

(2018) 01 DEL CK 0424

In the Delhi High Court

Case No : Civil Writ Petition No. 6503 Of 2016, Civil Miscellaneous No. 26624 Of 2016

Dr. V. Murali

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 18-01-2018

Acts Referred:

Dentists Act, 1948 — Section 8, 8(1)(a), 8(1)(d), 20(1)

Citation : (2018) 01 DEL CK 0424

Hon'ble Judges : Gita Mittal, J;C.Hari Shankar, J

Bench : Division Bench

Advocate : Animesh Kumar, Manish Mohan, Manisha Saroha, Vikas Singh, Gaurav Sharma

Final Decision : Dismissed

Judgement

Gita Mittal, J

1. This writ petition, claiming to have been filed in public interest, challenges the appointment of the respondent no.4 as the Secretary of the Dental Council of India (respondent no.2) effected by way of Notification no.AE-151(I)-2016/3258 dated 29th June, 2016 on the ground that it has effected the appointment of the respondent no.4 without seeking prior permission of the Central Government in accordance with statutory provisions.

2. The respondent nos. 1 and 2 were represented on advance notice and by the order dated 27th July, 2016, the respondent no.2 was called upon to file a counter affidavit explaining the steps taken before effecting the appointment of the respondent no.4.

3. The respondent no.1 as well as respondent no.2 have filed their counter affidavits. The record relating to the selection process, which was adopted before effecting the appointment of the respondent no.4 has also been produced before us.

4. Ld. counsel for the petitioner complains that the respondent no.2 has taken recourse to effect appointment of the respondent no.4 without making any attempt to fill up the post of Secretary to the respondent no.4 on deputation.

5. Mr. Vikas Singh, Id. Senior Counsel appearing for the respondent No.2 has drawn our attention to the statutory scheme. For expediency, we extract the relevant provisions of the Dentists Act, 1948 (hereinafter referred to as "the Act") regarding the appointment of staff as well as the remuneration and allowances which they would be entitled to upon such appointment. Section 8 of this enactment reads thus:

" Section 8 - Staff remuneration and allowances.-

(1) The Council shall-

(a) appoint a Secretary who may also, if so decided by the Council, act as Treasurer;

(b) appoint such other officers and servants as the Council deems necessary to enable it to carry out its functions under this Act;

(c) require and take from the Secretary or from any other officer or servant such security for the due performance of his duties as the Council considers necessary; and

(d) with the previous sanction of the Central Government, fix the fees and allowances of the President, Vice-President and other members of the Council, and the pay and allowances and other conditions of service of officers and servants of the Council.

(2) Notwithstanding anything contained in clause (a) of sub-section (1), for the first four years from the first constitution of the Council, the Secretary of the Council shall be a person appointed by the Central Government, who shall hold office during the pleasure of the Central Government."

6. A bare reading of the statutory provision would show that the legislature has empowered the Dental Council of India to effect appointments to the post of Secretary of the Council, the provision with which we are concerned in the present petition. So far as the requirement of "previous sanction of Central Government" is concerned, in terms of clause (d) of sub-section (1) of Section 8 of the Act, the same is restricted to fixation of pay and allowances of the members of the Dental Council of India and other conditions of service of officers and servants of the Council.

7. It appears that in exercise of powers conferred under Section 20(1) of the Act, the Dental Council of India has notified "Dental Council of India (Secretary) Recruitment Rules, 2010".

8. Mr. Vikas Singh, Id. Senior Counsel appearing for the respondent no.2 has pointed out that inasmuch these Rules prescribed the pay band with the

corresponding grade pay which could be admissible to the Secretary of the respondent no.2, a reference was made to the Central Government in accordance with Section 8(1)(d) of the Act. It is emphasized by Mr. Singh that there is no statutory requirement of seeking prior sanction of the Central Government for any other purpose.

9. Ld. counsel for the petitioner is unable to point out any statutory provisions of law which requires the respondent no.2 to seek previous sanction for effecting the appointment to the post of Secretary to the Dental Council of India.

10. It has to be noted that so far as the previous sanction of the Central Government is concerned, the same is confined to making of the Rules for pay and allowances as well as prescription of the other conditions of the service of the officers and servants of the Dental Council of India.

Thus, the statutory provision cannot be read that any previous sanction of the Central Government is required to effect appointment of the officers and servants of the Council.

11. So far as making appointment to the post of Secretary of the Dental Council of India is concerned, the respondent no.2 in its counter affidavit disclosed as under:

"22. It is relevant to submit that vide circular dated 02.11.2010, copy whereof is annexed as Annexure R2/1, address to the various authorities, the answering respondent in accordance with the provisions of the Rules invited applications for filling up the post of Secretary in Dental Council of India on deputation basis including short term contract basis. It is further submitted that the said circular was forwarded by the answering respondent to the Central Government/ Universities/Public Sector Undertakings/ Autonomous Organizations, Under Secretary and Coordinator Section of Ministry of Health and DAVP.

