
(1985) 07 PAT CK 0007
In the Patna High Court
Case No : C.W.J.C. No. 4550 of 1982

Dr. Prabhunath Choudhary	Vs	APPELLANT
The State of Bihar and others		RESPONDENT

Date of Decision : 30-07-1985

Acts Referred:

Bihar Development of Homeopathic System of Medicine Act, 1953 — Section 22, 29, 44

Citation : (1985) PLJR 791

Hon'ble Judges : S.K. Choudhari, J;S.H.S. Abidi, J

Bench : Division Bench

Advocate : Basant Kumar Choudhary, for the Appellant; Mani Lal, A.B. Mathur and S.S. Singh Shyam, for the Respondent

Final Decision : Allowed

Judgement

S.K. Choudhari, J.—The question which has to be answered in this writ application is as to whether the petitioner who is a registered medical practitioner having been registered in the first batch of registration of Homeopathic System of Medicine Act, 1953 (hereinafter called "the Act") is entitled to scale of pay as recommended by the Pay Revision Committee. The salient fact will be stated here for answering the aforesaid question The petitioner read in Sathi Homeopathic College, Laheriasarai and passed from there in the year 1950. Thereafter he got appointment in Samastipur Municipality as a doctor in the Homeopathic Dispensary run by the said Municipality. Annexure-1 is a copy of the appointment letter dated 28th February, 1935 (sic) The appointment of the petitioner was to take effect from 1.3.1955. Though the Act known as Bihar Development of Homeopathic System Act, 1953 was published, but it did not come into force. It actually came into force from 1.3.1955 i.e. the date when the petitioner joined the service of the Municipality. Thereafter under Annexure-2 dated 21.10.1955 the petitioner's appointment was confirmed in an ordinary meeting of the Commissioners of the said Municipality. Thereafter the petitioner applied for enlistment of his name in the register maintained under the

Act. This application for registration was filed u/s 29 of the Act read with the Rules known as "the Bihar Development of Homeopathic System of Medicines (Enlistment of Homeopathic Practitioners) Rules, 1956, hereinafter called "the" Rules", and after due enquiry the petitioner was registered and his name entered in the Enlistment Register maintained in form "B" of Rule 6 of the Rules and certificate was granted. A copy of the said certificate is Annexure 3 and is dated 15.5.1961. The said certificate shows that it was granted under the signature of the Registrar, State Board of Homeopathic Medicine, Bihar. The petitioner thereafter was promoted to the post of doctor in charge in the Municipal Homeopathic Dispensary in which he was initially appointed. This promotion was given to him as per decision taken, by the Municipal Board. After promotion the petitioner was confirmed by the Municipal Board under Annexure-4 dated 29.12.1955. Thereafter the second pay Commission's, recommendation was issued in the year 1970. According to that, the pay scale of the Local Board employees in Bihar was increased from 130/- to Rs. 210/ for Hakim, Vaidya and Homeopathic, and for the certificate holders an equivalent scale was increased from Rs. 100/- to Rs. 150/-. After this issue of recommendation, the petitioner was recommended by the Sub-committee of the Municipality the pay scale of Rs. 130/- to Rs. 210/- A copy of this resolution dated 31.07.1974 is Annexure-5 to this writ application. However, Annexure-5 shows that there was a rider to the effect that if there would be audit objection in future then the petitioner would be responsible to compensate the loss and, accordingly, the petitioner was made to give in writing the said undertaking. The petitioner thereafter gave his undertaking in writing as is apparent from Annexure-A dated 2.8.1974 to the supplementary counter affidavit. After this undertaking the petitioner received the said pay scale and continued to get the same scale from 1.4.1974 to 28.9.1978.

It appears that there was an audit and in view of the letter of the Urban Development Department, Government of Bihar issued to the Executive Officer, Samastipur Municipality, a copy of which is annexed as Annexure 6 dated 30.9.1974, the auditor raised objection on the ground that the petitioner being neither a degree-holder nor a diploma-holder was not entitled to the new scale of pay as recommended by the second pay commission. After this audit report, the Executive Officer issued a direction for adjustment of the excess amount paid to the petitioner from his salary.

