
(2001) 03 AHC CK 0089
In the Allahabad High Court
Case No : C.M.W.P. No. 460 of 2000

Dr. H.S. Rai and others

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 16-03-2001

Acts Referred:

Citation : (2001) 2 AWC 1167 : (2001) AWC 1167 : (2001) 2 UPLBEC 1603

Hon'ble Judges : O. Bhatt, J;M. Katju, J

Bench : Division Bench

Advocate : Umesh Narain Sharma, for the Appellant; Pushpendra Singh, S.C.,
for the Respondent

Final Decision : Allowed

Judgement

M. Katju, J.—Heard Sri Umesh Narain Sharma learned counsel for the petitioners, learned standing counsel for the State Government and Shri Pushpendra Singh for the U. P. Public Service Commission.

2. The petitioners are all working as veterinary officers in various veterinary hospitals in U. P. and they are in the service of the State Government. It may be mentioned that the post of veterinary officer was initially known as Pashu Chikitsak and thereafter it was designated as Pashudhan Vikas Adhikari (Life Stock Development Officer) vide Government order dated 27.1.1978 and thereafter redesignated as Pashu Chikitsa Adhikari (veterinary officer) vide G.O. dated 29.4.1981.

3. The petitioners applied for appointment as Zila Pashudhan Adhikari (District Live Stock Officer)/ Cattle Development Officer/Poultry Development Officer/ Gaushala Development Officer and other equivalent posts, in U. P. Veterinary Service Class II. It may be mentioned that 37 such posts were advertised vide advertisement dated 30.4.1977 copy of which is Annexure R.A. 1 to the rejoinder-affidavit.

4. It may be mentioned that in the channel of promotion the posts above the

post of veterinary officer is the post of District Live Stock Officer and other equivalent posts re-designated as chief veterinary officer vide G.O. dated 29.4.1991 copy of which is Annexure R.A. 3 to the rejoinder-affidavit. The post above that of District Live Stock Officer is the post of Deputy Director, and above that is the post of Joint Director, and then Additional Director, and finally the post of Director vide para 8 of the rejoinder-affidavit.

5. The petitioners applied for the post of District Live Stock Officer and other equivalent posts mentioned in the advertisement copy of which is Annexure R.A. 1. They were interviewed between 18 to 25 July, 1987 but the result could not be declared since it appears that W. P. No. 6854 of 1986, U. P. Veterinary Association and another u. State of U.P. and another, was filed in this Court in which the following interim order was passed on 23.7.1987 :

"As prayed, the respondents are granted three weeks time to file a counter-affidavit. Rejoinder affidavit may be filed within three days thereafter.

List for admission in the week commencing 24th August. 1987. It is made clear that if considered necessary the entire petition may be disposed of on merits on that date.

We are informed that the interviews for the posts are already going on and they are likely to come to an end on 29th July, 1987. We are further informed that after the recommendation is made by the Commission, it takes some time before the orders as issued by the Government. Therefore, no one shall be prejudiced if the appointment orders are not issued till the petition is disposed of. Therefore, we direct that although the selection may go on and the entire process may be completed but the appointment letters may not be issued till further orders of this Court."

6. A perusal of the above order shows that this Court permitted the selection process to RO on and to be completed but the appointment letters could not be issued till further orders of the Court.

7. Subsequently, it appears that another Writ Petition No. 1151 of 1999 was filed before the Lucknow Bench of this Court in which the following interim order was passed on 26.7.1999 :

"Notice on behalf of respondent No. 1 has been accepted by the learned standing counsel and on behalf of respondent No. 2 by Dr. R.K. Srivastava. He prays and is granted three weeks time to seek instruction or to file counter-affidavit. Petitioner shall have thereafter a week's time to file rejoinder-affidavit. List immediately on expiry of four weeks. In the meantime, respondents are directed to declare the result of the selection for the post of District Livestock Officer held between 19th to 25th July. 1987 within a period of two weeks from the date a certified copy of this order is communicated to the respondent No. 2 or to show cause within the same period."

8. In pursuance of the aforesaid interim order dated 26.7.1999, the U. P. Public

Service Commission declared the result vide notice dated 28.9.1999 copy of which is Annexure-1 to the petition. The petitioners' names are mentioned in the list of selected candidates. For instance petitioner No. 1. Dr. H. S. Rai is at serial No. 6 of select list, petitioner No. 2. Dr. R. P. Sinha is at serial No. 1, and so on.

