

Dr. M. C. Bindal

Vs

R. C. Singh and Others

Civil Appeal No. 3797 of 1984

Dr. M. C. Bindal

Vs

U. P. Public Service Commission, Allahabad and Another

Writ Petition No. 756 of 1986

Sadhan Kumar Majumdar

Vs

State of U. P. and Others

Civil Appeal No. 3926 of 1984 [In Slp (C) No. 2001 of 1984]

State of U. P.

Vs

Ram Chander Singh and Others

Civil Appeal No. 3798 of 1984

(A. P. Sen, B. C. Ray JJ)

19.09.1988

JUDGMENT

RAY, J. –

1. We allowed the Civil Appeal No. 3926 of 1986 and dismissed Civil Appeal No. 3797 of 1984 and Writ Petition No. 756 of 1986 filed by Dr. M. C. Bindal and Civil Appeal No. 3798 of 1984 filed by the State of Uttar Pradesh by our order dated December 19, 1986 and we indicated therein that the reason for the above order would be given later on. Accordingly, we are giving the reasoned judgment hereinbelow.

2. The U.P. Public Service Commission made an advertisement in various newspapers on September 13, 1981 inviting application for the post of Food and Drug Controller, U.P. The qualifications for this post stated in the said advertisement are set out hereunder :

Necessary qualifications. - (1) A degree from any recognised University in Medicine/Science/Pharmaceutical Chemistry.

(2) Experience of 5 years in drug Standardisation and problems relating to controlling of drug standards or drug manufacturing or drug testing in renowned institution

3. Pursuant to the said advertisement Dr. M. C. Bindal, Dr. S. K. Majumdar, Shri Ram Chander Singh and others filed applications. The appellant Dr. Bindal stated in his application that he has seven years' experience as per the advertisement. He also stated that he had three and a half years' specific experience i.e. experience in the field of drug testing and four years' other experience namely experience in the field of teaching Pharma analysis including testing of transfusion fluids in the hospitals, pharmacy manufacturing units attached to LLRM Medical College, Meerut. It has also been stated that in the four years of teaching experience in addition to his teaching responsibility he also conducted the laboratories in which drug testing was carried out. Of the applicants, Dr. S. K. Majumdar was not called for interview.

4. The U.P. Public Service Commission after holding interview of the candidates recommended the following candidates for appointment to the post of Food and Drug controller, U.P. :

(a) In the main list ... Shri R. C. Singh

(b) In the Reserve List ... Dr. M. C. Bindal (Provisional)

5. The Commission also recommended for relaxation of age Shri R. C. Singh. The Commission also made it clear that "the word 'Provisional' denoted that the recommendation was subject to the petitioner meeting the necessary qualification - experience of 5 years - for the appointment to the office of the Drug Controller".

6. On December 5, 1982, the State of Uttar Pradesh intimated the Commission that the candidate Shri R. C. Singh did not appear to be suitable in view of the fact that there had been a vigilance enquiry against him. It was also pointed out in the said letter that the appointment of Shri R. C. Singh as Food and Drug Controller would not be in public interest. The State further pointed out that Dr. Bindal had the requisite experience of 5 years and he had also excellent academic and other qualifications.

7. In reply to the said letter sent by the Secretary, Medical and Health, U.P. Government, the U.P. Public Service Commission by its letter dated February 23, 1983 intimated to the State of U.P. that the right to appoint or not to appoint a candidate vested with the State of U.P. and it was for the State Government to take a decision accordingly. On receipt of this letter the State Government appointed Dr. M. C. Bindal as Food and Drug Controller, U.P. by its letter dated April 6, 1983.

8. Thereafter two writ petitions were filed in the High Court at Allahabad, Lucknow Bench, one by Shri R. C. Singh and another by Dr. S. K. Majumdar challenging the appointment of Dr. M. C. Bindal on the ground that he had not the requisite experience as required for the said post of Food and Drug Controller, U.P. These writ petitions are Writ Petition No. 2451 of 1983 and Writ Petition No. 2155 of 1983. These were heard together and were allowed in party by a common judgment on December 22, 1983. The relevant portions of the findings are set out herein :

To sum up : (1) The order appointing Dr. Bindal to the post finally was premature.