The petitioner being aggrieved approached the High Court in its writ Jurisdiction which was registered as C.W.J.C. no. 5062 of 1978. The said writ application was disposed of by the Division Bench by judgment dated 6.3.1980 holding that the Executive Officer had no jurisdiction to decide this question and it was only the Municipal Board which was a competent body to take decision in this regard. Accordingly the direction issued by the executive Officer for adjustment of the excess amount was quashed by this Court.

Thereafter the Executive Officer again passed an order stopping payment of

salary to the petitioner till the excess amount drawn by the petitioner is adjusted. This direction of the Executive Officer is contained in Annexure-7 dated 28th August, 1981. On 15.9.1981 the Municipal Board constituted a sub-committee to report in this matter. The Sub-committee submitted its report dated 22.4.1982 a copy of which is Annexure-8 to the writ application. This report was accepted by the Municipal Board by its Resolution dated 9.10.1982, a copy of which is Annexure-8A. By these two annexures, it has been decided that the petitioner is not entitled to any revised pay scale, as the petitioner does not hold any diploma from Government recognised institution and there was no sanction by the Government as required u/s 44 of the Act. It is these two annexures, namely Annexures 8 and 8A, which are the subject matter of this writ application. These are all the material facts on the basis of which learned Counsel for the parties have advanced their arguments.

2. I may state here that the facts are not very much in controversy in this writ application. The question canvassed on behalf of the petitioner was as to whether in the circumstance of the case, the Sub-committee's report contained in Annexure-8 and the acceptance of the said report by the Municipal Board (Annexure-8A) are legal and valid or they are illegal, invalid and without jurisdiction and, therefore, liable to be quashed.

3. It is not disputed that on the date when the Act came into force on 1.3.1975, the petitioner joined the service of the Municipality as Assistant Doctor in the Homeopathic Dispensary and since then he is in continuous service. He has also, as already stated above, got himself registered under the Act and was one of the candidates in the first batch who was granted certificate and, therefore, he became a registered practitioner under the Act. This certificate was obtained in May, 1961, and thereafter the petitioner was duly promoted in his service and was confirmed in December, 1966 under Annexure-4. It is also not disputed that the recommendation of the second pay commission increased the scale of pay payable to Hakim, Vaidya and Homeopath and according to that recommendation, the petitioner was granted that scale of pay by the Municipal Board under Annexure 5 dated 1.7.74. However it appears that in view of the letter (Annexure-6) issued by the Urban Development Department, Government of Bihar, in the audit inspection, the auditor raised objection to the payment of the said scale of pay to the petitioner since he was neither a decree holder nor a diploma holder. It was thereafter when the Executive officer issued a direction for adjustment of the excess amount paid to the petitioner that the dispute has arisen. All these facts are not disputed.

4. The claim of the petitioner is that he being a registered practitioner under the Act and having obtained a certificate after fulfilling all the requirements of section 22 (2) (1) of the Act, the Local Body cannot question the grant of the said certificate and, therefore, the fact that the petitioner is a registered practitioner under the Act cannot be disputed and any authority far less the Municipal Board could ignore such certificate. If that be so then the contention of

the petitioner is that a registered homeopathic practitioner would come within the phrase "the legally qualified medical practitioner" as used in section 30(a) of the Act, and therefore, entitled to be retained in service by a local body.

