

(2008) 05 J&K CK 0032
In the Jammu And Kashmir High Court
Case No : LPASW No. 16 Of 2003

Union of India & Ors

APPELLANT

Vs

Ali Hassan

RESPONDENT

Date of Decision : 03-05-2008

Acts Referred:

Border Security Force (Group C Combatised Para Medical Staff) Recruitment Rules, 1983 — Rule 4

Citation : (2009) 1 JKJ 547 : (2009) 1 KashLJ 104

Hon'ble Judges : J.P.Singh, J and Nirmal Singh, J

Bench : Division Bench

Advocate : Surinder Kour, Ajay Sharma, Advocates appearing for the Parties

Judgement

J.P. Singh, J.—Union of India and its functionaries are aggrieved by July 23rd, 2002 judgment of learned Single Judge of this Court in terms

whereof respondent Ali Hassan had been held entitled to his placement in the higher grade prescribed for the post of Pharmacist (Qualified)

(Assistant SubInspector) in terms of Border Security Force (Group C Combatised Para Medical Staff) Recruitment Rules, 1983, and a direction

has been issued to Union of India and its functionaries to consider his placement in the grade.

2. Facts necessary for the disposal of this appeal may be stated thus:

Respondent had joined Border Security Force on March 1, 1975 as a Constable. He was later appointed as Compounder (Unqualified) in the pay

scale of Rs. 330837010400EB10480 with effect from April 26, 1983 subject to his registration under the Pharmacy Act.

3. Respondents request for his appointment as qualified Pharmacist was rejected by the appellants in the year 1988 because he had not acquired

requisite qualification of Degree or Diploma in Pharmacy followed by internship of four months. He had approached this Court by filing SWP no.

908/1998 seeking a direction to the appellants to appoint him as qualified compounder by treating him as Pharmacist (Qualified). This writ petition

was disposed of on February 4, 1999 with a direction to the appellants to look into the factual position and take appropriate remedial measures

within a period of three months.

4. Directorate General Border Security Force considered respondent's case in the light of the direction issued by this Court in SWP no. 908/1998

and accordingly passed an order on December 23, 1999, rejecting his claim for grant of pay scale of qualified Pharmacist with effect from April

26, 1983. Aggrieved by rejection of his claim by Directorate General Border Security Force, respondent filed SWP no. 536/2000 seeking

quashing of Directorate General Border Security Forces Order No. 70/12/99Med/BSF/61666170 dated December 23rd 1999 and for issuance

of directions to appellants to treat him as qualified Pharmacist retrospectively with effect from April 26, 1983.

5. This writ petition was contested by the appellants inter alia on the ground that respondent had not acquired requisite qualification of Degree or

Diploma in Pharmacy by an institution of Central or State Government or an institution recognized by the Centre or State Government and in that

view of the matter he was not entitled to seek consideration for placing him in the pay scale of qualified Pharmacist retrospectively with effect from

April 26, 1983.

6. Finding recorded by the learned Single Judge, holding respondent entitled to the higher grade of Pharmacist and direction issued to the

appellants to consider him for his placement in the higher grade of Pharmacist (Qualified) has been questioned by appellants in this appeal.

7. Assailing the judgment impugned in the appeal, learned counsel for the appellants Mr. Ajay Sharma submits that as the respondent did not

possess requisite qualification of Degree or Diploma in Pharmacy in terms of Border Security Force (Group C Combatised Para Medical Staff)

Recruitment Rules, 1983, so the finding recorded by the learned Single Judge and direction issued on the basis thereof was unwarranted.

8. Mrs. Surinder Kour, appearing in support of the judgment impugned in the

appeal, on the other hand, submits that registration of respondent as Pharmacist would entitle him for his placement in the higher pay scale of Pharmacist (Qualified). She additionally submits that persons situated similarly had been granted the grade of Pharmacist (Qualified) by the Border Security Force although these persons had not acquired requisite qualification of Degree or Diploma in Pharmacy and the respondent writ petitioner was entitled to similar relief because the appellants did not have any justification to treat the writ petitioner differently. While justifying the impugned judgment of learned Single Judge, learned counsel sought additional support from Government Order No. 803HME of 1993 dated 11.10.1993 and the recommendations made by Drugs and Food Organization, Government of Jammu and Kashmir.

9. The controversy raised in this original side appeal revolves around the entitlement or otherwise of respondent to his retrospective placement in the higher grade of Pharmacist (Qualified) (Assistant Sub Inspector) with effect from April 26, 1983 because during the pendency of the litigation the respondent stands placed in the higher scale of Pharmacist (Qualified) after his ten years continuous service as Pharmacist (Unqualified), in terms of the provisions appearing in the Schedule appended to the Border Security Force (Group C Combatized Para Medical Staff) Recruitment Rules, 1983.

