

Dr. Chittaranjan Sharma and Others

Vs

State of H.P. and Another

Civil Appeals Nos. 1248-49 of 1987

(K. Ramaswamy, Faizanuddin JJ)

19.09.1996

ORDER

1. These appeals by special leave arise from the order of the Administrative Tribunal made on 15-12-1986. Admittedly the H.I.M. Ayurvedic Degree College, Paprola, District Kangra was taken over by the Government and handed over to the H.P. Health and Family Welfare Department. Clause (3) of the agreement envisages as under :

"The service of the existing Staff, Principal, teaching administrative and other employed on regular basis in the college who fulfill the requisite qualifications and age conditions may be taken over with effect from 3-3-1978 after due screening if done by a screening committee constituted for this purpose by the Government in which 2 members i.e. Principal and Manager from the Managing Committee shall also be included. Service of the present employees will be protected according to Government rules."

2. In accordance therewith, the existing staff, principal, teaching, administrative and other employees employed on regular basis in the college were eligible to be absorbed on regular basis provided they fulfilled the following conditions : (1) they were appointed on regular basis in the college before taking over; (2) they possessed the requisite qualifications prescribed for the posts; and (3) they fulfilled the age condition at the time of taking over w.e.f. 3-3-1978. On fulfilment of all these condition, they would be sent to a screening committee constituted for the purpose by the Government including two members, i.e., the Principal and Manager of the Managing Committee to represent the employees in the screening committee. On recommendation made by the Committee, the regular absorption could be made.

3. Unfortunately, the appellants were not regularly appointed; nor did they possess the requisite qualifications for the absorption on regular basis in the posts as on the date of the take-over. Resultantly, instead of throwing them out of service by retrenchment, the Governor issued the order exercising the power under proviso to Article 309 of the Constitution on 24-5-1980 in consultation with the Himachal Pradesh Public Service Commission and Rules for Recruitment and Promotion of the Ayurvedic College employees, Paprola, District Kangra. Admittedly, the appellant even then did not satisfy those qualifications prescribed under the Rules. Resultantly, they were absorbed in suitable administrative posts to which they are eligible. When they challenged their absorption, the Tribunal in the impugned order directed to maintain the scale of pay which they were drawing on the date of take-over and directed their absorption in the posts of Ayurvedic Chikitsa Adhikaris etc. Thus these appeals by special leave.

4. It is seen that since the appellant had not fulfilled the requisite qualifications either when there were initially appointed by the committee before take-over nor when statutory rules were made by the Governor so as to enable for absorption. Instead of retrenching them from service due to non-fulfilment of the requisite qualifications, the Government came to absorb them in the Ayurvedic Chikitsa Adhikaris posts etc. to which they are eligible. The Tribunal has given the direction to maintain the pay scales and to make adjustment and absorption. In our view directions are correct and based on equity and do not call for any interference. They may also be considered for further promotion from the absorbed posts in accordance with the rules.

5. The appeals are accordingly dismissed. No costs.