5. In order to examine the aforesaid contention, it will be necessary to refer here certain relevant provisions of the Bihar Development of Homeopathic System of Medicine Act, 1953 (Bihar Act XXIV of 1953). It is not disputed that this Act came into force on 1.3.1955. Section 2(h) defines the term "registered homeopathic practitioner" to mean a homeopathic practitioner whose name is for the time being entered in the register u/s 22. Section 21 cast a duty upon the Registrar appointed u/s 19 of the Act to maintain the register of the registered homeopathic practitioners and from time to time revise the said register which is required to be maintained in the form prescribed by the rules. Then comes section 22. Sub-section (2) of this section is relevant for the purpose which may be read here :--

(2) Notwithstanding anything contained in sub-section (1), every person--

(i) Whose name has been entered in the list prepared u/s 29 and who proves to the satisfaction of the Registrar that he has passed the Matriculation Examination or any equivalent or higher examination and has been practicing as a whole time or part-time practitioner of the homeopathic system and medicine for a period of not less than three years on the first day of January, 1954 or

(iii) Who, in the opinion of the Board, is a fit person to be entered in the register by virtue of his eminent position as a whole time or part-time practitioner of the homeopathic system of medicine for a period of not less than three years on the first day of January, 1954,

and who has applied for the registration of his name in the register before such date as may be notified in this behalf by the State Government in the official gazette, shall be entitled to have his name entered in the register.

Sub-Section (4) of this section says that the names of persons whose names have been entered in the register and the names of those whose application have been rejected shall be published by the Registrar in the official Gazette. Section 23 is a provision for appeal by any aggrieved person from the decision of the Registrar regarding registration of any person of the making of any entry in the register. The next relevant provision is sub-section (3) of section 28. Leaving the proviso, it reads thus:--

(3) In any proceeding it shall be presumed that every person entered in such list is a registered homeopathic practitioner and that any person not so entered is not a registered homeopathic practitioner.

Then I may refer to section 29. This section makes a provision for preparation and maintenance of list of persons in practice on the first day of January, 1954. Under this section, the Registrar has been given power to prepare list of persons practicing in the State, the homeopathic system of medicine on the first day of

January, 1954 or on any other date which may be notified in this behalf by the State Government in such manner as it thinks fit. Under sub-section (2) of this section, such persons, who were desirous for enlistment of their names, were to submit applications in a prescribed form together with prescribed fee before such date as may be notified by the Registrar.

The Registrar thereafter was given an authority to make an enquiry and enter the name of the applicant in the list or reject the same. An order passed under this provision was made appealable u/s 23. Section 30 is also relevant and it will be necessary to read sub-sections (a) & (b) of this section. They read as follows :

(a) the expression "legally qualified medical practitioner or" duly qualified medical practitioner of any word importing a person recognised by law as a medical practitioner or member of the medical profession, shall, in all enactments for the time being in force in the State of Bihar, in so far as such enactments relate to any of the matters specified in the State List or the concurrent List appended to the Seventh Schedule to the Constitution of India be deemed to include a registered homeopathic practitioner

(b) a registered homeopathic practitioner shall be eligible to hold any appointment as a Medical Officer in any dispensary, hospital, infirmary or lying in-hospital supported by or receiving a grant from the State Government or any local authority and treating patients according to the homeopathic system of Medicines.

Under section 36 the Registrar is to grant a certificate for registration and renewal thereof. Lastly reference has also to be made to section 44 which was referred to at the Bar. It is, therefore, necessary to quote this sections as a whole, which reads thus:

44. Reservation of certain appointments to registered homeopathic practitioners who have qualified themselves from institutions established or recognised by the Board.

Except with the special sanction of the State Government, no homeopathic practitioner other than a registered homeopathic practitioner who has qualified himself from an institution established or recognised by the Board, shall be competent to hold an appointment as medical officer of health, or as physician, or other medical officer in a homeopathic hospital maintained or aided by the State Government or any local authority:

Provided that registered homeopathic practitioners in the employment of the State Government or a Local authority on the date on which this Act comes into force shall continue to hold the said appointments.

It appears that under this Act enlistment rules were framed in 1956. The name of the Rule is "the Bihar Development of Homeopathic System of Medicine (Enlistment of Homeopathic Practitioners) Rules, 1956". Rule 2 prescribes for making application under sub-section his name (1) of Section 29 by a person for

getting entered in the list. Form "A", has been prescribed for making such an application. Rule 6 makes a provision for maintaining enlistment register in Form "B". Rule 7 makes provision for grant of a certificate of enlistment in Form "C".

