

A. N. Shashtri

Vs

State of Punjab and Others

Civil Appeals Nos. 8623-24 of 1983

(Ranganath Misra, M. M. Dutt JJ)

11.12.1987

JUDGMENT

RANGANATH MISRA, J. –

1. These appeals are by special leave and are directed against two separate judgments of the Punjab and Haryana High Court. The first one is against the decision of the High Court in a writ application for quo warranto filed by respondents 2 to 4 while the second one is against the dismissal of a writ petition filed by the appellant before the High Court challenging his reversion.

2. The short facts are that the appellant was appointed as a Professor of Ayurvedic Medicines under the Punjab Government. Later, he was appointed as Deputy Director from which post he was further promoted as Director. By order dated October 21, 1981 he was reverted to the post of Deputy Director. On October 31, 1987, the appellant has superannuated. Respondents 2, 3 and 4, once upon a time students of the appellant came before the High Court asking for a writ of qua warranto challenging the appellant's appointment as Director on promotion on the plea that he did not possess the qualification prescribed by the Punjab Ayurvedic Department (Class I and Class II) Rules, 1963. Rule 6 of these Rules prescribes :

No person shall be appointed to the service, unless he possesses such qualifications, if any, as are shown in column 4 of Appendix 'A'.

In Appendix 'A' there is only one post under Class I - that being the post of Director of Ayurved. The requisite qualifications for that post as provided in Appendix 'A' are the following :

- (1) A degree (5 years or more of regular course) in Ayurvedic system of medicine of a Medical Board or Faculty of Indian Medicine recognised by the Government.
- (2) Doctor of Science in Ayurvedic Medicine (Post-Graduate) of any recognised University.
- (3) Must have worked as an Organiser in some Ayurvedic Institution of repute such as Government Ayurvedic Department in any State for a period of at least ten years.
- (4) Has conducted original research in Ayurvedic Therapy.
- (5) Must be an Ayurvedic Physician of at least 15 years standing.

Challenge in the High Court was on the ground that the appellant did not possess the prescribed

qualifications under items 1 and 2. The writ petition was filed soon after the appellant was promoted to the post of Director, and during the pendency of the writ petition the order of reversion as referred to above had been passed.

3. The appellant opposed the writ application by contending that he possesses the requisite qualifications and, inter alia, averred in the return made to rule that the petitioners before the High Court were his students and on account of ill motive, they had filed the application challenging the appointment of the appellant as Director. The State Government initially supported the appellant but later took a different stand. The High Court has found that the appellant possessed the second qualification, namely, that he had obtained the Doctor of Science degree in Ayurvedic as prescribed. In regard to the first qualification, the High Court found that the appellant had a degree in Ayurvedic system of Medicine from a recognised institution and the degree that the appellant possesses has been duly recognised by the Government of Punjab, but it found that the appellant had not studied in regular course for five years to obtain the degree and, therefore, came to the conclusion that the requisite qualification was not possessed by the appellant. Accordingly, it allowed the writ petition and came to hold that the appellant was not qualified to hold the post of Director. When the question of challenge to the reversion came for consideration in the connected writ petition, the High Court took the view that since the appellant did not possess the first qualification, he was not entitled to the post of Director and was not entitled to challenge the reversion to the post of Deputy Director.

4. We shall first deal with the appeal arising out of the quo warranto proceedings. The first qualification which we have referred to above appears to be a common qualification for almost all the ranks covered by Appendix 'A', namely, that a degree should have been obtained after five or more years of regular course having been gone through. No dispute has been raised to the appellant's appointment as Deputy Director. Learned counsel appearing for the respondents who had petitioned the High Court pointed out with reference to the correspondence with the State Public Service Commission that in regard to the qualification for the post of Deputy Director, a degree or diploma was considered sufficient. The State Public Service Commission had raised objection to the government's proposal of fixing the degree qualification by pointing out that since a degree after studying for five or more years or regular course was the requirement for the higher post of Director, a lesser qualification should be prescribed for the post of Deputy Director and accordingly the alternatives had been adopted. When we pointed out to her that for the post of Assistant Director - it cannot be disputed that Deputy Director's is a superior post - the requirement was five years or more of regular course in Ayurvedic with a diploma, there was really no answer. We would accordingly hold that the High Court should have looked into this aspect to find out what exactly was the requirement. In view of the fact that there was no challenge to the appointment of the appellant to the post of Deputy Director and the first item of the qualification is the same for the Director as also the Assistant Director and as Deputy Director, the appellant held a post between the two, we are not impressed by the stand of the respondents that the appellant was not possessed of the requisite qualification. There is no dispute that the appellant had been serving as Professor for several years. The requisite qualification for that post as per Appendix 'A', as far as relevant is :

