

**(2001) 07 RAJ CK 0106**

**In the Rajasthan High Court**

**Case No : Civil Special Appeal (W) No. 4 of 2001**

Rajasthan Pharmacy Council

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

**Date of Decision : 04-07-2001**

**Acts Referred:**

Pharmacy Council Act, 1948 — Section 19, 20, 21, 22, 23  
Rajasthan General Clauses Act, 1955 — Section 15, 16

**Citation :** (2002) 1 RLW 207 : (2001) 3 WLC 540

**Hon'ble Judges :** K.S. Rathore, J;Arun Madan, J

**Bench :** Division Bench

**Advocate :** Mahendra Singh and Shalini Sheoran, for the Appellant; M. Rafiq, Additional General, for the Respondent

**Final Decision :** Dismissed

## Judgement

Madan, J.

(1). Rajasthan Pharmacy Council (appellant) by filing this special appeal has assailed the judgment dated 8.12.2000 of the learned Single Judge whereby the writ petition of the Council was dismissed upholding the Government order 22.1.2000 withdrawing its permission granted to S.C. Pant to work as Registrar of the Council.

(2). Admitted facts are that appellant Rajasthan Pharmacy Council (for short, "Council") was constituted by State Government by order dated 11.08.1978 as a body corporate. The State Government in exercise of its powers u/s 26 of the Pharmacy Council Act, 1948 (for brevity "the Act") appointed Mr. Mohd. Ishaq as first Registrar of the Council for first four years of constitution with its pleasure, and accordingly Mr. Ishaq continued as first Registrar from August 1978 to August, 1982 in addition to his own substantive appointment as Administrative Officer in Mobile Surgical Unit of the Medical & Officer in Mobile Surgical Unit of the Medical & Health Department of the State Government. Thereafter though the State Govt. appointed Shri Mukesh Agrawal as Registrar of the Council in

place of Mr. Ishaq vide order dated 10.01.1983 but that order was challenged in writ petition wherein direction was allegedly issued to convene a meeting of the Executive of the Council so as to appoint Registrar, and pursuant to that direction the Executive Committee in its meeting on 14.04.1983 resolved to appoint Shri B.M. Sharma on officiating basis till regularly appointed candidate was made available and thereby Shri Mukesh Agrawal ceased to function as Registrar. However, pursuant to advertisement Mr.S.C. Pant was regularly appointed by order dated 15.02.1986 as Registrar but on part time basis. It is pertinent to mention that admittedly during his appointment as Registrar on part time basis Shri Pant was substantive Officer of the State Government having been working as Senior Lecturer and duly promoted as Reader in Public Health Training Institute and that being so, he has been continuing to discharge his duties as such in addition to his assignment as Registrar on part time basis. Similarly it is not in dispute rather admitted by the Council that Shri Pant continued to discharge all functions and duties of his regular employment with the State Government firstly as Senior Lecturer and subsequently or promotion as Reader with the Public Health Training Institute during office hours from 8 a.m. to 2 p.m. daily in addition to his part time assignment as Registrar of the Council during its office hours from 4 p.m. to 6 p.m. till 1.4.1999 when it got changed to 11 a.m. to 6 p.m. i.e. full day office hours. However, it is the case of the Council that on 28.3.2000 the respondent No.2 telephonically directed Shri Pant to relinquish post of Registrar and this telephonic communication was conveyed by Shri Pant to the Council. Ultimately, a communication was sent by the State Government on 1.4.2000 directing Shri Pant to relinquish the post of Registrar pursuant to order dated 22.1.2000 whereby original order dt. 10.2.1986 lending services of Shri Pant to work as Registrar of the Council was revoked, against which the council filed writ petition before the learned Single Judge who after show cause notice and upon reply thereto besides rejoinder, heard both the parties at admission stage and dismissed the writ petition by the impugned judgment. Hence, this special appeal.

(3). Having heard the learned counsel for me parties, perused the entire material on record and considered rival contentions, we find no merit in this special appeal. Our conclusions are thus.

(4). As regard the objection of the State Government as to the necessary party, learned counsel for the council relying upon the decisions in *Uditnarayan Singh v. Board of Revenue* (1) and *MV Ravindranath vs. Union of India* (2) contended that as per dictum of law laid down in catena of decisions of the Apex Court, it is settled law that necessary party is the person in whose absence the relief sought in petition cannot be granted; that if a necessary or appropriate party has not been impleaded instead of dismissing the petition straight-away, the Court must give an opportunity for impleading any such necessary or proper party. In *Uditnarayan's* case (supra) before the High Court in a writ for certiorari, only the Tribunal whose order was sought to be quashed was made a party but the persons who were parties before the lower Tribunal and in whose favour the

impugned order was passed were not joined as parties, the Apex Court held that the petition was incompetent and had been rightly rejected by the High Court; and further that the request that the Supreme Court may, at the stage of appeal direct them to be made parties and remand the matter to the High Court for disposal, was belated and could not, therefore, be-granted.

