
(1991) 01 P&H CK 0124
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 2237 of 1986

Dr. Sham Lal

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 08-01-1991

Acts Referred:

Constitution of India, 1950 — Article 16, 309

Punjab State Faculty of Ayurvedic and Unani System of Medicines Act, 1963 — Section 21, 21(1), 21(2)

Citation : (1992) 2 ILR (P&H) 309

Hon'ble Judges : A.L. Bahri, J

Bench : Single Bench

Advocate : Paramjit Singh Patwalia, for the Appellant; S.C. Mohanta, A.G. for Respondent No. 1, D.D. Vasudeva, D.A., Jagan Nath Kaushal, for Respondent No. 3, Deepak Agnihotri and Girish Agnihotri, for the Respondent

Final Decision : Dismissed

Judgement

A.L. Bahri, J.—Vide this judgment two Civil Writ Petition Nos. 3287 of 1986 and 2237 of 1986 are being disposed of. Since Dr. Sham Lal filed the latter Writ Petition, facts are taken from the same.

2. In both the Writ Petitions challenge is to the appointment of Dr. P.K. Jain, Respondent, to the post of Director, Ayurveda, a writ of quo warranto is made directing Respondent No. 3 to vacate the office and writ of mandamus is made directing State of Haryana, Respondent No. 1 to make appointment to the post of Director from other eligible candidates.

3. The recruitment to the post of Director, Ayurveda, Haryana is governed by Rules framed under Article 309 of the Constitution, known as the Punjab Ayurveda Department (Class I and II) Service Rules, 1963 as amended by State of Haryana in 1975 (hereinafter referred to as the Rules). Appendix "A" attached to these Rules prescribes the necessary qualifications of the post of Director Ayurveda which are as under:

(i) A degree (with atleast five years" regular course) in Ayurvedic System of Medicines from a Medical Board or Faculty of Indian Medicine duly recognised by the Government.

(ii) Knowledge of Sanskrit atleast upto Madhayama (Benaras) or Visharad (Punjab) or its equivalent qualifications;

(iii) Minimum experience of seven years on some administrative post of responsibility, after attainment of minimum basic qualifications.

Preferential:

A degree (with atleast five years" regular course) in Unani System of Medicine from a Medical Board or Faculty of Indian Medicine duly recognised by the Government or M.B.B.S.

An advertisement was published in the Daily Tribune on December 27, 1985 inviting applications for recruitment to the post of Director Ayurveda. Annexure P-I is the copy of the aforesaid advertisement, prescribing the qualifications as reproduced above. In all forty applications were received. Interview was held on April 26, 1986 of eight candidates. Respondent No. 3 Dr. P.K. Jain was selected and subsequently appointed Dr. P.K. Jain's qualifications are stated to be as under as mentioned in the Writ Petitions:

Matric Punjab University Solan. II Div. 415 14th May English 1955 Hindi.

prabhakar Punjab University Chandigaih. III Div. 311/650 (47.8%) 2nd Jan. Hindi 1964 Honours

B.A. Part-I Punjabi University Patiala. 192/550 (35%) 12th Nov. Sanskrit 1969

G.A.M.S. (Ayurvedic Acharya) Govt. Ayurvedic College Pat P.K. 12th Nov. 1960 Ayurvedic

M.A.H.M. (Surgery and Gujrat Ayurveda Jarmnrgar II Div. 66/1175 June, 1968 Ayurveda

Master of Ayurvedic Medicines) University (56.7%,)