9. However, despite the declaration of the result by the U. P. Public Service Commission, appointment letters were not issued to the petitioners although Writ Petition No. 6854 of 1986 had been dismissed by the Court on 13.11.1997.

10. The petitioners have alleged that although over 13 years have elapsed since the selection, yet they have not been given appointment although Writ Petition No. 6854 of 1986 had been dismissed. The petitioners sent several representations to the State Government as well as to the Director, Animal Husbandry for redressal of their grievance but to no avail. A true copy of one such representation dated 10.12.1999 is Annexure-3 to this writ petition. Hence this writ petition.

11. A counter-affidavit and supplementary counter-affidavit has been filed by the State Government. In paras 4 and 6 of the main counter-affidavit, it has been alleged that although vacancies for the various posts mentioned in the advertisement dated 30.4.1977 had been advertised and the interviews held in July, 1987 but subsequently by G.O. dated 19.11.1987, the different cadres were merged in one and common cadre known as "Adhinasth Pashu Chikitsa Seva (Raj Patrit) Ke Vibhinn Samvargo Ka Uttar Pradesh Pashu Chikitsa Seva Sfireni-2 Me Sambilian."

12. Consequently, it is alleged that in the absence of different cadres. It was not possible to promote or appoint the petitioners despite the selection by the U. P. Public Service Commission. True copy of G.O. dated 19.11.1987 is Annexure C.A. 1. A similar stand has been taken in the supplementary counter-affidavit.

13. In the rejoinder-affidavit, it has been pointed out in para 7 that the posts which were merged by G.O. dated 19.11.1987, were certain posts of subordinate Veterinary Service (Gazetted) into the U. P. Veterinary Service Class II. These posts which were merged were subordinate to the post of District Livestock Officer. The posts which were merged, are mentioned in para 7 of the rejoinder-affidavit. Moreover G.O. dated 19.11.1987 was to operate prospectively and not retrospectively. True copy of G.O. dated 19.11.1987 is Annexure R.A.-2. A similar stand has been taken in para 9 of the rejoinder-affidavit.

14. On the facts of the case, we are satisfied that the posts which were merged, were not posts for which the petitioners applied, i.e., the post of District Livestock Officer and other equivalent posts redesignated as Chief Veterinary Officer. Rather lower posts mentioned in para 7 of the rejoinder-affidavit were merged. Hence the stand of the State Government is wholly misconceived. The post of District Livestock Officer/Chief Veterinary Officer still exists and has not been merged with any other post. The post of District Livestock Officer/Chief Veterinary Officer is a higher post and only the senior-most officer of Veterinary

Service Class II can be appointed as a District Livestock Officer/Chief Veterinary Officer as is evident from the G.O. dated 4.5.1988, a copy of which is Annexure R.A.-5. Hence the G.O. dated 19.11.1987 does not come in the way of the petitioners' appointments.

15. Apart from that, we are also of the opinion that the petitioner should not suffer because of the interim order of this Court dated 23.7.1987 passed in Writ Petition No. 6854 of 1986 which was ultimately dismissed on 13.11.1997. Had the interim order dated 23.7.1987 not been passed by this Hon'ble Court, the petitioners would have been given appointment long time back, but their appointments were held up for long period for no fault of their. It is settled law that an act of the Court should not injure to any party. "Actus curiae neminem gravabit" vide *Broom's Legal Maxims*.

The above Latin Maxim has been quoted with the approval by the Supreme Court in *Jang Singh Vs. Brijlal and Others*,

16. In *H.M.T. Ltd. v. Labour Court* 1994 12 SCC 38, it was observed by the Supreme Court "it is now accepted that no party should suffer on account of the delay in the decision by the Court."

17. The principle of *actus curiae neminem gravabit* has been applied by the Supreme Court in several other decisions also, e.g., in *Jagat Dhish Bhargava Vs. Jawahar Lal Bhargava and Others*, ; *A. R. Antulay u. R.S. Nayak* 1988 12) SCC 603 ; *Johri Singh v. Sukh Pal Singh* 1989 14) SCC 403 ; *Suresh Grand v. Gulam Chisti*. 1990 (1) SCC 593 ; *Mithilesh Kumari and another v. Prem Behari Khare*. 1989 12) SCC 95 and *Raj Kumar Dey and Others Vs. Tarapada Dey and Others*, , etc.

18. In view of the above discussion, we allow this writ petition and direct that the petitioners should be given appointments as per recommendation of the Commission forthwith. As regards their prayer for retrospective appointments, petitioners may make a representation to the State Government which will be considered and decided expeditiously in accordance with law.