(5). Similarly in the case of MV Ravindranath (supra) the claim made by the appellants was dismissed by the Tribunal on technical ground of non impleadment of necessary parties without considering the matter on merits, therefore, the Apex Court remitted the matter back to the Tribunal with the direction that it would allow the appellants to implead all other persons as respondents to the petition who are likely to be affected by the ultimate decision rendered by it. In our considered view, the cases cited on behalf of the Council having distinguished facts do not at all help in advancing its case because here are the different facts and the impugned order of withdrawing the sanction to continue as Registrar of the council ought to have been assailed by SC Pant as it was passed against him and he could have been aggrieved to it but he has not come forward and appears to have been playing the game behind the curtain.

(6). As regards the reasons offered by the State Government by way of justification to the issuance of the impugned order against S.C. Pant, Shri Singh cited the decisions in S.L. Kapoor v. Jagmohan (3), Mohinder Singh Gill v. Chief Election Officer (4) and S.N. Mukherjee v. Union of India (5) and contended that the learned Single Judge committed an error in not entertaining the plea regarding violation of principles of natural justice.

(7). In M.S. Gill's case (supra) the Apex Court held that statutory order entailing adverse consequence needs to be judged only on the basis of reasons contained therein and not on the basis of reasons invented and offered by way of counter affidavit, whereas in S.L. Kapoor's case (supra) it was held that non-observance of natural justice is itself prejudicial to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary and similarly in S.N. Mukherjee's case the Apex Court held that the requirement to record reasons can be regarded as one of principles of natural justice.

(8). In S.L. Kapoor's case (supra) the status, rights and responsibilities and the expectation of the Committee to serve its full term of office since creates sufficient interest, in the Municipal Committee and their loss, if superseded, entails civil consequences so as to justify an insistence upon the observance of the principles of natural justice before an order of supersession is passed, as envisaged in Section 238(1) of the Punjab Municipal Act.

(9). We may emphasize that in S.N. Mukherjee's case (supra) it has also been held that with regard to the exercise of a particular power by an administrative authority including exercise of judicial or quasi-judicial functions of the legislature, while conferring the said power may feel that it would not be in the larger public interest that the reasons for the order passed by such

administrative authority be recorded in the order and be communicated to the aggrieved party and it may dispense with such a requirement, and such an exclusion can also arise by necessary implication from the nature of the subject matter, the scheme and the provisions of the enactment, and that the public interest underlying such a provision would outweigh the salutary purpose served by the requirement to record the reasons and the said requirement cannot, therefore, be insisted upon in such a case. In the instant case firstly the impugned order has been challenged in the writ petition by the Council who as rightly held by the learned Single Judge has, no locus stand to approach this Court, and further the impugned order is not a statutory order nor it was passed by the State in exercise of any judicial or quasi judicial power either under the Pharmacy Act or service Rules nor any statutory provisions have been pointed out by the appellants necessitating to record reasons before passing such an administrative order withdrawing the services of S.C. Pant who was admittedly official of the State Government and whose services were given only on lending basis for a particular period and whose services have not been withdrawn before that permitted period but after expiry of that period. Hence, we do not find any merit in the case of the Council for non observance of natural justice or requirement to record reasons before passing the impugned order.

(10). As regards decision cited by Shri Singh, in *Kirti Bhushan Singh v. State of Bihar* (6) it was a case of removal pursuant to enquiry officer's report but on the basis of certificate issued by civil surgeon meanwhile declaring the appellant to be invalid and unable to discharge his duties properly, order was passed retiring him on invalid pension and subsequently (after about one year & nine months after retirement), retirement order was revoked considering the government servant to be continuing under suspension and disciplinary proceedings completed and dismissal order was passed, the Apex Court held Rule 73(F) of Bihar Service Code inapplicable to the facts of the case and revocation of order of retirement in absence of any provision in that regard as illegal and as such dismissal order was held null and void. Here also again distinguished facts, therefore, aforecited decision is not applicable and does not help any aid in advancing any case.