A degree (five years regular course) in Ayurvedic system of Medicine of a recognised University, or of a Board of Indian System of Medicine established by law or from any Ayurvedic College recognised by government.

As far as this qualification goes, there is indeed no difference in the case of a Professor and that of Director. In giving appointment to the appellant as Professor, it must follow that government were

satisfied that appellant had the requisite qualification.

5. There is material on record to show that in regard to the degree obtainable on completion of the five year course, the appellant had read as a regular student for three years in the first instance and for the remaining two years he was directly under a qualified Professor though it was not study in a regular institution. After reading for five years he has obtained the degree which has been from a recognised University. In the circumstances, it has become difficult to agree with the reasons given by the High Court for its conclusion that the appellant was not having the requisite qualification prescribed under the Rules.

6. Mr. Rao, counsel for the appellant relied upon a decision of this Court in *Statesman (Private) Ltd. v. H. R. Deb* ((1968) 3 SCR 614 : AIR 1968 SC 1495 : 1968 Lab IC 1526) at page 621 of the Reports, Hidayatullah, C.J. speaking for the Constitution Bench indicated :

The High Court in a quo warranto proceeding should be slow to pronounce upon the matter unless there is a clear infringement of the law.

In the circumstances which we have narrated, it is indeed difficult to hold that the appellant did not have the requisite qualification.

7. Ayurveda is the traditional method of medical attention prevalent in this country. Modern science and people associated with the medical faculties of the modern age have gradually accepted the position that Ayurveda provided a fully developed medical process. In the post-medieval India the system had suffered a setback but in recent years, the Ayurved system has been revived. In the posts-independence period, the system has been accepted as a regular course of study and recognised as a system of therapy. The High Court should have given due consideration to the background and the history of the matter.

8. There is clear material that the petitioners before the High Court were the once-upon-a-time students of the appellant. Ordinarily one would expect obligations, piety and reverence in the conduct of the writ petitioners towards the appellant. This expectation would be more justified in the traditional system of Ayurved culture. Surprisingly that seems to have been totally wanting. The appellant has, on the other hand, alleged that the writ petition was the outcome of malice and ill-will. The High Court did not appropriately advert to this aspect.

9. We are of the view that in the facts of this case, the reasonable conclusion to reach should have been that the writ petitioners had failed to establish, that the appellant did not possess the requisite qualification. The appeal has therefore, to be allowed, the judgment of the High Court has to be set aside and the writ petition has to be dismissed with costs.

10. Now we come to the appeal challenging the reversion. The writ petition has been dismissed on the sole ground that the appellant was not possessed of the requisite qualification and, therefore, was not entitled to continue as Director. Now that we have reversed the finding of the High Court on that score, the judgment of the High Court cannot be sustained. Reversion as admitted by the State Government in its counter in the High Court was grounded upon non-possession of the requisite qualification. With our finding in the connected appeal, the order of High Court cannot be sustained. Nor can the order of reversion be. The other appeal too is allowed with costs. The appellant shall be treated to have been regularly appointed as Director and shall be treated to have retired in the post of Director - the order of reversion notwithstanding. He shall be entitled to all the benefits

prescribed for the post of Director from the date he came to the post till he retired. All this dues shall be paid to him within three months from today. Consolidated hearing fee of Rs. 5000 is allowed to the appellant and this shall be paid by the respondent-State alone.

