

State of Rajasthan and Another

Vs

Vinod Kumar Rao and Others

Civil Appeal Nos. 1981-90 of 1992

(Dr. A. S. Anand, L. M. Sharma JJ)

08.05.1992

JUDGMENT

DR A. S. ANAND, J.

1. Delay condoned.

2. Special leave granted.

3. The State of Rajasthan has filed this batch of special leave petitions from various orders of the High Court of Rajasthan in the writ-petitions filed by the respondents seeking identical relief. The High Court directed the petitioners to fix the respondents in Grade I male nurses-cum-compounders with effect from the date they acquired the requisite qualification and further directed the petitioners to give all consequential benefits to the respondents within the specified time. Directions were also issued to the petitioners, vide an order dated 15th December, 1988 (subject-matter of SLP Nos. 9164-69 of 1990) to consider the case of 'all other Grade I male nurses-cum-compounders' who have acquired the requisite qualification and to give them benefit of Grade I with effect from the date they acquired the said qualifications irrespective of the fact whether they had filed writ petitions or not. As would be seen from the judgment of the Division Bench, dated 15th December, 1988, the Court noticed the relief claimed by the writ-petitioners to be appointed as male nurses, Grade I from the date they acquired qualification of general nursing i.e. PNR/BPNA/RNRC, as the writ-petitioners were already matriculates, the Court observed thus :

".... There is also no dispute between the parties that a lot of litigation had taken place in the matter of grant of Grade I to the male nurse/compounder. In all the cases, the respondents were directed to fix the male nurse/compounder on the post of male nurse, Gr. I from the date they acquired qualification.

4. The Court then went on to observe :

"From the enumeration of the facts stated above, there is no dispute between the parties on the following facts :

1. That the petitioners in all the writ petitions are matriculate and they have acquired technical qualification from Bombay Pradesh Nursing Association or its equivalent Nursing Course from Punjab Nursing Registration Council or other equivalent courses.

2. The respondents have also not disputed that litigation took place between the male nurse, Grade I and the respondents, in which the High Court as well as the Services Appellate Tribunal, directed the respondents to fix the male nurse/compounders in Gr. I from the date they acquired the above two qualifications."

5. The Court then went on to opine :

"..... It is an admitted position and cannot be disputed by the respondents that in view of the various judgments referred to above S/Shri Gajraj Mehta, Kishan Singh Bhati, Jugal Kishore Joshi, Bhanwar Lal Bhati, Lalu Ram, Purshottam Bhatt, Mangi Lal, Dayal Singh, Daulal, Hari Narain, U. R. Choudhar Bherudas, Ramesh Chandra, Bhanwar Lal Verma, Kanhaiya Das, Bheru Lal, Janardhan Rai, Abbas Ali, Bhagwan Puri, Chandra Sen, Banshi Lal, Heera Lal, Kailash Nath Chauhan, Shyam Lal and Ganpat Lal were given the benefit of Gr. I either from the date of their initial appointment, or from the date of passing of the General Nursing Course from PNRC/RNRC; but the same has been denied to the male nurses, Gr. I who did not approach either to this Court or to the Rajasthan Civil services Appellate Tribunal. This clearly proves that the respondents believe in litigation rather than giving relief to its employees who have a valid right supported and well settled by the authoritative judicial pronouncement made by this Court or by the competent tribunal. Once the right of male nurse, Gr. I stood settled by judicial pronouncement, then the other similarly situate male nurses, Gr. I are entitled to be fixed in Gr. I with effect from the date they acquired the requisite qualification and the State cannot be allowed to (sic) persons who have gone to the court and it will deny the same relief to those who did not believe in litigation and have not gone to the court of law for vindicating their rights. Male nurses, Gr. I who have gone to the court of law and have got the relief from the court and those though having the same qualification who have not gone to the court, for all practical purposes are similarly situate and they are entitled for appointment and payment as male nurses, Gr. I from the date of passing General Nursing Course from PNRC/RNRC...."

6. Dr Chitale, appearing in support of these petitions, submitted that the "concession, made before the Division Bench" was based on a wrong assumed interpretation of the rules in question and that the directions given by the court run contrary to the rules and had the rules been brought to the notice of the Division Bench the aforesaid directions would not have been given.

