

(2016) 12 J&K CK 0008
In the Jammu And Kashmir High Court
Case No : LPAW No. 40 of 2009

State Dental Council, Srinagar

APPELLANT

Vs

Bachan Lal

RESPONDENT

Date of Decision : 21-12-2016

Acts Referred:

Dentists Act, 1948 — Section 32, Section 34(1)(ii), Section 41(1), Section 55
Jammu and Kashmir State Dental Council Rules, 2004 — Rule 125

Citation : (2017) AIR(J&K) 71

Hon'ble Judges : N. Paul Vasanthakumar and C.J. Tashi Rabstan, J.

Bench : Division Bench

Final Decision : Disposed Off

Judgement

Tashi Rabstan, J. :- This Letters Patents Appeal is directed against the judgment and order dated 31-3-2009 delivered by the learned single

Judge in OWP No. 447/2006, whereby, while allowing the writ petition, writ respondents were directed to accord renewal to the registration

certificates of all the writ petitioners, as also to furnish them application forms for completion of procedural formalities for legal registration of their

diagnostic establishments in Register-B as per the Rules occupying the field. It was further directed to reflect the names of writ petitioners in the

electoral roll of the State Dental Council being its legitimate members enabling them to exercise their franchise.

2. The facts-in-brief, as are gathered from the writ record and the judgment impugned, are that to regulate the practise of Dentistry, Dentists Act,

1948 came to be promulgated which required registration in two different categories, viz., Categories 'A- and' B - , subject to acquiring of certain

qualifications. The said Act also provided constitution of State Dental Council.

The persons registered under the said categories with State Dental Council figure in the electoral roll of the members for the purpose of exercising their franchise to the State Dental Council. However, the first Dentist Registration Tribunal was constituted in Jammu and Kashmir in April, 1977 and the first Register was opened in 1991. The writ petitioners who have obtained Diploma in Dentistry from J. & K. State, were included in Register-B in 1996. However, in 2004, the State Dental Council stopped renewing the registration. Writ petitioners filed OWP No. 447/2006 and the Writ Court while issuing notice directed the writ respondents to allow the writ petitioners to function on the touch stone of the statute. The writ respondents instead excluded their names from the list of registered Dentists. Aggrieved of the same, writ petitioners filed another writ petition, bearing OWP No.24/2007, and the Writ Court vide interim direction dated 12-1-2007 stayed the process of election.

3. The Writ Court after considering the matter at length and hearing learned counsel for the appearing parties allowed both the writ petitions vide common impugned judgment with a direction to the writ respondents to accord renewal to the registration certificates of all the writ petitioners, as also to furnish them application forms for completion of procedural formalities for legal registration of their diagnostic establishments in Register-B as per the Rules occupying the field. The Writ Court further directed to reflect the names of writ petitioners in the electoral roll of the State Dental Council being its legitimate members enabling them to exercise their franchise. Hence, the present appeal on behalf of State Dental Council in OWP No. 447/2006.

4. The main stand of State Dental council in the present appeal is that it was neither summoned or issued any notice by the Writ Court nor called upon to file reply/objections to the writ petition filed by the writ petitioners. Further, it is averred that inclusion of names of writ petitioners under Section 34 of Dentist Act in Register-B of Dentists by the then Registrar, Dentist Registration Tribunal vide letter dated 2-12-1996 was under the directions of Government when State Dental Council was not formed by the Government and that their inclusion in Register-B was contrary to the provisions of Dentist Act.

5. We have heard learned counsel appearing for the parties and also gone

through the appeal as well as the writ record.

6. It seems the State Dental Council did not file any reply/objections to the writ petition before the Writ Court and after passing of the impugned

judgment, it has come in appeal with the plea that it was neither summoned nor issued any notice by the Writ Court, hence there was no occasion

for the State Dental Council to put forth its stand or rebut the claim of writ petitioners before the Writ Court, and that the Writ Court has decided

the writ petition at the back of appellant herein.

7. However, a perusal of the writ record reveals that the writ petition came to be filed on 8-6-2006 and notice to writ respondents including State

Dental Council was issued by the Writ Court on 9-6-2006, which itself bely the claim of State Dental Council, appellant herein, that no notice or

summon was ever issued to it by the Writ Court. Further, the report of Registry dated 17-7-2006 clearly reveals that notice under registered AD

was issued to the State Dental Council along with the State Government on 16-6-2006 and the same did not receive back either served or

unserved meaning thereby after the expiry of statutory period of service the State Dental Council was presumed to had been served under law by

the Writ Court.

8. Be that as it may, the next plea of State Dental Council against the impugned judgment is that the inclusion of names of writ petitioners under

Section 34(1)(ii) of the Dentist Act in Register-B by the then Registrar, Dentist Registration Tribunal was contrary to the provisions of Dentist Act.

