

(2011) 01 SHI CK 0081
In the High Court Of Himachal Pradesh
Case No : CWP No. 3991 of 2010

Darshok Singh and Others	Vs	APPELLANT
State of H.P and Others		RESPONDENT

Date of Decision : 05-01-2011

Acts Referred:

Citation : (2011) 01 SHI CK 0081

Hon'ble Judges : Deepak Gupta, J

Bench : Single Bench

Judgement

Deepak Gupta, J.—The aforesaid three writ petitions are being disposed of by this common judgment since similar questions of law and facts are involved in the same.

2. Briefly stated the grievance of the Petitioners who are Class-IV employees in the Animal Husbandry Department is that the State is not following the Recruitment and Promotion Rules and is side tracking the promotional avenue meant for the Class-IV employees of the Animal Husbandry Department. In the Recruitment & Promotion Rules of 2002, notified on 23.5.2002, there were 2066 posts of Veterinary Pharmacists and as per the Rules, 75% posts had to be filled in by direct recruitment and the remaining 25% by promotion from amongst Class-IV employees failing which by direct recruitment. The Rules also provided that the Class-IV employees who had passed matriculation with science and had one year regular service or regular service combined with continuous ad hoc service plus five years service on daily wages would be eligible for promotion.

3. It would be pertinent to mention here that the essential educational qualifications for direct recruits were also identical. These Rules were amended in the year 2003 and the minimum educational qualifications were changed from Matriculation to 10+2 or its equivalent with Matriculation with science from a recognized Board or University. Column No. 8 was also amended and the essential qualifications for promotees were made the same as for direct recruits. Only age limits were not applicable in the case of promotees. The quotas were

also changed and now 871/2 posts were to be filled in by direct recruitment and 121/2% by promotion failing which by direct recruitment.

4. The grievance of the Petitioners is that they have not been sent for the Pharmacist Training Course from the Department Training Centres which is an essential pre-requisite condition before they can be considered for promotion. It has also been pointed out that prior to the year, 2003, 25% posts were not manned by Class-IV employees and even now, 121/2% posts are not being manned by those employees who are promoted from Class IV posts. In this regard, a Division Bench of this Court issued directions on 18.10.2010 directing the Respondents to supply the following information:

(i) In the cadre strength of veterinary pharmacists to the tune of 2066, how many class-IV employees are there as on 31.7.2003.

(ii) As on today, in the cadre strength of veterinary pharmacists to the tune of 2066, how many class-IV employees are there.

Affidavit has been filed and in this affidavit, it is stated that prior to 2003, the sanctioned strength of the Veterinary Pharmacists was 2066 and only 219 eligible Class-IV employees had been appointed against the quota. It has further been stated that as on date of filing of affidavit, i.e., 19.10.2010, there were 2280 sanctioned posts of Veterinary Pharmacists and after 2003, only 11 eligible class-IV employees have been promoted.

5. There is a clear-cut short fall in the number of class-IV employees being promoted to the post of Veterinary Pharmacists. As per the amended rules, all class-IV employees who have one year regular/regular service combined with continuous ad hoc service plus five years service on daily wages are eligible as long as they possess educational qualification of 10+2 and matriculation with science. It is not the case of the Respondents that such employees are not available. At least, almost all of the Petitioners are 10+2 and matriculate with science. The only impediment in the way of their promotion is the fact that they are not trained. The Petitioners cannot themselves go for training. It is for the Department to send them for training.

6. This Court is not oblivious to the fact that all Class-IV employees cannot be sent for training together since it would bring the functioning of the Department to a grinding halt but there must be some reasonable approach and these employees must be sent for training so that they can take benefit of the provision made in the Rules whereby 121/2% seats of the Veterinary Pharmacists are to be filled up by way of promotion from eligible Class-IV employees.

7. It has also been contended on behalf of the Petitioners that as on date, there are 773 Veterinary Pharmacists working on contract basis. In case, sufficient number of trained officials is not available, the State may be free to employ people on contract. It is not necessary for me to go into the question as to

whether the Policy of the State to employ these Veterinary Pharmacists on contract basis is permissible under the Rules or not but one thing is certain that by way of providing contract employment, the right of the class-IV employees cannot be negated. Their right to be considered for promotion against 121/2% posts or vacancies falling vacant every year should not be set at naught by appointing hundreds of people on contract basis.

8. The State has categorically averred that the training being imparted to the Veterinary Pharmacists is for their appointment in Panchayats under a separate scheme, i.e., Mukhya Mantri Arogya Pashudhan Yojna and has no connection with the Departmental posts.

In view of the above discussion, the aforesaid writ petitions are disposed of with the following directions:

1. That the State shall draw up a list of all the class-IV employees of the Animal Husbandry Department who fulfil the requisite qualifications of 10+2 and matriculation with science in the Department who are desirous of being promoted to the higher post.

2. In case the number of such employees is less than 50% of the total strength of Class-IV employees in the Department then the State shall ensure that in order of seniority at least 20% of such employees are sent for the training. In case the number of such qualified candidates is more than 50% then the State may reduce the number of employees to be sent for training to 15% or 10% as per the situation. This shall be done each year till all the qualified Class-IV employees are trained.

3. It is however made clear that the quota of 121/2% shall be calculated in respect of the vacancies of Veterinary Pharmacists falling vacant in the year irrespective of the fact whether the State fills up the posts by contract employment or by direct recruitment, that is to say in case 50 posts are to be filled in by contract employment and 50 posts by direct employment, then for the purposes of calculating the quota for promotion, all the hundreds posts shall be taken into consideration.

4. In view of the averment made by the State hereinbefore, the posts in the Department shall not be reduced by taking into consideration the posts to be filled in by the Panchayat under the Mukhya Mantri Arogya Pashudhan Yojna.

All the writ petitions are disposed of in the aforesaid terms. No order as to costs.