
(1984) 09 OHC CK 0001
In the Orissa High Court
Case No : O.J.C. No. 2529 of 1983

Rabi Chandra Panda

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 28-09-1984

Acts Referred:

Drugs and Cosmetics Act, 1940 — Section 33N

Citation : (1984) 58 CLT 536

Hon'ble Judges : R.C. Patnaik, J;D.P. Mohapatra, J

Bench : Division Bench

Advocate : J.P. Misra, M. Misra and A.K. Misra, for the Appellant; Addl. Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

D.P. Mohapatra, J.—The Petitioner, a Drugs Inspector being aggrieved by the order of the State Government in the Department of Health and Family Welfare, appointing, him as Scientific Officer in Government Ayurvedic Pharmacy, Bolangir has approached this Court for a writ of certiorari quashing the said order.

The Petitioner, a graduate in Pharmacy, was appointed as Drugs Inspector in September, 1979 on ad hoc basis. Subsequently, his services were regularised in consultation with the Orissa Public Service Commission by order dated 1st June, 1982 (Annexure-I). On being asked to give his willingness to undergo training in manufacturing of Ayurvedic Drugs the Petitioner gave his consent and underwent the training for a period of about 3 months, from 7-6-1983 to 13-9-1983 at M/s Utkal Ayurvedic Co-operative Pharmacy Ltd., Aska. According to the Petitioner, while asking the Drugs Inspectors their willingness to undergo the training the State Government had given out that the training in Ayurvedic medicine was intended to enable them to discharge their duties as Drugs Inspectors in respect of Ayurvedic medicines in addition to allopathic medicines.

While the Petitioner was discharging his duties as Drugs Inspector under the

administrative control of the Drugs Controller, the State Government created the post of Scientific Officer (Drugs Inspector) for the Drugs Testing Laboratory of Government-Ayurvedic Pharmacy, Bolangir in the scale of pay of Rs. 525-1150/- under letter No. 23804 dated 29-6-1979 from the Government of Orissa, Health & Family Welfare Department addressed to the Director of Indian Medicine and Homeopathy, Orissa (Annexure-D). It is clear from this letter that the newly created post of Scientific Officer was to be under the administrative control of the Director of Indian Medicine and Homeopathy, Orissa. Thereafter, the State Government was in search of a suitable hand to fill up the said post and the choice fell on the Petitioner on the plea that he was one of the few Drugs Inspectors who had undergone the training in manufacturing of Ayurvedic medicine. By the order dated 23-8-1983 the services of the Petitioner were placed under the Director of Indian Medicine and Homeopathy, Orissa by the Drugs Controller and this was followed by the impugned order dated 11-10-1983 (Annexure-7) appointing the Petitioner as Scientific Officer.

2. The Petitioner seeks to challenge the order on the ground that he belongs to the cadre of Drugs Inspector and his transfer as Scientific Officer, a post outside the cadre, without his consent was invalid. He further contends the post of Drugs Inspector is statutory and the duties are prescribed under the Drugs & Cosmetics Act, 1940 and the rules framed thereunder. The works assigned to the Scientific Officer is of a very different nature and he is not fully equipped to effectively discharge the same.

3. The opposite parties in their counter affidavits have tried to justify the impugned action. The gist of their case is that the Petitioner's posting as Scientific Officer has been made in the exigencies of public service taking into consideration the fact that he had received training in manufacturing of Ayurvedic drugs. It is also their case that his posting in the new post of Scientific Officer does not prejudicially affect the Petitioner since he still continues in the establishment of Drugs Inspectors and his pay and emoluments remain unaffected. They deny the claim of the Petitioner that there is a cadre of Drugs Inspectors under the administrative control of the Drugs Controller.

4. On a perusal of the pleadings of the parties and the several documents filed by them, it is clear that the establishment of the Drugs Controller is separate and distinct from that of the Director of Indian System of Medicines and Homeopathy. The recently created post of Scientific Officer is borne in the establishment of the Director of Indian System of Medicine and Homeopathy and not that of the Drugs Controller. It is not in dispute that the post of Drugs Inspector is statutory and, the duties discharged by them are provided under the Drugs & Cosmetic Act and rules framed thereunder. They mostly test allopathic drugs to determine whether they are spurious or not. But the nature of duties assigned to a Scientific Officer is of a very different type, mostly undertaking analysis and testing of Ayurvedic medicines i.e. the different components of the medicines and the proportion in which they are to be contained in a particular drugs, For effective discharging

work of analysts separate provisions are contained in the Act and Section 33N(b) makes provision for framing separate set of rules laying down qualifications for the posts of analysts and inspectors.

5. It is undoubtedly a well accepted principle that once the Government is shown to have the power to transfer a Government servant, the Courts would be reluctant and disinclined to interfere with the exercise of administrative discretion by the Government since the administration is the best judge and in the know of all relevant circumstances to determine as to the desirability or the propriety of any particular posting of a Government servant. But it is equally well settled that the Courts can Interfere if the transfer is in violation of any legal provision or is otherwise mala fide. In a case where it is shown that there is no legal authority in the Government to transfer a Government servant, it is the bounden duty of the Court to interfere since the executive can only act in pursuance of the powers given to it by law. Normally the Government employees who are appointed to a particular cadre or establishment would have the range of their transferability determined within that cadre or establishment. Therefore, a person who is recruited to a particular cadre cannot be compelled against his wishes to serve out side the cadre.

In the present case, without going into the question, whether there is a separate cadre of Drugs Inspector or not, which in our view it is not necessary to determine here, it can be safely said that the establishment of the Directorate of the Drugs Controller is distinct and separate from that of the Directorate Indian System of Medicine and Homeopathy. As already noticed, the duties discharged by the employees under the two establishments or of a widely different nature. While under the former the duty assigned to the Drugs Inspector is to test drugs in or to find out if they are of a spurious nature under the latter, the Scientific Officer is requited to analyse the drugs to determine their components. Further, the learned Counsel appearing for the opposite parties has not been able to show any rule or instructions empowering the authorities to transfer a Drugs Inspector as Scientific Officer. The Petitioner has also not been sent on deputation. In these circumstances the transfer of the Petitioner to a post out side the establishment to which he was appointed is unauthorised and without any support from law or rule and hence unsustainable.

6. In view of the aforesaid analysis, the writ petition succeeds and the same is allowed. The order appointing the Petitioner as Scientific Officer in Government Ayurvedic Pharmacy, Bolangir (Annexure-7) is quashed. There will be no order as to costs.

R.C. Patnaik, J.

7. I agree.