
(1995) 02 RAJ CK 0011

In the Rajasthan High Court

Case No : Civil Writ Petition No. 3697 of 1994

Mukesh Kumar Soni

APPELLANT

Vs

The State of Rajasthan

RESPONDENT

Date of Decision : 02-02-1995

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 311
Penal Code, 1860 (IPC) — Section 420

Citation : (1995) 1 RLW 352 : (1995) 1 WLN 448

Hon'ble Judges : Arun Madan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Arun Madan, J.—Heard learned Counsel for the parties. This writ petition has been filed under Article 226 of the Constitution of India in the matter of violation of fundamental rights of the petitioner under Arts. 14, 16 and 311 of the Constitution of India.

2. The facts giving rise to the filing of this writ petition, briefly stated, are that pursuant to the Advertisement issued by respondent No. 1 59 posts of Ayurved Chikitsak" were advertised vide notification dated 15.9.1992 for the said posts. In compliance with the said Advertisement the petitioner applied for the post of Ayurved Chikitsak in a prescribed form and submitted all relevant documents including his marksheet for having passed the examination of "Ayurvedacharya" as per column 6 of his application. The candidature of the petitioner was considered thoroagnly and the petitioner on being found eligible was issued appointment order for the post of Ayurved Chikitsak in the pay scale of Rs. 2000-50-2300- 75-3200-100-3500 on urgent/temporary basis for a period of one year or till candidates regularly selected by the Rajasthan Public Service Commission are available in terms of appointment Order, dated 7.3.1993 (Annex.2) It is further contended that in pursuance of the appointment order, dated 7.10.1993 the petitioner joined his duty on 14.10.1993 at Mandvi Distt.

Udalur and successfully discharged his duties till 17.5.1994. During this period there was no complaint against the petitioner.

3. Subsequently in pursuance of the order, dated 2.6.1994 of the Deputy Secretary to Govt. of Rajasthan, Medical & Health Department (Gr. 4) Ayurved, Jaipur, sole respondent herein, which was served on the petitioner on 17.6.1994, the services Of the petitioner were terminated on the ground that in the mark sheet of 2nd year examination of January, 1988 which the petitioner had submitted alongwith his application to the department, he did not mention as to in howmany attempts he had cleared the said examination; whereas the petitioner should have filed the mark- sheet of his first attempt and as such he had concealed this fact from the notice of the respondents. The ground of termination as would be evident to this court from the perusal of Annex. 3 is to the effect that the petitioner had passed his 2nd year examination of Ayurvedacharya in second attempt and as such he was not eligible for appointment as per merit and that he had cheated the State Government by concealing the fact and as such he comes within the ambit of Section 420 IPC. It is pertinent to mention that neither in the mark-sheet issued by the University of Rajasthan regarding 2nd year examination nor in the proforma application published in notification, dated 15.9.1993 contains any column regarding the fact as to in howmany attempts the candidate should pass the examination nor it is indicated in the said notification that the number of attempts of passing the examination a referred to above, should be mentioned.

4. In flagrant disregard of the notification dated 15.9.1992 and the proforma application which was published by the respondents pursuant to the notification, as referred to above, the respondents arbitrarily terminated the services of the petitioner by passing the impugned order, dated 2.6.1994 without giving any opportunity of hearing or show cause to the. petitioner in violation of Article 311(2) of the Constitution of India and the principle of natural Justice, equity and fair play. The provisions of Article 311(2) of the Constitution of India clearly stipulate that no person shall be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

5. It is well settled principle of law and natural justice that no person should be condemned unheard and that candidate gets vested right to continue on the post on which he has been lawfully appointed and that the said right cannot be taken away without providing any opportunity of hearing to the said candidate and in arbitrary manner by the respondent as has happened in this case.

6. It is contended by Shri A.K. Bansal, learned Counsel for the respondents who has controverted the case of the petitioner on the ground that it was incumbent upon the petitioner to have indicated the number of attempts in which he had passed 2nd year Examination of Ayurvedacharya examination and this fact has been concealed by the petitioner in his application and this condition was obligatory notwithstanding any stipulation or requirement regarding the same in

Advertisement, dated 15.9.1992 vide Annex. 1.

7. It is further contended by Shri A.K. Bansal that if a candidate passes the examination in two or more attempts, then the percentage for determining the eligibility shall be raised up to 50% in particular year in which the petitioner had passed the examination.

8. The above stated position as so contended by the learned Counsel for the respondent, in my opinion, neither is apparent from the perusal of record nor from any condition published in the Advertisement (Annex. 1) regarding appointment as referred to above. It is further clear that the respondents have not framed any guidelines or any service conditions in this regard in absence of which such an arbitrary condition could not be imposed on the candidates who have since applied and found eligible for appointment like the petitioner in the instant case. I am further of the opinion that no case of cheating is made out, since ingredients of Section 420 IPC are neither applicable nor attracted to the facts of the present case, and this in fact is based on misconception of law on the basis of which impugned order of termination (Annex.3) has been passed by the respondent herein.

9. After hearing learned Counsel for the parties and perusing the relevant documents on record as well as their rival claims and contentions, I am of the opinion that the petitioner is entitled to succeed.

10. In view of the above discussions the impugned order, dated 2.6.1994 (Annex,3) is passed and set aside and the State Government which is represented through Department of Medical & Health, Ayurved, Jaipur, respondent herein, is directed to reinstate the petitioner in service on the post of Ayurved Chikistak in the aforesaid department, i.e., the post which the petitioner was occupying prior to termination of his service with all consequential benefits.

11. I have been informed by learned Counsel for the petitioner that the respondents have already taken action against the petitioner by lodging an F.I.R. u/s 420 IPC and investigation is in progress. It is directed that any action which has been taken against the petitioner by initiating proceedings against the petitioner u/s 420 IPC on the basis of the said F.I.R. registered against him are also quashed. The petitioner is entitled to costs which are quantified at Rs. 3000/- out of which a sum of Rs. 1000/- will be deposited by the petitioner with legal Aid Board, Rajasthan High Court Bench, Jaipur.