
(1996) 01 AHC CK 0034
In the Allahabad High Court
Case No : C.M.W. No. 35670 of 1991

U.P. State Cement Corporation Ltd.

APPELLANT

Vs

Industrial Tribunal I and Another

RESPONDENT

Date of Decision : 12-01-1996

Acts Referred:

Citation : (1996) 73 FLR 1184 : (1996) 2 LLJ 953

Hon'ble Judges : D.K. Seth, J

Bench : Single Bench

Advocate : Arun Kumar Gupta and Dalip Gupta, for the Appellant;

Final Decision : Allowed

Judgement

D.K. Seth, J.—The post of Pharmacist in the petitioner's organisation fell vacant on March 1, 1987. The respondent No. 2 who was Dresser-cum-Ward Boy was allowed to perform the work of Pharmacist on ad hoc basis, for which he was being paid difference of pay, though he was not given the scale until regular selection was made in October 1989, when one Kera Ram was selected and given appointment. Since the respondent No. 2 had worked for two years and seven months in the said post temporarily and by reason of his performance of duty he had acquired experience, recommendation was made for giving him the scale. Before the selection and appointment the petitioner had moved the Industrial Tribunal, on which case No. 121 of 1988 was initiated, wherein the Tribunal had passed the award on January 1, 1991. In the said Award the respondents were directed to regularise the respondent No. 2 on the post of Pharmacist, following the decision in the case of Bhagwati Prasad Vs. Delhi State Mineral Development Corporation, . The Tribunal had found that the respondent No. 2 had no qualification as required but by virtue of his experience and by reason of his working, qualification has become immaterial in view of Bhagwati Prasad's (supra) case. Therefore, the Tribunal had allowed the prayer of respondent No. 2. It is against this Award the petitioner has moved this Court by means of present writ petition.

2. Though it is a case of respondent No. 2 that he had worked till October 1989 yet he had not made Kera Ram party before the Industrial Tribunal. The respondent No. 2, admittedly, was reverted to his original post on the appointment of Kera Ram, which fact was also noted in the Award passed by the Industrial Tribunal. Therefore the dispute could not have been proceeded without the presence of said Kera Ram inasmuch as any Award passed would affect his right. That apart as prescribed, in the Government Order, extract whereof is Annexure-3 to the Writ petition, a Pharmacist must be a registered Pharmacist or must hold Compounder's certificate approved by the Government. Though however, on the post of Pharmacist a Compounder may be considered to be an alternate, but the respondent No. 2 herein admittedly is not a Compounder. In the said Award nowhere it has been held that the respondent No. 2 is a registered Pharmacist or holds a compounded certificate approved by the Government.

3. Ad-hoc arrangement till the qualified person is selected does not confer any right on a person holding the substantive post of dresser-cum-ward boy, who had admittedly a qualification of IXth pass, does not confer any right to hold the post. The facts in the case of Bhagwati Prasad (supra) are altogether different where the petitioner had been appointed in the post and was allowed to continue for three long years, whereas in the present case subordinate staff was allowed to manage the affairs till regularly selected candidate was appointed. Therefore, this is not a case of regularisation. On the other hand at best it can be said to be a case for promotion. In order to have a promotion in a post higher than the post held by a person, such person must hold requisite qualification and eligibility for such promotion. Officiation cannot give rise to any claim to promotion despite absence of qualification.

4. The learned Tribunal appears to have proceeded wholly on misconceived notion. The approach of the Tribunal was altogether perverse. Such regularisation cannot be treated to be doing certain benefits to the persons who are to be dealt with by a Pharmacist which required technical knowledge which can be had only after a particular training. The working or officiation does not mean that the person has acquired expertise. If such a situation is accepted there would be room for appointment of undesirable under-qualified candidate through back door method. In any view of the matter when prescribed qualification has been provided and a person duly qualified has been selected the petitioner cannot claim benefit of regularisation on such posts.

5. A promotion cannot be claimed as of right. Consideration for promotion can be made only when a person is qualified for the post and is eligible for such promotion under the rules governing the condition of service. One of the considerations which weighed with the court in the case of Bhagwati Prasad (supra) is the consequence of non-regularisation which would result in the vagrancy or deprivation of livelihood of the incumbent, an element totally absent in the present case, inasmuch as the respondent No. 2 would neither become

vagrant nor be deprived of his livelihood. It is in effect an additional benefit which cannot be doled out to him despite absence of qualification, that too a technical one. Therefore the ratio decided in the case of Bhagwati Prasad (supra) cannot be attracted.

In the facts and circumstances of the case in my view the Award cannot be sustained and, as such, is hereby quashed. The writ petition, therefore, stands allowed.

Before parting with the case it is however, observed that difference of pay during the period during which the respondent No. 2 had worked, if not already paid shall be paid as early as possible, preferably within three weeks.

Let a copy of this order be given to the learned counsel for the petitioner on payment of usual charges within a week.