
(2000) 12 RAJ CK 0030
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1912 of 2000

Rajasthan Pharmacy Council, Jaipur

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 08-12-2000

Acts Referred:

General Clauses Act, 1897 — Section 16
Pharmacy Act, 1948 — Section 22, 26

Citation : (2001) 2 RLW 900 : (2001) 1 WLC 722 : (2001) 2 WLN 434

Hon'ble Judges : R.R. Yadav, J

Bench : Single Bench

Advocate : Mahendra Singh, for the Appellant; M. Rafiq, Additional Advocate General, for the Respondent

Judgement

Yadav, J.

(1). The instant writ petition has been filed by the petitioner, Rajasthan Pharmacy Council through its president, Sri Ramesh Ojha, which is a body corporate within the meaning of Section 22 of the Pharmacy Act, 1948, having perpetual succession and a common seal with power to acquire or hold property both moveable and immovable and can sue and can be sued by the said name. It is prayed in the present petition that the order impugned dated 22nd January, 2000, Annexure-6 to the writ petition, passed by the State Government, whereby the services of Sri Subhash Chandra Pant, Registrar, Rajasthan Pharmacy Council, has been withdrawn with a direction to the council to appoint a new Registrar in accordance with law, be quashed.

(2). Although the present writ petition is posted today for admission but with the consent of the learned counsel for the parties, I purpose to decide it on merits, at admission stage.

(3). I have heard the learned counsel for the parties. Perused the materials available on record.

(4). The controversy involved in the present writ petition can be effectively adjudicated without delineating the facts averred in the pleadings of the parties as the question for determination in the present case, gravitates and centres around the interpretation of Section 26 of the Pharmacy Act, 1948, read with Sections 14 and 16 of the General Clauses Act, 1897. Sections 14 and 16 of the General Clauses Act, 1897, can be used as catalysis to interpret section 26 of the Pharmacy Act, 1948.

(5). The aforesaid point is driven home from perusal of Annexure- 3 to the writ petition, which reveals that the State Government had given its previous sanction in exercise of its power u/s 26 of the Pharmacy Act, 1948 to the petitioner, Rajasthan Pharmacy Council to appoint Sri Subhash Chandra Pant as its Registrar.

(6). It is urged by the learned counsel for the petitioner that after giving previous sanction for appointment of Sri Subhash Chandra Pant, the State Government had become functus officio and it has no jurisdiction to withdraw its previous sanction by its impugned order dated 22.1.2000, Annexure-6 to the writ petition, with a direction to the petitioner to appoint a new Registrar in accordance with law.

(7). In support of his aforesaid arguments, the learned counsel for the petitioner invited my attention towards Section 16 of the General Clauses Act, 1897, which provides that whereby any Central Act-or Regulation, a power to make any appointment is conferred, then, unless a different intention appears, the authority having for the time being power to make the appointment shall also have power to suspend or dismiss any person appointed whether by itself or any other authority in exercise of the power. It is urged by the learned counsel for the petitioner that from reading of Section 26 of the Pharmacy Act, 1948, it is revealed that appointment of Registrar of the State Council is within the control of the petitioner, therefore, the dismissal or removal or any order adverse to the appointment of Sri Subhash Chandra Pant, as Registrar of Rajasthan Pharmacy Council, is to be exercised only by the corporate body, not by the State Government.

(8). The aforesaid arguments, raised by the learned counsel for the petitioner, are refuted by Sri M. Rafiq, Additional Advocate General, with equal vehemence. He also invited my attention towards Annexure-6, to the writ petition, whereby the State Government has withdrawn its previous sanction of appointment of Sri Subhash Chandra Pant, as Registrar of the Rajasthan Pharmacy Council. It is submitted by Sri, M. Rafiq, that u/s 14 of the General Clauses Act, 1897, it is provided that whereby any Central Act or Regulation made after the commencement of this Act, any power is conferred, then, unless a different intention appears, that power may be exercised from time to time as occasion requires. It is further submitted by the learned Additional Advocate General that indisputably Sri Subhash Chandra Pant, is a permanent employee of the State Government and he was accorded sanction by the State Government to work as