It is contended that since the writ petitioners did not have two years practise as dentists before the date appointed, i.e., 31-5-1977 under sub-

section (2) of section 32, they were not eligible to be included in Dentist Register ' B' ". Further, it is contended that the writ petitioners did not pass

the examination in terms of Section 34(1)(ii) of the Act.

9. From the above discussion what's come to fore is that to become eligible to be included in Register ' B', in terms of Section 34(1)(ii) of the

Dentist Act, one has to satisfy two main requirements, i.e., he/she had been engaged in practise as a dentist for a period not less than two years

before the date appointed (in the present case 31-5-1977) under sub-section (2) of Section 32 and, (ii) he/she has passed the examination

recognised for this purpose by the Central Government within a period of ten

years after the said date.

10. So far as second condition of Section 34 (1) (ii) is concerned, the writ petitioners have placed on record the Diplomas in Dental Technician

issued by the J.&K. State Medical Faculty, which reveals that writ petitioner Bachan Lal was issued the said Diploma in April, 1981, Ravinder

Nath Sharma cleared the examination in May, 1981, writ petitioner Veer Jee cleared the examination in July, 1987 conducted by the State

Medical Faculty, whereas writ petitioners Rajinder Krishan Hanloo and Ashok Kumar were issued the said Diplomas in March, 1980.

11. Now the question arises whether the State Dental Council or the Dental Council of India had conducted any examination of writ petitioners

recognised by the Central Government in terms of Section 34(1)(ii) of the Act.

12. Although the State Dental Council has pleaded in the appeal that the writ petitioners did not obtain any required qualification after the date

appointed under sub-section (2) of Section 32, yet it has not mentioned anywhere in the appeal or even clarified thereafter that the State Dental

Council or any competent authority had conducted any such test of writ petitioners in terms of Section 34(1)(ii) of the Act.

13. However, this Court vide order dated 21.11.2012 directed the writ petitioners to show whether they fulfil the requirement of Section 34(1)(ii)

of the Act or not.

14. Accordingly, writ petitioner No.5 had made an application dated 10.12.2012 to the Dental Council of India under Right to Information Act

seeking whether the J.&K. State Dental Council has offered or conducted any such examination for Dentists in terms of Section 34(1)(ii) of the

Act. In response to the said application, Deputy Secretary/Public Information Officer, Dental Council of India vide Communication N.DE-109-

2012/A-6813 dated 1-2-2013, referred the matter to the Registrar, J.&K. State Dental Council for furnishing the requisite information with the

plea that the information sought does not come under the purview of Dental Council of India; meaning thereby the Dental Council of India had

admitted that conducting of such test in terms of Section 34(1)(ii) of the Act was within the prerogative of State Dental Council and the Dental

Council of India had nothing to do with the same.

15. Accordingly, writ petitioner No.5 filed an application dated 27-5-2013 to the

J.&K. State Dental Council to the effect that whether it had offered or conducted any such examination and whether the same was communicated to Central Government for recognition in terms of Section

34(1)(ii) of the Act. Meanwhile, writ petitioner No.3 also made an application dated 21-7-2004 to J.&K. State Dental Council to the same extent.

16. In response thereto, vide Communication No.J.&K.SDC/RTI/2014 dated 31-7-2014 it was communicated by the Registrar/Secretary, J.&K.

State Dental Council to writ petitioner No.3 that it has no authority/jurisdiction to offer/conduct any such examination for Dentists in terms of

Section 34(1)(ii) of the Act.

17. Thus, on one hand the Dental Council of India clarified that conducting of said examination was not within its purview and, on the other hand,

State Dental Council too had shirked from conducting such examination with the plea that it has no authority or jurisdiction for the same. Once the

State Dental Council has itself admitted that it did not ever conduct any such examination in terms of Section 34(1)(ii), it does not lie in its mouth to

falsely claim that the writ petitioners did not obtain any required qualification in terms of the said section with the sole intention not to accord

renewal to their registration certificates. Thus, in the given circumstances, the writ petitioners cannot be said to be lacking in acquiring any required

qualification in terms of Section 34(1)(ii) of the Act. Therefore, in absence of any such examination conducted either by the State Dental Council or

the Dental Council of India the Diplomas in Dental Technician issued by the J.&K. State Medical Faculty can be taken to be the required

qualification to satisfy the second condition of Section 34(1)(ii) of the Act. Thus, it seems the Dentist Registration Tribunal, J.&K., taking this

qualification of writ petitioners of Diplomas in Dental Technician and considering them to be eligible in terms of Section 34(1)(ii) of the Act

included their names in Dentist Register 'B'.

18. Therefore, in view of the above, we are of the considered view that the writ petitioners have satisfied the second condition of Section 34(1)(ii)

of the Act.