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J. L. Nanda

Vs

Smt. Veena Nanda

Civil Appeal No. 3946 of 1987

(Ranganath Misra, G. L. Oza JJ)

11.12.1987

JUDGMENT

OZA, J. –

1. Leave granted.

2. This appeal arises out of SLP (Civil) No. 14149/83 filed by the petitioner husband against the judgment of the High Court of Delhi in Letters Patent Appeal No. 141/82 decided in July 22, 1983. The present appellant husband filed a petition in the trial court for decree of divorce on the ground of cruelty and desertion. The trial court granted the degree of divorce but on appeal by the respondent wife learned Single Judge of High Court of Delhi reversed the decision and dismissed the petition filed by the appellant husband. It is against this that a letters patent appeal under Clause 10 of the Letters Patent was filed before the High Court wherein it was heard by a Division Bench of the High Court and the appeal filed by the appellant was dismissed. It is against this that the present special leave petition was filed.

3. Considering the circumstances of the case and the age of the parties we issued notice and also directed the parties to appear before us in chambers and in spite of our best efforts it is unfortunate that no reconciliation was possible.

4. It is one of those unfortunate cases where the husband and wife are of mature age not only that but they have a grown-up son who is maturing into a lawyer as he is studying in law and unfortunately even these circumstances were not able to bring about an amicable settlement in the matter.

5. The parties to these proceedings were married at Delhi in accordance with the Hindu customs on February 7, 1961. It seems that there was disagreement and disharmony from the very beginning. A male child, however, was born out of this wedlock on August 30, 1964. The parties by and large lived together till February 1971. They have lived separately ever since except for a short duration in the middle of 1975 when they were together. The main allegation of the appellant was that from the very beginning the respondent wife did not like to live in the joint family and she used to behave in a peculiar manner, always created ugly scenes, indulged in quarrels and taunting and ultimately

forced the appellant to shift to a government allotted quarter and live separately away from other members of the family but according to him even then her behaviours continued to be the same and it was also alleged that because of her behaviour ultimately the appellant suffered a nervous breakdown and had to be admitted in the Willingdon Hospital, New Delhi for about 45 days.

6. The Division Bench of the High Court came to the conclusion that from perusal of all the facts alleged it appears that there may have been a few incidents prior to the birth of the child on August 30, 1964 but after that there was no such incident pleaded or proved till 1966 except for the allegation that the wife got the pregnancy terminated some time in 1966 against the wishes of the appellant and on this basis the learned Judges of the Division Bench came to the conclusion that the early part before August 1964 probably was a period of inexperience and lack of adjustment between the husband and wife but ultimately after the birth of the son in 1964 there appears to be nothing serious and in this view of the matter the learned Judges came to the conclusion that between 1963 and 1968 there appears to be no incident or problem which really deserves consideration. A small matter about her describing herself Mrs. Veena Vohra instead of Mrs. Veena Nanda the learned Judges have considered and have accepted the explanation of the wife as plausible. The learned Judges of the Division Bench have considered all the circumstances and have also referred to the correspondence and the letters wherein regrets have been expressed in some matters by the respondent. Considering all these facts, the Division Bench came to the conclusion that although it is unfortunate that they have not been keeping good relations but it could not be said to be a case of cruelty entitling the appellant to a decree of divorce.

7. Having heard learned counsel for the parties and also having heard the parties themselves we come to the same conclusion as was reached by the learned Judges of the Division Bench of the High Court while disposing of the appeal filed by the appellant against the judgment of the learned Single Judge. It is no doubt an unfortunate state of affairs but it could not be held that the respondent was behaving with the appellant in a manner which could be termed as cruelty which would entitle the appellant to a decree for divorce. Sometimes the temperament of the parties may not be conducive to each other which may result in petty quarrels and troubles although it was contended by the appellant that he had to suffer various ailments on account of this kind of behaviour meted out to him by the wife but it could not be held on the basis of any material that ailment of the appellant was the direct result of her (respondent's) conduct. The Division Bench therefore was right in coming to the conclusion that there is no material to come to the conclusion that the respondent treated the appellant with such cruelty as would entitle him to a decree for divorce. In view of the facts and circumstances, therefore, the appeal is devoid of merit. It is therefore dismissed. The judgment of the High Court of Delhi is maintained. In the circumstances of the case respondent shall be entitled to costs of this appeal. The counsel's fee is quantified at Rs. 3000.

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