

State of U. P. and Others

Vs

Dr. Sarvadaman Mishra and Others

Civil Appeal No. 1406 of 1977

(V. R. Krishna Iyer, R. S. Pathak JJ)

25.10.1979

JUDGMENT

KRISHNA IYER, J. –

1. The only point in the case put forward by Shri Dikshit turns on the respondent Medical Officer having to appear before the Public Service Commission of U.P. and getting confirmation from the government of his service if the PSC approves. Alternatively, should he go through that exercise at all ?

2. The respondent was a Medical Officer in the service of the State of U.P. Then came the war of 1962, and the consequential Emergency. Many Medical Officers served the country in the theatres of war and the respondent was one such. On the termination of the war he returned like others, and rejoined Government service. The State, perhaps on a punctious reading of the rules governing the service, took the view that the respondent had to appear before the public service Commission and, on its approval seek confirmation from the government. The respondent's counsel states that he has no objection to appear before the Public Service Commission. Indeed, he goes further to state that he had already appeared and was approved by the PSC. We need not go into this question except to state that in case the Public Service Commission has not already approved of the confirmation of the service of the respondent he is willing to appear before that body. Prima facie we see no reason why a person of the experience of the respondent should not be approved by the Public Service Commission or be confirmed by the State Government. However, it is not for us to express any final opinion on this question the concerned authorities, we are sure, will act fairly in the situation.

3. The next point that may arise is as to the date of confirmation in the event of the Public Service Commission's approval being obtained and government's decision in favour of confirmation. We dare say that the respondent who served the country in the state of emergency should not suffer for that reason in his service seniority. Government, we hope will remember this factor when giving the date of confirmation retrospectively.

4. The circumstances as presented to us leave us in no doubt that unless there are strong adverse factors, the respondent may legitimately expect and, perhaps is eligible for retrospective confirmation with effect from May 21, 1963 in the Provincial Medical Service. With these observations we dispose of the appeal because counsel for the State, Shri Dikshit says that the state to the legitimate claims of the respondent. We dispose of the appeal subject to the above observations. Parties will bear their own costs.

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