19. Now we come to first condition of Section 34(1)(ii) of the Act that whether the writ petitioners had been engaged in practise as dentists for a

period not less than two years before the cut-off date under sub-section (2) of

Section 32 of the Act.

20. Once it has been cleared that the State Dental Council itself did not conduct any examination in terms of second condition of Section 34(1)(ii)

of the Act, the writ petitioners, therefore, did not have any occasion to pass the said test so as to satisfy the said condition. The fault, if any, lies on

the State Dental Council and not on the writ petitioners for which they cannot be made to suffer Since the State Dental Council itself did not

conduct the aforesaid examination in terms of second condition of Section 34(1)(ii) of the Act, they cannot be allowed to plead nor have they any

right to assert that the writ petitioners did not satisfy the first condition to become eligible to be included in Register 'B', in terms of Section 34(1)(ii)

of the Act.

21. Otherwise too, the writ petitioners have already been included in Dentist Register 'B', by the Dentists Registration Tribunal in the year 1996

when the State Dental Council was certainly not in existence and renewal to their registration certificates was being accorded from time to time till

2004 when the State Dental Council abruptly stopped to accord renewal to their registration on the plea that they did not satisfy the requirements

of Section 34(1)(ii) of the Act, ignoring the fact that even the State Dental Council itself had accorded renewal to their registration certificates in the

year 2003, which fact is also authenticated by the then learned counsel, who had been appearing on behalf State, in paragraph 'A', of preliminary

objections filed in response to the writ petition of writ petitioners.

22. Further, as regards the contention of learned counsel for appellant that the writ petitioners were reading in schools when SRO 198 dated 29-

4-1977 came to be issued, therefore, they cannot be said to have acquired two years requisite experience before the cut-off date, it is to be seen

that as per writ record, writ petitioner No.1, namely, Buchan Lal was having 52 years of age when he filed OWP No.447/2006; meaning thereby

he must have crossed the age of 24 years when SRO 198 dated 29-4-1977 came to be issued, therefore, it would be wrong to assimilate that at

the age of 25 years writ petitioner Buchan Lal had been reading in school. Same is somewhat similar position in case of rest of the writ petitioners.

Therefore, it cannot be said after about four decades that the writ petitioners might not have acquired two years requisite experience by or before

the cut-off date, i.e., 31-5-1977.

23. Further, the Dental Council of India vide its communication dated 3-9-1978 had recommended to the Director Health Services, J.&K., to

register the Dental Technicians as Dentists in Register ' B', having five years experience prior to the opening of First Dentist Register. Admittedly,

the First Dentist Register was opened in the State in 1991, and it is not disputed by the State Dental Council that the writ petitioners were not

having five years experience prior to the opening of First Dentist Register.

24. As regards the plea of appellant taken in the appeal that in terms of Section 41(4) of the Dentist Act, 1948, only the Government is the final

authority to decide on the appeals of aggrieved persons whose cases are rejected by the State Dental Council, it is to be seen that a perusal of the

impugned judgment reveals that the State Counsel had made a statement that the State Government had no objection if the names of writ

petitioners were registered in Register 'B' which was being maintained by the State Dental Council; meaning thereby it can be well construed that

the State Government acting in terms of Section 41(4) of the Act and after getting instructions from the concerned quarters including taking opinion

of the Law Department, instructed its counsel to make a statement before the Writ Court in favour of writ petitioners, which otherwise itself

satisfies the requirement of provisions of Section 41(4) of the Act.

25. Further, the names of writ petitioners were removed by the State Dental Council from Register ' B', in terms of Section 41(i) of the Act. Here,

it would be appropriate to reproduce the said part of the Section hereunder:

'41. Removal from register.- (1) Subject to the provisions of this section, the State Council may order that the name of any person shall be

removed from any register where it is satisfied, after giving that person a reasonable opportunity of being heard and after such further inquiry, if

any, as it may think fit to make,-

(i) that his name has been entered in the register by error or on account of misrepresentation or suppression of a material fact.....'

26. Admittedly, when the names of writ petitioners were entered in Register ' B', in the year 1996 the State Dental Council was not in existence. It

came in existence in the year 2001. The names of writ petitioners were registered by the Dentists Registration Tribunal, J.&K., under the directions

of Administrative Department of the State Government. Here, neither the Dentists Registration Tribunal, before it came to be abolished in the year

2001, nor the State Government had admitted before the Writ Court nor anywhere it has come on record that the registration of names of writ

petitioners under Dentists Register ' B', were either by error or on account of misrepresentation or suppression of a material fact; rather the State

Government had supported the case of writ petitioners. Even the Law Department of the State had opined that refusal of renewal by the State

Dentist Council was not in accordance with Section 41(i) of the Act. Then, how the State Dental Council, which was not in existence at the

relevant time when the names of writ petitioners came to be registered in Register 'B'", could claim that their registration was by error or on

account of misrepresentation or suppression of a material fact. Therefore, in our considered view, the removal of names of writ petitioners from

Dentist Register 'B'" was not only illegal and harsh, but mis-interpretation of Section 41(1) of the Act.

