
(2013) 07 CHH CK 0002
In the Chhattisgarh High Court
Case No : Writ Petition (S) No. 4441 of 2009

Dr. Ramesh Chandra Pathak

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 16-07-2013

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 21

Citation : (2013) 07 CHH CK 0002

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Advocate : Ashish Shrivastava, Mr. Vaibhav Shukla and Mr. Gautam Khetrapal, for the Appellant; M.P.S. Bhatia, Dy. Government Advocate, for the Respondent

Judgement

Satish K. Agnihotri, J.—These petitions viz. W.P. (S) No. 4441/2009, 96/2010, 2712/2010, 3400/2009, 3697/2009, 6138/2009 and 6989/2009, involve common question of facts and law requiring common consideration and disposal by this common order. By these petitions, the petitioners seek quashing of the order dated 03.07.2009 (Annexure P/1 to W.P. (S) No. 4441/2009, 96/2010, 2712/2010, 3400/2009, 3697/2009 and W.P. (S) No. 6989/2009). The petitioners further seek a direction to the respondent authorities to pass appropriate orders relating to their absorption as Ayurvedic Medical Officer Grade II (Gazetted) (for short "AMO") as per the recommendations of the screening committee, with all consequential benefits of seniority, monetary benefits in the capacity as AMO from the date, the Government took over all the Ayurvedic Dispensaries i.e. from the year 1987.

2. In W.P. (S) No. 6138/2009, the petitioner seeks quashing of the order dated 20.08.2009 (Annexure P/25) and seeks a direction to the respondent authorities to modify the same to the extent that the petitioner is entitled to be absorbed as AMO w.e.f. the date on which the Government took over all Ayurvedic Dispensaries i.e. from the year 1987, with other consequential benefits.

3. The facts, in brief, as projected by the petitioners, are that all the petitioners

are the degree holders in Bachelor of Ayurvedic Medicine & Surgery (for short "BAMS") and were initially appointed as Vaidya-I in the Janpad Dispensaries. In the year 1987-88, the State Government took a policy decision to take over all the dispensaries and the services of the employees. Earlier also, absorptions were made in 1983, 1995, 2001 & 2006 and the Janpad Vaidyas were absorbed on their respective posts and pay scales on the basis of their qualifications i.e. degree holders were absorbed as AMO and non-degree holder Janpad Vaidyas were absorbed as Assistant Ayurved Medical Officer (Class III Non-Gazetted) (for short "AAMO"). The absorptions were made from the date when the Government took over the respective dispensaries.

4. Further case of the petitioners is that after the State of Chhattisgarh came into existence, due to change in the policy of the State Government, the case of the petitioners was considered for absorption by the screening committee and a discrimination has been made by the respondent/State. Earlier, the similarly situated persons were absorbed from the date of taking over of the dispensary by the State Government, however, in the aforesaid cases, the petitioners have been absorbed from the date of passing of the order i.e. 03.07.2009 (in all cases except W.P. (S) No. 6138/2009) and 20.08.2009 (in W.P. (S) No. 6138/2009). Thus, these petitions seeking the aforesaid reliefs.

5. Shri Ashish Shrivastava, Shri Vaibhav Shukla & Shri Gautam Khetrapal, learned Advocates appearing for the respective petitioners, submit that a screening committee was constituted by the State Government to consider the cases for absorption of the petitioners on the post of AMO and the names of the petitioners were duly recommended. However, the absorption could not be done on the post of AMO, the State Government has declared the post of AAMO as dying cadre in 2008, and therefore, no absorption was permissible on the post which was not in existence.

6. Learned counsel would further submit that the petitioners possess all the minimum essential qualification as per the Chhattisgarh Public Health (Indian System of Medicines & Homeopathy) Gazetted Service Recruitment Rules, Schedule-III for being absorbed on the post of AMO.

7. Shri Shukla would also submit that the High Court of Madhya Pradesh, in an identical matter i.e. Vijay Kumar Jatt v. State of Madhya Pradesh & Others, and State of M.P. v. Dr. Purushottam Dwivedi, had directed the State Government to absorb the petitioners therein as AMO w.e.f. 1987-88, i.e. the date on which the dispensaries were taken over by the Government as per the qualification and the report of the screening committee.

8. Learned counsel would lastly submit that the action of the respondent authorities in not absorbing the petitioners on the post of AMO w.e.f. 1987-88 is violative of Articles 14, 16 & 21 of the Constitution of India as other similarly situated persons were absorbed from the earlier date. Further, in the event of absorbing the petitioners from 2009, they would be suffering a heavy financial

loss and also deprive the petitioners of pensionary benefits.

9. On the other hand, Shri Bhatia, learned Deputy Govt. Advocate appearing for the State/respondents, would submit that a screening committee was constituted to examine the cases of those AMOs who were appointed prior to 1982 and after 1982 in the Aushadhalayas of the Janpad Panchayat for their absorption in the services of the State Government. In para 5 of the report of the Screening Committee, it is clearly mentioned that there were directions that no Chikitsak be appointed after the year 1982, however, the Janpad Panchayats had irregularly appointed the petitioners as AMO defying the aforesaid orders and directions of the Department. Since the petitioners were appointed after 1982, it was recommended that looking to their eligibility, they be absorbed. However, the petitioners were absorbed as AAMO and not as AMO, as they were appointed after 1982. The petitioners cannot claim it as a matter of right that they should be absorbed as AMO.

