

(2008) 03 AHC CK 0105
In the Allahabad High Court
Case No : Writ Petition No.9274 (S/S) of 1993

State of U.P.and Others

APPELLANT

Vs

Ramesh Bhai and Another

RESPONDENT

Date of Decision : 05-03-2008

Acts Referred:

Citation : (2008) 03 AHC CK 0105

Hon'ble Judges : U.K.Dhaon, J and Devi Prasad Singh, J

Final Decision : Dismissed

Judgement

1. Heard Sri Sharad Dwivedi, learned Standing Counsel for the petitioner and Sri Mohd. Ali, learned counsel for the opposite party No.1.

2. This petition under Article 226 of the Constitution of India has been filed against the impugned judgment and order dated 25.5.1992, passed by the U.P. Public Services TribunalII, Lucknow.

3. The brief facts of the present case are as under:

4. The opposite party No.1 was appointed on the post of Compounder by the President of the Zila Parishad, Budaun by an order dated 15.4.1975. Later on, he was made in charge of Mudia Dispensary maintained by the Zila Parishad with effect from 15.4.1975. The private respondents possessed a degree of BAMS which is a Bachelor degree in Ayurvedi Medicine and on the basis of said degree he continued to discharge duty as Medical Officer in Mudia Dispensary. However, later on, he was asked to work on the post of Pharmacist. A certificate was issued by the Executive Officer of the Zila Parishad to the effect that the opposite party No.1 was permitted to discharge duty as a Medical Officer since 16.4.1975. The private respondent was said to have been assured by the petitioners to absorb his services on the post of Medical Officer. He also placed his claim for regularization before the concerned authorities but no action has been taken by them. Consequently, the respondent No.1 in pursuance of the Government Order dated 22.7.1981 has submitted an option to continue on the post of Pharmacist.

Learned counsel for the Opposite Party No.1 submitted that while discharging his duties as in charge of Mudia Dispensary, he has been also allowed to work on the post of Pharmacist (Compounder) on account of absence of required staff. In pursuance of option of Opposite Party No.1, the Director, Medical & Health Services, U.P. vide letter dated 5.10.1981 permitted the Opposite Party No.1 to work against the post of Pharmacist but the Chief Medical Officer, Budaun did not adhere to the direction issued by the Director.

5. Feeling aggrieved with the inaction on the part of the petitioners to absorb him on the post of Pharmacist. Opposite Party No.1 preferred a claim petition before the U.P. Public Services TribunalII, Lucknow. During the pendency of the claim petition, the private respondent got his petition amended after provincialization of the Mudia Dispensary but the petitioners did not prefer to file any written statement against the amended petition. Hence, on the basis of unrebutted pleadings on record, the tribunal has recorded the findings that the private respondent would be deemed to be absorbed on the post of Pharmacist w.e.f. 22.7.1981 and he was entitled for all the consequential benefits.

6. By assailing the impugned judgment and order, Sri Sharad Dwivedi, learned Standing Counsel submits that the Opposite Party No.1 does not possess the requisite qualification hence, he is not entitled to be continued on the post of Pharmacist.

7. On the other hand it is submitted by learned counsel for the opposite party No.1 that opposite party No.1 had given an option for absorption on the post of Pharmacist and in pursuance whereof, the Director, Medical and Health Services, U.P. vide his letter dated 5.10.1981 directed the Chief Medical Officer, Budaun to absorb him on the post of Pharmacist. Besides, the Additional Chief Administrative Officer too vide his letter dated 6.10.1981 had asked the Chief Medical Officer, Budaun to absorb the opposite party No.1 on the post of Pharmacist but the directions issued by these authorities were not taken note of by the Chief Medical Officer. While amending the claim petition, the opposite party No.1 specifically mentioned that he had continued to discharge the duty on the post of Medical Officer and has also got experience on the post of Pharmacist.

8. During the pendency of his absorption, opposite party No.1 was permitted to work on the post of Pharmacist. The respondent No.1 has served the department for about 30 years on the post of Pharmacist and possessed the bachelor's degree of BAMS which is the minimum qualification for the post of Medical Officer in Ayurvedic. It is not disputed that Pharmacy is one of the subjects of teaching in BAMS. The Private respondent had served the department for about 30 years which indicates that he had spent a long period of his service career in the Medical Department. Although the petitioners were given sufficient time to file a supplementary written statement to the amended paragraphs of the claim petition but they did not submit any such reply and treating the contents of the amended claim petition as unrebutted, the Tribunal has rightly held that the opposite party No.1 is entitled for being treated as Pharmacist w.e.f. 22.7.1981

i.e. since the provincialization of Mudia dispensary and he shall be entitled for the consequential service benefits.

9. In view of the above, the impugned judgment and order dated 25.5.1992 does not suffer from any illegality.

10. The writ petition is devoid of merit and is accordingly dismissed.

(Petition dismissed)