

(2011) 04 SHI CK 0346
In the High Court Of Himachal Pradesh
Case No : CWP (T) No. 11336 of 2008

Kishore Kumar

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 20-04-2011

Acts Referred:

Citation : (2011) 04 SHI CK 0346

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajiv Sharma, J.—Petitioner has undertaken Ayurvedic Pharmacist training from Ayurvedic Pharmacist Training Centre, Jogindernagar during the academic session 1998-99. 100 candidates had been selected for training of two years duration. Only 97 candidates had joined the course. On completion of the course, 90 candidates passed out in the month of May, 2000 and 7 candidates, including Petitioner, could not pass since they were placed under compartment. Petitioner passed the course after 4-5 months, as supplementary candidate. 90 candidates, according to the reply filed by the Respondents, were appointed during the month of May, 2000, but 7 candidates, including Petitioner, could not be offered appointment. The reason assigned for not appointing the Petitioner is the pendency of O.A. No. 1853/1999 filed by Prishikshit Berozgar Ayurvedic Pharmacists. These pharmacists had obtained two years diploma from the Institution in Bihar. The learned Tribunal in O.A. No. 1853/1999 had granted relief to them by way of judgment dated 25.11.2002. Judgment dated 25.11.2002 was assailed by the State of Himachal Pradesh by way of CWP No. 606/2003. The same was allowed by this Court on 2.12.2003 and the judgment of the learned Tribunal was set aside with all consequences. Petitioner was offered appointment on contractual basis vide letter dated 11.6.2004 on a fixed salary of Rs. 4,550/- though similarly situate Sh. Ganga Ram, who was also appointed on contract basis, was given regular pay scale.

2. Mrs. Ranjana Parmar has strenuously argued that her client has been discriminated against by the Respondents by not offering him appointment at par with those 90 candidates, who were appointed in the month of May, 2000. She further contended that the case of the Petitioner was required to be considered immediately after the judgment was passed by this Court in CWP No. 606/2003 on 2.12.2003 for regular appointment. She also contended that even her client has been discriminated against by the Respondents by not giving him regular pay scale at par with Sh. Ganga Ram.

3. Mr. R.P. Singh, learned Assistant Advocate General has vehemently argued that the Petitioner could not be offered appointment due to stay granted by the learned erstwhile Himachal Pradesh Administrative Tribunal in the month of January, 2000 in O.A. No. 1853/1999. The stay was modified by the learned Tribunal to the effect that 90 trainees, who had passed during the said period, were permitted to be offered appointment, subject to ultimate decision of the original application. It is in these circumstances, according to him, 90 candidates were appointed.

4. I have heard the learned Counsel for the parties and have perused the pleadings carefully.

5. It is not in dispute that the Petitioner had also completed successfully two years" Ayurvedic Pharmacist course from Ayurvedic Pharmacist Training Centre, Jogindernagar. Initially, 90 candidates had passed and 7 candidates were put under compartment. Petitioner has also passed the compartment examination. It is true that the learned Tribunal had stayed the fresh/new appointment of Ayurvedic Pharmacists vide order dated January, 2000 in O.A. No. 1853/1999. This stay was subsequently modified by the learned Tribunal, as per averments contained in the reply filed by Respondents No. 1 to 3 by permitting to offer appointment to 90 candidates in the month of May, 2000. According to Mr. R.P. Singh, learned Tribunal was also requested by the State Government to vacate the stay qua 7 candidates, who had passed the examination by way of supplementary examination. This prayer was not allowed by the learned Tribunal and O.A. No. 1853/1999 was allowed on 25.11.2002. The State Government filed CWP No. 606/2003 assailing the judgment dated 25.11.2002 rendered by the learned Tribunal. The judgment of the Tribunal was set aside with all the consequences by this Court on 2.11.2003.

6. The Court is of the considered view that after setting aside the judgment of the learned Tribunal, case of the Petitioner was required to be considered at par with those candidates, who had already been appointed in the month of May, 2000 after the successful completion of two years" training course from Pharmacist Training Centre, Jogindernagar. It is not in dispute that the Petitioner had also qualified the compartment examination.

7. Mr. R.P. Singh has vehemently argued that Petitioner and 6 other candidates could not be appointed due to the stay orders passed by the learned Tribunal in

the month of January, 2000. The fact of the matter is that the Petitioner was similarly situate vis-a-vis 90 candidates, who had already completed the pharmacist training course from Pharmacist Training Centre, Jogindernagar. Case of the Petitioner was also required to be considered at par with 90 candidates, who had been issued appointment letter in the month of May, 2000. Petitioner has been offered appointment, that too, on contract basis on 11.6.2004 on a fixed salary of Rs. 4,550/- per month. He has further been discriminated against by the Respondent-State by not considering his case vis-a-vis Sh. Ganga Ram, who was appointed in the running pay scale. Respondents have stated in the reply that the matter has been taken up with the Government on 14.6.2004, however, till date, no decision has been placed on record by the Respondents.

8. Accordingly, in view of the observations and discussions made hereinabove, since the Petitioner had already completed two years training course from Ayurvedic Pharmacist Training Centre, Jogindernagar, he was required to be offered appointment at par with 90 candidates, from the date he has qualified the course.

9. Consequently, the petition is allowed. Respondents No. 1 to 3 are directed to offer appointment letter to the Petitioner from due date. It is made clear that in the eventuality of offering appointment to the Petitioner from due date, he shall only be entitled to notional benefits. Needful be done within a period of 8 weeks from the date of production of certified copy of this judgment by the Petitioner. No costs.