
(2002) 09 MP CK 0027
In the Madhya Pradesh High Court
Case No : Writ Petition No. 5376/98

Dr. Basant Kumar Agrawal	Vs	APPELLANT
Commissioner, Municipal Corporation and Others		RESPONDENT

Date of Decision : 12-09-2002

Acts Referred:

Constitution of India, 1950 — Article 19, 19(1)
Madhya Pradesh Ayurvedic, Unani Tatha Prakritik Chikitsa Vyavasayi Adhiniyam, 1971
— Section 2

Citation : (2002) 4 MPHT 386

Hon'ble Judges : S.P. Khare, J

Bench : Single Bench

Advocate : Surendra Gangele, for the Appellant; Sanjay K. Agrawal, for the Respondent No. 1 and ex-parte Respondent Nos. 2 to 4, for the Respondent

Final Decision : Partly Allowed

Judgement

S.P. Khare, J.—This is a petition under Articles 226 and 227 of the Constitution of India challenging the order dated 3-11-1998 (Annexure P-1) of the respondent No. 1 by which the respondent Nos. 2 to 4 have been promoted from the post of Up-Vaidya to Vaidya.

2. The petitioner is holding the degree of B.A.M.S. and the substantive post of Up-Vaidya in the Municipal Corporation, Jabalpur. The respondent Nos. 2 to 4 were also holding the same post and they have been shown as senior to the petitioner on that post. By the impugned order they have been promoted as Vaidya. The respondent Nos. 2 and 3 obtained the qualification of "Ayurvedic Ratna" from Hindi Sahitya Sammelan, Prayag before 4-11-1989. This was a recognised qualification upto that date but it was derecognised from 4-11-1989 by deleting Entry 51 from the Schedule annexed to M.P. Ayurvedic Unani Tatha Prakritik Chikitsa Vyavasayi Adhiniyam, 1970 (hereinafter to be referred to as "the Act"). The respondent No. 4 obtained the certificate of "Ayurvedic Ratna" from "Hindi Sahitya Sammelan, Allahabad". This institution is different from

"Hindi Sahitya Sammelan, Prayag". The certificate obtained from Hindi Sahitya Sammelan, Allahabad was never a recognised qualification under the Act.

3. The petitioner's case is that the respondent Nos. 2 to 4 do not possess the basic qualification to practise as Vaidya and therefore, they could not be promoted to that post.

4. The reply of the respondent No. 1 is that the promotions have been given keeping in view the seniority of the respondent Nos. 2 to 4 and that is the "settled practice". The respondent Nos. 2 to 4 have not filed any return after the service of notice on them.

5. The learned Counsel for both the sides have been heard. So far as the respondent Nos. 2 and 3 are concerned they obtained the certificate of "Ayurved Ratna" from "Hindi Sahitya Sammelan, Prayag" before the deletion of Entry 51 from the Schedule to the Act and therefore it continues to be valid qualification for practising in Ayurved. There is no infirmity in the impugned order in promoting the respondent Nos. 2 and 3 to the post of Vaidya from the post of Up-Vaidya. They are senior to the petitioner.

6. But so far as respondent No. 4 Kantilal Pande is concerned, he obtained the certificate of "Ayurved Ratna" from "Hindi Sahitya Sammelan, Allahabad" as per Annexure P-13 and this was never a recognised qualification under the Act. This institution is different from "Hindi Sahitya Sammelan, Prayag" as is clear from the letter dated 4-4-2000 (Annexure P-12) of the Central Council of Indian Medicine, New Delhi. On the basis of this certificate the respondent No. 4 cannot practise in Ayurved. Therefore, he does not possess the basic recognised medical qualification of a Vaidya. His promotion is illegal. The Supreme Court has observed in *Dr. Mukhtiar Chand and Others Vs. The State of Punjab and Others*, that the right to practise any profession or to carry on any occupation, trade or business is no doubt a fundamental right guaranteed under Article 19(1)(g) of the Constitution of India. But that right is subject to any law relating to the professional or technical qualifications necessary for practising any profession or carrying on any occupation or trade or business enacted under Clause (6) of Article 19. The regulatory measures on the exercise of this right both with regard to the standard of professional qualifications and professional conduct have been applied keeping in view not only the right of the medical practitioners but also the right to life and proper health care of persons who need medical care and treatment.

7. The petition is partly allowed. The impugned order dated 3-11-1998 (Annexure P-1) so far as it relates to the respondent No. 4 promoting him to the post of Vaidya is quashed. The promotion of respondent Nos. 2 and 3 to this post is unassailable.