(2) Before final decisions taken in the matter, the State Government has to take a decision on : (a) Whether to allow or reject Shri R. C. Singh's representation against the censure entry based on vigilance report and then to consider the question of his suitability for appointment. (b) Whether to relax the age limit for Shri R. C. Singh. (c) If Shri R. C. Singh was not to be considered suitable, then to consider in consultation with the Public Service Commission the question whether Dr. Bindal fulfilled the requisite qualification relating to practical experience in accordance with law. (d) If Dr. Bindal is found not to fulfill the qualification, then to consider whether the qualification relating to practical experience has to be modified or not. (e) As Dr. Bindal is not per se unsuitable or disqualified for the post, he will continue to hold the post provisionally till a decision is taken as above. The final decision should however be taken at an early date, say within a period of three months from today.

Accordingly, the petitioners succeeded in part. The matter will have to be considered afresh by the State Government in some respects as set out above in consultation with the Commission. Dr. Bindal's appointment cannot, however, be held to be illegal because it is not in violation of an statutory provision. Indeed, if an IAS officer could hold the post for such a long time, Dr. Bindal being certainly better qualified can also hold the post. However, his appointment shall be treated as only provisional and will be subject to the final decision of the State Government as indicated hereinabove.

The writ petitions are, accordingly, allowed in part to the extent indicated above. No order is made as to costs.

9. Aggrieved by the said judgment Dr. Bindal who was one of the respondents in the said writ petitions filed a special leave petition being SLP (C) No. 10330 of 1984 which was numbered as Civil Appeal No. 3797 of 1984 after the grant of special leave. The State of Uttar Pradesh also filed SLP (C) No. 9084 of 1984 and this was numbered subsequently as Civil Appeal No. 3798 of 1984 after grant of special leave. The U.P. Public Service Commission however, in the meantime on March 15, 1984 directed one of its officers i.e. Deputy Secretary to verify whether Dr. Bindal fulfilled the qualifications relating to practical experience in drug standardisation or drug manufacturing or drug testing in a renowned institution. The Deputy Secretary after enquiry sent a report to the U. P. Public Service Commission stating that the total period of experience of Dr. Bindal on the date of submission of his application was only 3 years 4 months and 9 days whereas the essential qualification required was experience should be for 5 years from any reputed concern. The U.P. Public Service Commission took a decision on April 17, 1984 to the effect "that the Commission withdraws and cancels the provisional recommendation the candidature because Shri Bindal does not possess the requisite qualifications" and the same was sent to the government on April 23, 1984. Dr. Bindal moved a writ petition being Writ Petition No. 756 of 1986 against this impugned order made by the Public Service Commission withdrawing the candidature of Dr. Bindal and cancelling its recommendation of the petitioner for the post of Food and Drug Controller, U.P.

10. It is necessary to mention in this connection that on September 21, 1984 this Court while granting special leave made an order of stay or operation of the High Court Judgment pending hearing of the appeal. But subsequently on March 18, 1986 after hearing the learned counsel the interim order of stay was recalled in consideration of the fact that U.P. Public Service Commission had already cancelled the candidature of the appellant and withdrawn the recommendation made in his favour for the reason inter alia that he lacked in five years experience in drug testing. This Court also directed the State Government to appoint a member of the Indian Administrative Service

to function as the Food and Drug Controller, U.P.

