
(2015) 07 SC CK 0097

In the Supreme Court Of India

Case No : Civil Appeal Nos. 4924-4925 of 2015 (Arising from SLP (C) Nos. 16665-66/14)

State of Karnataka and Others

APPELLANT

Vs

M. Munikrishna

RESPONDENT

Date of Decision : 01-07-2015

Acts Referred:

Karnataka Health and Family Welfare Department Services (Recruitment to Certain Posts) (Special) Rules, 2009 — Rule 1

Citation : AIR 2015 SC 3184 : (2015) 3 AKR 815 : (2015) LabIC 3433 : (2015) 8 SCALE 31 : (2015) 4 SCT 202

Hon'ble Judges : J.S. Khehar, J;A.K. Goel, J

Bench : Division Bench

Advocate : V.N. Raghupathy, for the Appellant; Ankur. S. Kulkarni, Advocates for the Respondent

Final Decision : Disposed Of

Judgement

J.S. Khehar, J—Leave granted.

2. The post of Graduate Pharmacist was required to be filled up in accordance with the mandate contained in the Karnataka Health and Family Welfare Department Services (Recruitment) Rules, 1965 (hereinafter referred to as the "1965 Rules"). The relevant rule dealing with the question of promotion to the post of Graduate Pharmacist under the 1965 Rules is being extracted hereunder:

By promotion from the cadre of Senior Pharmacist. If no suitable Senior Pharmacists are available for promotion, by deputation of an officer of Drugs Control Department from the Cadre of Drugs Inspectors and if no such person is available for promotion or deputation, by direct recruitment.

For promotion, deputation and direct recruitment:

1. Must be holder of a Degree in Pharmacy or a Post Graduation Degree in Chemistry with Pharmaceuticals as Special subject, of a university established by

law in India of equivalent qualification.

2. Must have put in not less than two years of experience in administration or manufacturing establishment licenced under the Drugs and Cosmetics Act, 1940 (Central Act XXVII of 1940) or in teaching at a college of Pharmacy recognized by the Government. Preference will be given to persons possessing a Master's Degree in Pharmacy of a University established by law in India.

3. On 26.2.2009, the department of Health and Family Welfare notified the Karnataka Health and Family Welfare Department Services (Recruitment to Certain Posts) (Special) Rules, 2009 (hereinafter referred to as the "Special Rules"). Rule 1 of the Special Rules is being extracted hereunder:

1. Title, commencement and application: (1) These rules may be called the Karnataka Health and Family Welfare Department Services (Recruitment to certain Posts) (Special) Rules, 2009.

2. They shall come into force from the date of their publication in the Official Gazette.

3. Notwithstanding anything contained in the Karnataka Civil Services (General Recruitment) Rules, 1977 or in the Karnataka Health and Family Welfare Department Services (Recruitment) Rules, 1965 or any other rules of recruitment relating to the categories of posts specified in the Schedule made or deemed to have been made under the Karnataka State Civil Act, 1978 (Karnataka Act 14 of 1990) the provisions of these rules, shall apply to recruitment to fill 5021 number of vacancies specified in column (3) of the Schedule in respect of cadres specified in column (3) of the Schedule in respect of cadres specified in column (2) thereof by way of Direct Recruitment in the Karnataka Directorate of Health & Family Welfare Services as specified in the said Schedule;

(Emphasis is ours)

4. A perusal of Rule 1 leaves no room for any doubt, that the Special Rules replaced the 1965 Rules with reference to the vacancies specified in column 3 of the schedule appended to the Special Rules. The schedule indicates the posts of Graduate Pharmacists at serial No. 2, and the number of vacancies to be filled up by direct recruitment in terms of Rule 1, as 19. The qualifications prescribed for filling up the posts of Graduate Pharmacists under the Special Rules, are being extracted hereunder:

1. Must be a holder of a Bachelor Degree in Pharmacy.

OR

A P.G. Degree in Chemistry with Pharmaceuticals as a special subject or equivalent qualification.

2. Must have put in a service of not less than two years in administration or manufacturing establishment licensed under the Drug and Cosmetic Act, 1940 or

in teaching at a college or Pharmacy recognized by the Government of Karnataka, Preference shall be given to persons possessing Master's Degree in Pharmacy; and

3. Must possess current or life registration with Karnataka Pharmacy Council.

In view of the factual position narrated hereinabove, it is apparent, that 19 posts of Graduate Pharmacists have to be filled up by direct recruitment under the Special Rules, out of the candidates who satisfy the qualifications depicted above.

5. It is the contention of the learned Counsel for the Respondent, that the Respondent was qualified and eligible for promotion under the 1965 Rules, and irrespective of the promulgation of the Special Rules on 26.02.2009, he ought to be considered for promotion against the post of Pharmacist on account of his eligibility. The High Court had accepted the afore-stated prayer made by the Respondent, through the impugned order dated 13.12.2013, and in the process had set aside the order passed by the Karnataka Administrative Tribunal, Bangalore dated 26.02.2010.

6. Having given our thoughtful consideration to the controversy in hand, we are satisfied, that the 1965 Rules came to be superseded on 26.02.2009 by the Special Rules. Thereafter, the Special Rules would alone regulate the matter of appointment to 19 posts of Graduate Pharmacists, depicted in the schedule appended to the Special Rules. It was therefore imperative for the authorities to fill up the 19 vacancies, for the post of Graduate Pharmacist in terms of the Special Rules, and not in terms of the 1965 Rules (relied upon by the learned Counsel for the Respondent). We are satisfied, that the High Court erred in concluding, that the 1965 Rules were applicable even after the promulgation of the Special Rules on 26.02.2009.

For the reasons recorded hereinabove, the impugned order passed by the High Court is set aside. The State shall be at liberty to fill up the vacancies depicted in the schedule appended to the Special Rules, by way of direct recruitment, in terms of the mandate of the Special Rules.

The instant appeals are accordingly allowed in the aforesaid terms.