
(2013) 11 CHH CK 0002
In the Chhattisgarh High Court
Case No : Writ Petition (S) No. 3743 of 2013

Manju Netam and Others

APPELLANT

Vs

State of Chhatisgarh and Others

RESPONDENT

Date of Decision : 12-11-2013

Acts Referred:

Citation : (2014) LabIC 231

Hon'ble Judges : Prashant Kumar Mishra, J

Bench : Single Bench

Advocate : Alok Dewangan, for the Appellant; Ajay Dwivedi for State, for the Respondent

Final Decision : Dismissed

Judgement

Prashant Kumar Mishra, J.—The petitioners are aggrieved by the impugned order Annexure P/1, whereby their promotion from the post of Lady Health Visitor (for short "L.H.V.") to the post of Block Extension Educator (for short "B.E.E.") has been cancelled with immediate effect. Facts of the case, in nutshell, are that in a Departmental Promotion Committee ("DPC") meeting dated 06/08/2012 the petitioners' name were recommended for promotion to the post of B.E.E. and pursuant thereto, the Divisional Joint Director, Health Services, Bastar issued the promotion order on 23/08/2012 (Annexure P/2). When complaints were made before the Directorate, on examination, it was found that the DPC should have been convened at the State Level/Directorate Level, however, since the subject DPC was convened at the Divisional Level and not at the State Level, the recommendations were found to have been made by incompetent DPC having no jurisdiction over the matter and as such, the promotion has been cancelled.

2. Learned counsel for the petitioners would draw attention of the Court to the provisions of Chhattisgarh Health and Family Welfare Department, Non-Ministerial Para Medical and Nursing (Directorate Health Services) Class III Service Recruitment Rules, 2013 (for short "Rules, 2013") (Annexure P/5), particularly Rule 2(a), (b), Rule 14 and Schedule IV (Sl. No. 16) to argue that

under the said Rules, the Divisional Level Promotion Committee is competent to recommend the names of eligible candidates for promotion to the post of B.E.E., therefore, there is no illegality or incompetency while directing their promotion and as such, the impugned order is illegal. He would also submit that in the year 1983 and 1985, similar orders were issued by the Divisional Level Promotion Committee; there is no fault on the part of the petitioners, therefore, they cannot be victimized and in any case, the impugned order has been issued without giving any opportunity of hearing. He would also submit that as per Rule 22 of the Rules 2013, all the action taken under the repealed Rules shall be deemed to have been made or taken under the corresponding provisions of the new Rules, therefore, the promotion order issued on 23/08/2012 is saved.

3. Learned State counsel would submit that the impugned order has been passed on account of non-compliance of the provisions of Health and Family Welfare Department, Public Health and Family Welfare Department (related to the Directorate of Health Services) Class III Service Recruitment Rules 1989, therefore, the new Rules are not applicable. He would also submit that recommendation made by incompetent DPC is void and not binding.

4. In the impugned order, a reference is made to the Rules of 1989 and a finding is recorded therein that under the said Rules, the competent body to convene the meeting of DPC is at the State Level, however, the DPC in the present case has been convened at the Divisional Level, therefore, the said Divisional Level Committee was not competent to make recommendation. True it is that under the Rules of 2013, the Divisional Level DPC is competent to recommend the cases for promotion from the post of L.H.V. to B.E.E., however, the said Rules have come into force w.e.f. 6th July, 2013 whereas the relevant DPC was convened on 06/08/2012 pursuant to which the promotion orders were issued on 23/08/2012. Thus, it would be manifest that at the time when recommendations were made by the Divisional DPC, the Rules of 1989 were in force. Under the said Rules of 1989, for making promotion from the post of L.H.V. to B.E.E., the DPC is to be convened at the Directorate Level consisting of senior most Joint Director of Health Services, as Chairman and Joint Director of Health Services Planning, (Head Office), Deputy Director of Health Services, Non-advertised Establishment, (Head Office) and Administrative Officer (Office) as Members. Admittedly, as would be reflected in the promotion order Annexure P/2, the petitioners' names for promotion were recommended by the Divisional Level DPC and not by the State Level DPC. Thus, the recommendation itself was by incompetent body having no jurisdiction to make recommendation.

5. The Supreme Court in *State of Manipur and Others Vs. Y. Token Singh and Others*, observed as under:

20.....Even assuming that DPC would mean Selection Committee, there is nothing on record to show who were its members and how and at whose instance it was constituted. The Commissioner, as noticed hereinbefore, was the Chairman of the DPC. How the matter was referred to the DPC has not been disclosed.....

21. The appointing authority, in absence of any delegation of power having been made in that behalf, was the State Government. The Government order dated 12.01.1998 did not delegate the power of appointment to the Commissioner. He, therefore, was wholly incompetent to issue the appointment letters.

22. The respondents, therefore, in our opinion, were not entitled to hold the posts. In a case of this nature, where the facts are admitted, the principles of natural justice were not required to be complied with, particularly when the same would result in futility. It is true that where appointments had been made by a competent authority or at least some steps have been taken in that behalf, the principles of natural justice are required to be complied with, in view of the decision of this Court in *Murugayya Udayar*.

Also see *Dhirender Singh etc. Vs. State of Haryana and others*,

6. It is trite law that writ Court cannot enforce negative quality meaning thereby that if any illegal order has been passed in the past, the illegality cannot be perpetuated by applying the doctrine under Article 14 of the Constitution. Similarly when the order has been issued by an authority who is not competent in law, the fact that petitioners were not at fault has no bearing. Since the impugned order has not been issued attributing any wrong committed by the petitioners and it is a case of patent lack of jurisdiction by the DPC, in the opinion of this Court, affording opportunity of hearing would be empty formality.

7. As the principle of law has been settled above that if the facts are admitted, compliance of the principles of natural justice becomes empty formality.

8. In the matter of *Viveka Nand Sethi Vs. Chairman, J and K Bank Ltd. and Others*, the Supreme Court observed as under:--

22. The principle of natural justice, it is trite, is no unruly horse. When facts are admitted, an enquiry would be an empty formality. Even the principles of estoppel will apply. (See *Gurjeewan Garewal (Dr.) v. Dr. Sumitra Dash*) The principles of natural justice are required to be complied with having regard to the fact situation obtaining therein. It cannot be put in a straitjacket formula. It cannot be applied in a vacuum without reference to the relevant facts and circumstances of the case (See *State of Punjab v. Jagir Singh and Karnataka SRTC v. S.G. Kotturappa*).

9. The ratio laid down in *Viveka Nand Sethi (supra)* was referred with approval in *P.D. Agrawal Vs. State Bank of India and Others*,). For the foregoing this Court is of the considered opinion that the writ petition is devoid of any substance, it deserves to be, and is hereby dismissed.