
(2012) 01 SHI CK 0116
In the High Court Of Himachal Pradesh
Case No : CWP No. 3976 of 2010

Yadopati

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 11-01-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 309

Citation : (2012) 01 SHI CK 0116

Hon'ble Judges : Deepak Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Deepak Gupta, J.—The petitioner who is working as Veterinary Pharmacist on contract basis under the State of Himachal Pradesh prays that the respondents-State be directed to appoint him on regular basis and not on contract basis against the vacant permanent regularly sanctioned substantive posts of Veterinary Pharmacists existing in the department.

2. The case of the petitioner is that the State Government must make permanent appointments under Article 309 of the Constitution of India and the concept of making appointments on contractual basis is not permitted under the Constitution of India. According to the petitioner the practice of making appointments on contractual basis is highly illegal and against the mandate of the Constitution of India and against the judgment of the Apex Court in Secretary, State of Karnataka and Others Vs. Umadevi and Others,

3. The undisputed facts are that a written entrance test was conducted by the Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishwavidyalaya, Palampur (CSKHPKV) for selecting candidates to undergo two years Veterinary Pharmacist Training Course on 13.07.2003. The petitioner successfully completed the said course. Thereafter the posts had to be filled up and the Council of Ministers took a decision on 6.9.2006 to fill up 786 vacant posts of Veterinary Pharmacists on

contractual basis. The petitioner was appointed as Veterinary Pharmacist on contractual basis. The petitioner alleged that 11 persons who had also appeared in the training course with him were regularly appointed as Veterinary Pharmacists on promotion on 1.12.2006. According to the petitioner there are 2277 sanctioned posts of Veterinary Pharmacists out of these 1321 have been filled in by regular appointment and 773 on contractual basis. The petitioner alleges that the decision of the cabinet to appoint Veterinary Pharmacists on contractual basis is against the law laid down by the Supreme Court of India. He has also prayed that the State cannot discriminate between different types of employees and that regularly appointed Veterinary Pharmacists are given the pay scale of Rs. 4400-7000 and the persons like the petitioner are being paid fixed emoluments of Rs. 8710/- only.

4. The stand of the State is that the petitioner was appointed on contractual basis. It is alleged that the petition having been filed four years after appointment is barred on the principle of delay and laches. The stand of the State is also that now a policy decision has been taken that contractual employees will be considered for regularization against available vacancies on completion of eight years of service and that as per the instructions issued from time to time even a contractual employee is entitled to a fixed amount of salary equal to the minimum of pay band + grade pay applicable to the corresponding cadre of employees working on regular basis in regular pay band.

5. In the present case, at the very outset it should be noted that the petitioner had no right to be considered for employment. In fact, this Court in CWP No. 611 of 2004 titled as *Rajiv Sharma vs. State of H.P. and others* held that the interview/test for selecting candidates to the Veterinary Pharmacist Course was not a proper mean of assessing the suitability of the candidate. This Court held as follows:-

The main concern of the respondents should be the interest of the student community as a whole, to afford them equal opportunity for getting admission to the course of Veterinary Pharmacist. The written test appears to be the best mode. The method of interview as in the present case will result in discrimination since 20% marks have been kept for interview which lends sufficient credence to the submission of the petitioner that these marks are to be utilized to grant admission to the favourites on the basis of extraneous consideration. The Apex Court even in cases of public employment where the method of interview may have some importance, in the case of *Ashok Kumar Yadav (supra)* clearly stated that even with relation to recruitment to the Civil Services allocation of more than 12.2% marks is not justified. In the present case we are concerned with the admission to a vocational course which cannot even be equated with a graduate course. Young impressionable teenagers who have just finished their studies at the school level are taking this test. It would also be pertinent to notice that keeping in view the nature of the course a large number of candidates are from rural areas and some from semi-urban areas and very few from urban areas. An

interview will put a candidate from the rural background at a disadvantage. As far as the academic performance is concerned it can be judged only on the basis of the marks obtained by them in the entrance examination.

