
(2012) 07 DEL CK 0195
In the Delhi High Court
Case No : WP (C) 5733 of 2008

Nanak Chand and Another

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 03-07-2012

Acts Referred:

Indian Nursing Council Act, 1947 — Section 8, 8(2), 8(2)(d), 8(2)(f)

Citation : (2012) 07 DEL CK 0195

Hon'ble Judges : Siddharth Mridul, J

Bench : Single Bench

Advocate : S. Mehdi Imam and Mr. Anis Suhrawardy, for the Appellant; R.N. Singh, A.S. Singh, Advocates for R-1, Mr. Parag P. Tripathi, ASG, Mr. VSR Krishna, Shadan Farasat, Advocates for R-2 and Mr. Jaswant Rai Aggarwal, Advocate for R-3, for the Respondent

Final Decision : Dismissed

Judgement

Siddharth Mridul, J.—The present writ petition has been filed praying for a writ of mandamus to quash and set aside the appointment of respondent No.3 and 4 to the post of Statistical Assistant made by office order No.13 of 2003 dated 24th July, 2003, on the ground that the same is violative of the Recruitment Rules in regard to appointment and promotion of employees by the Indian Nursing Council (hereinafter referred to as "the Council"), respondent No.2. The petitioner has further prayed for a mandamus against the respondent No.1 and 2 to promote the petitioner to the post of Statistical Assistant since July, 2003 and for consequential promotions thereafter. The facts leading to filing of the present petition are adumbrated below:-

(i) The petitioner No.1 and 2 by way of the present writ petition as aforesaid have sought to challenge the appointments made by the respondent No.1 and 2 to the post of Statistical Assistant since the year 2003 being in contravention to the Recruitment Rules formulated for regulating appointments in respondent No.2.

(ii) The respondent No.2 is a statutory body established under the aegis of respondent No.1, the Ministry of Health and Welfare. The respondent No.2 has been set up under the provisions of the Indian Nursing Council Act, 1947(for short "the Act?) with a view to obtain uniform standard of training for nurses, midwives and health visitors.

(iii) The respondent No.2 Council consists of members as prescribed by the Act. The Council consists of President, a Vice President, Assistant Secretary (Admn.) and an Inspector. The Council further includes ministerial staff. The complete seniority list of the employees of the Council is provided on Page 29 of the Paper Book as Annexure P-2. The entries relevant for the purpose of the present writ petition are entry No.3, 4 and 5; entry No.3 being seniority of respondent No.3; entry No.4 being seniority of the petitioner herein and entry No.5 being seniority of respondent No.5 being seniority of respondent No.4.

(iv) The recruitment, seniority and promotion of the employees of the Council are governed as per the Recruitment rules. The Recruitment Rules are subject to the approval of the respondent No.1 and were amended in consonance with the relevant communication dated 13th July, 1989 from respondent No.1 to the Secretary to respondent No.2 Council.

(v) As per the Recruitment Rules the post in cadre of Statistical Assistant has to be filled by 100% promotion failing which by direct recruitment. The Rules further provide the grade from which such promotions are to be made as UDC grade with six years experience of the grade and two years experience of Statistical Work.

(vi) The Recruitment Rules specified that in the event that none is promoted, the recruitment has to be made by direct selection for which the criterion is only educational qualification, age and other qualifications. The requisite qualification for direct recruitment to the post of Statistical Assistant is prescribed in Column 9 of the Recruitment Rules. The qualifications are provided as below:- (i) Degree of a recognized University or equivalent preferably B.Com, (ii) Two years experience in

Statistical Works, (iii) Ability of noting and drafting, (iv) Age limit of 25 years.

(vii) In the instant case the writ petitioner contends that the promotion of the respondent No.3 Mrs.K.S.Bharati to the post of Statistical Assistant in July, 2003 and her further promotion to the post of Assistant Secretary (Admn.) in February 2008 is illegal being contrary to the Act and Recruitment Rules. The petitioner has also impugned the promotion/appointment of respondent No.4 to the post of Statistical Assistant in June, 2008 in the Council.

