

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

D.B. Spl. Appl. Writ No. 862/2024

1. State Of Rajasthan, through Principal Secretary, Department Of Medical Health and Welfare, Government Of Rajasthan, Secretariat, Jaipur, (Raj.)
2. Director, (Non-Gazetted) Directorate, Medical And Health Services, Jaipur Rajasthan
3. Principal and Controller, Dr. S.N. Medical College, Residency Road, Jodhpur.
4. Superintendent, Umaid Hospital, Sivanchi Gate, Jodhpur, Rajasthan.
5. Chief Medical Officer, (CMO), District Hospital Paota, Jodhpur.

----Appellants

Versus

Bharti W/o Rakesh Singh, aged about 40 Years, R/o In Front Of Rao Ji Ki Haweli, Kabutron Ka Chowk, Jodhpur, Rajasthan.

----Respondent

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For Appellant(s) : Mr. Mahaveer Bishnoi, AAG  
For Respondent(s) : Mr. Narendra Rajpurohit

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**HON'BLE MR. JUSTICE SHREE CHANDRASHEKHAR  
HON'BLE MR. JUSTICE KULDEEP MATHUR**

**Order****09/09/2024**

This Special Appeal has been preferred to question the order dated 22.03.2024 passed in S.B. Civil Writ Petition No.4101/2024.

2. Before the writ Court, a challenge was made to the order dated 03.07.2023 rejecting the claim of the writ petitioner to provide her bonus marks as per actual length of her work experience, without excluding Sundays and holidays.



3. The writ Court referred to a decision in "*Suresh Choudhary Vs. State of Rajasthan & Ors. (S.B. Civil Writ Petition No.5694/2021)*" and formed an opinion of rejection of the representation filed by the writ petitioner was illegal.

4. In *Suresh Choudhary*, the learned Single Judge of this Court held as under:-

*"5. The fact that the petitioner has not been awarded bonus marks is not in dispute. The only question, which requires to be decided by this Court is, as to whether the weekly holiday (Sunday) and National Holiday etc. can be excluded while calculating experience for the purpose of bonus marks?"*

*6. The answer to this question does not require any detailed deliberation. As per the Labour Laws, all organizations/institutions/enterprises etc., whether government owned or private are, required to observed weekly offs or are bound to allow one weekly off to each employee. If the petitioner was allowed a weekly off by the respondent themselves, his experience cannot be counted hyper-technically by excluding such day offs. The State's action of calculating petitioner's working days to be 339 (324+15) days and considering such period to be the actual working days is clearly illegal and violative of petitioner's fundamental rights.*

*7. If 53 days of weekly offs are added in the petitioner's actual number of working days i.e. 339 as per two experience certificates (Annexure-3), the petitioner's total number of working days comes to 392 days, which is obviously more than a year."*

5. While deciding *S.B. Civil Writ Petition No.4101/2024*, the writ Court also referred to a decision in "*Narendra Barwal v. State of Rajasthan & Ors. (S.B. Civil Writ Petition No.1669/2022)*". The writ Court having regard to the previous decisions of this Court held that the work experience on the post of Lab Technician or Lab



Assistant was similar in nature as long as they perform their duty in the Laboratory. The writ Court therefore held as under:-

"9. As an upshot, the impugned order dated 03.07.2023 (Annex.17), vide which the representation of the petitioner was rejected, is quashed. The respondents are directed to consider the candidature of the petitioner and award her bonus marks as per entitlement and reassess her performance.

10. In the parting, I may hasten to add here that the relief granted to the petitioner is subject to the verification by the respondents qua the period of her work experience as well as her claim that she worked as Lab Technician. In case, it is found that she was not working as Lab Technician, she shall not be entitled to the benefit of the judgment rendered in *Narendra Barwal Vs. State of Rajasthan & Ors.: S.B. Civil Writ Petition No.1669/2022 decided on 05.05.2022.*"

6. Under the General Clauses Act, month has been defined under clause 35 to section 3 to mean a month reckoned according to British calendar. This is well settled that, while computing a month Sundays and holidays are not excluded.

