

2022 LiveLaw (SC) 177

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
L. NAGESWARA RAO; B.R. GAVAI, JJ.
FEBRUARY 17, 2022.**

CIVIL APPEAL NO. 1422 OF 2022 [Arising out of SLP(C) No. 24434 of 2019] **WITH CIVIL APPEAL NOS. 1426 - 1430 OF 2022** [Arising out of SLP(C) Nos. 7341 - 7345 of 2020] **CIVIL APPEAL NOS. 1431- 1437 OF 2022** [Arising out of SLP(C) Nos. 8155 - 8161 of 2020] **CIVIL APPEAL NOS. 1438 - 1440 OF 2022** [Arising out of SLP(C) Nos. 13124 - 13126 of 2020] **CIVIL APPEAL NOS. 1423 - 1425 OF 2022** [Arising out of SLP(C) Nos. 6142 - 6144 of 2021]

SATYA DEV BHAGAUR & ORS.

VERSUS

THE STATE OF RAJASTHAN AND ORS.

Constitution of India, 1950 - Article 14 - Policy Decision - The policy of the State of Rajasthan is that while selecting Nurse Compounder Junior Grade, the bonus marks are to be given to such employees who have done similar work under the State Government and under the various schemes - Whether such bonus marks would also be available to the contractual employees working under the NHM/NRHM schemes in other States - The policy of the State of Rajasthan to restrict the benefit of bonus marks only to such employees who have worked under different organizations in the State of Rajasthan and to employees working under the NHM/NRHM schemes in the State of Rajasthan, cannot be said to be arbitrary. (Para 22)

Constitution of India, 1950 - Article 226 - Judicial review of policy decisions - Courts would be slow in interfering in the policy matters, unless the policy is found to be palpably discriminatory and arbitrary. This court would not interfere with the policy decision when a State is in a position to point out that there is intelligible differentia in application of policy and that such intelligible differentia has a nexus with the object sought to be achieved. (Para 16)

(Arising out of impugned final judgment and order dated 13-08-2019 in DBSAW No. 837/2019 passed by the High Court of Judicature for Rajasthan at Jodhpur)

For Petitioner(s) Mr. Ravi Prakash, AOR Mr. Himanshu Jain, Adv. Mr. Sandeep Malik, Adv. Mr. Alok Kumar, Adv. Mr. Ajit Kumar Ekka, Adv. Ms. Vagisha Nandini,

Adv. Ms. Alpana Sharma, Adv. Mr. Raj Shekhar Sharma, Adv. Mr. Rajnish Kumar, Adv. Ms. Manju Jetley, AOR Mr. Rishabh Sancheti, Adv. Ms. Padma Priya, Adv. Mr. Anchit Bhandari, Adv. Mr. K. Paari Vendhan, AOR

For Respondent(s) Mr. B.S. Rajesh Agrajit, Adv. Mr. Samdarshi Sanjay, Adv. Ms. Jyoti Rana, Adv. Ms. Dipti Singh, Adv. Mr. D. K. Devesh, AOR Mr. Milind Kumar, AOR Dr. Manish Singhvi, Sr. Adv. Mr. Arpit Parkash, Adv. Mr. Sandeep Kumar Jha, AOR Ms. Padmalakshmi Iyanger, AAG Mr. Nishanth Patil, AOR Ms. Malvika Kala, Adv. Mr. Sandeep Malik, Adv. Mr. Himanshu Jain, Adv. Mr. Pranav Kumar, AOR

J U D G M E N T

B.R. GAVAI, J.

1. Leave granted.

2. In the lead matter in this bunch of appeals, the appellants assail the order dated 13.08.2019, passed by the Division Bench of the High Court of Judicature for Rajasthan at Jodhpur (hereinafter referred to as the “High Court”), in D.B. Special Appeal Writ No. 837 of 2019, thereby allowing the appeal filed by the State of Rajasthan, challenging the order of the Single Judge of the High Court dated 28.08.2018. The Single Judge of the High Court vide the said order had allowed the writ petitions filed by the appellants and directed the respondent State to grant bonus marks to the appellants herein, who have worked under the National Health Mission Schemes (hereinafter referred to as “NHM”) and National Rural Health Mission Schemes (hereinafter referred to as “NRHM”) in States other than the State of Rajasthan.

