
(1981) 03 OHC CK 0005

In the Orissa High Court

Case No : O.J.C. No's. 1016 of 1977, 12 of 1978 and 531 of 1978

Dr. Sarat Chandra Mohanty and Others

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 02-03-1981

Acts Referred:

Constitution of India, 1950 — Article 16, 226, 254, 311
Homoeopathy Central Council Act, 1973 — Section 15(2), 15(3)
Orissa Homeopathic Act, 1956 — Section 29, 43

Citation : AIR 1981 Ori 70 : (1981) 51 CLT 371

Hon'ble Judges : R.N. Misra, C.J.; B.N. Misra, J

Bench : Division Bench

Advocate : R.C. Ram, for the Appellant; Additional Government Advocate, for the Respondent

Judgement

R.N. Misra, C.J.—Each of the petitioners was a registered Homoeopathic practitioner within the meaning of Section 29 of the Orissa Homoeopathic Act, 1956 (hereinafter referred to as the State Act) and was given appointment as doctor for a term in a dispensary as would appear from the order of appointment appended to the respective writ applications. The term of appointment was extended by subsequent orders from time to time, but each of them was later informed that service was being terminated from a specified date. The writ applications have been filed on the footing that the termination was under a misapprehension that the petitioners were not qualified to continue as doctors in dispensaries in view of the Homoeopathy Central Council Act, 1973 (Act 59 of 1973) (hereinafter referred to as the Central Act), and though similarly placed doctors continued in service and have even been absorbed as regular employees under the State Government, the petitioners have been discriminated against. Counter-affidavit has been filed and the action has been justified by relying upon Section 43 of the State Act. It has also been contended that the petitioners being not institutionally qualified have no right to service and as a preliminary point it has been stated that the petitioners have no cause of action as they were under

service contracts and their services have been terminated in terms of the service contracts.

2. It is not disputed that the petitioners, as a fact, were employed for specific periods and the termination has been at the end of the period and not before it. In that view of the matter, we accept the objection of the learned Additional Government Advocate that the petitioners are not entitled to issue of mandamus for continuing their employment.

3. Ordinarily, with this finding these writ applications should have been dismissed. There is, however, another aspect which cannot be lost sight of. According to the petitioners, persons similarly situated have already been absorbed in Government service. Therefore, there is no justification in the field of public employment to discriminate the petitioners from others who are similarly situated. Long arguments were advanced before us as to whether the grievance of the petitioners on this score should be examined inasmuch as in the original writ application there was no specific allegation on this score. There does not seem to be any dispute that Government have proceeded to take action being under the impression that the petitioners have no requisite qualification. Whatever may have been the position under the State Act according to the State Government, with the coming in of the Central Act institutional qualification became a must and, therefore, there is no scope for the petitioners to claim service. We think, we should clarify the legal position on this score and leave it open to the Government to examine the petitioners' grievances whether persons similarly situated have been more favourably treated than the petitioners giving rise to the allegation of discrimination. Learned Additional Government Advocate agrees that the field is covered by Article 16 of the Constitution and as it is public employment, discrimination cannot be permitted.

4. Section 21 of the State Act prescribes the requisite qualifications for a registered Homoeopathic practitioner. Section 29 (b) provides:--

"A registered homoeopathic 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 homoeopathic system of medicine."

As each of the petitioners was a registered homoeopathic practitioner, he was entitled to appointment as Medical Officer and the appointments were actually made in terms of Section 29 (b). It may be pointed out that initially these appointments were in dispensaries. Section 43 with its heading reads thus:--

"43. Reservation of certain appointments to registered Homoeopathic Practitioners who have qualified themselves from institutions established or recognised by the Board-

Except with the special sanction of the State Government, no Homoeopathic

Practitioner, other than a registered Homoeopathic 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 Homoeopathic hospital maintained or aided by the State Government or any Local authority;

XX XX XX XX XX"

Admittedly, none of these petitioners is institutionally qualified. But Mr. Ram in our opinion, has rightly pointed out that Section 43 of the State Act is a special provision dealing with reservation of certain appointments and, therefore, with a view to having a harmonious construction of Sections 29 (b) and 43 of the State Act, we must accept the position that in regard to the institutions covered by Section 29 (b) institutional qualification of registered Homoeopathic practitioners is not necessary while for the field limited by Section 43 such qualification is a condition precedent. In Section 29 (b) four categories of institutions have been named namely, dispensary, hospital, infirmary and lying-in-hospital. There would be no presumption that the legislature used redundant words in the statute, and if all the four types of institutions referred therein were hospitals, different words had not been used. It was pointed out by Lord Viscount Haldane, L. C., in *Attorney General v. Milne*, 1914 All ER 1063 that -

"If the language used has a natural meaning, we cannot depart from that meaning unless reading the statute as a whole the context directs us to do so."

