
(1996) 11 AP CK 0082

In the Andhra Pradesh High Court

Case No : Writ Appeal No. 1065 of 1996

Central Council for Research in Unani Medicine, by Director
and Another

APPELLANT

Vs

Mohd. Abdul Waheed

RESPONDENT

Date of Decision : 08-11-1996

Acts Referred:

Citation : (1996) 4 ALT 1129

Hon'ble Judges : P.S. Mishra, C.J;S.V. Maruthi, J

Bench : Division Bench

Advocate : T. Lakshminarayana, for the Appellant; T. Ramakrishna Rao, for the Respondent

Final Decision : Allowed

Judgement

S.V. Maruthi, J.—This appeal is preferred by the Central Council for Research in Unani and Central Research Institute for Unani Medicine against the judgment of the learned Single Judge in W.P.No. 1501 of 1994 allowing the Writ Petition filed by the respondent and directing the appellants to promote him as Radiographer w.e.f. 1st April, 1991 by relaxing the Rules within one month from the date of receipt of a copy of the judgment, granting all consequential benefits from 1st April, 1991. By the impugned judgment, the learned Judge also quashed the advertisement issued by the 3rd respondent on 11-09-1991 inviting applications for the post of Radiographer on the ground that it is in violation of Article 14 and Article 16 of the Constitution of India. The learned Judge also directed to pay revised pay scales to the petitioner with effect from 1st April, 1991 within a period of four months from the date of the receipt of the copy of the judgment.

2. The case of the respondent in the Writ appeal, is as follows:- The respondent was appointed as a Dark Room Assistant in the Central Research Institute for Unani Medicine, Hyderabad w.e.f. 30-10-1975 in the pay scale of Rs. 260-400 with usual allowances. The regular Radiographer who was discharging the duties in X-Ray Department left the appellant institute. Therefore, the respondent was

made in-charge to function as Radiographer in the X-Ray Department from 29-9-1978 to 1-12-1988. After one month Mr. Rajgopal was appointed as a Radiographer and he worked upto 14th March, 1991. Consequent upon his resignation, the respondent was again put in Full Additional Charge in the X-Ray department as Radiographer w.e.f. 15th March, 1991. Ever since he is discharging the duties of Radiographer in addition to his normal duties as Dark Room Assistant. The service rendered by the respondent was commended by the Central Institute for Unani Medicine, Hyderabad, and he was sent on deputation to undergo training in the Radiology Department, Osmania General Hospital, Hyderabad for a period of three months w.e.f. 15-4-1991 and a certificate was issued certifying that he has undergone successful training in Radiologist Assistant Course. The Consultant Radiologist of the appellant Institute also gave a certificate certifying that the respondent could work as a certified Radiologist Assistant independently. After obtaining the necessary expertise, he approached the appellant to consider his case for promotion to the post of Radiographer. The Deputy Director of the appellant institute recommended the promotion of the respondent to the post of Radiographer. The respondent was paid enhanced salary by upgrading the post of Dark Room Assistant in the pay scale of Rs. 1200/- 2040/- on ad hoc basis by the appellant upto 8-9-1993. However, the said payment was stopped. The appellants issued an advertisement on 11-9-1993 in Urdu News Paper "Siyasat" inviting applications for direct recruitment from the eligible candidates for the post of Radiographer. The essential qualifications prescribed for the post of Radiographer are (a) Metric or equivalent, (b) Diploma in Radiography for a minimum of one year duration from a recognised Institute, (c) one year experience of handling X-Ray from a recognised institution and (d) aged below 30 years. Aggrieved by the issuance of the advertisement he filed the writ petition on the ground that he was functioning as a Radiographer independently for more than 12 to 13 years and, therefore, he should be promoted as Radiographer. He further contends that the experience as Radiographer from 1978 to 1993 is enough for appointment as Radiographer and having regard to the fact there is no further channel of promotion from the post of Dark Room Assistant it is incumbent on the appellants to provide avenues of promotion in order to avoid stagnation in one post for over a period of years.

3. On the other hand the case of the appellants is that the appointment of the respondent as Radiographer is a stop-gap arrangement till a regular incumbent is appointed in the vacancy and the respondent is not qualified to hold the post of Radiographer. The appellants further contended that since the respondent is not qualified to be appointed as Radiographer as he did not possess a diploma in Radiography for a minimum period of one year duration from a recognised institution, he cannot be appointed to the post of Radiographer.