23. It is relevant to submit that the answering respondent had thereafter also published advertisement in the Employment Newspaper in the month of December, 2010, inviting applications for filling up the post of Secretary on deputation including short term contract basis.

24. It is respectfully submitted that the answering respondent had received ten applications in response to advertisements published by the Council in various newspapers. It is submitted that the Executive Committee of the answering respondent in its meeting held on 10.03.2011 decided to process the said applications and it was decided by the Executive Committee to constitute a Sub Committee to scrutinize the applications which had been received.

25. It is submitted that after scrutinizing the applications received by the Council the Sub Committee of the answering respondent found that none of the candidates fulfilled the qualifications and eligibility criteria required for the appointment to the Secretary, as provided under the Act and the Rules. Accordingly, the Sub-Committee forwarded its recommendations to the Executive

Committee of the answering respondent that none of the candidates fulfil the requisite qualifying criteria for appointment to the post of Secretary. The Executive Committee of the answering respondent in its meeting held on 27.06.2011, after due discussion and deliberation decided to accept the recommendation of the Sub-Committee.

26. It is submitted that the answering respondent vide circular dated 12.08.2015, copy whereof is annexed as Annexure R2/2, the answering respondent in accordance with the provisions of the Rules once again invited applications for filling up the post of Secretary in Dental Council of India on deputation basis including short term contract basis. It is further submitted that the said circular was forwarded by the answering respondent to the Central Government/ Universities/Public Sector Undertakings/Autonomous Organizations, Under Secretary and Coordinator Section of Ministry of Health and DAVP.

27. It is relevant to submit that the answering respondent in the month of Oct/ Nov.2015 had also published several advertisements in various newspapers inviting applications for filling up the post of Secretary on deputation including short term contract basis. Copies of the advertisement, as per the requirement of the rule/guideline published by the answering respondent in Employment News on dated 31.10.2015 is annexed as Annexure-R2/3.

28. It is respectfully submitted that the answering respondent in response to the abovementioned advertisement received two applications, which were placed before the Executive Committee of the answering respondent for their consideration in its meeting held on 15.01.2016. It is relevant to submit that after scrutinizing the two applications it was found by the Executive Committee of the Council that the candidates did not fulfil the requisite qualifications and eligibility criteria required for the appointment to the post of Secretary, as prescribed under the Act and the Rules.

29. It is submitted that it was under these circumstances that the Executive Committee in its meeting held on 15.01.2016, after due discussion and deliberation, decided to publish an advertisement afresh for appointment to the post of Secretary by Direct Recruitment method since the Council had been unable to find a suitable candidate for appointment to the post of Secretary on deputation or short term contract. It is relevant to submit that the answering respondent on various occasions had made attempts to fill the post of Secretary on deputation including short term contract basis, however, the answering respondent on such occasions had been unable to find any suitable candidate fulfilling the requisite qualifications prescribed under the Act and the Rules."

(Emphasis Supplied)

12. Pursuant to the above decision, the respondents had published advertisements in the Employment Newspapers in the month of April, 2016

13. In response thereto, eight applications were received by the respondent

no.2. These applications were considered by a Selection Committee appointed by the respondent no.2. On 25th May, 2016, the Selection Committee interviewed and conducted a Personality Test of the applications. Only six out of eight applicants had appeared, who, based on the evaluation, were given marks by the Selection Committee. After undertaking an appropriate selection process, the Selection Committee recommended the name of the respondent no.4 who had secured the highest marks in the selection process. In its meeting held on 1st June, 2016, the Executive Committee of the respondent no.2 accepted the recommendations of the Selection Committee to appoint the respondent no.4 to the post of Secretary of the Dental Council of India.

This decision of the Executive Committee was accepted in the General Body meeting held on 11th/12th June, 2016 of the respondent no.2. On 11th June, 2016, based thereon, the respondent no.2 issued the offer of appointment to the respondent no.4, who has since then been working in this position.

14. The above narration of facts would show that the respondent no.2 has made every effort to find the suitable candidate on deputation. Having failed in this effort, the respondent no.2 has taken recourse to inviting applications for appointment for the post of Secretary to the respondent no.2 by direct recruitment.

In view of the above discussion, the challenge made by the petitioner is wholly misconceived and baseless.

We find no merit in this writ petition and the same is accordingly dismissed.

In view of the order passed in the writ petition, pending application is hereby dismissed.