4. The challenge on behalf of the Petitioner is that G.A.M.S. degree obtained by Dr. P.K. Jain from Ayurvedic College, Patiala is not a degree recognised by the State of Haryana. Further it is asserted that Dr. P.K. Jain did not obtain this degree after completing five years course. Dr. P.K. Jain also did not possess the other requisite qualifications of knowledge of Sanskrit. He also did not possess the requisite experience The appointment was secured by Dr. P.K. Jain by misleading the State of Haryana with respect to the degree obtained by him. The Punjab State Faculty of Ayurvedic and Unani System of Medicine is alleged to have issued a degree on the basis of examination held in November, 1960. Infact, no such examination was held in the year 1960 and in fact the Faculty was not in existence then. The Faculty was established under the Punjab State Faculty of Ayurvedic and Unani Systems of Medicine Act, 1963 which came into

force as per notification issued on January 26, 1964. Before that Faculty of Indian Medicine Punjab was established under Punjab Government notification dated January 17, 1967. For all intents and purposes this Faculty came into existence in January, 1961. Thus, there was no question of holding any examination in January, 1961 or earlier. It was incorrectly stated that the degree Annexure P-3 was issued on the basis of examination held by the Faculty in November, 1960. The degree in fact was issued in the year 1968. The Indian Medicine central council recognised the degree of Faculty aforesaid from 1961 onwards. This would show that the degrees issued by this Faculty earlier were not recognised. The Faculty had been issuing degree from the year 1957, 1958 and 1959, as is shown from Annexure P-4. Such degrees are not recognised for the purposes of the Indian Medicine Central Council Act, 1970, as would be clear from the letter of Central Government dated May 6, 1985, Annexure P-5, Earlier, one Gurcharan Singh Bedi had filed Civil Writ Petition No. 4114 of 1981 on the basis of qualifications like the one possessed by Dr. P.K. Jain. The stand taken by the State of Punjab in their written statement was that such degrees were not recognised under the Indian Medicine Central Council Act, 1970. On July 14, 1983 State of Haryana issued a notification recognising G.A.M.S. degree issued by Punjab Faculty. Copy of notification is Annexure P-6. However, subsequently, this notification was superseded on November 5, 1984,--vide notification Annexure P-7. Dr. P.K. Jain does not possess knowledge of Sanskrit upto Madhayama (Benaras) or Visharad (Punjab). He had Sanskrit as one of the subjects in B.A. Part 1. As per letter of the Punjab University M.A. in Sanskrit is equivalent to Visharad or Madhyama. Earlier Dr. P.K. Jain and another filed Writ Petition No. 4139 of 1980 challenging the appointment of Dr. R. Dayalu as Director of Ayurveda Haryana. The State of Haryana while defending the appointment of Dr. R. Dayalu, in their written statement asserted that Dr. P.K. Jain was not possessing the prescribed knowledge of Sanskrit and the requisite experience. The claim of Dr. P.K. Jain in the said Writ Petition was that he had passed the examination from Government Ayurvedic College, Patiala. He did not state that he was Graduate from Punjab State Faculty. The application of Dr. P.K. Jain was obtained after the due date. The Respondents filed separate written statements to contest the Writ Petition. The Punjab State Faculty of Ayurvedic and Unani Systems of Medicine, Respondent No. 2 took up the stand that the Faculty was constituted,--vide Punjab Government notification dated January 27, 1961 and was authorised to hold qualifying examination of G.A.M.S. with effect from April 14, 1960. The Faculty validly conducted the examination of Dr. P.K. Jain and others in November, 1960. Dr. P.K. Jain passed the examination under Roll No. 175. He also passed the final examination and was thus awarded a degree of G.A.M.S. correctly. Such degrees were validated u/s 21 of the Punjab State Faculty of Ayurvedic and Unani Systems of Medicine Act, 1963. Before the constitution of the Punjab Faculty, the examinations were conducted by the Board of Examiners of the Punjab Ayurvedic College, Patiala, Such functions were entrusted to the Faculty after it's constitution and the Board of Examiners ceased to function. The left out candidates were awarded degrees on the basis of

