

Amar Chand

Vs

State of Punjab and Another

Criminal Appeal No. 1403(N) of 1977

(P. N. Shinghal, O. Chinnappa Reddy JJ)

25.10.1978

JUDGMENT

CHINNAPPA REDDY J.

1. The appellant Amar Chand who held a degree of "Ayurvedic Bhishak" of the All India Ayurvedic Vidyapeeth, Delhi, was appointed as Up-Vaidya in the Punjab Ayurvedic Department on March 3, 1961. On the reorganisation of the erstwhile composite State of Punjab he was allotted to the State of Punjab on November 1, 1966. In April, 1972 he obtained the degree of Ayurvedya Ratan of the Hindi Sahitya Sammelan, Prayag. He claims that though he was eligible to be promoted as Vaidya he was not so promoted while a number of persons who held similar qualifications were promoted in the years 1970, 1971 and 1972, to the post of Vaidyas against the 50% quota reserved for appointment by promotion. In June, 1972, it was alleged by the appellant, the Punjab Ayurvedic and Unani Practitioners Act was amended and a notification was also issued under the Punjab Ayurvedic Department (Class III Technical) Service Rules, 1963, the effect of which was to deny to the appellant the right to be promoted to the post of Vaidya on the basis of the qualifications possessed by him. The contention of the appellant was that this action of the State Government altered the conditions of his service to his disadvantage and as it had been done without obtaining the prior approval of the Central Government it was illegal, as it contravened the proviso to sub-section (6) of Section 82 of the Punjab Reorganisation Act. The appellant alleged that without promoting him to the post of Vaidya, the Government had advertised five posts of Vaidyas to be filled up by direct recruitment. He, therefore, filed a petition under Article 226 of the Constitution in the High Court of Punjab and Haryana for the issue of a Writ in the nature of Mandamus "commending" the respondents to consider the petitioner for promotion according to the principles of seniority-cum-merit strictly in accordance with service rules and also for the issue of Writ of Prohibition "restraining the respondents from diverting the quota of the promotees towards direct recruits as is being done by the impugned advertisement".

2. On behalf of the respondents namely the State of Punjab and the Director, Health Services, Punjab (Ayurvedic Department), a counter-affidavit was filed in the High Court pleading that the so called degree of Ayurvedic Bhishak was ever recognised and that the appellate who was asked to supply the original or certified copy of the Ayurvedya Ratan degree said to have been obtained by him in April, 1972 did not supply the same. The appellant did not possess the qualification of Ayurvedya Ratan in 1970, or in February, 1972, when the cases of Up-Vaidyas for promotion to the posts of Vaidyas were considered. It was also pleaded that the degree of Ayurvedya Ratan was no longer a recognised qualification for appointment as Vaidya and, therefore, the petitioner could not claim promotion to the post of Vaidya on the basis of that qualification.

3. A learned Single Judge of the High Court of Punjab and Haryana allowed the Writ Petition on the ground that the degree of Ayurvedya Ratan was a sufficient qualification for promotion to the post of Vaidya before November 1, 1966, and, therefore, under the proviso to Section 82(6) of the Punjab Reorganisation Act, it was not permissible for the State Government to prescribe a different qualification so as to disentitle those holding the Ayurvedya Ratan degree from being considered for promotion. On an appeal preferred by the State of Punjab and the Director of Health Services under clause 18 of the Letters Patent, a Division Bench of the High Court of Punjab and Haryana reversed the judgment of the learned Single Judge on the ground that the prescription of a different qualification for promotion to the post of Vaidya was not violative of the proviso to Section 82(6) of the Punjab Reorganisation Act as the general approval of the Central Government had been granted by Memo No. F. No. 5/6/57/SR(S) dated March 27, 1957.

4. We are afraid both the learned Single Judge and the Division Bench of the High Court of Punjab and Haryana went off at a tangent in purporting to decide the questions whether there was an alteration in the conditions of service as a result of the 1972 amendment and whether the previous approval of the Central Government had been obtained for such alteration. The question which had to be considered first was whether the appellant possessed the qualification prescribed for promotion to the post of Vaidya on November 1, 1966, the date of coming into force of the Punjab Reorganisation Act. If he did not possess the prescribed qualification on that date, he could not complain against the prescription of a different qualification in 1972 under which also he was not eligible to be considered for promotion. On November 1, 1966, the only qualification that the appellant possessed was a degree of Ayurvedic Bhishak of the All India Ayurvedic Vidyapeeth, Delhi. In the counter-affidavit filed by the respondents to the Writ Petition in the High Court, it was expressly pleaded that the so-called degree of Ayurvedic Bhishak of the All India Ayurvedic Vidyapeeth, Delhi, was not recognised as a qualification for promotion to the post of Vaidya. Both the learned Single Judge and Division Bench of the High Court proceeded to consider the case on the basis that it was the degree of Ayurvedya Ratan obtained by the appellant in April, 1972 that enabled the appellant to claim to be promoted to the post of Vaidya but that was beside the point. Before us Shri Dutta learned Counsel for the appellant attempted to argue that the All India Ayurvedic Vidyapeeth, Delhi was "a recognised Institution or University" within the meaning of Section 2(g)(i) of the Punjab Ayurvedic Department (Class III Technical) Service Rules, which reads as : "Any Institution or University incorporated by law in any of the States in India." He was unable to substantiate this submission. He has filed an additional affidavit in which the assertion is repeated. It does not carry the matter further. We have, therefore, no option but to dismiss the appeal though not for the reasons stated by the Division Bench of the High Court of Punjab and Haryana. We have refrained from considering the question whether a change of the qualification prescribed for promotion amounts to a change of the conditions of service and also the question whether the degree Ayurvedya Ratan satisfied the requirements of the rules before or after the 1972 amendment. In the circumstances of the case the parties will bear their own costs.

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