

(2011) 11 AHC CK 0389

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No"s. 65409 of 2011, 62978 of 2010, 66474 and 66920 of 2011

Dr. Akhilesh Singh and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 29-11-2011

Acts Referred:

Constitution of India, 1950 — Article 246, 309
Homoeopathy Central Council Act, 1973 — Section 3
Uttar Pradesh State Homeopathic Medical Colleges Teachers Service Rules, 1990 — Rule 8

Citation : (2012) 2 ADJ 333

Hon'ble Judges : Sunil Ambwani, J;Manoj Misra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. We have heard Shri R.K. Ojha, assisted by Shri Arun Kumar Mishra for the petitioners. Shri Zafar Naiyer, Additional Advocate General assisted by Shri Ravi Shanker Prasad appears for the State respondents. Shri V.P. Varshney appears for UP Public Service Commission.

2. By these writ petitions the petitioners have prayed for declaring the Appendix-B, fixing minimum qualifications as per Rule-8 of the U.P. State Homeopathic Education Medical Colleges Regulations, 1990, as ultra vires to the Homeopathy (Minimum Standards of Education) Regulations, 1983, as amended in 2002, published in Extraordinary Gazette dated 12th September, 2002, and further to accept application forms of the petitioners for the post of Lecturers in pursuance to the Advertisement No. 3/2010-11 dated 1.10.2010, and the Advertisement No. 2/2011-12 dated 6.12.2011 published by the U.P. Public Service Commission, in so far as the qualifications for the posts of Lecturers, Readers and Professors in Government Homeopathic Medical Colleges are concerned.

3. It is admitted that the petitioners are not eligible to apply as they do not

possess the requisite experience for the post of Lecturer and Reader as prescribed under the U.P. State Homeopathic Medical Colleges Teachers' Service Rules, 1990. They claim to possess the higher qualification, namely the Post Graduate degree in Homeopathy as against the prescribed qualifications of recognised Diploma and Degree in Homeopathy. The petitioners apprehend that they will be disqualified as they do not have the teaching experience prescribed under the Rules of 1990, which provide that for the post of lecturer, the candidates should have three years' teaching experience as Demonstrator, and for the post of reader, the candidates should have seven years' teaching experience in as Lecturer or four years' experience as Principal of the Private Homeopathy Medical Colleges.

4. It is submitted by Shri R.K. Ojha, that since the Homeopathy Central Council Act, 1973, has been enacted to standardise the Homeopathic medical education under the powers vested in the Parliament under Entry 66 of List III of the 7th Schedule, the regulations framed by the Central Council of Homeopathy will override and supersede the Rules made by the State Government, prescribing the qualifications for appointment of teachers under proviso to Article 309 of the Constitution of India. He submits that once the regulations prescribing qualifications have been tabled before the Parliament, and will be taken to be approved in view of Article 246, the Regulations will supersede the service rules made by the State under the proviso to Article 309 of the Constitution of India.

5. Shri V. P. Varshney appearing for UP Public Service Commission and Shri Zafer Naiyer, Additional Advocate General submit that the similar controversy had engaged attention of the Lucknow Bench of the High Court in Writ Petition No. 1654 (SB) of 2011 (Dr. Ravindra Nath Tripathi v. State of UP and Others) decided on 15.9.2011. The Division Bench at Lucknow has dismissed the writ petition on the grounds that the regulations framed by the Central Council of Homeopathy in exercise of its powers u/s 73 of the Act do not have the force as Act of Parliament, and thus the regulations will not supersede the service rules framed by the State of U.P. under proviso to Article 309 of Constitution of India. It was further held that in any case the selections have to be made in view of the prevalent service rules vide Md. Raisul Islam and Others Vs. Gokul Mohan Hazarika and Others, and thus the advertisement, so far as it prescribes the qualifications, which are laid down in statutory rules, cannot be changed in the advertised selections.

6. Shri Zafer Naiyer submits that the State Government has not yet taken any final decision with regard to the amendment of the Rules of 1990. The matter is still under consideration of the State Government.

