
(2002) 09 RAJ CK 0010
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1456 of 2002

Shiv Kumar Joshi

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 04-09-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 5 WLC 908 : (2002) 4 WLN 679

Hon'ble Judges : Sunil Kumar Garg, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sunil Kumar Garg, J.—The instant writ petition has been filed by the petitioner under Article 226 of the Constitution of India against the respondents with a prayer that the impugned order dtd. 4.4.2002 (Annex. 8) by which the petitioner who was holding the post of Ayurvedic Chikitsak was transferred from Dist. Bhilwara to Nagore District be quashed and set aside.

2. The facts as put forward by the petitioner are as under:

(i) That the petitioner was initially appointed as Valdy Grade-III on 3.10.1071. The petitioner is working as "Ayurved Chikitsak" at Govt. Ayurved Hospital Rupaheli Kalan via Tehsil Hurda, Dist. Bhilwara.

(ii) That the petitioner's services are governed by the Rajasthan Ayurvedic Unani, Homeopathy and Naturopathy Subordinate Service Rules, 1966 (hereinafter referred to as the Rules of 1966).

(iii) That respondent No. 3, Divisional Commissioner, Ajmer through impugned order dtd. 4.4.2002 (Annex. 8) transferred the petitioner from Dist. Bhilwara to Dist. Nagaur on the ground that during inspection, he was not found at the head-quarter and thereafter, the Collector, Bhilwara (respondent No. 4) made a recommendation of the transfer of the petitioner. This order of transfer has been

challenged in this writ petition.

3. The main submission of the learned Counsel for the petitioner is that the order dtd. 4.4.2002 (Annex. 8) which was passed by the respondent No. 3 in the capacity as Divisional Commissioner, Ajmer is without jurisdiction as he had no authority to pass such orders as he was not the appointing authority of the petitioner and further more, the power to transfer Ayurved Chikitsak was not given to the Divisional Commissioner. Hence, the order dtd. 4.4.2002 becomes void in the eye of law and should be set aside.

4. It may be stated here that the operation of order dtd. 4.4.2002 (Annex. 8) was stayed by this Court vide order dtd. 6.6.2002 and the same is still in force and because of stay order, the petitioner has not been relieved so far.

5. Reply to the writ petition was filed by the respondents and their main contention is that the Circular dtd. 2.7.1999 (Annex. 6) empowers and authorises the Divisional Commissioner of the concerned area to transfer Ayurved Chikitsak from one place to another place in the Division. Hence, the impugned order dtd. 4.4.2002 (Annex. 8) which was passed by the Divisional Commissioner was well within his power and, therefore, the writ petition should be dismissed.

6. The learned Counsel for the petitioner has submitted that the circular dtd. 2.7.1999 (Annex. 6) does not cover Ayurved Chikitsak.

7. A bare perusal of Circular dtd. 2.7.1999 (Annex. 6) reveals that it covers Chikitsa Adhikari (Medical Officer). The word "Medical Officer" means the doctor who has passed MBBS course and has obtained MBBS Degree. The word "doctor" is found in the Schedule appended to Rajasthan Medical and Health Service Rules, 1963 (hereinafter referred to as the Rules of 1963). Therefore, the word "Chikitsa Adhikari" (Medical Officer) used in the Circular dtd. 2.7.1999 (Annex. 6) refers to doctors only who are governed by the Rules of 1963 and not the Ayurved Chikitsak who are governed by the Rules of 1966. Hence, the Circular dtd. 2.7.1999 (Annex. 6) would cover those Medical Officers who are governed by the Rules of 1963 and not the Ayurved Chikitsak who are governed by the Rules of 1966. Therefore, in these circumstances, the Divisional Commissioner has no power to transfer Ayurved Chikitsaks who are governed by the Rules of 1966. It is further made clear that the word "Ayurved Chikitsak" appeared in the Rules of 1966 and the word "Medical Officer" appeared in the Rules of 1963 are altogether different in nature and, therefore, if in Circular dtd. 2.7.1999, the word "Medical Officer" is mentioned, it would not cover the Ayurved Chikitsak as both the governed by separate Rules.

8. It is settled proposition of law that when Statute confers power on a particular authority or person to perform certain functions, it cannot be exercised by any other person.

9. From this point of view, the transfer order dtd. 4.4.2002 (Annex. 8) passed by

the Divisional Commissioner, Ajmer (respondent No. 3) is without jurisdiction as he has only power to transfer medical officers (MBBS degree holder) and not the Ayurved Chikitsak who are governed by the Rules of 1966 and therefore, the transfer order dtd. 4.4.2002 (Annex. 8) cannot be sustained and this writ petition is liable to be allowed.

RIGHT OF VOLUNTARY RETIREMENT

10. Before parting with this judgment, something should be said on the point of voluntary retirement which is though directly not in issue, but indirectly in issue in this writ petition. The petitioner submitted an application dtd. 12.6.2002 (Annex. 9) before respondent No. 1, Secretary, Ministry of Ayurved Family Welfare, Jaipur seeking voluntary retirement from the service and on that application order (Annex. 10) was passed by respondent No. 1 on 15.6.2002 in which it was mentioned that since writ petition was pending in the High Court, therefore, no action could be taken on that application. Further more from letter dtd. 9.7.2002 (Annex. 11), it is very much clear that no enquiry of any nature under Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 was pending against the petitioner. The legal position on the right of voluntary retirement may be stated here that just as the Government has statutory right to compulsorily retire a Government servant, similarly there is corresponding right to the Government servant to seek voluntary retirement from the Services by observing some conditions as are found in the Service Rules. Further more since right belonging to the Government servant, it is not dependent on acceptance by the Government nor can any such acceptance be revoked by the Government. Further more any retention of Government servant in the service against his/her will on the expiry of period of notice shall, therefore, be illegal and liable to be quashed. But if an employee is under suspension, the authority concerned has a right to withhold permission. Thus, While dealing with the application (Annex. 9) filed by the petitioner, the above proposition of law be kept in mind for appropriate action.

For the reasons mentioned above, this writ petition is allowed and the transfer order dtd. 4.4.2002 (Annex. 8) is quashed and set aside.

However, it is made clear that in future if the respondent No. 1, Secretary, Ministry of Ayurved Family Welfare feels administrative exigency to transfer the petitioner again, he can do so and this order would not come in that way.

Cost made easy.