

State of Orissa and another

Vs

Radheshyam Nanda

Civil Appeal No.1917 of 1982

(K. Jagannatha Shetty, R. M. Sahai, Yogeshwar Dayal JJ)

30.04.1991

JUDGMENT

1. This is an appeal from a decision of the High Court of Orissa which allowed the claim of the respondent for appointment as a Medical Officer in Homoeopathic Dispensary.
2. The respondent is a registered Homoeopathic Practitioner within the meaning of S. 21 of the Orissa Homoeopathic Act, 1956 which is hereinafter referred to as the "State Act". There is also a Central enactment called Homoeopathic Central Council Act, 1973 (Act No. 59 of 1973) on the same subject, which is hereinafter referred to as the "Central Act. "
3. The respondent was originally holding the post of Distributor and thereafter he was appointed as Medical Officer in a Homoeopathic Dispensary. After coming into force of the Central Act, the respondent was reverted to his original post of Distributor. The reversion was based perhaps on the ground that the respondent was not duly qualified to hold the post of Medical Officer in the dispensary in view of the bar imposed either by the Central Act or by the State Act. The validity of reversion was challenged before the High Court by means of a writ petition under Art. 226 of the Constitution. There were several other petitions filed by the similarly reverted persons. The High Court in those petitions (See: OJC No. 1916/77, 12/78 and 531/ 78) disposed of on March 21, 1981 gave a considered judgment expressing the view that a registered homoeopathic practitioner like the respondent is not ineligible for appointment as Medical Officer in Homoeopathic Dispensary. In that judgment, the High Court directed the State Government to review the cases of the reverted Medical Officers. Following the judgment the respondent's writ petition was also allowed in terms thereof.
4. The State being aggrieved by the High Court decision has appealed to this Court.
5. The Central question for consideration is whether the registered Homoeopathic practitioner who has not qualified himself from an institution established. or recognised by the Homoeopathic Board shall be ineligible either under the State Act or under the Central Act for being appointed as Medical Officer of any State Homoeopathic dispensary? S. 2(i) defines registered Homoeopathic practitioner to mean a Homoeopathic practitioner registered as such under S. 21. S. 21(1) refers two categories of Homoeopathy practitioners; (i) Registered Homoeopathic practitioner; and (ii) Listed Homoeopathic practitioner. We are not concerned with the later category, we are duly concerned with the former category. 21(2) furnishes the requirements to qualify oneself to become a registered Homoeopathic practitioner. It is not in dispute that the respondent is one of such registered Homoeopathic practitioners.
6. With these undisputed facts, we may now consider the scope of Ss. 29(b) and 43 of the State Act

and S. 15 of the Central Act. S. 29(b) of the State Act reads:

"29. Registered practitioners' certificate-

Notwithstanding anything contained in any law for the time being in force-

xxx xxx xxx xxx xxx

(b) a registered homoeopathic practitioner shall be eligible to hold any appointment as a Medical Officer in any dispensary, hospital, infirmary or lying-in-hospital supported by or receiving a grant from the State Government or any local authority and treating patients according to the homoeopathic system of medicine;

7. Section 43 of the State Act, so far as relevant provides:

"43. Reservation of certain appointment to registered Homoeopathic Practitioners who have qualified themselves from institutions established or recognised by the Board :- Except with the special sanction of the State Government no Homoeopathic Practitioner, other than a registered Homoeopathic Practitioner who has qualified himself from an institution established or recognised by the Board, shall be competent to hold an appointment as Medical Officer of health, or as physical or other medical officer in a Homoeopathic hospital maintained or aided by the State Government or any Local authority."

8. Section 29(b) states that a registered Homoeopathic Practitioner shall be eligible to hold appointment as Medical Officer in any dispensary, hospital, infirmary etc. supported by or receiving grant from the State Government or any local authority and treating patients according to the homoeopathic system of medicine. The section, in other words, states that if one is a registered Homoeopathic Practitioner, he would be eligible for appointment as a Medical Officer either in any dispensary or hospital. S. 43, however, makes certain reservations of posts of medical officers exclusively for institutionally qualified registered Homoeopathic Practitioners. It provides that no Homoeopathic Practitioner other than a registered Homoeopathic Practitioner who has qualified himself from an institution established or recognised by the Board shall be competent to hold appointment as Medical Officer of Health or Physician in a Homoeopathic Hospital maintained or aided by the State Government or any Local authority. The condition imposed under S.43 is that the registered Homoeopathic Practitioner must have qualified himself from an institution established or recognised by the Board and it means he must have undergone the course prescribed by such institution. No such restriction, however, is imposed for appointment as Medical Officer of a Homoeopathic dispensary. Any registered Homoeopathic Practitioner could be eligible for an appointment as a Medical Officer in any Homoeopathic dispensary. The respondent therefore is not ineligible for appointment as Medical Officer of a Homoeopathic dispensary.

9. We will now examine whether the Central Act contains any restraint or provides any additional qualification for appointment as Medical Officer in Homoeopathic dispensary. If there is any such provision, the Central Act being a subsequent enactment on the same subject would override the State Act. S. 15(2) of the Central Act provides:

"15(2). No person, other than a practitioner of Homoeopathy who possesses a recognised medical qualification and is enrolled on a State Register or the Central Register of Homoeopathy-

(a) shall hold office as Homoeopathic physician or any other office (by whatever designation called) in Government or in any institution maintained by a local or other authority.

10. Section 15(2) states that no person other than a practitioner of Homoeopathy who possesses a recognised medical qualification and is enrolled on a State Register or the Central Register shall hold office as Homoeopathic physician or any other office in Government or in any institution maintained by a local or other authority. Medical qualifications referred to therein are included in the second or the third schedule of the Act. It is clear therefrom that a person who does not possess any such medical qualification cannot be appointed as a Medical Officer of any dispensary. But S. 15(3) (b) preserves the privileges including the right to practice Homoeopathy conferred by or under the State Act. Section 15(3) (b) provides:

"15. Rights of persons possessing qualifications included in Second or the Third Schedule to be enrolled-

xxx xxx xxx xxx

(3) Nothing contained in sub-section (2) shall affect-

xxx xxx xxx xxx

(b) the privileges (including the right to practise Homoeopathy) conferred by or under any law relating to registration of practitioners of Homoeopathy for the time being in force in any State, on a practitioner of Homoeopathy enrolled on a State Register of Homoeopathy."

11. It will be clear from the above provision of the Central Act that the right conferred on a registered Homoeopathic Practitioner under the State Act is not affected by the conditions under S. 15(2) of the Central Act and indeed such right or privilege has been specifically preserved by S. 15(3)(b) of the Central Act. The State Act as we have seen earlier provides eligibility for the respondent, for appointment as Medical Officer in a Homoeopathic dispensary and that right remains unaffected by the Central Act. This is also the view expressed by the High Court on the construction of the above provisions with. which we concur.

12. In this view of the matter we dismiss the appeal without an order as to costs.

Appeal dismissed.

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