examination conducted by the Board of Examiners. Annexure R/2/3 in this respect was submitted. The degree possessed by Dr. P.K. Jain of G.A.M.S. stands recognised by the Indian Medicine Central Council under the Indian Medicine Central Council Act, 1970. The State of Haryana in their written statement further stated that Dr. P.K. Jain had studied Sanskrit for two years in G.A.M.S. Course as is apparent from Annexure R-I. With respect to the degree of G.A.M.S. of Dr. P.K. Jain similar reply was filed as was done by the Faculty. Dr. P.K. Jain also got experience as Assistant Director Incharge from the period May 10, 1979 to May 15, 1986., after filing of the earlier Writ Petition No. 4139 of 1980. He obtained five years experience thereafter for the post of Director Ayurvedic, Reference was made to the admission of Dr. Sham Lal Petitioner that he had no experience on the administrative side in paragraph 22. The application of Dr. P.K. Jain was received on January 16, 1960. The state Government had taken this post out of the purview of Haryana Public service Commission and advertised the same. The Government of India was also requested to send a panel of names. The panel submitted by the government of india included the name of Dr. P.K. jain which was considered. Dr. P.K. Jain was fully qualified for the post of Director. Dr. P.K. Jain in his written statement alleged that he was working as Assistant Director Incharge Central .Research Institute for Ayurveda, New Delhi and his name was sent in the panel for the post of Director Ayurveda. His name was duly considered. He possessed requisite qualifications, a G.A.M.S. degree from faculty of Indian Medicines Punjab in November, 1960. This faculty was authorised to hold qualifying examination, with effect from, April 14, 1960 by a notification issued on January 27, 1961. He obtained internship completion certificate on February 9, 1961. Since the first convocation was held in February, 1968, he was awarded the degree in 1968. A degree of G.A.M.S. Course (5 years Course) awarded by the Punjab State Faculty was valid. He also possessed the requisite qualifications of knowledge of Sanskrit. He studied Sanskrit for two years in G.A.M.S. Course. He also passed B.A. Part-I with Sanskrit as one of the compulsory subjects. The Central Government had declared the Higher Secondary with Sanskrit equivalent to Madhyama of Benaras University as against this he had passed B.A. Part-I with Sanskrit which is higher to the Higher Secondary. Further more, he also passed Prabhakar Examination of Panjab University in 1964 with Sanskrit as one of the additional optional subjects. He possessed necessary experience as stated in paragraph 20 of the written statement. The rejoinder was filed by the Petitioner retiring the stand taken by him.

5. The main challenge in the writ Petition is regarding the requisite qualifications of Dr. P.K. Jain, particularly degree of G.A.M.S. Course awarded by the Faculty of Punjab in his favour. The contention is that the Faculty could not and did not hold any examination before its constitution though with retrospective effect power was given and the degree of G.A.M.S. Course issued by the Faculty in favour of Dr. P.K. Jain is invalid, as it did not cover five years Course. These contentions are devoid of merits. Section 21(1) and (2) of the Punjab State Faculty of

Ayurvedic and Unani Systems of Medicine Act, 1963 reads as under:

(1) The Faculty of Indian Medicine, Punjab, notified and constituted under Punjab Government, Health Department, Notification No. HBII-24 (15) 1961/3607, dated the 27th January, 1961, until the Faculty is established and constituted under and in accordance with the provisions of this Act be deemed to be the Faculty established and constituted under this Act for the purpose of carrying but the provisions of this Act.

2. Anything done or any action taken by the Faculty of. Indian Medicine, Punjab, so notified and constituted (including any appointment made, notification, order, instruction or direction issued, bye-law or form framed, qualifying or other examinations held, training or courses of studies prescribed, degrees, diplomas or certificates conferred, granted or issued, institutions recognised or affiliated, fees fixed or levied or stipends scholarships, medals, prizes or rewards awarded shall be deemed to have been done or taken under the provisions of this Act and shall continue to be in force accordingly unless and until superseded or amended by anything done or action taken under this Act.