Section 29 (b) and Section 43 of the State Act, therefore, cover different fields, though in regard to hospitals there seems to be some overlapping. Since the petitioners' appointments were in dispensaries that aspect of the matter need not engage our attention any longer. The attempt to rely on Section 43 of the State Act as a justification for termination, therefore, is not correct.

Section 15 (2) of the Central Act provides:--

"No persons, other than a practitioner of Homoeopathy who possesses a recognised medical qualification and is enrolled on a State Register or the Central Register of Homoeopathy -

(a) shall hold office as Homoeopathic physician or any other office (by whatever designation called) in Government or in any institution maintained by a local or other authority."

5. Homoeopathy is a concurrent subject for the purposes of legislation and the subsequent Central Act would certainly override in case there is any repugnance or inconsistency between the two. There is no dispute before us, therefore, that Section 15 (2) of the Central Act is operative, and in view of the language used in Clause (a) of Section 15 (2) of the Central Act all the four categories of institutions in Section 29 (b) of the State Act would come within the ambit. Reliance, however, is placed on Sub-section (3) (b) of Section 15 of the Central Act which provides -

"(b) the privileges (including the right to practise Homoeopathy) conferred by or under any law relating to registration of practitioners of Homoeopathy for the time being in force in any State, on a practitioner of Homoeopathy enrolled on a State Register of Homoeopathy,"

The State Act came long before the Central Act. Section 29 (b), as already noted, made registered Homoeopathic practitioners eligible to hold appointments as medical officers. Clause (d) of the same section entitled the registered Homoeopathic practitioners to sign or authenticate birth or death certificates; sign or authenticate medical or physical fitness certificates of prescribed descriptions and to give evidence at any inquest or in any court of law as an expert u/s 45 of the Evidence Act or on any matter relating to the Homoeopathic system of medicine.

6. Mr. Ram contends that the eligibility under Clause (b) as also the entitlements under Clause (d) of Section 29 of the State Act are included in the term "privilege" occurring in Sub-section (3) of Section 15 of the Central Act and on that footing has argued that since the petitioners were enjoying a privilege u/s 29 (b) of the State Act, by application of Section 15 (2) that privilege could not be taken away.

"Privilege" having not been defined, the common parlance meaning is to be adopted. According to the Shorter Oxford English Dictionary, "privilege" means.

"Right, advantage or amenity granted to or enjoyed by a person or class of persons beyond the common advantages of others."

The advantage conferred on or extended to a registered Homoeopathic practitioner u/s 29 (b) of the State Act to hold an appointment as medical officer would thus come within the wide meaning of the term "privilege" and thus the advantage under the State Act would be protected u/s 15 (3) of the Central Act. That being the position, notwithstanding the enforcement of the Central Act, those who were already in service by virtue of Section 29 (b) of the State Act, would not incur the liability of being disqualified from holding appointments. The above discussion clearly leads to the conclusion that persons like the petitioners who were already in employment did not incur the disability arising out of Section 15 (2) of the Central Act.

7. As we have already indicated, the petitioners held term appointments and the terms having run out their services had been terminated. The petitioners have, however, alleged that in respect of others the term appointments have been renewed or they have even been absorbed. The State Government, we hope, would look into the allegations of the petitioners that the order of termination in their cases flowed out of a misapprehension of the factual position and others similarly placed like the petitioners have been favourably treated. It is the duty of the State in the field of public employment to act strictly in accordance with the equality clause subject to known limitations. Therefore, the grievance of the petitioners should be examined, and in case Government are satisfied that the

terminations were grounded upon the provision in the Central Act or of Section 43 of the State Act, the entire matter should be reviewed within a reasonable time.

8. With these observations we dispose of the writ applications without any direction for costs.

Misra, J.

I agree.