3. Appellants in civil appeals arising out of the connected Special Leave Petitions viz., SLP(C) Nos. 73417345 of 2020, SLP(C) Nos. 81558161 of 2020 and SLP(C) Nos. 1312413126 of 2020 are similarly situated candidates, who were originally writ petitioners before the Single Judge of the High Court, seeking similar reliefs as the appellants in the lead matter. The Single Judge had dismissed the said writ petitions vide a common order dated 29.08.2019. The appellants herein preferred appeals before the Division Bench of the High Court. The Division Bench vide common order dated 23.03.2020, relying on the impugned judgment rendered in the lead matter, dismissed the appeals. Being aggrieved thereby, the appellants are before this Court.

4. The appellants in civil appeals arising out of SLP (C) Nos. 61426144 of 2021 are another set of similarly placed candidates. They have approached this Court, being aggrieved by the judgment passed by the Division Bench of the High Court dated 28.02.2019, thereby dismissing their appeals, challenging the order dated 26.11.2018 passed by the Single Judge, whereby two separate writ petitions were dismissed.

5. All these appeals are heard together.

6. For the sake of convenience, the facts in civil appeal arising out of SLP (C) No 24434 of 2019 are referred to for consideration.

The State of Rajasthan has framed rules known as Rajasthan Ayurvedic, Unani, Homeopathy and Naturopathy Services (Amendment) Rules, 2013 (hereinafter referred to as the "said Rules"). Rule 19 of the said Rules reads thus :

"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 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, 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."

7. The respondent State of Rajasthan has issued a notification on 30.05.2018, thereby providing that such of the candidate who had worked under the Government, Chief Minister BPL Life Saving Fund, NRHM Medicare Relief Society, AIDS Control Society, National TB Control Program, Jhalawar Hospital and Medical College Society, Samekit Rog Nirgrani Pariyojna or State Institute of Health Family Welfare (SIHFW), would be entitled to bonus marks as per the experience attained. For 1 year of experience, the bonus marks will be 10, for 2 years of experience the bonus marks will be 20 and for 3 years of experience it will be 30. The advertisement

also provided that only such of the candidates who were having experience certificate from the competent authority as mentioned in the said advertisement would be entitled to the bonus marks.

8. The appellants herein, who have the experience of working under the NRHM scheme on contract basis in different States, approached the High Court vide various writ petitions seeking a direction to the respondent State of Rajasthan to accept the experience certificate of the petitioners which was issued by the NRHM authorities of different States, so as to qualify them for getting the bonus marks. The Single Judge of the High Court vide order dated 28.08.2018, allowed the said writ petitions and directed the State of Rajasthan to grant bonus marks to the appellants who had worked under the NHM/NRHM schemes in different states.

9. Being aggrieved by the order passed by the Single Judge, the State of Rajasthan approached the Division Bench of the High Court. The Division Bench by the impugned order dated 13.08.2018, allowed the appeal by holding that the intention of the State of Rajasthan was to confine the benefit of award of bonus marks to those employed in the schemes within the State of Rajasthan and not in other States. Being aggrieved thereby, the appellants are before this Court.

10. We have heard Mr. Rishabh Sancheti, Mr. Himanshu Jain and Ms. Alpana Sharma, learned counsel for the appellants and Dr. Manish Singhvi, learned Senior Counsel for the State of Rajasthan.