(viii) It is the case of the petitioner that the respondent No.3 was initially appointed as Computer Consultant on 3rd January, 2002 in the Council. The said appointment was made within the personal knowledge of the President of the Council. It is also averred by the petitioner that the appointment of respondent

No.3 to the post of Consultant was made without any formal advertisement. It is alleged by the petitioner that the Recruitment Rules do not provide for such post.

(ix) The bone of contention in the present writ petition originates on the retirement of one Shri H.S.Bhatia on 31st December, 2002. Upon said retirement a regular post of Statistical Assistant fell vacant. According to the petitioner the said regular vacancy to the post of Statistical Assistant could be filled by promoting the petitioner who was working as UDC, being promoted to the said grade on 7th August, 1997 although they were confirmed to the said post of UDC w.e.f. 30th May, 2003.

(x) However, on 1st June, 2003 the Council published advertisement in the newspapers for filling up the post of Statistical Assistant stipulating the age limit of 24 years. The advertisement went on to elaborate that the "upper age relaxation in deserving cases will also be considered as per INC Meeting Resolution dated 11.01.2003". At this juncture it would be relevant to note that Item No.6 of the resolution passed in the INC General Body Meeting dated 11th January, 2003 clearly provided for relaxation of upper age limit for filling up the post of Statistical Assistant in deserving cases.

(xi) Pursuant to the advertisement dated 1st June, 2003, the respondent No.3, petitioner and other candidates applied for the said post. The Council appointed respondent No.3 vide appointment letter dated 24th July, 2003.

(xii) After the appointment of respondent No.3, the petitioner made a representation before the Council praying that the Council fill up the post by promotion from the feeder cadre of UDC?s.

(xiii) The respondent No.3 was further promoted to the post of Assistant Secretary (Admn.) w.e.f. 1st February, 2008 and the post of Statistical Assistant fell vacant once again. Ms.Sunita Saxena, respondent No.4 herein was promoted to the post of

Statistical Assistant by office order No.2 to 2008 dated 9th June, 2008.

(xiv) The petitioner again made representation against the promotion of respondent No.2 before the concerned authority on 23rd June, 2008 contending that the appointment of respondent No.4 is in clear violation of the Recruitment Rules and therefore arbitrary.

2. On behalf of the petitioner it was contended as follows:- (a) That in publishing the advertisement dated 1st June, 2003 for the post of Statistical Assistant the Council violated the Recruitment Rules inasmuch as resort of direct recruitment could only be made when there was no candidate available in the feeder post of UDC duly qualified for the said promotion; (b) The advertisement of 1st June, 2003 clearly indicated that the maximum age for appointment to the post of Statistical Assistant was 25 years whereas the respondent No.3 who was appointed to the post was already 34 years of age on the date of the advertisement; (c) The resolution of the General Body of Council dated 11th

January, 2003 is ultra vires the Act as the same has not been passed with the prior approval of respondent No.1 in terms of Section 8 of Act.

3. Per contra, it was urged on behalf of the respondent that:-

(a) The petitioner was not eligible to be promoted to the post of Statistical Assistant by way of promotion as he did not possess the requisite experience of six years as UDC at the time that respondent No.3 was appointed to the said post. The petitioner had been appointed as ad-hoc UDC on 7th August, 1997 only to be regularized on 30th May, 2003 and consequently at the time of the appointment of respondent No.3 to the said post the petitioner had not completed six years experience of working as UDC on regular basis.

(b) The petitioner also did not qualify for appointment for the post of Statistical Assistant by way of direct recruitment as the petitioner was not a graduate which was a necessary eligibility condition to be selected for direct appointment.

