

Dr. Sunil Kumar and ors. Vs. State of Bihar and ors.

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Court : Patna

Decided On : Aug-21-2000

Judge : S.N. Jha, J.

Appeal No. : C.W.J.C. Nos. 5136, 5192 and 5322 of 2000

Appellant : Dr. Sunil Kumar and ors.

Respondent : State of Bihar and ors.

Disposition : Petition Dismissed

Prior history : S.N. Jha, J. 1. These three writ petitions on behalf of 10 petitioners have been filed seeking direction to allow them to appear at the competitive examination for appointment of Lecturers in the Bihar State Medical Education Service. 2. When these petitions were filed, the examination was scheduled to be held on 25.6.2000. The examination stands postponed possibly on account of the dispute relating to the interpretation of eligibility Clause and the pendency of the writ petitions. According t

Judgement :

S.N. Jha, J.

1. These three writ petitions on behalf of 10 petitioners have been filed seeking direction to allow them to appear at the competitive examination for appointment of

Lecturers in the Bihar State Medical Education Service.

2. When these petitions were filed, the examination was scheduled to be held on 25.6.2000. The examination stands postponed possibly on account of the dispute relating to the interpretation of eligibility Clause and the pendency of the writ petitions. According to the respondents, the candidates who possessed the requisite qualification upon the last day of submission of the application alone are eligible to appear at the examination, according to the petitioners, the candidates who acquired the requisite qualification upon the date of the examination are also eligible. Thus, the appearing candidates could also apply subject to their passing the post-graduate examination before the commencement of the competitive examination.

3. A learned Single Judge of this Court at its Ranchi Bench in the case of Dr. Viprashree and Ors. v. State of Bihar and Ors. CWJC No. 1567/2000 (R) and analogous, relating to the same examination and advertisement has held vide judgment dated 23.6.2000 that the cut-off date for determining the eligibility is the last day of submission of the application i.e., 21.1.1999. The point thus has been answered in favour of the Department. The argument-put forward on behalf of the petitioners in those cases was that the candidates could acquire the requisite qualifications upto the date of selection and therefore, they could not be prevented from appearing at the examination. The plea was rejected and, if I may say so with respect, rightly in view of the decisions of the apex Court. A similar argument but under a different cloak was made in these case necessitating this judgment.

4. There is no dispute at the Bar that where the reckoning date is not fixed either in the rules (where recruitment is governed by Rules) or in the advertisement, the last day of submission of the application is to be treated as the reckoning date. The submission of the counsel for the petitioners, however, is that as per the advertisement it was not mandatory for the candidate to possess the post-graduate degree (amongst other qualifications with which we are not concerned) on the date of application, he could acquire such qualification even afterwards up to the date of examination. The relevant Clause of the advertisement runs as under:

JIS VISHAIA/IBHAGO KE LIYE UMMIDWAR KA CHAYAN KIA JAYEGA US VISHAI MEN HOUSEMANSHIP TATHA SNATAKOTTAR UPADHI PRAPT KARNA/HONA ANIWARYA HOGA.

According to the counsel for the petitioners, the words 'KARNA/HONA' suggest that the candidate could acquire (PRAPT KARNA) the post-graduate qualification and it is not necessary that he should possess (PRAPT HONA) the said qualification on the date of the application.

5. In order to resolve the dispute, looked into the Bihar Medical Education Service Cadre Recruitment Rules, 1997 framed under Article 309 of the Constitution of India. Rule 8(1) (kha) of the said Rules refers to the eligibility Clause. The word 'KARA' after the words 'PRAPT HONA' is not mentioned there. Counsel for the Commission stated that the word 'KARNA' in the advertisement refers to 'Housemanship'. It is not necessary to consider this submission. It is an admitted position that in whichever subject there is provision for housemanship, without doing the housemanship, no person can appear at the post-graduate examination and therefore, the completion of the housemanship in the concerned subjects is implicit in the post-graduate qualification and in that view of the matter corrigendum deleting that part of the advertisement has been issued on 8.4.2000.