27. Further, since the names of writ petitioners had already been included in Register 'B', by the Dentist Registration Tribunal, J.&K. under the

direction of the Administrative Department of the State Government, as per Rule 125 of J.&K. State Dental Council Rules, 2004, the State Dental

Council had no power to remove the names of writ petitioners from the Dentist Register ' B'.

28. Therefore, in view of the above discussion, we are not inclined to take a view other than the one taken by the Writ Court. The appeal,

accordingly, fails and the same is dismissed along with connected miscellaneous petition(s), if any. Interim direction dated 5-8-2013, where

impugned judgment came to be stayed, is hereby vacated. Photocopies of documents produced by Mr. Pant during the course of final hearing of

the appeal be taken on the record of this file.

B. LPASW No.96/2009

29. This Letters Patent Appeal is directed against the judgment and order dated 31-3-2009 delivered by the learned single Judge in SWP No.

1610/2003, whereby, while allowing the writ petition, Order No.J.&K.SDC/837-48 dated 7-8-2002 came to be quashed with a direction to the

writ respondents to accord registration to the writ petitioners by entering their

names in Register 'B', as per the rules occupying the field.

30. A perusal of the judgment reveals that the same came to be allowed without discussing the merits of the case; rather merely relying on the

statement made by the learned counsel for writ petitioners to the effect that the controversy in SWP No. 1610/2003 was virtually similar to the one

in OWP No.447/2006, the said writ petition came to be allowed in the manner, referred to herein above.

31. In OWP No.447/2006 the names of writ petitioners therein were included in Registered 'B' in the year 1996 by the Dentists Registration

Tribunal, J.&K. under the direction of the Administrative Department of the State Government and in pursuant to said registration, they had been

undertaking their jobs in the dental clinics in which they had been engaged. Even prior to registration of their names in Register 'B', they had been

in the said job. Even when the State Dental Council did not renew their registration certificates and removed their names from Dentist Register 'B',

they were allowed to function as such by the interim direction of Writ Court vide order dated 9-6-2006. Further, when the State Dental Council

after the allowing of OWP No.447/2006 went in appeal in LPAOW No.40/2009, the judgment passed in OWP No.447/2006 was not initially

stayed; rather the writ petitioners in OWP No.447/2006 were allowed to continue their jobs in dentistry by this Court vide order dated 25-5-

2010.

32. Whereas, in the instant case, i.e., writ petitioners in SWP No.1610/2003, their names were never included in Dentist Register 'B', either by the

Dentist Registration Tribunal, J.&K. under the direction of the Administrative Department of the State Government or by the State Dental Council

nor they were ever allowed to perform their job of dentistry as in the case of writ petitioners in OWP No.447/2006. Even when the writ

petitioners in SWP No.1610/2003 filed a writ petition before the Writ Court, no interim order came to be passed in their favour to allow them to

function/perform the job of dentistry as in the case of writ petitioners in OWP No.447/2006. Further, when the Writ Court allowed SWP

No.1610/2003 and the State Dental Council has filed the instant appeal, this Court stayed the judgment passed in SWP No.1610/2003 vide

interim order dated 9-5-2011. Whereas the judgment passed in OWP

No.447/2006 was not initially stayed by this Court; rather the writ petitioners therein were allowed to continue their jobs in dentistry by this Court.

33. Thus, in view of this factual position, it is clear that the specific case of writ petitioners in OWP No.447/2006 was renewal of their registration

certificates, whereas the case of writ petitioners in SWP No.1610/200 was for registration of their names in Dentist Register 'B'". Therefore, from

none of the angles the case of writ petitioners in SWP No.1610/2003 can be said to be virtually similar to that of writ petitioners in OWP

No.447/2006.

34. Therefore, in the given circumstances, since SWP No.1610/2003 came to be allowed by the Writ Court merely on the statement made by the

learned counsel for writ petitioners therein and without discussing the merits of the case, as such we deem it proper to remand the case to the Writ

Court with a request of decide SWP No. 1610/2003 on merits.

35. Accordingly, the present appeal, bearing LPASW No.96/2009 is allowed and the judgment/order of Writ Court dated 31-3-2009 passed in

SWP No.1610/2003 is set aside Miscellaneous petition(s), if any, accordingly, stands disposed of. The case is remanded to the Writ Court with a

request to decide SWP No.1610/2003 on merits, of course, after hearing learned counsel appearing on behalf of both the parties.