
(1994) 04 RAJ CK 0071

In the Rajasthan High Court

Case No : Civil Writ Petition No. 5598 of 1991

Ayurved Chikitsaks Welfare Association

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 19-04-1994

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (1994) 2 WLC 452 : (1994) 1 WLN 446

Hon'ble Judges : G.S. Singhvi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

G.S. Singhvi, J.—Ayurved Chikitsaks Welfare Association, Jaipur has filed this writ petition through its General President Shyam Sunder Vasisth with a prayer that respondents No. 1 and 2 be directed to first regularise the service of temporary/ad-hoc Ayurved Chikitsaks and/or to confirm them and also that such ad- hoc/temporary Ayurvedic Chikitsaks should not be compelled to face the RPSC in pursuance of advertisement No. 5/91-92. Petitioner is a registered association which has been constituted for the welfare of Ayurved Chikitsaks/Vaidyas working in Ayurved Department of the Government of Rajasthan. It is also a body constituted for the purpose of espousing the cause of Ayurved Chikitsaks/Vaidyas working in Ayurved Department of the Government of Rajasthan. A number of persons have been appointed as Ayurved Chikitsaks on temporary basis. Some such appointments were made after selection by a duly constituted selection committee. This is evident from order dated 19.11.81 (annexure-1) filed by the petitioner along with the writ petition. Some other appointments have been made on ad hoc/temporary basis and such ad hoc/temporary appointments have been continued from time to time. A number of temporary appointees have been confirmed in the service vide order issued on 4.2. by the Director, Ayurved Department. That order shows that persons appointed upto 8.6.81 have been confirmed as Ayurved Chikitsaks. Petitioner's plea is that

appointment on the post of Ayurved Chikitsak is require to be made 100% by direct recruitment and the competent authority to make appointment was Director, Ayurved Department in terms of the provisional of Rajasthan Ayurved Subordinate Service Rules, 1966. The Director, Ayurved Department had made large number of appointments during last few years but while some have been confirmed, other have been left out. At the same time advertisement Annexure-4 has been issued by the RPSC for making recruitment on the post of Ayurved Chikitsaks and the existing appointees who are serving the Department are required to apply of regular appointment. Petitioner's assertion is that about 1000 Ayurved Chikitsaks who are its member, are adversely affected because they are required to compete with fresh candidates. This is being done without requirement of Rule 6 of the Rajasthan Ayurved, Unani, Homeopathy and Naturpathy service Rules, 1973. Petitioner has submitted that failure of the respondents to take steps for regularisation of the service of existing Ayurved Chikitsaks is contrary to Articles 14 and 16 as well as the statutory rules.

2. Respondents have in their return not disputed the existence of the association. On merits they have pleaded that upto the commencement of 1973 Rules, the service conditions of Ayurved Chikitsaks used to be governed by Rajasthan Ayurved Subordinate Service Rules, 1966. On and with effect from the date of inclusion of the post of Ayurved Chikitsak in the schedule appended to the Rules of 1973. The post is now a subordinate service post. By Notification dated 5.5.90 which has been made effective from 1.9.81, post of Ayurved Chikitsak is governed by the provisions of Rules of 1973. They have also pleaded that upto 31.10.83 the post of Ayurved Chikitsak would be filled by the Director, Ayurved Department and the post was not within the purview of RPSC. The Director, Ayurved Department had made ad- hoc/temporary appointments through properly constituted selection committees. Some of these ad-hoc appointees have been confirmed while matter relating to others is pending consideration before the respondents. The respondents have pleaded that those who have been appointed after 31.10.83 are not entitled to be treated as regular appointees and they have no right to be regularised in service through the agency of RPSC.