6. Rule 8(1) (kha) of the Recruitment Rules, in my opinion, leaves little room for doubt that only such candidates who already possessed the post-graduate qualification in the particular subject alone were entitled to appear at the examination. This is the only interpretation of the words 'UPADHI PRAPT HONA AWASHAYAK HA I' occurring in the said Rule. Even if it be assumed that the advertisement contained a different stipulation, the inconsistency, if any, has to be ironed out because in case of inconsistency, it is the statutory rule which will prevail and not the advertisement. On behalf of the petitioners, it was submitted that the words UPADHI PRAPT HONA AWASYAK HAI ought to be read along with the words 'PARIKSHA MEN SAMMLIT HONE KE LIYE' which according to the Counsel suggest that the Post-Graduate qualification was essential for appearing at the examination and therefore, at any time before the examination is held, the candidate could acquire such qualification. It is difficult to accept the

submission. Rule 8(1) (ka) provides that the recruitment to the Bihar Medical Education Service Cadre shall be made on the basis of a competitive examination to be conducted by the Bihar Public Service Commission, it is in that context that Clause (kha) lays down that for appearing at such competitive examination, it is necessary that the candidate should have post-graduate qualification. The moot question therefore, is what should be reckoning date for determining the eligibility of the candidate for appearing at the competitive examination, without which a candidate cannot be appointed as lecturer in the Bihar Medical Education Service. As the advertisement does not prescribe any particular date, it would follow that the last day for submission of the application viz. 21.1.99 should be treated as the reckoning date.

7. It was then submitted that allowing candidates who acquired the requisite qualifications upto the date of examination would ensure larger participation and the Commission may thereby select better candidates. The submission is attractive but squarely covered by decision of the Supreme Court in Ashok Kr. Shanva v. Chandrashekhar : (1997)ILLJ 1160 SC . It may be mentioned here that the said decision was rendered on review petition arising from the main judgment reported in 1993 Supp. (2) SCC 611, wherein the Majority had taken the similar view that in order to have wider selection it was in public interest to entertain applications of candidates who did not possess requisite qualification on the date of application but possess the same on the date of interview. The Minority view was that deviation from instructions in the advertisement was not permissible though on equitable considerations the learned Judge agreed with the Majority not to disturb the appointments made a long time back. The unsuccessful appellants sought review of the judgment. A Bench of three judges this time unanimously held:

Where applications are called for prescribing a particular date as the last date for filing the applications, the eligibility of the candidates shall have to be judged with reference to that date and that date alone. A person who acquires the prescribed qualification subsequent to such prescribed date cannot be considered at all. An advertisement or notification issued/published calling for applications constitutes a representation to the public and the authority issuing, it is bound by such

representation. It cannot act contrary to it. The reasoning in the Majority opinion that by allowing the 33 respondents to appear for the interview, the recruiting authority was able to get the best talent available and that such course was in furtherance of public interest is, an impermissible justification. The minority opinion in the 1993 decision in Ashok Kumar Sharma case that the 33 respondents, who were not qualified on the date of submission of the application but had acquired the requisite qualification before the date of interview, could not have been allowed to appear for interview, was right.

It may be mentioned here that they said majority view in 1993 Supp. (2) SCC 611 was disapproved earlier by a two Judges Bench in U.P. Public Service Commission v. Alpana : [1994]1SCR131 .

8. In view of the decisions in the cases of Rekha Chaturvedi v. University of Rajasthan 1993 Supp. (3) SCC 168 U.P. Public Service Commission v. Alpana : [1994]1SCR131 State of haryana v. Anurag Srivastava : (1998)8SCC399 and Bhupendra Lai Singh v. State of Punjab : (2000)5SCC262 , it is now well settled that eligibility requirement must be satisfied on the date appointed by the service Rules and if there is no cut-off date so appointed by the Rules, then such date as may be appointed, for the purpose in the advertisement calling for applications. If the advertisement also does not mention any such date the eligibility criteria have to be fulfilled by reference to the last day of receipt of application. No date having been prescribed in the Rules, or mentioned for reckoning the eligibility of the candidates in the instant case, the conclusion is irresistible that only those candidates who possessed the requisite qualification including post-graduate degree in the subject concerned on or before 21.1.99 were eligible to appear at the written examination. As the petitioners admittedly did not possess the post-graduate degree by that date and they did so latter, they are clearly not eligible to appear. There is therefore, no scope for taking a different view from the one taken by this Court in the case of Viprashree and Ors. (supra).

9. In the result, these writ petitions are dismissed.