ed. (Child Development) Course was passed from a University duly recognized under the U.G.C. Act. The relevant paras 8 and 9 of the aforesaid judgment are quoted below for ready reference: -

8. So far as the first part is concerned, there is no dispute that the writ petitioners are Graduate. Infact, the Graduation is the minimum qualification for admission to B.Ed. (Child Development) Course. As regards the second part, the question arises for consideration is as to whether the Degree in Education awarded by the Vidhya Peeth after an integrated course i.e. B.Ed. (Child Development) followed by three months' Bridge Course is a Degree in Education or just a Certificate, equivalent to S.T.C. only for the purpose of appointment as Senior Teacher under the Rules of 1971. The requirement of the rule of holding a Degree or Dilpoma in Education is not circumscribed by any other conditions, such as Degree recognized by the State Government or the Degree with specified duration of Courses with specified subjects only and so on. It is plain and simple Degree in Education. Therefore, the rule leaves no scope for the State Government or S.B.C.W.P. No.8909/2009 Amit Kumar Jhamb Vs. State of Rajasthan & Ors. Along-with 7 connected writ petitions. Order dt:

17. 12/2013 21/34 anybody to entertain the exercise of drawing equivalence on the basis of the Courses, which results in grant of Degree in Education or Diploma in Education by any institution recognised in law entitled to award the said Degrees.

9. The Apex Court in Dr. B.L. Asawa v. State of Rajasthan (4) has held that in case of a post graduate degree in the concerned subject awarded by a statutory Indian University, no recognition or declaration of equivalence by any other University is called for. In the said case, the the candidate applied for the post of Lecturer in Forensic Medicine in response to the advertisement issued by the Rajasthan Public Service Commission. The basic qualification was M.C. Degree in Forensic Medicine. The appellant possessed M.D. Degree of Bihar University in Forensic Medicine. His candidature was rejected on the ground that he was ineligible for the post as his M.D. Degree in Forensic Medicine was not recognized by the University of Rajasthan as an equivalent qualification. The learned Single Judge of this Court allowed the writ petition holding the Public Service Commission had acted illegally in treating the appellant as not possessing the request qualification and in rejecting his candidature for the post of Lecturer in Forensic Medicine on the said ground. The Division Bench reversed the judgment of the learned Single Judge. The Apex Court on appeal by Dr. B.L. Asawa held that the Division Bench of this Court was in error in thinking that since the post S.B.C.W.P. No.8909/2009 Amit Kumar Jhamb Vs. State of Rajasthan & Ors. Along-with 7 connected writ petitions. Order dt:

17. 12/2013 22/34 graduate degree possessed by the appellant was not one obtained from the University of Rajasthan, it could not be treated as a valid qualification for the purpose of recruitment in question in absence of any specific order by the University of Rajasthan recognising the said degree or declaring it as an equivalent qualification. The Apex Court held thus:- A Post-graduate Medical Degree granted by a University duly established by statute in this country and which has also been recognised by the Indian Medical Council by inclusion to the Schedule of the Medical Council Act has ipso facto to be regarded, accepted and treated as valid throughout our country. In the absence of any express provision to the contrary, such a degree does not require to be specifically recognised by other

Universities in any State in India before it can be accepted as a valid qualification for the purpose of appointment to any post in such in such a state.. 10. We find no infirmity in the order of the learned Single Judge. We, accordingly, endorse the view take by the learned Single Judge and dismiss all the Special Appeal filed by the State in limine.. 20. Turning back to the facts of the present case, this Court finds that the requirement under the Rules of 2008, in which the Advertisement (Annex.1) dated 07.07.2008 was issued, only required that the candidate should be Secondary or equivalent passed with Laboratory Technology course passed from the institution duly recognized by the State Government. S.B.C.W.P. No.8909/2009 Amit Kumar Jhamb Vs. State of Rajasthan & Ors. Along-with 7 connected writ petitions. Order dt:

17. 12/2013 23/34 21. As far as the Dungar Mahavidhyalaya, Bikaner is concerned, there is no dispute that it is a Government College and the administrative sanction to start the said course of PG Diploma in Lab. Technology and Instrumentation was duly given by the competent authority, namely, the Commissioner, College Education, Government of Rajasthan, Jaipur, on 10.10.2006 (Annex.6) for the Session 2006-07 and it is only after this approval and commencement of the course of the said College, the petitioner, Amit Kumar Jhamb passed the said course with 1st division and had also undergone 3 months training from the Government Hospital i.e. Sardar Patel Hospital, Bikaner. The said Dungar college was duly informed by the Technical Education Department of the Government of Rajasthan itself vide Annex.8 dated 24.01.2007 that the course of PG Diploma in Lab. Technology and Instrumentation was not covered by the A.I.C.T.E. and, therefore, the Dungar College, Bikaner, may contact the Rajasthan Medical Science & Health University in this regard. However, what happened in the sequence afterwards between Dungar College, and the Rajasthan Medical Science & Health University, is not placed before this Court. It is a matter of anybody's guess that if the Technical Education Department itself has stated that since the course in question is not covered by the A.I.C.T.E., and therefore, the Government College, namely, Dungar Mahavidhyalaya, Bikaner, may contact Rajasthan Medical Science & Health University, Jaipur, whether the said S.B.C.W.P. No.8909/2009 Amit Kumar Jhamb Vs. State of Rajasthan & Ors. Along-with 7 connected writ petitions. Order dt:

17. 12/2013 24/34 Department of Technical Education itself had the jurisdiction and concern to give the due recognition to the said Government college for running the said course of PG Diploma in Lab Technology & Instrumentation or not. If the said Technical Education Department itself had the obligation and jurisdiction to grant recognition to the said course, conducted by the respondent Dungar Mahavidhyalaya, Bikaner, it could either grant such recognition or refuse the same after making proper enquiry with regard to said course conducted by it. But, no such enquiry appears to have undertaken by the Technical Education Department of the State Government and on the other hand, the communication Annex.8 dated 24.01.2007, gives an impression that the Technical Education Department has no jurisdiction in the matter, since the course in question is not covered by the courses as required to be approved by A.I.C.T.E. under the provisions of All India Council for Technical Education Act, 1987, a central enactment of Parliament, which defined the term in clause 2 (g) 'Technical Education' also, which primarily covers engineering courses as aforesaid.

22. In the face of these documents, particularly, when the petitioner has undergone 9 months course from a Government College and has undertaken the training in Government hospital, namely, Sardar Patel Hospital, Bikaner, for three months, prima- facie, it appears to this Court that the petitioner fulfill the eligibility criteria as stipulated in the Advertisement (Annex.1) dated S.B.C.W.P. No.8909/2009 Amit Kumar Jhamb Vs. State of Rajasthan & Ors. Along-with 7 connected writ petitions. Order dt:

17. 12/2013 25/34 07.07.2008. After the administrative approval for the commencement of the said course given by the Commissioner, College Education, Govt. of Rajasthan, Jaipur, vide letter (Annex.6) dated 25.09.2006/10.10.2006, there is no communication from the side of either of the parties, petitioners or the respondents, before this Court that either this Government College, Dungar Mahavidhyalaya, Bikaner, was de-recognized for this purpose of conducting the said course or refusing to grant any specific approval for running the said course.

23. The petitioners, who has undertaken the course from the Government College and has undertaken the training in the Government hospitals for the said purpose

coupled with the fact that the petitioner and some other persons have already been engaged as Lab Technicians on contractual basis by the State Government itself and still are working as such on the said post, the rejection of the petitioners' candidature for consideration against the said post in direct recruitment process on the ground that he/she did not pass their course from the recognized institutions, does not appear to be correct and sustainable. Their case is distinguishable from the case of Lohade Ram Meena (supra) as given above.