10. We have considered the submissions made by learned counsel for the parties and perused the Border Security Force (Group C Combatized Para Medical Staff) Recruitment Rules, 1983, Government Order No. 803HME of 1993 dated 11.10.1993 and the recommendations made by Drugs and Food Organization, Government of Jammu and Kashmir.

11. Recruitment to the post of Pharmacist (Qualified) (Assistant SubInspector) in the Border Security Force is governed by the Border Security Force (Group C Combatized Para Medical Staff) Recruitment Rules, 1983. Rule 4 of these rules says that the method of recruitment, age limit, qualifications and other matters relating to the post mentioned in the rules shall be as specified in columns 6 to 14 of the Schedule appended to the Rules. In terms of the Schedule, the qualification prescribed for the post of Pharmacist (Qualified) is as follows:

i) Matriculation or equivalent,

ii) Degree or Diploma in Pharmacy granted by an institution of the Central or State Government or an institution recognized by the Central or State

Government,

iii) Possessing qualification under sections 31 & 32 of the Indian Pharmacy Act, 1948 and registered under Section 33 of the said Act.

12. In terms of the Rules aforementioned, before a person may stake claim, for his appointment against the post mentioned in the Schedule he is

required to possess the qualifications prescribed for such post in the Schedule. Person falling short of the qualifications prescribed in the Schedule

for the post mentioned therein cannot therefore claim consideration for appointment against the post.

13. During the hearing of this appeal it was not disputed before us by learned counsel for the respondent Mrs. Surinder Kour that the respondent

had not acquired Degree or Diploma in Pharmacy from Central or State Government or an institution recognized by the Central or State

Government. It is thus clear that respondent did not possess one of the three qualifications prescribed for the post of Pharmacist (Qualified)

(Assistant SubInspector). Possessing of Degree or Diploma in Pharmacy, in our view, is a necessary qualification to seek consideration for

appointment as Pharmacist (Qualified). Respondent cannot thus be said to be duly qualified to seek consideration for his placement in the higher

grade of Pharmacist (Qualified) retrospectively with effect from April 26, 1983.

14. In view of the clear position reflected in the rules that possessing of Degree or Diploma in Pharmacy from Central or State Government or an

institution recognized by the Central or State Government besides other qualifications prescribed in the rules, We do not find any justification in

learned Single Judges finding, that the respondent was entitled to a higher grade in terms of the rules. This finding of, and the direction issued by,

the learned Single Judge to consider respondent's case for his placement in the higher grade of Pharmacist (Qualified) cannot thus be sustained.

15. We do not find any justification in respondent's counsel's yet another submission that appellants had granted higher scale of Pharmacist

(Qualified) to persons who were similarly situated like the respondent, because all those persons who had been placed in the higher grade of

Pharmacist (Qualified) had been granted the scale much prior to coming into

force of 1983 rules. Respondent has not placed any material on records to demonstrate that any person had been placed in the higher scale of Pharmacist (Qualified) after the coming into force of 1983 rules although he had not possessed the requisite qualification of Degree or Diploma in Pharmacy.

16. We further do not find any merit in respondent's counsel's submission that merely because respondent had got himself registered as a

Pharmacist would entitle him to seek consideration for his placement in the higher scale of Pharmacist (Qualified) because registration of a person

under the Pharmacy Act had nothing to do with his recruitment as a Pharmacist in terms of the recruitment rules.

17. Redesignation of the post of Medical Assistant by the J&K State Government as Pharmacist too would not advance the cause of the

respondent, for recruitment/appointment to the post governed by service rules has to be made strictly in accordance with the rules on the subject

and no foreign support may be warranted in this respect.

18. Redesignation of post of Medical Assistant as Pharmacist by the J&K State Government may thus be irrelevant to consider the eligibility of

respondent to consider his placement in the higher scale of Pharmacist (Qualified) in terms of the Border Security Force (Group C Combatised

Para Medical Staff) Recruitment Rules, 1983.

19. Order of Directorate General of Border Security Force, rejecting respondent's claim for retrospective placement in the higher scale of

Pharmacist (Qualified) has been examined by us. We do not find any illegality in the order which may warrant interference in exercise of extra

ordinary writ jurisdiction.

20. We are, therefore, of the view that the learned Single Judge had erred in holding the respondent entitled to his placement in the higher scale of

Pharmacist (Qualified) and issuing directions to the appellants to consider him for his placement in the higher scale of Pharmacist (Qualified)

retrospectively with effect from April 26, 1983 in terms of the Border Security Force (Group C Combatised Para Medical Staff) Recruitment

Rules, 1983, as he was ineligible to seek consideration for his placement in the higher scale because of his not possessing requisite necessary

qualification of Degree or Diploma in Pharmacy. Writ petition tiled by the

respondent, therefore, lacks substance and is liable to be dismissed. In view of the above discussion, we would accordingly allow this appeal, set aside the judgment of learned Single Judge passed on July 23rd, 2002 in SWP no. 536/2000 and resultantly dismiss respondent's writ petition without any order as to costs.