The Faculty was formally constituted by notification in January, 1961 and was authorised to hold examinations, with effect from April, 1960. Since the Act came into force in 1963, there was transitional period for which the Faculty was conducting examinations and issuing degrees which were validated by the Statute. Before that period Board of Examiners were holding the examinations and after April, 1960 no such examination was held by the Board of examiners. In November, 1960 the examination was held by the Faculty. Even if the Faculty issued degrees on the basis of examination conducted by the Board, no fault can be found. The final examination was held by the Faculty and G.A.M.S. degree was issued. The period for which Dr. P.K. Jain and others had studied before constitution of the Faculty was to be taken into consideration while considering five years Course of G.A.M.S. Similar question was under consideration before the Supreme Court in A.N. Shashtri Vs. State of Punjab and Others, . A.N. Shastri was appointed as Professor of Ayurvedic Medicines by the Punjab Government and thereafter he was appointed as Deputy Director and subsequently Director. A degree of five years or more of regular course in Ayurvedic Systems of Medicine of a Medical Board or "A" acuity of Indian Medicines recognised by the Government was qualification for the post of Director of Ayurveda. The High Court had held that shri A.N. shashtri had read as a regular student and for the remaining two years, he was directly under a quailed professor, though it was not a study in regular institution. Alter reading for live years, he had obtained the degree which was recognised by me university. The Supreme Court held the degree to De valid. AS already stated above Dr. P.K. Jain was awarded G.A.M.S. degree by the faculty which is valid. Further more, it is not required of the Court to make any comments on academic matters as held by the Supreme Court in The University of Mysore and Another Vs. C.D. Govinda Rao and Another, . It made general observations with regard to

the powers of the Court to comment on academic matters, in paragraph 12 it was observed as under:

The High Court does not appear to have considered the question as to whether it would be appropriate for the High Court to differ from the opinion of the Board when it was quite likely that the Board may have taken the view that the Degree of Master of Arts of the Durham University, which Appellant No. 2 had obtained, was equivalent to a High Second Class Masters Degree of an Indian University. This aspect of the-questions (sic) purely to an academic matter and Courts would naturally hesitate to express a definite opinion, particularly, when it appears that the Board of experts was satisfied that Appellant No. 2 fulfilled the first qualification.

6. When the Faculty had issued the degree of G.A.M.S. 5-years Course, which degree is deemed to be valid u/s 21 of the Act aforesaid, its validity cannot be challenged in the Writ Petition. By operation of law, a degree issued by the Faculty has to be recognised as valid. This degree is further recognised by the Indian Medical Council. Thus the same is to be treated as valid. In this respect reference would be made to the decision of the Supreme Court in *Dr. B.L. Asawa Vs. State of Rajasthan and Others*, . That was a case of Post-Graduate Medical Degree granted by the University duly established by the Statute in India, which was recognised by the Indian Medical Council. Such a degree was included in the Schedule of the Medical Council Act, It was held that the same was to be regarded, accepted and treated as valid throughout the country (Para-11). Vide item No. 83 of the Schedule of Indian Medical Council, A.A.M.S. degree has been recognised by the Indian Medical Council and throughout the country, it is to be accepted as valid.

7. There is no force in the contention that the post was re-advertised and ought to have been filled from the candidates who had earlier submitted their applications. As per sequence of facts stated above, a panel of names was also invited from the Central Government and the name of Dr. P.K. Jain was included in such a panel. If the recommendations of the panel were received one day after the due date fixed for receipt of applications, the names included though in the panel were not required to be rejected on that ground alone, as those candidates, were not responsible for submitting their names late. Merely by submitting applications within the prescribed period does not clothe such persons with a right to be so appointed. *Dr. Surinder Nath Joshi v. The Punjab Public Service Commission and Ors.* 1984 (2) S.L.R. 665, decided by the Division Bench of this Court was a case where a direction was given to the Public Service Commission to read verities the post in accordance with the amended Rules. It was observed that the employer was competent to decide qualifications for eligibility of the post and the same could not be challenged in the absence of any mala fides. It was observed as under:

If Government was not bound to appoint a person who had even been selected by the Public Service Commission, there could not be any bar against the

Government to reconsider the matter of appointment before the selection had been made by the Commission, as in the present case. We are at one with the learned Counsel in regard to the above contentions. Even on first principles, it is for the employer to decide about the qualifications for eligibility of a certain post to be filled in by him. If at a given time the Government, for a bona fide reason desires to effect a change in the requirements of eligibility, it is not for the Public Service Commission to propose any such change on the ground that it would undermine their independence. As already noticed, admittedly interviews had not taken place so far, for selection to the post in question. In the absence of any allegations of malafides, we see no justification for Respondent No. 1 not to comply with the fresh requisition made by the Government for readvertising the post. As already noticed, the post was advertised first in 1981 and then twice in 1982. but no eligible/suitable candidate was available on those occasions. These facts are indicative of the bona fides of the Government in making a fresh effort by raising the maximum age limit so as to attract better talent.