24. The legitimate expectation of the petitioner/s that they have passed a course from a duly recognized and approved institution for the said course, which will entitle them for employment as Rural Lab Technicians in the posts advertised by the State S.B.C.W.P. No.8909/2009 Amit Kumar Jhamb Vs. State of Rajasthan & Ors. Along-with 7 connected writ petitions. Order dt:

17. 12/2013 26/34 Government, can be said to have arisen to the petitioners in the present case.

25. The Hon'ble Supreme Court in the case of Bannari Amman Sugars Ltd. Vs. Commercial Tax Officer & Ors. reported in (2005) 1 SCC625has held as under: - A person may have a 'legitimate expectation' of being treated in a certain way by an administrative authority even though he has no legal right in private law to receive such treatment. The expectation may arise either from a representation or promise made by the authority, including an implied representation, or from consistent past practice. A legitimate expectation can provide a sufficient interest to enable one who cannot point to the existence of a substantive right to obtain the leave of the court to apply for judicial review. It is to be confined mostly to right of a fair hearing before a decision which results in negativing a promise or withdrawing an undertaking is taken. The doctrine does not give scope to claim relief straightway from the administrative authorities as no crystallized right as such is involved. The protection of such legitimate expectation does not require the fulfilment of the expectation where an overriding public interest requires otherwise. In other words, where a person's legitimate expectation is not fulfilled by taking a particular decision then decision maker should justify the denial of such expectation by showing some overriding public interest. S.B.C.W.P. No.8909/2009 Amit Kumar

Jhamb Vs. State of Rajasthan & Ors. Along-with 7 connected writ petitions. Order dt:

17. 12/2013 27/34 A claim based on mere legitimate expectation without anything more cannot ipso facto give a right. It can be one of the grounds to consider, but the Court must lift the veil and see whether the decision is violative of these principles warranting interference. It depends very much on the facts and the recognised general principles of administrative law applicable to such facts and the concept of legitimate expectation. The power of the Courts to review administrative action must be restricted to the general legal limitations applicable. It follows that the concept of legitimate expectation is 'not the key which unlocks the treasure of natural justice and it ought not to unlock the gates which shuts the Court out of review on the merits,' particularly, when the elements of speculation and uncertainty are inherent in that very concept. For legal purposes, expectation is not same as anticipation. Legitimacy of an expectation can be inferred only if it is founded on the sanction of law.. 26. The Hon'ble Apex Court in another case of Ram Pravesh Singh & Ors. Vs. State of Bihar & Ors. reported in (2006) 8 SCC381has held as under: In short, a person can be said to have a 'legitimate expectation' of a particular treatment, if any representation or promise is made by an authority, either expressly or impliedly, or if the regular and consistent past practice of the authority gives room for such expectation in the normal course. As a ground for S.B.C.W.P. No.8909/2009 Amit Kumar Jhamb Vs. State of Rajasthan & Ors. Along-with 7 connected writ petitions. Order dt:

17. 12/2013 28/34 relief, the efficacy of the doctrine is rather weak as its slot is just above 'fairness in action' but far below 'promissory estoppel'. It may only entitle an expectant: (a) to an opportunity to show cause before the expectation is dashed; or (b) to an explanation as to the cause for denial. The Courts may grant a direction requiring the Authority to follow the promised procedure or established practice. A legitimate expectation, even when made out, does not always entitle the expectant to a relief. Public interest, change in policy, conduct of the expectant or any other valid or bona fide reason given by the decision-maker, may be sufficient to negate the 'legitimate expectation'. The doctrine of legitimate expectation based on established practice (as contrasted from legitimate

expectation based on a promise), can be invoked only by someone who has dealings or transactions or negotiations with an authority, on which such established practice has a bearing, or by someone who has a recognized legal relationship with the authority. A total stranger unconnected with the authority or a person who had no previous dealings with the authority and who has not entered into any transaction or negotiations with the authority, cannot invoke the doctrine of legitimate expectation, merely on the ground that the authority has a general obligation to act fairly.. 27. The rejection of the petitioners' candidature by the Medical & Health Department by the impugned order (Annex.15) S.B.C.W.P. No.8909/2009 Amit Kumar Jhamb Vs. State of Rajasthan & Ors. Along-with 7 connected writ petitions. Order dt:

17. 12/2013 29/34 dated 29.09.2009 on this ground that course in question is not approved by the Technical Education Department of the Government of Rajasthan, therefore, is not found to be a justifiable ground particularly in view of the fact that the same Technical Education Department has disowned its responsibility to grant such recognition vide the communication (Annex.8) dated 24.01.2007, which was noted by the Additional Director (Adm.), Medical & Health Department in the impugned order (Annex.10) dated 29.05.2009 itself. However, the said authority has inferred it as refusal of the recognition to the said course of Government college but that inference, does not seem to be justified. The last two paras of the impugned order dated 29.05.2009 are also quoted herein below for ready reference: - L! ?. !1 2006-07 2 2 ?. 22F) (!]. 2 F , . (2 24.1.07) \ 2 , ! + L! . . !. L . . 2 , + ( ]. ! (L! (! !) 2006-07 !1) L! ?. 2 D (2 \ 2 S.B.C.W.P. No.8909/2009 Amit Kumar Jhamb Vs. State of Rajasthan & Ors. Along-with 7 connected writ petitions. Order dt:

17. 12/2013 30/34 ! (?. !1 2 2]. 9 L! ( ) ! : (!]. . . . 2 . F! 2008) ! L! ?. F (\ 2 (!]. ?. D ( ) F (\2" 28. As far as the case laws relied upon by the learned counsel for the respondents are concerned, suffice it to state that they are distinguishable for two reasons; (i) the learned Single Judge in the case of Lohade Ram Meena (supra) was dealing with case of private colleges like, J.R.N. University of Udaipur and certain other private colleges of Punjab and Tamil Nadu etc. those were not the same as Government College, namely, Dungar Mahavidhyalaya, Bikaner, which is

the case involved in the present case; and (ii), the Division Bench of this Court in the case of Nawal Kishore Sharma (supra) dealing with a case of Diploma holders of two years courses and the Division Bench came to the conclusion that their exclusion from the zone of consideration where the requirement was only of 9 months course, was unjustified. The Division Bench held in their favour that they could also be included in the zone of consideration. That judgment is of little help to the respondents in the present case where the Court is concerned only about the recognition of the PG Diploma in Lab Technology & Instrumentation conducted by a Government college like respondent, Dungar Mahavidhyalaya, S.B.C.W.P. No.8909/2009 Amit Kumar Jhamb Vs. State of Rajasthan & Ors. Along-with 7 connected writ petitions. Order dt:

17. 12/2013 31/34 Bikaner.

29. As far as the case of Rajasthan Vidhyapeeth University, Udaipur is concerned, this Court also finds considerable force in the contentions of the learned counsel for the petitioners and the reliance placed by learned counsel for the petitioners on various judgments, referred above, that the University is duly recognized as deemed University under the provisions of the U.G.C. Act, 1956 and no separate recognition by the State Government for that purpose is required on the basis of decision of Hon'ble Supreme Court in the case of Dr. B.L. Asawa (supra) and Division Bench decision of this Court in the case of State of Rajasthan & Ors. Vs. Karan Singh Rathore (supra). Therefore, the one year course of Medical Laboratory Technician passed by the petitioner from the deemed university viz. Rajasthan Vidhyapeeth, Udaipur, also appears to be sufficient in terms of Advertisement in question. The learned Single Judge in the case of Lohade Ram Meena (supra) while discussing Govt. Circular dated 03.11.1999, quoted above, has not fully appreciated the last para of said quoted Circular, which actually called upon such recognized Universities to inform the Employer Departments from time to time about their Degree/Diploma Courses, specially if they have newly started such courses, so that the employer Departments are kept informed and abreast about it. This last para of Circular cannot be taken in negative that new courses are not to be treated as recognized ipso-facto or that they will S.B.C.W.P. No.8909/2009 Amit Kumar Jhamb Vs. State of Rajasthan & Ors. Along-with 7

connected writ petitions. Order dt:

17. 12/2013 32/34 separately require any such recognition.