7. Still, Mr. Mahaveer Bishnoi, the learned Additional Advocate General submits that there is different requirement for the post of Lab Technician and Lab Assistant under Rule 19 of the Rajasthan Medical and Health Subordinate Services Rules, 1965 which is reproduced herein below:

**"19. Scrutiny of application.-** (1) The applications received by the Commission, for the post falling under the purview of the Commission, which are found to be incomplete shall be rejected by them. Before appearing in the examination, it should be ensured by the candidate himself/herself that he/she fulfils the conditions in regard to age, educational qualifications, experience, if any, etc. as provided in these rules. Being allowed to take the examination shall not entitle the candidate to presumption of eligibility. The candidates shall have to appear in the written examination. The Commission shall scrutinise later on the



*applications of such candidates only as qualify in the written examination.*

*(2) The Scheme and Syllabus of written examination shall be such as may be decided by the Commission, from time to time.*

*(3) The applications received by the Board or the Appointing Authority, as the case may be, for the posts not falling under the purview of the Commission, which are found to be incomplete shall be rejected by it. Before appearing in the examination, it should be ensured by the candidate himself/ herself that he/she fulfills the conditions in regard to age, educational qualifications, experience, if any, etc. as provided in these rules. Being allowed to take the examination shall not entitle the candidate to presumption of eligibility. The candidates shall have to appear in the written examination. The Board or the Appointing Authority, as the case may be shall scrutinize later on the applications of such candidates only as qualify in the written examination:*

*Provided that in case of appointment to the post of Pharmacist, the written examination shall be conducted by the Board/Appointing Authority and the merit shall be prepared on the basis of marks obtained in such written examination and such bonus marks as may be specified by the State Government having regard to the length of experience on similar work under the Government of Rajasthan in Chief Minister BPL Jeevan Raksha Kosh, National Health Mission, Medicare Relief Society, AIDS Control Society, Sahakari Upbhokta Wholesale Bhandar, Sahakari Upbhokta Bhandar and other Co-operative Institutes under the Co-operative department. However, as one time measure, after commencement of the Rajasthan Medical & Health Subordinate Service (II Amendment) Rules, 2022, the recruitment to the post of Pharmacist shall be done by preparing merit list on the basis of marks obtained by the applicant in such qualifying academic and professional examinations as specified in the schedule appended to these rules and such bonus marks as may be specified by State Government having regard to the length of experience on similar work under the Government of Rajasthan in Chief Minister BPL Jeevan Raksha Kosh, National Health Mission, Medicare Relief Society, AIDS Control Society, Sahakari Upbhokta Wholesale Bhandar, Sahakari Upbhokta Bhandar and other Co-operative Institutes under the Co-operative department.*

*Provided further that in case of appointment to the posts other than Pharmacist, which are not in the purview of the Commission, merit shall be prepared by the Appointing Authority on the basis of marks obtained in such qualifying academic examination or professional examination or both*





*as specified in the schedule appended to these rules and such bonus marks as may be specified by the State Government having regard to the length of experience on similar work under the Government, National Rural Health Mission, Medi Care Relief Society, Chief Minister BPL Jeevan Raksha Kosh, AIDS Control Society, Revised National Tuberculosis Control Programme (RNTCP), Jhalawar Hospital and Medical College Society, Integrated Disease Surveillance Project or State Institute for Health and Family Welfare.*

*Provided also that the decision of the Commission/Board or Appointing Authority, as the case may be, regarding the eligibility or otherwise of a candidate shall be final."*

8. There is no denial by the respondent that under the Rules of 1965 the qualification for the post of Lab Assistant is (i) Senior Secondary with Science or its equivalent and (ii) any Diploma in Medical Laboratory Technology from an institute recognized by the State Government. The respondent pleaded that after the commencement of the Rajasthan Medical & Health Subordinate Service (Amendment) Rules, 2018, the persons having 3 years experience of working as Laboratory Assistant/Laboratory Technician in the State Government hospitals are also eligible; the respondent was working on contractual basis as Laboratory Technician. We accord our concurrence to the view expressed by the writ Court to the extent that Lab Technician or Lab Assistant as long as they work in the Laboratory, the experience obtained by them must be counted.

9. In that view of the matter, we are not inclined to entertain this Special Appeal which is accordingly dismissed.

**(KULDEEP MATHUR),J**

**(SHREE CHANDRASHEKHAR),J**

54-Hanuman/Tikam-