(11). Chapter III of the Pharmacy Act, 1948 (for short, "Pharmacy Act") covers Sections-19 to 28. Section 19 deals with constitution and composition of State Council and according to provisions made therein, in case of a Joint State Council an agreement is required to be made u/s 20, and in either case the State Government is required to constitute a State Council consisting of; (a) six members elected from amongst themselves by registered pharmacists of the State; (b) five members of whom atleast three shall be persons possessing a prescribed degree or diploma in pharmacy or pharmaceutical chemistry or registered pharmacists nominated by the State Government; (c) one member elected from themselves by the members of each Medical Council or the Council of Medical Registration of the State as the case may be; (d) the Chief Administrative Medical Officer of the State ex officio or if he is unable to attend

any meeting, a person authorised by him in writing to do so; (dd) the Officer Incharge or if he is unable to attend any meeting a person authorised by him in writing to do so; (e) the Govt. Analyst under the Drugs and Cosmetics act, 1940, ex officio, or whom there is more than one, such one as the State Government may appoint in this behalf.

(12). Section 20 pertains to Inter State agreements to be entered into by two or more State Governments to provide for: (a) for the constitution of a Joint State Council for all the participating States, or (b) that the State Council of one State shall serve the needs of the other participating States. Section 21 contemplates for composition of Joint State Councils. Section 22 provides for incorporation of State Councils and according to which every State Council shall be a body corporate by such name as may be notified by the State Government in official gazettee. u/s 23 the President and Vice President of the State Council are elected from amongst themselves. Section 24 provides for mode of elections and according to which elections under this Chapter III are conducted in the prescribed manner and where any dispute arises regarding any such election it is to be referred to the State Government whose decision shall be final. Section 25 relates to term of office and casual vacancies.

(13). Section 26 deals with staff, remuneration and allowances which reads as under:

"26. Staff, remuneration and allowance. - The State Council may, with the previous sanction of the State Government,-

(a) appoint a Registrar who shall also act as Secretary and if so decided by the State Council, treasurer, of the State Council;

(b) appoint such other officers and servants as may be required to enable the State Council to carry out its functions under this Act;

(c) fix the salaries and allowances and other conditions of service of the Secretary and other officers and servants of the State Council;

(d) fix the rates of allowances payable to members of the State Council;

Provided that for the first four years from the first constitution of the State Council, the Registrar shall be a person appointed by the State Government who shall hold office during the pleasure of the State Government."

(14). Even as per provisions contained in Section 46 of the Act which confers power on the State Government to make rules. Section 46 in the context of "Registrar" reads as under:-

"46. Power to make rules.-(1) the State Government may, by notification in the Official Gazette, make rules to carry out the purposes of Chapter III, IV and V.

(2) In particular and without prejudice to the generality of the foregoing power such rules may provide for-

(a) to (e) xxx xxx

(b) the qualifications, the term of office and the powers and duties of the Registrar and other officers and servants of the State Council, including the amount and nature of the security to be given by the Treasurer;

(g) to (l) xxx xxx"

(15). If we read concomitantly Sections 26 & 46 of the Act then it is crystal clear that no doubt u/s 16 of the General Clauses Act, powers of removal are conferred only on the appointing authority but merely because Section 26 does not say as to the conferment of power of the State Government to remove "Registrar", it cannot be said that the State Government is ceased of the power once it accords prior sanction for appointment of "Registrar" forever, whereas the legislative intent to contemplate Section 46 in the Act, itself, conferring upon State Government to make rules to carry out the purposes of Chapter III (which deals with Section 26, too) and such rules may provide for the qualifications, the term of office and the powers and duties of the Registrar, as contemplated in Sub-section (2) of Section 46 of the Act, again makes it explicit clear that the State Government has been conferred with powers of control over the State Council. Even for the sake of arguments, if the State council selected a person to appoint him Registrar, does it appoint such selected person as Registrar either without previous sanction or in case the State Government declines to accord such sanction u/s 26 of the Act. What does it shows/ It means that as per the legislative intent itself to frame the Act, the State Government has been conferred with the powers of control over the State Council and that being so, Section 46 has been enacted in the Act conferring power to make rules upon the State Government to carry out the purposes of Chapter III, besides other Chapters referred to therein. Thus by necessary implication, from the nature of the subject matter, the scheme and the provisions of the enactment, there is no exclusion of power of the State Government for removal of the Registrar once appointed. Thus, it cannot be said that the State Government is given a very limited role to the extent of according previous sanction for appointment of "Registrar" u/s 26 of the Act whereas by virtue of Section 46 the State Government has power to fix term of office of the Registrar also. By virtue of conferment of power to grant permission and/or accord previous sanction for appointment of Registrar upon selection by the Council, Section 26 can be construed to empower the State Govt. to have control over the Council in respect of appointment of Registrar either on a full time or a part time basis for a selected person who may or may not be serving elsewhere. Of course Section 16 of the General Clauses Act empowers the State Government to remove a person from its own employment. Admittedly, S.C. Pant was substantive employee/officer of the State Government whose services have been lent to serve as Registrar of the Council on part time basis in addition to his own original employment with the State Government in its Public Health Training Institute on the post of Reader. Be that as It may, previous sanction was accorded by the