3. Argument of the learned Counsel for the petitioner is that failure of respondents No. 1 and 2 to regularise the service of ad-hoc Ayurved Chikitsaks, is wholly irrational, arbitrary and unjustified. Shri Balwada argued that once the Government has taken a policy decision to regularise the service of ad-hoc Ayurved Chikitsaks who had been appointed upto 31.10.83, there remains no justification for the respondents not to regularise the service of some of the persons appointed prior to 31.10.83 and not to regularise the service of some others. Shri Balwada argued that from amongst the larger group of employees holding the post of Ayurved Chikitsaks as on 31.10.83, no discrimination should be made by the respondents in the matter of regularisation of service. Shri B.L. Awasthi, learned Counsel for the respondents, conceded that some of the persons appointed as Ayurved Chikitsak as on 31.10.83 have been confirmed but

submitted that that was by way of concession and all ad hoc appointees cannot get a right to be confirmed in service as Ayurved Chikitsak.

4. I have given my thoughtful consideration to the rival submissions. Admitted position which has been brought on record shows that appointment of Ayurved Chikitsak had been made by the Director, Ayurved Department after selection by a duly constituted selection committee. These appointments have been made after following the procedure which could entitle an appointee regular appointment in service. Admittedly till 5.5.90 the post was not within the purview of RPSC and even though the amendment made in the Rules by Notification dated 5.5.90 has been made effective from 1.9.81, this appointment cannot be treated as retroactive. The Government has itself not treated it to be retroactive because it has confirmed a large number of Ayurved chikitsaks who had been appointed on temporary basis by the Director, Ayurved Department. It can thus be said that the Government has, as a measure of policy, decided to regularise the service of the existing Ayurved Chikitsaks who had been appointed by the Director, Ayurved Department. Having been taken that decision, the Government cannot now be permitted to discriminate between the Ayurved Chikitsaks who were appointed upto 31.10.83. No rational justification has been furnished by the respondents for not taking appropriate measures and for not passing necessary orders for regularisation of the service of existing Ayurved Chikitsaks, particularly when some of them have in fact been regularised in service.

There is yet another reason for declaring the action of respondents as arbitrary. As per the version of respondents themselves, appointment on the post of Ayurved Chikitsak could be made by the Director, Ayurved Department and the Director, Ayurved Department did make these appointments after regular selection. Once the mode of recruitment has been followed, mere use of the word "ad hoc/temporary" in the order of appointment or mere fixing the tenure of appointment, cannot by itself be sufficient to treat the appointment as nothing else than a substantive appointment. In *Rajendra Singh Rawat v. The Navodaya Vidyalaya Samiti* 1993 (1) WLC 79 this Court has examined the difference between an ad-hoc appointment and a regular appointment and held that once an appointment is made after selection by a duly constituted selection committee, such appointment will have to be treated as a regular appointment and the appointee will have a right to be treated as substantive in service.

5. In view of the aforesaid decision the action of respondents in treating those members of the petitioner association who have been appointed after regular selection as ad-hoc appointees; has to be treated as arbitrary and unjustified.

6. Although Shri Awasthi, learned Counsel for the respondents, did raise an objection to the maintainability of the writ petition by an association, in my opinion it is not necessary to make a detailed examination of the issue for two reasons. Firstly, in the reply to the writ petition the respondents have not controvert the statement made by the petitioner that it is a registered body and

it has a right to represent the Ayurved Chikitsaks employed in Ayurved Department of the Government of Rajasthan. Secondly, in view of the judgment of Supreme Court in Akhil Bharatiya Soshit Karamchari Sangh (Railway) represented by its Assistant General Secretary on behalf of the Association Vs. Union of India (UOI) and Others, there is no doubt that an association of employees can maintain writ petition for espousing the cause of its members and for protecting the interest of its members.

7. In the result, the writ petition is allowed. The respondents are directed to treat all those persons as substantive Ayurved Chikitsaks who were appointed by the Director, Ayurved Department after selection by a duly constituted selection committee. Respondents are also directed to confirm such Ayurved Chikitsak against the available substantive vacancies in the service. Such confirmation shall be made effective from the date of availability of the vacancy. These Ayurved Chikitsaks shall be entitled to seniority from the date of their substantive appointment but they shall be made junior to those who have been appointed in the same manner but prior to them. Costs made easy.