11. The main contention of the appellants is that a plain reading of Rule 19 of the said Rules would clearly show that the experience of working anywhere in the country under the NHM/NRHM schemes would be sufficient to qualify a candidate to get bonus marks. It is submitted that the work which is being done by all the contractual employees working under the NHM/NRHM schemes in the State of Rajasthan is the same as that being done by the employees working under the NHM/NRHM schemes in the other States. Learned counsel submitted that basically all these contractual employees are working as Nursing Assistants in ambulances. It is therefore, submitted that the Rule 19 of the said Rules itself enables a candidate working anywhere in the country under the NHM/NRHM schemes to qualify to get the bonus marks. The candidate cannot be deprived of the same on

the ground that only the employees working under the NHM/NRHM schemes in the State of Rajasthan are entitled to such benefit.

12. The learned counsel for the appellants submit that, to discriminate between employees working under the NHM/NRHM schemes in the State of Rajasthan as against those working outside the State of Rajasthan, is without *intelligible differentia*, not having the nexus with the object sought to be achieved and as such, is palpably arbitrary and violative of Article 14 of the Constitution of India.

13. Dr. Singhvi, the learned Senior Counsel appearing for the State of Rajasthan, per contra, submitted that if Rule 19 is read in proper prospective along with the advertisement, it will be clear that the benefit of bonus marks is available only to the employees working under the NHM/NRHM schemes who have rendered their services in the State of Rajasthan. He submits that Rajasthan is a vast State with different types of topographies. He further submitted that the object of Rule 19 is only to give additional weightage for the services rendered by the contractual employees either with the State Government or under the schemes executed or implemented in the State of Rajasthan. He submitted that the Division Bench has rightly construed this aspect and allowed the appeal filed by the State.

14. Rule 19, which has been reproduced by us in the beginning itself, provides that in the case of appointment to the post of Nurse Compounder Junior Grade, the merit shall be prepared by the Appointing Authority on the basis of the marks obtained in such qualifying examination specified in the Schedule appended to the said Rules. It further provides that bonus marks as specified by the State Government, having regard to the length of experience on similar work under the Government, Chief Minister BPL Jeevan Raksha Kosh and National Rural Health Mission, would be added to the qualifying marks.

15. From the material placed on record, it appears that the policy of the State of Rajasthan is that while selecting Nurse Compounder Junior Grade, the bonus marks are to be given to such employees who have done similar work under the State Government and under the various schemes. The question thus, would be whether such bonus marks would also be available to the contractual employees working under the NHM/NRHM schemes in other States.

16. It is trite that the Courts would be slow in interfering in the policy matters, unless the policy is found to be palpably discriminatory and arbitrary. This court would not interfere with the policy decision when a State is in a position to point out that there is *intelligible differentia* in application of policy and that such *intelligible differentia* has a nexus with the object sought to be achieved.

17. This Court in the case of ***Krishnan Kakkanth vs. Government of Kerala and others***, (1997) 9 SCC 495 has observed thus:

“36. To ascertain unreasonableness and arbitrariness in the context of Article 14 of the Constitution, it is not necessary to enter upon any exercise for finding out the wisdom in the policy decision of the State Government. It is immaterial whether a better or more comprehensive policy decision could have been taken. It is equally immaterial if it can be demonstrated that the policy decision is unwise and is likely to defeat the purpose for which such decision has been taken. Unless the policy decision is demonstrably capricious or arbitrary and not informed by any reason whatsoever or it suffers from the vice of discrimination or infringes any statute or provisions of the Constitution, the policy decision cannot be struck down. It should be borne in mind that except for the limited purpose of testing a public policy in the context of illegality and unconstitutionality, courts should avoid “embarking on uncharted ocean of public policy”.”

18. A threeJudge bench of this Court in ***Sher Singh and Others vs. Union of India and Others***, (1995) 6 SCC 515 has observed thus:

“As a matter of fact the courts would be slow in interfering with matters of government policy except where it is shown that the decision is unfair, mala fide or contrary to any statutory directions.”

