

Court No. - 18

Case :- WRIT - A No. - 122 of 2024

Petitioner :- Nandan Prakash Saroj And 15 Others

Respondent :- State Of U.P. Thru. Prin. Secy. Deptt. Medical Health And Family Welfare Lko. And 2 Others

Counsel for Petitioner :- Alok Mishra

Counsel for Respondent :- C.S.C.,Gaurav Mehrotra,Utsav Mishra

Hon'ble Manish Kumar,J.

Heard Shri Alok Mishra, learned counsel for the petitioner, learned Standing Counsel and learned counsel for the respondent no. 3.

Present writ petition has been preferred for quashing of the impugned order dated 21.11.2023 passed by the respondent no. 1-Principal Secretary, Department of Medical, Health & Family Welfare, Civil Secretariat, Government of U.P., Lucknow rejecting the representation of the petitioner for grant of weightage for considering his candidature on the post of Optometrist in pursuance of advertisement dated 12.07.2023 issued by the respondent no. 3-U.P. Subordinate Services Selection Commission is also prayed for.

The petitioners have also prayed for issuing directions in the nature of mandamus to the opposite parties not to give effect to the impugned order dated 21.11.2023 i.e. rejection of representation of the petitioner and the advertisement dated 12.07.2023 and to provide weightage on the basis of contractual services rendered by him as Optometrist.

Learned counsel for the petitioner has submitted that the petitioner has continuously been functioning on the post of Optometrist on contractual basis since the year ranging from 2012 to 2017 under the National Health Mission Scheme (hereinafter referred to as, the N.H.M.).

In exactly similar set of facts, this Court has passed a judgment and order in the case of Deepak Singh vs. State of U.P. passed in Writ A No. 8682 of 2023, which was allowed vide order dated 04.01.2024. For convenience, the said order dated 04.01.2024 is quoted hereinbelow:-

"1. Heard Shri Alok Mishra, learned counsel for the petitioner, learned Standing Counsel and learned counsel for the respondent no. 3.

2. Present writ petition has been preferred for quashing of the impugned orders dated 15.09.2023 passed by the respondent no. 1-Principal Secretary, Department of Medical, Health & Family Welfare, Civil Secretariat, Government of U.P., Lucknow rejecting the

representation of the petitioner for grant of weightage and age relaxation for considering his candidature on the post of Optometrist in pursuance of advertisement dated 12.07.2023; advertisement dated 12.07.2023 issued by the respondent no. 3-U.P. Subordinate Services Selection Commission is also prayed for.

3. Also prayed for issuing directions in the nature of mandamus to the opposite parties not to give effect to the impugned order dated 15.09.2023 i.e. rejection of representation of the petitioner and the advertisement dated 12.07.2023 and to provide some age relaxation and weightage on the basis of contractual services rendered by him as Optometrist.

4. Learned counsel for the petitioner has submitted that the petitioner has continuously been functioning on the post of Optometrist on contractual basis w.e.f. 03.10.2012 in the office of Chief Medical Officer, Fatehpur under the National Rural Health Mission Scheme (hereinafter referred to as, the N.R.H.M.).

5. On 12.07.2023 an advertisement was published by the respondent no. 3 for appointment on the post of Optometrist but the petitioner was not eligible for the same as the maximum age provided for the said post is 40 years, whereas petitioner was over-aged by 3 months and 26 days.

6. It is further submitted that petitioner has applied against the vacancies notified in the advertisement dated 12.07.2023 but on inquiring, he had come to know that his candidature will not be considered or he would not be permitted to appear in the written examination as he has become over-aged.

7. Under these compelling circumstances, petitioner has approached this Court by filing Writ A No. 5745 of 2023 (Deepak Singh Vs. State of U.P. and others) seeking quashing of the advertisement dated 12.07.2023 and for providing weightage/age relaxation to the petitioner on account of past services rendered by him on contractual post in the light of the judgment and order dated 01.02.2013 passed in **Writ Petition No.190 (S/S) of 2013 (Seema Singh & others Vs. State of U.P. and others)**. The said judgment has subsequently been upheld in Special Appeal (Defective) No. 848 of 2013, which has also been upheld by Hon'ble Supreme Court in S.L.P. No. 8302 of 2014.

8. This Court vide its judgment and order dated 08.08.2023 had disposed of Writ A No. 5745 of 2023 while giving liberty to the petitioner to make a fresh representation to the respondent no. 1 i.e. Principal Secretary, Department of Health and Family Welfare, U.P., who shall consider and decide the same in the light of the judgment rendered by this Court in the case of Seema Singh (supra) by passing reasoned and speaking order within a period of three weeks.

9. It is further submitted that the petitioner had made a representation in compliance of the earlier judgment and order of this Court dated 08.08.2023 and the representation of the petitioner has been rejected by the impugned order dated 15.09.2023.

10. It is further submitted that while rejecting the representation of the petitioner, the respondent no. 1 has wrongly interpreted the judgment in the case of Seema Singh (supra) and distinguished the same in a most arbitrary manner whereas the case of the petitioner is squarely covered by the judgment in the case of Seema Singh (supra). It has lastly been submitted that the date of examination has yet not been notified/ declared and the examination has not been held till date.

11. On the other hand, learned Standing Counsel has submitted that the judgment in the case of Seema Singh (supra), parity of which has

been claimed by the petitioner is not applicable in the case of petitioner as it relates to the Health Workers (Female) and their services are governed by the Uttar Pradesh Medical Health and Family Welfare Department Health Workers and Health Supervisors (Male/Female) Service Rules, 1997 (hereinafter referred to as, the 1997) whereas the services of the petitioner is governed by the Uttar Pradesh Ophthalmic Assistant Service (First Amendment) Rules, 2000 (hereinafter referred to as, the Rules, 2000), which has been relied and provided by the learned Standing Counsel. The source, educational qualification and the work are different between the services of Health Workers and the Optometrist hence there is no illegality in the impugned order dated 15.09.2023 and the writ petition is liable to be dismissed.

