
(2000) 05 P&H CK 0132
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 8694 of 1999

Angrez Kaur

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 30-05-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) 05 P&H CK 0132

Hon'ble Judges : R.L. Anand, J

Bench : Single Bench

Advocate : Mr. R.N. Raina, for the Appellant; Mrs. S.K. Bhatia, DAG, for the Respondent

Judgement

R.L. Anand, J.—Angrez Kaur, petitioner, has filed the present writ petition under Article 226 of the Constitution of India praying for the issue of an appropriate writ, order or direction quashing the impugned order dated 21.6.1999, Annexure P-5, issued by the respondent No. 3, vide which the petitioner was transferred from her parent department of Homeopathy to Ayurvedic Department.

2. The petitioner joined the service of the Punjab Govt. somewhere in the year 1977. She was initially recruited in the office of the Sikh Gurudwara Tribunal where she got promotion as Senior Clerk and Senior Assistant, etc. She remained employed in the office of the said Tribunal up to 24.2.1992 when the Tribunal was abolished by the Govt. of India. The petitioner became surplus. She had been representing to the Govt. for her absorption in the other departments. Finally, with the intervention of the high-ups, the petitioner was absorbed in the office of the Punjab Home Guards on 17.9.1992, being the surplus staff, where she remained employed up to 28.2.1994, The sanction to the post against which the petitioner was working was not granted by the State Govt. as a result of which the petitioner again come on the road. As a surplus staff, again, she was adjusted in the Homeopathic Deptt. in the office of Director, Ayurvedic, Punjab, vide order dated 2.3.1995. Vide office order dated 21.6.1996, the petitioner was

transferred to the Head Office. Ayurvedic Deptt., Punjab, Chandigarh. The petitioner has given challenge to her transfer order Annexure P-S in the present writ petition mainly on the ground that she being the employee of the Homeopathic Deptt. which is an independent Deptt. could not be transferred to Ayurvedic Deptt. of the Punjab Govt. and that the Ayurvedic Department (Class III Ministerial Service) Rules, 1963 (hereinafter referred to as "the Rules") could not be made applicable to her case. This attempt on the part of the respondent authorities is illegal, violative and unconstitutional as the cadre of the petitioner could not be changed from Homeopathic Deptt. to Ayurvedic Deptt. By this action of the Department, the chances of promotion of the petitioner have become remote.

3. Notice of the writ petition was given to the respondents. Two written statements are available on record. The first written statement was filed on 20.9.1999 by Dr. T.C. Malhan, Director Ayurveda, Punjab, on behalf of respondents 1 to 3 and it was maintained by the respondents that services of ministerial staff of Homeopathic Deptt. are governed under the Rules. Fresh appointment of the petitioner was made by the Homeopathic Deptt. under the Rules. The clerical cadre of both these Departments are inter-changeable; that the transfer of the petitioner was made as per the Rules; that the petitioner has not exhausted the channel of representation to the Principal Secretary, Govt. of Punjab, Health and Family Welfare Deptt. about her transfer and, therefore, on this ground the writ petition is liable to be dismissed.

4. On merits, the stand of the State was that though the petitioner was working under the Homeopathic Deptt. but the service of the petitioner is governed under the Rules. So, in these circumstances, it is not necessary to take the consent of the petitioner for her transfer to the Ayurvedic Deptt. Though the Homeopathic Deptt. is working as a separate department but the ministerial staff working in the Homeopathic Deptt. is under the active control of the Ayurvedic Deptt. At the time of appointment of the petitioner made by the Homeopathic Deptt, it was made clear that the services of the petitioner will be governed under the Rules. At the time of appointment of the petitioner, copy of the joining report ought to have been endorsed to the Ayurvedic Deptt. and for that reason her name could not be entered in the seniority list of the Senior Assistants of Ayurvedic Deptt. After receiving the same, the name of the petitioner was entered in the Seniority list of Senior Assistants according to her joining report. Moreover, as per the appointment order, the petitioner was appointed afresh. No representation of the petitioner was received in the Deptt., so the question of considering her for promotion does not arise as she is junior in the clerical staff cadre of the Ayurvedic Deptt. The petitioner was transferred in the general transfer, the petitioner made a representation to respondents 1 and 2 about the order of transfer but she has not made any representation to the Ayurvedic Deptt. The petitioner has not exhausted her all channels of remedy. Justifying the transfer, the respondents prayed for the dismissal of the writ petition. Yet another written statement was filed by respondents 1 to 3 under the signatures of Shri