6. Learned Counsel for the petitioner vehemently argued that after the Act came into force on 1.3.1955, the petitioner applied under 1956 Rules aforesaid for enlistment and after due enquiry his name was registered as a registered homeopathic practitioner. Learned Counsel, therefore, argued with reference to Section 30, sub-sections (a) & (b) that such a person whose name has been registered as. "registered homeopathic practitioner" shall be deemed to be a legally qualified medical practitioner or a duly qualified medical practitioner That being so u/s 30(b), as asserted by learned Counsel for the petitioner, such registered homeopathic practitioner shall be eligible to hold any appointment as a medical officer under any local authority, and the petitioner being such a person within the meaning of section 30 cannot be said to be a person disqualified to hold the post to which he was duly promoted. Reading Section 30, sub-sections (a) & (b) read with the definition of "registered homeopathic practitioner", it is manifest that after the petitioner was registered as a "homeopathic practitioner" he became fully qualified to hold the post which he was holding under the Municipal Board.

7. It may be stated here that it has not been disputed that the petitioner was one of the candidates, who was registered as homeopathic practitioner along with other persons in the first batch who applied for the same u/s 29 of the Act. The Rules itself having been framed in the year 1956, application could have been made for enlistment of the name of the petitioner u/s 29 of the Act before the Rules were applied. In the circumstances of the case, the petitioner having been duly entered in the register prepared for the registered homeopathic practitioners, after due enquiry would be deemed to be fully qualified for holding the post of the medical practitioner on the date when he was appointed by the local body. It may be stated here that when the petitioner qualified himself for homeopathic medicine and passed from Sathi Homeopathic College, Laheriasarai in the year 1950, there was no law preventing the petitioner from practising in homeopathic medicines, and the petitioner, after coming into force of the Act read with the Rules, 1956, having applied for registration and having got himself so registered in the first batch of the Act.

In the circumstances, it will be difficult to hold that the petitioner was not fully qualified to hold the post to which he was appointed and thereafter promoted by the Local Body. At this stage I may refer to Section 44 of the Act which has been quoted above. Strong reliance was placed upon this section by learned Counsel for the respondents. Learned Counsel pointed out that the proviso to section 44 gives a right to a person to continue on the post under the State Government or a local authority who was a registered medical practitioner on the date on which the Act had come into force. I have pointed out above that on coming into force of the Act, nobody could have applied for registration of his name as registered

homeopathic practitioner on the 1st. January, 1954 u/s 29 of the Act as the Rules were not framed then prescribing the form and the fees. It was duly framed in the year 1956 and, therefore, the petitioner after coming in to force of the Rules could only apply for such enlistment and in fact he applied for the same and was one of the candidates in the first batch who were enlisted as registered medical practitioners. That being so, I do not appreciate the arguments put forward on behalf of the respondents, specially in view of sub-section (a) & (b) of section 30 of the Act read with the definition of "registered medical practitioner" which have been dealt with above, that the petitioner was not a qualified homeopathic practitioner on the date when the Act came into force,

8. In view of the discussions made above, with reference to the sections of the Act and the Rules, it cannot be said that there was any infirmity in the appointment and promotion of the petitioner from time to time by the local Body. They were all made in accordance with law. For the reasons stated above the application is allowed and the report of the sub-committee as contained in Annexure-8 and its acceptance by the Municipal Board as contained in Annexure-8/A are held to be illegal and, accordingly, they are quashed. The petitioner will now hold the post which he was holding and is entitled to the revised scale of pay as recommended by the pay commission. If the petitioner has not been paid his salary, then the respondents shall make arrangements for clearing off his arrears of pay on the revised scale as recommended by the Commission. He is also entitled at that rate his current salary. In the circumstances of the case there will be no order as to costs.

S.H.S. Abidi, J.

I agree.