12. Learned counsel for the respondent no. 3 has fairly submitted before this Court that the date of written examination has yet not been notified in pursuance of the advertisement dated 12.07.2023.

13. After hearing learned counsel for the parties and going through the record of the case, it is found that while passing the impugned order dated 15.09.2023, respondent no. 1 has wrongly held that the judgment passed in the case of Seema Singh (supra) would not apply in the case of petitioner.

14. In the case of Seema Singh (supra), matter pertained to the training on the post of health Workers (Female). The petitioners of that writ petition were working as Auxiliary Nurses (Midwives) from last several years under various schemes including N.R.H.M. The issue which was to be adjudicated in that writ petition was as to whether authorities can grant relaxation under the Rules, 1997 governing the services of Health Workers (Female) in the age as well as qualification relating to the training etc.

15. This Court in the case of Seema Singh (supra) has held that there is a provision of relaxation under the Rules, 1997, hence, concerned competent authorities can grant relaxation in age as well as in the qualification relating to training etc. It has further been held that the State Government has already framed U.P. Public Services (Relaxation of the Age Limits for Recruitment) Rules, 1992 for providing relaxation in the maximum age limit and disposed of the writ petition with the certain directions. For convenience the relevant paras are reproduced hereinbelow:-

'1.The petitioners shall be considered for appointment on the post of Basic Health Worker (Female) taking into consideration their work and experience on the post of ANM and by giving them relaxation in the qualification relating to training for the post in question provided the petitioners have obtained the training as per the prescribed qualification at that particular time.

2.The petitioners shall be given relaxation in case they have obtained one and half year training for the post in question from any institution other than the departmental divisional training centers.

3.The petitioners shall be given preference against outside candidates for appointment on the post of Basic Health Worker (Female).

4.The petitioners who have become overage for the post in question shall be granted relaxation considering their work and experience.

5.The opposite parties shall make necessary appointment on the post of Basic Health Worker (Female) against the existing vacancies considering the petitioners and similarly situated other candidates. In case any vacancy remains unfilled the same shall be filled from outside candidates.

6.The opposite parties shall complete the required formalities in this regard within a period of six weeks from the date a certified copy of this order is produced before the opposite party nos. 1 and 2 i.e. Principal Secretary, Department of Medical, Health & Family Welfare, Government of U.P. and Director General, Medical, Health & Family Welfare, Lucknow respectively.'

16. The High Court has interpreted the Rule 26 of Rules, 1997 governing the services of Health Workers (Female) in the case of Seema Singh (supra), which is the pari materia of Rule 25 of the Rules, 2000 governing the services of optometrist. Both the rules are being reproduced hereinbelow for convenience:-

'26.Relaxation from the conditions of Service.-Where the State Government is satisfied that the operation of any rule regulating the conditions of service of persons appointed to the service causes undue hardship in any particular case, it may, notwithstanding anything contained in the rules applicable to the case, by order, dispense with or relax the requirement of that rule to such extent and subject to such conditions as it may consider necessary for dealing with the case in just and equitable manner.'

25.Relaxation from the conditions of Service.-Where the State Government is satisfied that the operation of any rule regulating the conditions of service of persons appointed to the service causes undue hardship in any particular case, it may, notwithstanding anything contained in the rules applicable to the case, by order, dispense with or relax the requirement of that rule to such extent and subject to such conditions as it may consider necessary for dealing with the case in just and equitable manner.'

17. The Rule 26 of Rules, 1997 whereby relaxation can be granted to Health Workers (Female) and Rule 25 of the Rules, 2000 governing the services of Optometrist are in verbatim the same hence the case of the petitioner is also covered by the judgment passed in the case of Seema Singh (supra), which has also been upheld by Hon'ble Supreme Court in S.L.P. No. 8302 of 2014.

18. That being the position that Rule 26 of Rules 1997 & Rule 25 of the Rules, 2000 are same in nature and Rules 26 of Rules, 1997 having been considered and interpreted in the case of Seema Singh (supra), the authorities could not legally take a view that the case of Seema Singh (supra) was regulated by different Rules whereas in substance, the Rules relating to relaxation from the conditions of service are of the same effect in both the cases. The authorities legally erred in trying to distinguish the case of the petitioner from the judgment in the case of Seema Singh (supra), which interpretation was upheld by the Hon'ble Supreme Court as well.

19. In view of the discussions made hereinabove, the impugned order dated 15.09.20223 passed by respondent no. 1 is legally not sustainable, thus, it is hereby quashed.

20. Writ petition is allowed.

21. Respondents are directed to consider the candidature of petitioner in the light of this judgment and the judgment passed in the case of Seema Singh (supra) within a period of four weeks from the date of production of certified copy of this order."

Learned Standing Counsel has not disputed the applicability of the judgement quoted hereinabove.

Keeping in view the aforesaid facts and circumstances

discussed in the aforesaid judgment, the impugned order dated 21.11.2023 passed by respondent no. 1 is legally not sustainable, thus, it is hereby quashed.

Writ petition is allowed.

Respondents are directed to consider the candidature of the petitioners in the light of this judgment and the judgment passed in the case of Seema Singh (supra) after granting weightage on account of passed services rendered by petitioners as an Optometrist on contractual basis for the last several years under N.H.M. within a period of four weeks from the date of production of certified copy of this order.

Order Date :- 16.1.2024
Nitesh