Harjit Singh on 29.10.1999 in which the stand of the State is the same with a clarification that no separate service rules governing the municipal care (cadre ?) in the Homeopathic Deptt. has been appointing formulated by the State Government and there are only the 1963 Rules and the Director of the Ayurvedic Deptt. is the Director and transferring authority under the Rules. The Director, Homeopathic Deptt. is not competent to make any appointment to Class-111 posts. It is only the Director, Ayurvedic Deptt. Punjab who is competent to make such appointments under the Rules. Thus, the main defence of the respondents is that the petitioner is governed by the Rules and the appointing authority of the employees working in the Homeopathic Deptt. is also the Director, Ayurvedic, Punjab.

5. In support of their case, some documents have been placed on record by the parties. A brief mention of these documents can be made in the following manner :-

6. Annexure P-1 is the order issued by the Govt. to Punjab dated 7.4.1980 whereby the President of India was pleased to create a Homeopathic Cell in the Directorate of Ayurvedic, Punjab, and some posts mention in the Annexure were sanctioned. The subject of this sanction order clearly spells out that a Homeopathic Cell was created in the office of Directorate, Ayurvedic, Punjab, meaning thereby that Homeopathic Cell is an intergal part of the Directorate, Ayurvedic. However, subsequently, a separate Director was appointed by the Homeopathic Cell. Vide Annexure P-2, the President of India declared the Joint Secretary to Govt. of Punjab as Head of the Homeopathic Deptt. This gazette notification is dated 4.7.1980. Annexure P-3 is the appointment letter dated 2.3.1995, clause 3 of which is important for us, which prescribes and lays down that the service will be governed under the Ayurvedic Deptt. (Class III Ministerial Service) Rules, 1963, Annexure P-4 is the final seniority of the Senior Assistants, which was prepared as on 6.8.1998 in which the name of the petitioner does not figure. Annexure P-5 is the transfer order dated 21.6.1999 which has been challenged in the present writ petition by the petitioner.

7. Annexure R-1 is the letter dated 27.9.1999 issued by the Special Secretary, Health, to the Head of Homeopathic Deptt. in which it is clearly indicated that there is no rule for the Homeopathic Deptt. vide which it can appoint or promote any employee in the department. The ministerial cadre of the department has not been separated. Therefore, the promotions or appointments made by the Homeopathic Deptt. are not correct. It is not correct to take decision that the cadre of ministerial staff of both the departments may be separated. Also, it was made clear that the seniority of the employees should be counted in the common seniority list.

8. I have yard the counsel for the parties and with their assistance have gone through the record of this case.

9. The short point which survives for determination is whether the Homeopathic

Deptt. is an integral part of the Ayurvedic Deptt of the Punjab Govt. or not. Though Homeopathic Cell was created and the Principal Secretary was made the Head of the Deptt., yet for the purpose of appointments, Director, Ayurvedic Deptt. is the appointing and transferring authority. The appointment letter, Annexure P-3, clearly lays down that the service conditions of the petitioner shall be governed by the Rules and, in these circumstances, the petitioner cannot be allowed to cry by saying that the general rules will be applicable in her case. She has joined the service of the Homeopathic Deptt. under clear cut terms and conditions. Vide Annexure R-1, it has been further made clear that the cadre of the ministerial staff of the Homeopathic Deptt. and Ayurvedic Deptt. is interchangeable. The Govt. has exercised the powers under the Rules in transferring the petitioner from Homeopathic Deptt. to Ayurvedic Deptt. In these circumstances, it cannot be said that the order, Annexure P- 5, is violative of any rules or instructions of the State Govt. The transfer order are not mala fide. This a routine transfer. Transfer is an incident of service. The petitioner has even not alleged any mala fides on the part of the transferring authority.

10. Resultantly, I do not see any merit in this writ petition and the same is hereby dismissed with no order as to costs.

11. Petition dismissed.