7. From the observations of the Division Bench as noticed above, it appears that the High Court assumed that the entire earlier litigation had ended in favour of the nursing compounders and that relief had been granted to all such nurses-cum-compounders of promotion to Gr. I with effect from the date they passed both the necessary examination i.e. matriculation and nurses training, irrespective of the vacancy position or the experience required under the rules. This assumption is not correct. The judgment rendered by the Division Bench of the Rajasthan High Court on February 4, 1985 in the case of State v. Mool Chand [Decided on February 4, 1985 (Raj HC)] [Annexure V - SLP 9164] reveals that the order of the Single Judge was modified in that case and the State Government was directed to fix the respondent in that case on the post of male nurses-cum-compounder, Gr. I with effect from such date, on or after October 16, 1973, when vacant post was available in the cadre of compounder, Gr. I. The court noticed the provisions of 1965 Rules and observed that the respondent had been promoted on the post of compounder, Gr. II by the order dated October 16, 1968 and only five years thereafter he "became entitled to promotion on the

higher post of compounder, Gr. I subject to availability of vacancy on the post". We were informed at the Bar that a special leave petition against the judgment, dated February 4, 1985, was dismissed by this Court. Obviously, therefore, the assumption made by the court that all cases had been decided in favour of the nurses-cum-compounders was not correct.

8. Dr Chitale argued that having regard to Rajasthan Medical and Health Subordinate Services Rules, 1965 (hereinafter referred to as 1965 Rules), the respondents cannot be allowed promotion to Grade I unless they complete five years of service in Grade II and since the respondents did not possess that experience, the direction to promote them to Grade I was erroneous. He submitted that so far as Grade II is concerned, that can be claimed only after passing the PNRC Examination. In this connection, he referred to the Schedule to the 1965 Rules, which provides as follows :

#Name Source of Minimum Post from Minimumof recruitment qualifications which qualificationpost with and experience promotion is and experience percentage for direct to be made required for recruitment promotionCompounder, 100% by ..
Compounder, PNRC or itsGr. I promotion Gr. II equivalent qualification recognised by Govt. with 5 years' service as Compounder, Gr. IICompounder, -do- ..
Compounder, PNRC or itsGr. II Gr. III equivalent qualification recognised by Govt.##

9. Mr P. P. Rao, Senior Advocate and Mr Abhijat P. Medh, Advocate appearing for the respondents, on the other hand defended the impugned judgments by taking support from the Rajasthan Civil Services (Unification of Pay Scales) Rules, 1951 (hereinafter referred to as 1951 Rules); Rajasthan Civil Services (Rationalisation of Pay Scales) Rules and Schedule, 1956 (hereinafter referred to as 1956 Rules); Rajasthan Civil Services (Revised Pay Scale) Rules, 1961 (hereinafter referred to as 1961 Rules); and Rajasthan Civil (New Pay Scale) Rules, 1969 (hereinafter referred to as 1969 Rules) to urge that before the coming into force of the 1965 Rules, there was no question of categorisation in the single cadre to which all the nurses-cum-compounders belonged and that the reference to Grades I, II and III was only with respect to the pay scales and not to the class. Emphasis was laid on the nature of 1951 Rules, 1956 Rules and 1961 Rules which deal with the pay scales. According to Mr Rao, under the 1951 Rules, three grades of pay were payable to the same cadre and therefore it could not be legitimately suggested that the cadre was divided into further three classes. With reference to Entry 86 of Annexure I of the 1951 Rules, it was submitted that the pay scale of male nurses and compounders of Grade I was restricted to 20% of the cadre while that of Grade II and Grade III to 40% of the cadre. The precise submission of Mr Rao was that as a result of the 1951 Rules and the rationalisation of the pay scales by 1956 Rules subsequently revised by the 1961 Rules, all the respondents were entitled to Grade I pay as they satisfied the conditions mentioned against Entry 83 added to Schedule to the Rajasthan Civil Services (Unification of Pay Scales) Rules in 1961. According to learned counsel for the respondents, since the 1961 pay scales remained in operation till July 1969, therefore there could not be any adverse effect on the rights of the respondents who were governed by those rules, by bringing the 1965 Rules into operation. Learned counsel relied upon the circular dated April 9, 1958 to urge that the respondents were entitled to pay scales for Grade I compounders as the hospitals were divided into two categories being "Hospital A" and "Hospital B" and there was no third category of the Hospital. Dr Chitale in reply, however, argued that the circular dated April 9, 1958 had been modified on July 25, 1958 and the modification clearly envisaged the requirement of experience of a number of years in the Government service before promotion to Grade I could be made. Mr Rao, however, submitted that in view of the 1961 Rules which had been framed under Article 309, the modification issued on July 25, 1958 was required to be ignored but Dr Chitale emphasised that since the 1961 Rules and the