30. In the absence of any specific and published list of recognized institutions who were so entitled to conduct the said course of PG Diploma in Lab Technology & Instrumentation of 9 months, which would render the candidates having passed such course from the said recognized institution only, duly notified by the State Government either with same advertisement or even otherwise, this Court does not find any ground for upholding the impugned order of (Adm.), Medical & Health Department, Govt. of Rajasthan, Jaipur, rejecting the candidature of the petitioners, who had passed the course of Lab Technician for 9 months period from a Government College or the institution whose such courses were conducted by deemed University duly approved by the U.G.C. under the provisions of the U.G.C. Act, 1956 like Rajasthan Vidhyapeeth, Udaipur, or by Government college like Dungar Mahavidhyalaya, Bikaner, which was duly sanctioned to start the said course by the Commissioner, College Education Department of Govt. of Rajasthan, as aforesaid. If the State Government has thereafter failed to take adequate steps for regulating the conduct of the said course and has either not specifically de-recognized these institutions from holding said courses, or has otherwise separately notified the list of specific institution/s whose courses alone would be considered as eligible for said recruitment process, the petitioners and the candidates who have passed such courses from these Govt. institutions, cannot be S.B.C.W.P. No.8909/2009 Amit Kumar Jhamb Vs. State of Rajasthan & Ors. Along-with 7 connected writ petitions. Order dt:

17. 12/2013 33/34 thrown out of the zone of consideration on this ground. This would not only be contrary to the principles of legitimate expectation of the petitioners, but it would also be otherwise arbitrary and violative of Article 14 of the Constitution of India, as their rejection of candidature was also done without giving them any opportunity of hearing in this regard.

31. Therefore, in the considered opinion of this Court, the present writ petitions deserve acceptance and the same are, accordingly, allowed and quashing the impugned rejection orders of the Medical & Health Department, Govt. of

Rajasthan, the respondents are directed to re-consider the case of the petitioners for appointment as Laboratory Technician in the said selection process and if the vacancies are still existing or have been kept vacant under the interim orders of this Court, as the case may be, such consideration will be made and appointments offered within a period of three months from today. No costs. A copy of this order be sent to the concerned parties forthwith. (Dr. VINEET KOTHARI), J.

DJ/- 13-23 S.B.C.W.P. No.8909/2009 Amit Kumar Jhamb Vs. State of Rajasthan & Ors. Along-with 7 connected writ petitions. Order dt:

17. 12/2013 34/34 SCHEDULE S. No.SBCW Title Course passed Institute from No.by the petitioner where the petitioner has passed the course 1 8907/2009 Vijay Singh Vs. State of Raj. & PG Diploma Lab. University of Tech. & Bikaner (Dungar Ors. Instrumentation College, Bikaner) 2 8910/2009 Anup Singh Bargujar Vs. State PG Diploma Lab. University of Tech. & Bikaner (Dungar of Raj. & Ors. Instrumentation College, Bikaner) 3 8911/2009 Poonam Chand Godara Vs. PG Diploma Lab. University of Tech. & Bikaner (Dungar State of Raj. & Ors. Instrumentation College, Bikaner) 4 8912/2009 Punit Sharma Vs. State of Raj. PG Diploma Lab. University of Tech. & Bikaner (Dungar & Ors. Instrumentation College, Bikaner) 5 8913/2009 Arvind Goyal Vs. State of Raj. PG Diploma Lab. University of Tech. & Bikaner (Dungar & Ors. Instrumentation College, Bikaner) 6 1187/2011 Lokesh Vs. State of Raj. & Medical Rajasthan Laboratory Vidyapeeth, Ors. Technology Udaipur 7 5326/2011 Ram Nath Bhadani Vs. State PG Diploma Lab. University of Tech. & Bikaner (Dungar of Raj. & Ors. Instrumentation College, Bikaner)

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com