7. Since the point and issue is squarely covered by the judgment of Lucknow High Court in Dr. Ravindra Nath Tripathi v. State of UP and others (supra), with which we respectfully agree, we are relieved of considering the arguments of learned counsel for the petitioner in detail, that the Regulations of 1983 will supersede the statutory Rules of 1990, and that the selections must be made by

substituting way to the qualifications provided in the Regulations of 1983.

8. Shri R.K. Ojha has cited following decisions in *Dr. A.K. Sabhapathy Vs. State of Kerala and others*, ; *Thirumuruga Kirupananda Variarthavathiru Sundara Swamigalme Vs. State of Tamil Nadu and Others*, ; *State of Maharashtra Vs. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya and Others*, ; *Annamalai University rep. by Registrar Vs. Secy. to Govt. Infn. and Toursm Dept. and Others*, , in support of the submission, that once the Central Councils such as AICTE, MCI, NCTE and others, have in exercise of their statutory powers made regulations prescribing the conditions for admission to the professional colleges and the qualifications of teachers, the statutory administrative orders and statutory rules framed by the State Government contrary to State recommendations should be treated as superseded and thus should not be acted upon. He submits that in the present case the three years" experience as Demonstrator for the post of lecturer will ultimately result on almost all the vacancies going vacant as there are only 04 Demonstrators, who have completed three years" teaching experience, and that most of the vacancies will be filled up by the candidates from outside the State.

9. Shri Zafer Naiyer on the other hand relies upon the judgment of the Supreme Court in *Government of Andhra Pradesh and Another Vs. Dr. R. Murali Babu Rao and Another*, , in which almost similar situation, when the Medical Council of India has recommended different qualifications, the Supreme Court held that the statutory rules made for recruitment under proviso to Section 309 of Constitution of India, unless amended will prevail. The Supreme Court held as follows :

14. As is manifest from the affidavit filed by the Indian Medical Council, it is only a recommendatory body. This Court has in a series of decisions defined the precise functions and duties of the Medical Council of India. The Indian Medical Council constituted u/s 3 of the Act is an expert body intended and meant to control the minimum standards of medical education and to regulate their observance. We may only cite the case of *State of Madhya Pradesh and Another Vs. Kumari Nivedita Jain and Others*, , where the Court had to consider the effect of 191 the Regulations framed by the Medical Council and the various executive orders issued by the State Government. Analysing the various provisions of the Act in depth, it was observed as follows:

An analysis of the various sections of the Act indicate that the main purpose of the Act is to establish Medical Council of India, to provide for its constitution, composition and its functions and the main function of the Council is to maintain the medical register of India and to maintain a proper standard of medical education and medical ethics and professional conduct for medical practitioners. The scheme of the Act appears to be that the Medical Council of India is to be set up in the manner provided in the Act and the Medical Council will maintain a proper medical register, will prescribe minimum standards of medical education required for granting recognised medical qualifications, will also prescribe

standards of post graduate medical education and will further regulate the standards of professional conduct and etiquette and code of ethics for medical practitioners.

(Emphasis supplied)

A fortiori, the recommendations made by the Council or the Regulations framed by it are only recommendatory and not mandatory. It is not for the Council to prescribe qualifications for recruitment to posts of Professors, Readers and Lecturers. It can only lay down broad guidelines therefor. Such qualifications have necessarily to be prescribed by the framing of Rules under the proviso to Article 309. Right to be considered for promotion is a condition of service and it can only be regulated by a rule framed under the proviso to Article 309.

10. The Rules of 1990, have not been amended. They do not; stand superseded or overridden by the Regulations of 1983, as amended in the year 2002. The State Government is still in the process of consideration to amend the Rules of 1990. Hence the petitioners are not entitled to any relief in these writ petitions.

11. All the writ petitions are dismissed. The U.P. Public Service Commission will proceed and complete the selections expeditiously.

12. Before parting of the matter we may observe that for several years the State Government is contemplating the amendments in the Rules of 1990. It has not taken any decision which may indicate that the State Government is not willing to amend the Rules. The establishment of the Central Council of Homeopathy is to standardise the education, which necessarily includes the qualifications of teachers. The Central Council of Homeopathy consists of experts and thus the State Government will be well advised to harmonise the qualifications of the teachers with the qualifications prevalent in the other parts of the country. The students of Homeopathy medicine in the State should also get the benefit of teaching by highly qualified teachers in the subjects.