
(1996) 09 SC CK 0172

In the Supreme Court Of India

Case No : Civil Appeal No's. 1248-49 of 1987

Dr Chittaranjan Sharma and Others

APPELLANT

Vs

State of H.P. and Another

RESPONDENT

Date of Decision : 19-09-1996

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (1996) 7 AD 820 : (1996) 9 JT 118 : (1996) 7 SCALE 483 : (1996) 10 SCC 529 : (1997) SCC(L&S) 130 : (1996) 6 SCR 526 Supp : (1996) 2 UJ 796

Hon'ble Judges : K. Ramaswamy, J;G. B. Pattanaik, J;Faizan Uddin, J

Bench : Full Bench

Advocate : S.V. Deshpande, for the Appellant; T. Sridharan, T.A. Khan, Shiva Pujan Singh and Rajiv Nanda, for the Respondent

Final Decision : Dismissed

Judgement

1. These appeals by special leave arise from the order of the Administrative Tribunal made on December 15, 1986. Admittedly the H.I.M. Ayurvedic Degree College, Paprola, District Kangra was taken over by the Government and handed over to the H.P. Health and Family Welfare Department. Clause (3) of the agreement envisages as under:

The service of the existing staff, principal, Teaching Administrative and other employed on regular basis in the college who fulfil the requisite qualifications and age conditions may be taken over with effect from 3.3.1978 after due screening if done by a screening committee constituted for this purpose by the Government in which 2 members i.e. principal and Manager from the Managing Committee shall also be included. Service of the present employees will be protected according to Government: rules.

2. In accordance therewith, the existing staff, principal, teaching, administrative and other employees employed on regular basis in the college were eligible to be absorbed on regular basis provided they fulfilled the following conditions : (1)

they were appointed on regular basis in the college before taking over; (2) they possessed the requisite qualifications prescribed for the posts; and (3) they fulfilled the age condition at the time of taking over w.e.f. March 3, 1978. On fulfilment of all these conditions, they would be sent to a screening committee constituted for the purpose by the Government including to members, i.e., the Principal and Manager to the Managing Committee to represent the employees in the screening committee. On recommendation made by the Committee, the regular absorption could be made.

3. Unfortunately, the appellants were not regularly appointed; nor did they possess the requisite qualifications for absorption on regular basis in the posts as on the date of the take over. Resultantly, instead of throwing them out of service by retrenchment, the Government issued the order exercising the power under proviso to Article 309 of the Constitution on May 24, 1980 in consultation with the Himachal Pradesh Public Service Commission and Rules for Recruitment and Promotion of the Ayurvedic College employees, Paprola, District Kangra. Admittedly, the appellant even then did not satisfy those qualifications prescribed under the Rules. Resultantly, they were absorbed in suitable administrative posts to which they are eligible. When they challenged their absorption, the Tribunal in the impugned order directed to maintain the scale of pay which they were drawing on the date of the take over and directed their absorption in the posts of Ayurvedic Chikitsa Adhikaris etc. Thus, these appeals by special leave.

4. It is seen that since the appellant had not fulfilled the requisite qualifications either when they were initially appointed by the committee before take over nor when statutory rules were made by the Governor so as to enable for absorption. Instead of retrenching them from service due to non-fulfillment of the requisite qualifications, the Government came to absorb them in the Ayurvedic Chikitsa Adhikaris posts etc. to which they are eligible. The Tribunal has given the direction to maintain the pay-scales and to make adjustment and absorption. In our view directions are correct and based on equity and do not call for any interference. They may also be considered for further promotion from the absorbed posts in accordance with the rules.

5. The appeals are accordingly dismissed. No costs.