10. Heard learned counsel appearing for the parties, perused the pleadings and documents appended thereto.

11. Indisputably, the petitioners were working as Vaidya - I in Janpad Dispensaries on the basis of having obtained degree of BAMS. All the dispensaries were taken over on 27.1.1987 (Annexure - P/3) whereunder 104 Ayurved Hospitals were absorbed and 104 posts were created to absorb 104 Vaidya-I as AMOs. It was mentioned that terms and conditions of the employees will be decided accordingly and thereafter, the petitioners were appointed as AAMO.

12. The qualification for appointment on the post of AMO is BAMS and the qualification for appointment on the post of AAMO is L.A.P. Bhisgacharya & Ayurvedacharya with B.A. Part I.

13. Some of the similarly situated AMOs approached the Madhya Pradesh State Administrative Tribunal (for short "the Tribunal") whereunder the Tribunal directed review of the absorption of the similarly situated applicants in accordance with the directions/ guidelines laid down by the Tribunal.

14. Thereagainst, writ petitions were filed before the High Court of Madhya Pradesh in WP No. 5287/1997 (The State of M.P. & Ors. v. Dr. Purushottam Dwivedi) and other connected matters. Learned Division Bench of the High Court by order dated 1.7.1999 held as under:

9...It is not disputed before us that the Government has by communication dated 07.01.1984, laid down conditions of absorption to, inter alia, provide for protection of pay of the employees so absorbed. We are, therefore, of the opinion that the direction of the Tribunal deserves to be modified and we, accordingly, direct that the Government shall also take into consideration the qualification laid down vide enclosure to memo dated 01.6.1967 (Annexure-R/2 to the return in W.P. No. 5271/1997) and frame a scheme for absorption of the Vaidyas bearing

in mind the qualifications laid down for the post of Ayurved Chikitsa Adhikari for direct recruitment and by Promotion, both, and to consider the cases afresh in accordance with the scheme so framed. These petitions are, thus, partly allowed with no order as to costs.

15. Subsequently, the State of Chhattisgarh was carved out from the, then, State of Madhya Pradesh w.e.f. 1.11.2000. Pursuant thereto the screening committee was constituted on 21.2.2002 (Annexure - P/7) under the Chairmanship of the, then, Director, Indian System of Medicine & Homeopathy, Raipur. The said screening committee screened all the records available before it on the lines suggested by the earlier screening committee chaired by the Chief Secretary on 7.5.1980.

16. The screening committee on the basis of decision taken by the earlier screening committee headed by the Chief Secretary on 7.5.1980 in respect of the Vaidyas-I of Janpad Panchayat, who were appointed prior to 1982 took a decision that the petitioners namely; Dr. Gyanendra Kumar Agrawal & Dr. Ramesh Chandra Pathak be appointed as AMO. In case of other petitioners namely; Dr. Vishwanath Pathak, Dr. Gauri Shankar Patel, Dr. R.S. Sahi & Dr. Virendra Mishra who were appointed after 1982 the committee recommended to appoint them also on the post of AMO after taking approval from the Public Service Commission (for short "the PSC").

17. In the meanwhile, writ petition No. 11383/2003 (Dr. Gyanendra Kumar Agrawal & Another v. The State of M.P. & Others) was disposed of by the High Court of Madhya Pradesh by order dated 30.6.2008 directing that the petitioner may file representation to the competent authority who shall take action for referring the case to the committee and thereafter take final decision in the matter on the basis of recommendation of the committee within a period of 3 months and communicate the same to the petitioner.

18. The petitioners are aggrieved by the order dated 3.7.2009 whereunder all the petitioners despite clear recommendations in favour of them to appoint on the post of AMO were appointed as AAMO without referring the matter to the PSC and taking approval of the same.

19. On perusal of the absorption order, it is manifest that the Government intended to absorb all the Janpad Panchayat hospitals and also the Janpad Vaidya - I on the post of AMO. Accordingly, 104 posts were sanctioned, however, the State Government thereafter appointed some officers except the petitioners in State of Chhattisgarh. Similarly situated officers have been appointed in the State of Madhya Pradesh as AMO. The screening committee, as aforesaid, has also clearly directed to absorb them on the post of AMO after seeking approval of the PSC, as required under the constitutional provisions. The State Government decided on its own to reject the recommendation without any rhyme or reason and also failed to seek approval of the PSC.

20. It is not in dispute that though recommendation is not binding, however, if

the recommendation has been rejected without any justification and reasonableness the Court has power to entertain judicial review. In the case on hand, the State Government has accepted the recommendation to the extent of appointing them as AAMO when the recommendation was to appoint the petitioners as AMO. Thus, there is not total rejection of the recommendation.

21. The State Government has failed to point out any reasons except that they were appointed by the competent authority during the ban period. The appointment during the ban period has been regularized and also the Chief Secretary in its screening committee meeting held on 7.5.1980 laid down guidelines. Further, the screening committee, chaired by the Director, Medical Education System and Homeopathy, in its meeting held on 21.02.2002, having examined all the documents and facts of the case came to the conclusion that the petitioners possessed all the qualifications for appointment on the post of AMO recommended the name of the petitioners for absorbing them on the post of AMO with prior approval of the PSC. In spite of the above, without any justification and in an arbitrary manner, the Government has taken the decision not to appoint the petitioners on the post of AMO.

22. The recommendation reads as under:

23. For the reasons mentioned hereinabove, the respondent authorities are directed to consider the recommendation dated 21.2.2002 afresh and pass an order in accordance with the recommendation made by the screening committee within two months from today. The petitioners shall be entitled to absorption w.e.f. the date other similarly situated Janpad Vaidyas have been absorbed as AMO with consequential notional seniority for the pension and other benefits. However, the petitioners shall be entitled to difference of salary only w.e.f. from the date of filing of these petitions till they are appointed on the post of AMO. As an upshot, all the writ petitions are allowed to extent indicated above. No order as to costs.