

(2009) 11 KL CK 0057

In the High Court Of Kerala

Case No : Writ Petition (C) No. 2951 of 2009

Kerala State Pharmacy Council

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 18-11-2009

Acts Referred:

Kerala State Pharmacy Council Rules — Rule 104
Pharmacy Act, 1948 — Section 26

Citation : (2010) 2 KLT 200

Hon'ble Judges : Antony Dominic, J

Bench : Single Bench

Advocate : P.B. Sahasranaman, K. Jagadeesh and T.S. Harikumar, for the Appellant; Murali Purushothaman, Deepu Lal Mohan, Ninu M. Das, Lecna Murali and Anu Sivaraman, Government Pleader, for the Respondent

Judgement

Antony Dominic, J.—The petitioner is the Kerala State Pharmacy Council constituted under the provisions of Chapter III of the Pharmacy Act, 1948.

2. In this Writ Petition, the prayer sought is to quash Exts.P4 & P5 and to direct the First respondent to accept Ext.P6 and pass orders thereon.

3. Briefly stated, the facts of the case are that, by order dated 30.7.2005 Shri. B. Vasanthakumaran was appointed as Registrar of the petitioner. While he was continuing in Office, by Ext.R1(a), with effect from 31.5.2008, the age of retirement was reduced from 60 to 58. Shri. B. Vasanthakumaran attained 58 years on 15.7.2008, and therefore, the Government issued order dated 21.8.2008 directing the petitioner to relieve Shri. B. Vasanthakumaran.

4. It would appear that immediately thereafter the petitioner on its own, appointed Shri. D. Sunilkumar as its Registrar, and sought approval of the 1st respondent. However, on the ground that the appointment was made without complying with the provisions of Section 26 of the Pharmacy Act, 1948, the approval was rejected.

5. In the meantime, the second respondent represented to the Government seeking appointment as Registrar of the petitioner, and that was also forwarded by the First respondent to the petitioner. Thereafter, once again, enclosing his bio-data and requesting the petitioner to forward its views on appointing the Second respondent as Registrar, the First respondent issued Ext.R1(b). To this, the petitioner replied by Ext.P3 informing, inter alia, that the candidature of the Second respondent will be considered.

6. Thereafter, the First respondent issued Ext.P4 dated 05.01.2009 according sanction to the petitioner to appoint second respondent as full time Registrar of the petitioner on contract basis. Again reiterating its competence, Ext.P5 dated 24.01.2009 was issued by the First respondent. The petitioner submits that u/s 26 of the Act, the power to make appointment to the post of Registrar is to be exercised by the petitioner. According to them, they had already appointed Shri. V.R. Rajeev as Registrar and by Ext.P6 sought sanction of the First respondent also.

7. In so far as the respondents are concerned, the case set up is that with the retirement of Shri. B. Vasanthakumaran, the petitioner did not make appointment of any Registrar and as the proposal made by the First respondent for the appointment of the second respondent was pending consideration of the petitioner, Ext.P4 was issued according sanction for the appointment of the second respondent. The second respondent also supports this contention and canvasses that he is fully qualified in terms of Rule 104 of the Kerala State Pharmacy Council Rules to be appointed as Registrar of the petitioner.

8. In so far as Exts.P4 & P5 are concerned, the only question is regarding the power of the Government to issue such orders to the petitioner. Appointment of Registrar is provided in Section 26 of the Act, which reads as under:

26. Staff, remuneration and allowances: The State Council may, with the previous sanction of the State Government,:

(a) appoint a Registrar who shall also act as Secretary and, if so decided by the State Council, Treasurer, of the State Council:

(b) appoint such other officers and servants as may be required to enable the State Council to carry out its functions under this Act;

(c) fix the salaries and allowances and other conditions of service of the Secretary and other officers and servants of the State Council;

(d) fix the rates of allowances payable to members of the State Council:

Provided that for the first four years from the first constitution of the State Council, the Registrar shall be a person appointed by the State Government, who shall hold office during the pleasure of the State Government.

9. A reading of the Section shows that it is for the State Council to appoint Registrar, which shall be done with the previous sanction of the Government. The

proviso to the Section also says that the Government have the power to make appointment to the post of Registrar only for a period covering the first four years from the first constitution of the State Council. None has a case that the proviso is applicable. In this case, the petitioner has not appointed the second respondent nor has the petitioner sought the previous sanction of the First respondent to appoint the second respondent. If that be so, in the absence of any appointment made by the petitioner or any sanction sought for by the petitioner, Exts.P4 and P5 cannot be sustained. Therefore, these orders are quashed.

10. The second prayer made in the Writ Petition is to direct the First respondent to accept Ext.P6 and accord sanction for the appointment of Shri. V.R. Rajeev. A reading of Ext.P6 itself show that it was after appointing Shri. V.R. Rajeev as Registrar that sanction of the First respondent is sought for by the petitioner. It is clearly erroneous. As already seen Section 26 mandates previous sanction of the State Government for appointing anyone to the post of Registrar. Ext.P6 itself show that it was after making appointment to the post of Registrar of the petitioner, the petitioner was seeking ratification, of the first respondent, for such appointment. This is clearly impermissible. Therefore, Ext.P6 being an illegal proceedings, this Court will not be justified in directing the first respondent to accept Ext.P6 and accord previous sanction as contemplated u/s 26 of the Act. This Writ Petition is disposed of as above.