11. It has been urged on behalf of the appellant, Dr. Bindal that the order of the Public Service Commission in cancelling the candidature of the appellant and withdrawing the recommendation made in his favour is wholly illegal and bad inasmuch as the government has considered the certificates produced by the appellant and found that the appellant had the requisite experience of five years in drug testing and as such he was appointed by the government as Food and Drug Controller, U.P. The Public Service Commission was wrong and patently in error in withdrawing the candidature of the appellant and in cancelling its recommendation without properly considering the opening of the government to the effect that the appellant had the requisite experience of five years in drug testing. It has been further contended in this connection that the provision of Article 320 of the Constitution of India providing for consultation with the Union Public Service Commission or providing for consultation with the State Public Service Commission is not mandatory and as such the recommendation of the Commission was not binding on the State Government. It has been submitted that the recommendation of the Commission is in the nature of advisory function and it is for the State to take the ultimate decision. Some decisions of this Court have been cited at the bar on this score.

12. In the instant case, the advertisement for the post was made at the instance of the U.P. Public Service Commission and the requisite qualification for the post had been specified in the advertisement. It is therefore, essential that a candidate in order to be considered for appointment for the said post must have to comply with the requisite qualification namely the educational qualification as well as the experience in drug testing etc. for a period of five years. If any of these essential qualifications is lacking then the candidate cannot claim to be appointed in the said post. Undoubtedly, it is the Public Service Commission who has to receive the applications of the candidates and has to scrutinise them and then to decide which of these applicants have got the requisite qualifications and so be called for interview. It is the duty of the Commission with the help of experts in the particular subject to hold interview and to find out and select the candidates having the requisite qualifications and experience fit to be recommended to the government for appointment to the said post of Food and Drug Controller. Therefore, under Article 320(3)(a) and (b), it is the duty of Public Service Commission to consider and to get itself satisfied as to which of the candidates has fulfilled the requisite qualifications specified in the advertisement. The Commission in this particular case has duly got verified the certificates of Dr. Bindal in regard to his experience of five years in drug testing by a Deputy Secretary of the Commission and after considering his report as well as the certificates came to their conclusion that the appellant though fulfilled educational qualifications, lacked in the requisite experience of five years in drug testing. The Commission, therefore, revised its earlier decision and withdrew the candidature of the appellant and also cancelled its recommendation earlier given in favour of the appellant. This decision of the Public Service Commission, in our considered opinion cannot be faulted. It is the constitutional requirement envisaged in Article 320 that the Commission will have to perform the duty of recommending the candidate fulfilling all the requisite qualifications for the post to the government for being considered for appointment to the post concerned. It is, of course, a well settled legal position that the duty to consult the Commission in the matter of appointment to civil posts by the government is not mandatory but directory and as such the absence of consultation with the State Public Service Commission does not render any appointment made by the government in civil posts invalid or illegal. It cannot also be contended that since the duty to consult the Public Service Commission in the matter of making appointments to Civil Services of the State is directory and not mandatory, the appointment of Dr. Bindal as Food and Drug Controller, U.P. by the Government of Uttar Pradesh cannot be questioned or interfered with by the court inasmuch as the

candidature of the appellant, Dr. Bindal for the post in question has already been withdrawn by the Public Service Commission and as such the question of validity or invalidity of the appointment of the appellant, Dr. Bindal to the said post is no longer open to be considered by the court.

13. In such circumstances the only course open for the government is to re-advertise the post. If such advertisement is made the appellant, Dr. Bindal will be free to apply for the same. It has been brought to our notice by a subsequent affidavit sworn by Dr. S. K. Majumdar that the said post with a change name as Drug Controller was advertised and Dr. Bindal's name was recommended for the said post by the U.P. Public Service Commission and the deponent was not called for interview. We do not think it proper to take notice of the subsequent fact and we refrain from expressing any opinion in this respect. It is open to the parties to take appropriate steps in accordance with law.

14. For the reasons aforesaid the Civil Appeal No. 3926 of 1986 is allowed and Civil Appeal No. 3797 of 1984, Writ Petition No. 756 of 1986 filed by Dr. M. C. Bindal and Civil Appeal No. 3798 of 1984 filed by the State of Uttar Pradesh are dismissed with costs.

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