19. When Rule 19 is read with subclause (ii) of Clause 7 of the advertisement, the policy and object of the State of Rajasthan would be clear. Subclause (ii) of Clause 7 of the advertisement enlists the authorities who are competent to issue experience certificate for contractual employees. The list would reveal that most of the competent authorities are the authorities who are heads of the institution like Government Medical College, Government Dental College, Director, Public Health, All Chief Medical and Health Officer of the State, All Primary Medical Officers, etc. Insofar as the NHM/AIDS is concerned, the competent authority is mentioned as Project Director, NHM/AIDS. We find that reading ‘Project Director, NHM/AIDS’ to

be a Project Director of NHM/NRHM anywhere in the country would be reading the said words without context. When subclause (ii) of Clause (7) of the advertisement mentions all other authorities who are the heads of the various establishments in the State of Rajasthan, the term 'Project Director, NHM' will have to be construed as 'Project Director, NHM' within the State of Rajasthan.

20. Though the impugned order does not consider this aspect in detail, it will be apposite to refer to the observation made by the Division Bench of the High Court of Rajasthan in the case of ***Jagdish Prasad and Others vs. State of Rajasthan and Ors***; D.B. Civil Writ Petition No. 12942/2015, dated 09.02.2016:

“From perusal of the record made available, the Government of Rajasthan has conducted several training programmes for the persons working even on contractual basis and under different schemes controlled by the Government of Rajasthan and Medi Care Relief Society. The training programmes mainly pertain to the peculiar working pattern in the rural areas of the State of Rajasthan including tribal and arid zones. It is also pertinent to note that the participation in such trainings is mandatory and nonjoining of the same may result into nonrenewal of service contract. The persons working with Government of Rajasthan and Medi Care Relief Society with experience similar to the work of Nurse Gradell are posted at different hospitals and other institutions affiliated with the health projects and as such these persons are having a special knowledge of working in the State. A person having such knowledge certainly forms a class different than the persons not having such experience of working in the State. It is also pertinent to note that the benefit extended is only a little weightage on basis of the length of service with experience of working in Rajasthan and not the eligibility. A person having qualification eligibility is entitled to face the process of recruitment irrespective of having any experience or not. The experience gained in other States cannot be compared with the working in the State of Rajasthan as every State is having its own problems and issues and the persons trained to meet such circumstances stand on different pedestal.”

21. It could thus clearly be seen that the Division Bench in the case of ***Jagdish Prasad (Supra)*** after considering the record, has come to the

finding that the Government of Rajasthan has conducted several training programmes for the persons working with it on contractual basis, as well as under different schemes. The training programmes mainly pertain to the peculiar working pattern in the rural areas of the State of Rajasthan including tribal and arid zones. The Division Bench has further come to a finding that participation in such a training is mandatory and nonjoining of the same would result in nonrenewal of service contracts. It has been held that persons having special knowledge in working in the State of Rajasthan form a class different than the persons not having such experience of working in the State. It was found that the benefit extended by the State policy was only that of giving a little more weightage on the basis of experience and all the candidates were required to undergo the rigor of selection process. The Division Bench has clearly held that the experienced candidates in other States cannot be compared with the candidates working in the State of Rajasthan, as every State has its own problems and issues and the persons trained to meet such circumstances, stand on a different pedestal.

22. We are in complete agreement with the aforesaid observations of the Division Bench. We find that the policy of the State of Rajasthan to restrict the benefit of bonus marks only to such employees who have worked under different organizations in the State of Rajasthan and to employees working under the NHM/NRHM schemes in the State of Rajasthan, cannot be said to be arbitrary.

23. It is further to be noted that this Court in the case of ***Sachivalaya Dainik Vetan Bhogi Karamchari Union, Jaipur vs. State of Rajasthan and Others***, (2017) 11 SCC 421 has upheld the policy of the State of Rajasthan, for giving weightage for the services rendered by the employees, where services were used by the State either temporarily or on *ad hoc* basis.

24. In that view of the matter, we do not find any reason to interfere with the impugned judgment. The appeals are dismissed.

25. No order as to cost. Pending application(s), if any, shall stand disposed of in the above terms.