

Dr. Ravinder Nath

Vs

State of H.P. and Others

Civil Appeals Nos. 3959 with 3960 of 1992

(P. B. Sawant, N. P. Singh JJ)

25.09.1992

JUDGEMENT

SAWANT, J.:-

1. Leave granted. Respondents 3 to 9 are trained Ayurvedic Compounders. They joined the State service between 1962 and 1969 as such Compounders. The next promotional post is that of Ayurvedic Chikitsa Adhikari (Vaidya). Under the Himachal Pradesh Health and Family Planning Department Subordinate Class III Services (Recruitment, Promotion and Certain Conditions of Service) Rules, 1974 (hereinafter referred to as "State Rules") which have been framed under Art. 309 of the Constitution, the essential qualification for promotion to the post of Vaidya is either (i) Vaidya Visharad which is a diploma course, with seven years' experience or (ii) Ayurveda Ratna which is a degree course, with five years' experience. The Departmental Promotion Committee (D.P.C.) for selecting candidates for the post of Vaidya met on 2nd December, 1977. Respondents 3 to 9 (hereinafter referred to as "respondents") were not selected on the ground that they did not have the required diploma/ degree from a recognised institution as required by the said Rules. Instead, their juniors were selected. The claim of the respondents is that in fact they had appeared for the examinations variously for Vaidya Visharad or Ayurveda Ratna held by Hindi Sahitya Sammelan, Allahabad (H.S.S) in 1974 and had obtained diplomas/ degrees of the said institution. According to the respondents, the H.S.S. was a recognised institution and, therefore, they were qualified to be promoted to the post of Vaidya. Hence, they filed a writ petition in the High Court which was transferred to the Central Administrative Tribunal. To the writ petition, the State as well as the promotees to the post of Vaidya were made parties.

2. Before the Tribunal, the stand taken by the appellant-State in Civil Appeal No. 3960/ 1992 arising out of SLP 12778/1992 and the promotee Vaidyas was that the degrees/ diplomas which are recognised as professional medical qualifications are listed in the Second Schedule to the Indian Medical Central Council Act, 1970 (IMCC Act or the Central Act). The said Schedule mentions H.S.S. at serial number 105 in it, and specifies against it in column 4 thereof that its diploma/degree of Vaidya Visharad/Ayurveda Ratna which is acquired between 1931 and 1967 alone would be recognised as a professional medical qualification. Since, admittedly, the respondents had acquired their degrees/ diplomas in 1974, the same were not the recognised qualifications for the promotional post.

3. The Tribunal, however, held that 1974 Rules merely provided that degree/diploma should be from a recognised University/ Board of Indian system of medicines established by an enactment of

State Legislature or an institute recognised by Central/State Government. Since the Director of Institutions for Higher Education issued by the ministry of Education and Social Welfare, Government of India had shown in Section III thereof the H.S.S. as one of the recognised institutions of national importance under Acts of Parliament, it should be held that the degree/diploma given by the H.S.S. is one given by an institute recognised by the Central Government. The Tribunal also held that the IMCC Act of 1970 was made applicable to Himachal Pradesh only from 10th September, 1976 and, therefore, its provision that the diplomas/ degrees obtained from the H.S.S. during the period 1931 to 1967 alone were recognisable under the said Act, would be applicable to Himachal Pradesh only from that date and not earlier. The Tribunal, in this connection, relied upon the fact that the Register for enrolment of Vaidyas recognised under the Board of Ayurveda and Unani system of Medicines of Himachal Pradesh contained the name of one Amar Singh at serial number 526, although he had obtained the degree of Ayurveda Ratna from H.S.S. in 1971, i.e., after 1967. The Tribunal further held that S. 17 of the IMCC Act of 1970 only provided for enrolment of a qualified person on a State Register. Since, however, the appellants were already in service, there was no question of their being enrolled in any State Register and as such Section 17 of the Act of 1970 did not apply to the respondents but applied only to direct recruits. The promotion, according to the Tribunal, as governed only by the State Rules of 1974. The Tribunal accordingly directed the State Government to convene a fresh D. P.C. to consider the case of the respondents for their suitability for promotion to the post of Vaidya on 'the said basis and if found suitable, to treat their promotion to the said post from the date their juniors were promoted to the post of Vaidyas. The Tribunal also directed that if the respondents were so promoted, they would be entitled to all the consequential benefits like seniority, arrears of pay etc. from their deemed date of promotion.

4. Aggrieved by the said decision, both the State as well as the promotees have preferred these two separate appeals-Civil Appeal No. 3959 of 1992 is by one of the promotee employees and Civil Appeal No. 3960 of 1992 by the State of Himachal Pradesh.

5. We find that none of the grounds given by the Tribunal is sustainable in law. In the first instance, all sections of the IMCC Act of 1970 except S. 17, came into force in the State of Himachal Pradesh from 15th August, 1971. Section 17 came into force from 10th September, 1976. It is not, therefore, correct to say that the whole of the IMCC Act of 1970 was made applicable to Himachal Pradesh only from 10th September, 1976. Even assuming that the whole of the Act had come into force in Himachal Pradesh for the first time on 10th September, 1976, the provisions of the Act were applicable on 2nd December, 1977 when the D. P.C. considered the cases of respondents for promotion. On that date, the provisions of S. 17 (1) and (2) of the said Act which in term's confined the recognition of diplomas/ degrees conferred by the H.S.S. only to those conferred between 1931 to 1967, were very much in force. The said provisions are as follows :

"17. (1) Subject to the other provisions contained in this Act, any medical qualification included in the Second, Third or Fourth Schedule shall be sufficient qualification for enrolment on any State Register of Indian Medicine.