modification made, vide letter dated July 25, 1958 did not deal with the same subject, therefore, the question of ignoring the letter in view of the coming into force of the 1961 Rules did not arise. He submitted that the modification dated July 25, 1958 dealt with gradation while 1961 Rules only dealt with the pay scales.

10. Dr Chitale further argued that whenever the question of promotion arises, it is dependent upon many factors including the vacancy of posts and that mere eligibility for a higher post does not clothe the Government servant with any right of promotion to the higher post. It only makes him entitled to consideration for promotion and the existence of vacancies coupled with the question of suitability is important and therefore no order of promotion could be mechanically made as had been done by the High Court in the instant case.

11. Learned counsel for the parties referred to the judgments rendered by the Rajasthan High Court in some of the earlier cases and we find that except for the judgment dated February 4, 1985 referred to (*supra*) where reference has been made to the 1965 Rules, neither the effect of various Rules relied upon by learned counsel for the respondents nor the effect of the 1965 Rules and the various circulars and letters which were brought to our notice by Dr Chitale were considered by the Rajasthan High Court as presumably the same were not brought to the notice of the High Court. It appears to us that on account of ignorance of the Rules and the various Government letters, circulars and orders concession was made on behalf of the State which led to the passing of the impugned orders. The submissions which have been raised before us by Dr Chitale and M/s P. P. Rao and A. P. Medh were not apparently raised in the Rajasthan High Court in the various cases decided by that Court.

12. So far as the case of respondent Sampath Singh [SLP 7914] is concerned, it was submitted by Dr Chitale that Sampath Singh had passed the nursing examination on April 13, 1966 after the 1965 Rules had come into force with effect from March 16, 1966 and he was therefore clearly governed by the 1965 Rules and by no stretch of imagination could respondent Sampath Singh claim either Grade II and/or Grade I promotion before he had actually passed the nursing examination. Since the 1965 Rules introduced an additional condition which respondent Sampath Singh did not fulfil, no relief could have been granted to him by the High Court in view of the 1965 Rules. The respondent was eligible to be promoted to Grade II only on April 13, 1966 when he passed the nursing examination but he had to wait for a period of five years, under the rules, before he could be eligible for consideration for promotion to Grade I and that the High Court fell in error in granting relief to him ignoring the Rules. Mr Medh, however, submitted that the interpretation placed on the 1965 Rules in view of various Government circulars and the Rules of 1951, 1956 and 1961 was erroneous. We find that none of these questions were considered by the High Court in Sampath Singh case apparently due to the fact that the State Government did not contest the case and did not bring any of the provisions to the notice of the Rajasthan High Court.

13. In our view, having regard to the circumstances and the interplay of various rules and circulars, orders and letters referred to by the parties, the matter requires reconsideration. We, therefore, think that the case should go back for rehearing before the High Court where all these questions will be examined and we refrain from expressing any opinion at this stage on the merits of the controversy between the parties. Since, the pleadings of the parties were not complete before the High Court and the different Government orders, circulars, letters, rules etc. to which reference has been made by learned counsel for the parties before us were also not referred to before the High Court, we permit both sides to file fresh affidavits explaining their cases in clear terms and file copies of orders, circulars, letters or rules, which may be relevant for arriving at the correct decision. The impugned

judgments are, in the circumstances, set aside and the appeals allowed in the terms noticed hereinabove and the cases remitted to the High Court for rehearing and a fresh decision in accordance with law. There shall, however, be no order as to costs.

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