State Government in respect of S.C. Pant to work as Registrar on part time basis without disturbance to his original service inasmuch as the facts stand established on record that such a previous sanction was accorded for appointment of Registrar - post of which was advertised indicating for one year and as a result of the change in timing of the council's office hours i.e. day hours from 11 a.m. to 6 p.m. it would affecting functioning of S.C. Pant on his original & substantive service holding the post of Reader in the aforesaid Institute of the State Government. Thus, previous sanction of the State Government under its order dated 10.2.1986 was not just in exercise of powers u/s 26 of the Act but was also in the form of a permission to an Officer of the Government, as has been pleaded in paras 3, 4, 6(A), 8(B) & 8(C) of reply to the writ petition as S.C. Pant cannot take upon any other assignment either whole or part time except with prior permission under the Rajasthan Civil Services (Conduct) Rules, 1971 which is the case herein, besides in exercise of powers u/s 15 of the Rajasthan General Clauses Act. Shri Rafiq has rightly placed reliance upon the decision in State of H.P. v. Kailash Chandra Mahajan (7), with which we have no reasons to differ.

(16). In fact, the council appears to have been espousing cause of S.C. Pant against whom earlier previous sanction has been revoked under the impugned order, and for whose benefit the writ petition has been filed, that too without even impleading him as a party to the petition, especially when the lis between the council and the State Government had been due to permission accorded by the Government to its Officer Shri Pant to work as Registrar of the Council on part time basis and which stood withdrawn by impugned order dated 22.1.2000 (Annex.6). Yet, Shri Pant is not a party to the lis where a decision either way is bound to affect his right depriving him of monthly allowance as part time Registrar to the tune of Rs.500/- per month. Reliance can be placed upon the decision in Krishan Swami v. Union of India (8). Here, the present lis appears to have been fighting by Shri Pant as a proxy through the Council and in either case if he had any complaint about or against the order (Annex.6) he should have himself chosen to challenge the same. That being so, in our considered view, the learned Single Judge has rightly observed, "judicial restraint does not permit me to make elaborate discussion on the point raised by the learned counsel for the petitioner, insisting upon that only Shri Subhash Chandra Pant should act as Registrar of the Council" and further, "filing of the present petition by the Council and act and omission of Shri Pant in not approaching this Court against the impugned order of withdrawal of previous as Registrar speaks louder than words". Ultimately, the learned Single Judge rightly concluded that the council could not complain about alleged denial of natural justice since by issue of Annex.6 the rights and privileges, if any of Shri Pant were judicially affected, therefore, it was Shri Pant who could claim denial of doctrine of natural justice and not the council.

(17). We are also in agreement with the contention of Shri Rafiq learned Additional Advocate General that for the service lent on deputation the terms and

conditions of such deputation of foreign service to Central Government, other State Government, public undertakings, autonomous bodies whether incorporated or not and other bodies wholly or substantially controlled by the Government, are regulated in accordance with the order issued by the Government from time to time as provided for by Rule 164-A of Rajasthan Service Rules. As held in *Umapati Choudhary v. State of Bihar* (9) deputation means assignment of an employee of one department to another which involves voluntary decision of the lending authority, borrowing authority and employee concerned because concept of deputation is consensual and involves a voluntary decision of the employer to lend the services of his employee and corresponding acceptance of such services by the borrowing employer, besides consent of the employees going on deputation, Similarly as is expounded in *State of Punjab v. Inder Singh* (10) there is no escape in law for the deputationists to go back to their parent department if required to do so. Thus in our view Shri Pant cannot acquire a superior right than one given to deputationists having gone to another department or organisation with the consent of the parent employer and so long as Shri Pant continued to be on permanent roll of the State Government, therefore, he cannot refuse to abide by the instructions of the Government.

(18). Consequently, this special appeal being devoid of any merit is dismissed. No order as to costs. Ad interim stay order, if any, stands vacated.