Registrar of Rajasthan Pharmacy Council, on part-time basis. According to Sri M. Rafiq, Additional Advocate General, the administrative exigency where the services of, Sri Subhash Chandra Pant, who is permanent employee of State, can be utilised effectively, is within the executive domain of the State Government. It is further submitted that impugned order Annexure-6, to the writ petition, is innocuously worded and it does not cast stigma to Sri Pant, hence, it does not require interference under Article 226 of the Constitution.

(9). I have given my thoughtful consideration to the rival contentions raised at the Bar. I am of the view that there is substance in the arguments advanced by the learned Additional Advocate General, Sri M. Rafiq. For the reasons given hereinbelow, the petitioner is not entitled to obtain the relief prayed for, in the instant writ petition.

(10). It is well to remember that Pharmacy Act, 1948, is not a self contained Act. Section 26 of the said Act, being the Central Act, is to be interpreted within the meaning of Section 14 of the General Clauses Act, 1897. In the present case, Section 16 of the General Clauses Act, 1897, is not attracted because the petitioner is a body corporate and it is authorised to make appointment on the post of Registrar of the Rajasthan Pharmacy Council, within the meaning of the Section 26 of the Pharmacy Act, 1948, which provides that the State Council may with the previous sanction of the State Government appoint a Registrar. The appointment on the post of Registrar of Rajasthan Pharmacy Council is to be preceded with the previous sanction of the State Government, and as such the petitioner Council has no exclusive power to make appointment on the post of Registrar, whereas Section 16 of the General Clauses Act, 1897, can be pressed into service only in those cases, where an authority or a body corporate is empowered with exclusive power to make such appointment.

(11). In the present case, previous sanction accorded by the State Government for appointment on the post of Registrar, in favour of Sri Subhash Chandra Pant, is withdrawn by the State Government with a direction to the council to make fresh appointment on the post of Registrar, in accordance with law, can be saved within the meaning of Section, 14 of the General Clauses Act, 1897, which provides that where by any Central Act or Regulation made after commencement of General Clauses Act, any power is conferred than unless a different intention appears that power may be exercised for time to time as occasion requires. The State Government is entitled to exercise its power from time to time as occasion requires to accord sanction for appointment on the post of Registrar, in administrative exigency. The power to grant sanction or to withdraw such prior sanction for appointment of Registrar u/s 26 of the Pharmacy Act, 1948, as occasion requires in administrative exigency, is within the exclusive domain of the State Government, and an argument contrary to it, is not acceptable.

(12) The second limb of the argument of the learned counsel for the petitioner before me is that, after withdrawing the sanction, accorded by State Government for appointment of Registrar of Rajasthan Pharmacy Council in favour of Sri

Subhash Chandra Pant, the petitioner council was entitled to be given an opportunity of hearing.

(13). 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, Sri Subhash Chandra Pant, should act as Registrar of Rajasthan Pharmacy Council. The filing of the present petition by the council and act and omission of Sri Pant, not approaching to this Court against the impugned order of withdrawal of previous sanction by State Government, making him disentitled to continue as Registrar, speaks louder than words. From the administrative decision of State Government, withdrawing its previous sanction for appointment of Registrar, vide Annexure-6 to the writ petition, the rights and privilege, if any, of Sri Pant are juridically affected, therefore, it is only Sri Pant, who can claim denial of doctrine of natural justice but not the petitioner, who has no exclusive jurisdiction to make appointment on the post of Registrar. It is to be imbibed that the concept of natural justice is not a static formula but it is ever expanding concept from its initial stage and its application differ from case to case. In the present case, the question of giving opportunity of hearing to the petitioner council does not arise.

(14). As a result of the aforementioned discussion, the present writ petition is dismissed. Cost is made easy.