(2) Save as provided in section 28, no person other than a practitioner of Indian medicine who possesses a recognised medical qualification and is enrolled on a State Register or the Central Register of Indian Medicine,-

(a) shall hold office as Vaid, Siddha, Hakim or Physician or any other office (by whatever designation called) in Government or in any institution maintained by a

local or other authority;

(b) shall practise Indian medicine in any State;

(c) shall be entitled to sign or authenticate a medical or fitness certificate or any other certificate required by any law to be signed or authenticated by a duly qualified medical practitioner;

(d) shall be entitled to give evidence at any inquest or in any court of law as an expert under section 45 of the Indian Evidence Act, 1872, or any matter relating to Indian medicine"

6. Admittedly, the respondents do not claim that they have qualifications included in the Third or Fourth Schedule of the Act. Their case is that they possess qualifications included in the Second Schedule since they hold diplomas/ degrees from the H.S.S. which is mentioned at serial number 105 in that Schedule. The remark in column 4 of the Schedule against that entry, however, shows that diploma/degree given by H.S.S. from 1931 to 1967 alone are recognised under Section 17.

7. Hence the D.P.C. could not have, on that day, recognised the qualifications of the respondents which were admittedly obtained in 1974. However, the fact remains that the Second Schedule to the IMCC Act of 1970 which enumerates recognised medical qualifications and which is prepared pursuant to Section 14 of the Act, came into force on 15th August, 1971 i.e., even prior to the date on which the respondents obtained the degrees/ diplomas from the H.S.S. On this short ground alone, the writ petition filed by the respondents is liable to be dismissed.

8. However, it was contended before us, on behalf of the respondents that the 1974 State Service Rules which prescribe the qualification of a degree in Ayurveda from a recognised University/ Board established under an enactment of a State legislature or of an institute recognised by the Central/ State Government, are applicable only to direct recruits as per Rule 7 of the said Rules. As far as the promotees are concerned, their qualifications are laid down in Rule 11 thereof which does not require that the Board or the institute from which the degrees /diplomas are obtained should either be established under a State enactment or recognised by the Central or State Government. We may reproduce here both the said Rules 7 and 11 :

"(7). Minimum educational and other qualifications required for Direct Recruits :

Essential : (i) Matric or Rattan with English or Pragya with English.

(ii) Degree holder in Ayurveda of not less than 5 years duration from a recognised University/ Board of Indian line system of Medicines established under the enactment by a State Legislature of Institute recognised by the Central/ State Government.

(11), In case of rectt. by promotion/ deputation/ transfer, grades from which promotion/ deputation/ transfer, to be made:

By promotion from amongst : Ayurvedic Compounder/ Up-Vaidyas working in the Department provided that they have following professional qualifications and completed years of service noted against each.

(i) Trained Ayurvedic Compounders/ Up-Vaidyas having diploma of Ayurveda Vachaspati/Vidya Vachaspati or Ayurvedacharya or Ayurveda Rattan or any other degree/diploma equivalent thereto, after completion of 5 years' satisfactory regular service. (ii) Trd. Ay. Compounder/ Up-Vaidyas having diploma of Kaviraj of Ay. Shastri or Ayurveda Bhushan or Vaidya Visharad or any other degree/ diploma equivalent thereto after completion of 7 years' satisfactory regular service."

9. Having stated in Rule 7(ii) that the degree should be from a recognised University/ Board or from an institute recognised by the Central/State Government, as an essential qualification for direct recruitment, it is difficult to hold that in Rule 11 the State Government would permit degree/diploma of any Board or institute whether recognised or not by the Central or State Government. Such an interpretation will be contrary to the provisions of the IMCC Act of 1970 which is a Central Act as well as to the State Act of 1968. The 1974 State Rules will have to be read consistently with the provisions of both the said enactments as well as with the State Government notification No.2-38/73-H/ P.W. dated 21st February, 1978 which recognises only the degree/diploma granted by the H.S.S., during the period 1931 to 1967. The provisions of Section 15 read with Section 31 and Schedule I of the State Act of 1968, show that only a person possessing the qualifications specified in Schedule I of that Act will be entitled to get his name registered in the State Register. Schedule I speaks of degree or diploma recognised by the Board. The Board referred to there is the Board as defined under Section 2(d) of the Act and means the Board of Ayurveda and Unani System of Medicines in Himachal Pradesh established/constituted under the Act. Admittedly, the Board constituted under the Act has not recognised the degree/ diploma of the H.S.S. obtained after 1967.

10. We have already referred to the provisions of the Central Act which also recognise the said degree/diploma of H.S.S. if obtained between the period 1931 to 1967 only.

11. The Tribunal's View that since H. S. S. is mentioned in the Directory of Institutions for Higher Education issued by the Government of India, the degree/ diploma conferred by it is entitled to be recognised for the present promotion, is clearly erroneous. The mere mention of the institution in the said Directory cannot confer on it the authority to give degrees/ diplomas overriding the provisions of the Central Act of 1970, the State Act of 1968, the State Service Rules of 1974 and the notification of the State Government issued in 1978 which lay down the professional medical qualifications.

12. Hence we are of the view that the qualifications acquired by the respondents from the H.S.S. which are admittedly after 1967 do not entitle them to be considered for promotion to the post of Vaidya.

13. It may further be stated that the instance of Shri Amar Singh referred to in the judgment of the Tribunal and also cited before us is of no avail to the respondents for the simple reason that, as has been pointed out by Dr. Ghatate, on realising the mistake, it was rectified by cancelling his enrolment in the State Register. This was done even prior to the impugned decision of the Tribunal.

14. In the result, both the appeals are allowed and the decision of the Tribunal is set aside. In the circumstances of the case, there will be no order as to costs. Appeals allowed.

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