8. The Full Bench of this Court in *Daljit Singh Minhas and Ors. v. The State of Punjab and Ors.* 1978 (2) S.L.R. 32, held as under:

Therefore, if the employer State can clearly indicate a reasonable classification for the source to which it has confined itself to select persons to man public offices, then no fault can be found therewith on the basis of any doctrinaire approach to Article 16.

Even after applications were invited, the Central Government was approached to send the panel of names of eligible candidates, the action in doing so was not violative of Article 16 of the Constitution.

9. Although on behalf of the Respondents, it has been explained in the written statements that Dr. P.K. Jain possessed requisite administrative experience, however, even if he was lacking to some extent in the matter of experience, his appointment now cannot be quashed as Director Ayurveda, as during this period he has gained the necessary experience. The Supreme Court in *Ram Sarup v. State of Haryana and Ors.* 1978 (2) SLR 836 approved such an action. In that case from the date of completion of experience the appointment was held to be regular.

10. Another question for consideration is regarding the requisite knowledge of Sanskrit possessed by Dr. P.K. Jain. What is required under the Rules is knowledge of Sanskrit atleast upto Madhyama (Benaras) or Visharad (Punjab) or its equivalent qualification. The rule does not say that the person must possess either of the degrees mentioned above or its equivalent. The requirement is knowledge of Sanskrit and standard is prescribed. It is of no consequence that B.A. Part-I with Sanskrit subject is not made equivalent to. either Madhyama (Benaras) or Visharad (Punjab). Apart from passing B.A. Part-I with Sanskrit Dr. P.K. Jain had also studied Sanskrit in G.A.M.S. Course for two years. Again it may be stated that it was for the Appointing Authority to consider the knowledge

possessed by Dr. P.K. Jain to be sufficient of standard of Madhyama (Benaras) or Visharad (Punjab) or its equivalent qualification. The Courts cannot sit in appeal in such like matters. As held by the Supreme Court in *The University of Mysore and Another Vs. C.D. Govinda Rao and Another*, , where the question was whether the foreign degree is equivalent to a High Second Class Master Degree of an Indian University, it was observed that such a question was purely an academic matter and the Courts would naturally "hesitate to express a definite opinion especially when a Board of Experts considers a particular foreign degree as co-equivalent.

11. Though formally the Faculty was constituted under a notification in 1961, but it was formulated earlier when Board of Examiners stopped functioning and constituted the Faculty to conduct examinations on April 14, 1960, Annexure R-12. Item No. 8 is a resolution that Faculty of Indian Medicines be created and the teaching portion of the functions of the two Boards be entrusted to it and one of its functions be to conduct G.A.M.S. Examinations in the State. The constitution of the Faculty was also given in this resolution. Secretary of Faculty was also appointed. It was further resolved that Faculty may appoint an Examination Sub-Committee of four Members to conduct the examinations. It is this Faculty which was ultimately notified and recognised u/s 21 of the Act mentioned above. Even on the basis of examination conducted by the Board of Examiners and final examination conducted by the Faculty degree of G.A.M.S. was granted like the one granted to Dr. P.K. Jain, the same is valid. Under the Central Act of 1070 G.A.M.S. degree granted by the Punjab Faculty has been recognised,--vide item No. 83. Such recognition would be valid throughout the country as already mentioned above. The act of the State of Haryana first of all recognising the degree and then receding is of no consequence.

12. For the reasons recorded above, these Writ Petitions are dismissed with costs.