(c) The writ petition was liable to be dismissed on the ground of delay and laches as the vacancy to the post of Statistical Assistant arose on 31st December, 2002 and the respondent No.3 was appointed to the post vide appointment letter dated 24th July, 2003 whereas the present writ petition came to be filed only in 27th July, 2008 i.e. five years after such appointment.

(d) Lastly it was urged on behalf of the Council that the resolution of the General Body of the Council does not require prior approval of the Central Government as per Section 8(2)(d) or Section 8(2)(f).

4. Coming to the submissions made on behalf of the petitioner it is seen that on the date of the advertisement for the post of Statistical Assistant i.e. 1st June, 2003 the petitioner had not completed six years as regular UDC. The experience of the petitioner for promotion could be considered only from the time that he started working as UDC on regular basis on 30th May, 2003. Thus the contention of the petitioner that he possess the requisite experience of six years as UDC and two years experience of Statistical Work required for the promotion to the post of Statistical Assistant does not hold water.

5. With regard to the challenge to the age of the respondent No.3 at the time of her appointment as Statistical Assistant it is observed that vide resolution dated 11th January, 2003 as indicated in the advertisement the Governing Body of the Council had already taken a decision to grant upper age relaxation in deserving cases. As such the upper age relaxation granted to the respondent No.3 preceding her appointment to the post of Statistical Assistant cannot be faulted on this ground.

6. With regard to the contention of the petitioner that the resolution of the General Body of the Council dated 11th January, 2003 is ultra vires the Act as the same had not been passed with the prior approval of the respondent No.1, Central Government, it is necessary to extract the relevant Rule. Section 8(2) of the Act reads as under:-

(2) The Council Shall-

- (a) elect from among its members a Vice-President;
- (b) constitute from among its members an Executive Committee and such other committees for general or special purposes as the Council deems necessary to carry out the purposes of this Act;
- (c) subject to the provisions of sub-section(1), appoint a Secretary, who may also, if deemed expedient, act as Treasurer;
- (d) appoint or nominate such other officers and servants as the Council deems necessary to carry out the purposes of this Act;
- (e) 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 deems necessary;
- (f) with the previous sanction of the Central Government, fix the fees and allowances to be paid to the President. Vice President and members and the pay and allowances of officers and servants of the Council.

7. From the plain reading of the above, it is seen that the previous sanction of the Central Government is required only for fixing the fees and allowances to be paid to the President, Vice President and members and the pay and allowances of officers and servants of the Council. The prior sanction of the Central Government is not essential for the purpose of appointment of officers and servants of the Council. Resultantly, the General Body of the Council whilst passing the impugned resolution dated 11th January, 2003 were not required to obtain prior approval of the Central Government for the appointment to the post of Statistical Assistant by direct recruitment. Thus this contention on behalf of the petitioner is also of no avail to him.

8. Apart from the above, in the present case it is seen that the petitioner is belatedly challenging decisions that were made by the Council five years prior to the date of the petition. The appointment of respondent No.3 was made on 24th July, 2003 whereas the present writ petition has been filed on 23rd July, 2008 challenging the said appointment. The only explanation given by the petitioner to explain the delay as aforesaid is to state that he regularly represented before the concerned authority in this behalf. In our view it is settled law that representation made before the concerned authority cannot extend the period of limitation. (Ref. Naresh Kumar Vs. Department of Atomic Energy and Others, C. Jacob Vs. Director of Geology and Mining Indus. Est. and Another,

9. Before parting we should also note that the respondent No.3 has since been promoted to Assistant Secretary w.e.f. 9th June, 2008 and thereafter to Joint Secretary w.e.f. 29th June, 2011 and that the petitioner has also been appointed as Superintendent (Statistical Assistant). Therefore much water has flown since the time of the appointment of the respondent No.3 as Statistical Assistant in the

year 2003 when the petitioner was not eligible for promotion to the said post. In view of the above discussion I find no merit in the present writ petition and the same is accordingly dismissed without any order as to costs.