4. On consideration of the respective pleadings, the learned Judge held that since the respondent has been functioning as Radiographer w.e.f. 1978 without any cause or complaint, the appellants cannot throw him out on the ground that he

does not possess the requisite qualifications; that the appellants could have relaxed the relevant Rules to appoint the respondent as Radiographer since they could not get a regular qualified Radiographer for the purpose of filling up of the vacancy which is lying vacant from 1978, and that the appellants have exploited the respondent as they have taken his services as Radiographer without paying the regular salary. Relying on the judgment of the Supreme Court in "Bhagawati Prasad v. Delhi State Mineral Development Corporation 1992 (8) SLR 784, he observed that practical experience as Radiographer is a sure guide to assess the suitability of the respondent for promoting to the post of Radiographer. He accepted that the post of Dark Room Assistant is not a channel of promotion to the post of Radiographer, that it is incumbent on the appellants to provide at least two promotions to an employee and he cannot be allowed to stagnate in one post throughout his tenure, and denying promotion of Radiographer to the respondent is in violation of Article 14 and Article 16 of the Constitution of India and thus allowed the Writ Petition.

5. The only argument of the appellants before us is that the respondent does not possess the requisite qualification of diploma in Radiography which is an essential qualification for the purpose of appointment as Radiographer. In the absence of essential qualification no person can be considered for appointment to the post. Essential qualification cannot be relaxed and, therefore, the learned Judge is not right in directing the appointment to promote the petitioner by relaxing the essential qualification. On the other hand, the learned counsel for the respondent contended that having regard to the fact that the respondent was working as Radiographer successfully right from 1978 it is incumbent on the appellants to relax the rules and appoint the respondent as Radiographer.

6. To consider the issue that arises for consideration, it is necessary to refer to the rules regulating the appointment of Radiographer. The relevant recruitment rules reads as follows:-

25. 1. Radiographer

2. Three

3. Class III

4. Rs. 330-10~380-EB-12-500-EB-15-560.

5. ...

6. 25 years and below

7. Essential:

1. Metric or equivalent

2. Diploma in Radiology of minimum of 2 years duration from a recognised Institution.

3. 1 year experience in handling X-Ray equipment in a recognised Institution.

8. Does not arise
9. 2 years
10. 100% by direct recruitment
11.
12.

The learned counsel for the appellants submits that the minimum of two years duration has now been reduced to one year for the purpose of obtaining diploma in radiology. It is not disputed that the respondent did not possess the qualification of diploma in Radiology and the post of Radiographer is to be filled up by direct recruitment only. Since the respondent does not possess the requisite qualification he cannot be considered for appointment to the post of Radiographer. The post of Radiographer being a technical post, deals with technical work. In the absence of essential qualification he cannot be considered for appointment as Radiographer which is to be filled only by direct recruitment and not by promotion. No direction can be issued directing the appellants to promote the respondent to a post which under rules requires to be filled by direct recruitment as it amounts to directing the respondent to take action in violation of Rules. Further, no direction can be given for relaxing the essential qualification. Since the Rules provide for possession of Diploma in Radiology to be eligible for appointment as Radiographer and since the respondent did not possess the said qualification he cannot be considered for the purpose of appointment as Radiographer. Further the post of Radiographer is to be filled only by direct recruitment. Therefore, no direction could be issued to the appellants directing them to fill up the post by promotion which is in violation of Rules.

7. The case of H. C. Putta Swamy v. Chief Justice of Karnataka 1991 (2) SCC 421 is a case wherein violation of procedure contemplated under the Rules, recruitment to the post of second Division Clerk which requires a qualification of S.S.L.C. was made by recruiting Graduates, Post-Graduates and double Graduates. In that context, the Supreme Court taking into account that these second Division Clerks were even promoted to higher posts and they were over-aged for entry into any other service and if they are left in a mid-stream their family members have to face untold miseries, adopted a humanitarian approach and directed those candidates to be treated on regular basis.

8. It is true in Council of Scientific and Industrial Research and Another Vs. K.G.S. Bhatt and Another, the Supreme Court observed that an organisation should develop a satisfactory procedure for promotion and refused to interfere with the orders of the tribunal which granted relief to the respondent by applying a rule which is not applicable to the respondent on the ground that the respondent stagnated for 20 years due to defective promotional policy.

9. The case in Bhagawathi Prasad v. Delhi State Mineral Development

Corporation 1992 (8) SLR 784 deals with daily rated workers and the question involved was the confirmation of the daily rated workers in various posts to which they were appointed. Since the incumbents of various posts were working from 1983 and 1986 and they were allowed to work for a considerable length of time, In that context it was held mat it would create hardship to deny their confirmation in the respective posts on the ground that they lack prescribed educational qualifications.

10. These three cases are not relevant to the facts of the present case as the question of recruiting an unqualified person to a post did not arise for consideration.

11. For the foregoing reasons, the Writ Appeal is allowed; and the judgment under Writ Petition is set aside. No costs.