The candidates are being selected not for any public employment but only for two years, post school, vocational course. The manner in which the oral interview test has been conducted in the present case leaves vast scope for discrimination, manipulation and nepotism which may remain undetected under the cover of an interview. There is no reason why the respondents should insist on the interview. There are no reasons to test the personal traits of a candidate for admission to a course like the Veterinary Pharmacist course. There is inherent weakness and infirmity in the system of interviews itself which is subjective rather than objective. The major role is played by the subjective assessment of the Selection Committee. The students who are seeking admission are young and predominantly belong to rural areas and personality of such students still remained to be developed and as such the only consideration for their admission to the course should be their academic performance.

Keeping into consideration the entire law cited above and the present existing situation we hold that the interview test is totally uncalled for and should not be conducted for admission to courses of the nature like Veterinary Pharmacist, JBT etc. where young boys and girls whose personality has not fully developed are to be judged. In the facts of the present case the interview test is illegal, discriminatory and suffers from the vice of arbitrariness. Hence, it is violative of Article 14 of the Constitution of India.

In the present case the admission to the Veterinary Pharmacist course is over and the course itself started in August, 2004. The petitioner himself has contributed to the delay since he approached the Administrative Tribunal which had no jurisdiction and has come to the Court much later. The persons who have already been selected would be affected by the result of the case. They have not been made parties to the petition. Therefore, we feel that it would be inequitable to interfere in the selections which have taken place especially since the course started almost about 8 months back. The petitioner is, therefore, not granted any relief. However for future we wish to clearly state that for courses such as the Veterinary Pharmacist course and similar courses of this level the selection should be based only on the basis of tangible data such as written test or marks obtained in qualifying examination but not on the basis of any interview.

6. It was only on account of the fact that by the time the matter came up for hearing the course had already started and the Court did not interfere when the selection had taken place. It would also be pertinent to mention that the stand of the State Government in the aforesaid case was that admission to the Veterinary Pharmacist Course was not by itself a guarantee that the person so selected for the academic course would be granted employment. However, after the course was completed, the fact is, that all the persons who had successfully completed the course were granted employment.

7. The Recruitment and Promotion Rules for the post prescribe that the recruitment to the Veterinary Pharmacist posts would be 75% by direct recruitment and 25% by promotion failing which by direct recruitment. In case of appointment by direct recruitment the selection to the post would be made on the basis of viva-voce test conducted by the Himachal Pradesh Public Service Commission or other recruiting authority or if expedient by conducting a written test or practical test the syllabus and standard of which is to be determined by the H.P. Public Service Commission or other recruiting authority.

8. It is apparent that the Secretary (Animal Husbandry) to the Government of Himachal Pradesh put up a proposal on 28.08.2006 that 786 posts available in the department be filled up from amongst the candidates who had been awarded diploma by the CSKHPKV Palampur. The Finance Department concurred with the proposal but with the caveat that the appointment should be on contract basis and should be staggered in two stages over two years. The Secretary (Animal Husbandry), however, proposed that all 786 posts be filled up and that too on regular basis. Therefore, the following point was put up for consideration before the Council of Ministers:-

Seeking approval for absorbing 786 posts of Veterinary Pharmacists on regular basis in one go in public interest instead of filling 786 vacant posts in two stages over two years on contract basis as advised by the Finance Department.

The Council of Ministers took the following decision:-

approved on contract basis.

9. It is now contended on behalf of the petitioner relying upon Uma Devi's case that he should have been appointed on regular basis and not on contract basis. At the time when the petitioner was appointed there was no provision in the rules that appointments could be made on contractual basis but however later such amendment has been incorporated in the rules w.e.f. 26.4.2010 and now the rules specifically provide for appointment on contractual basis.

10. In my opinion, reliance placed by Shri Keshav Thakur, Advocate, on the judgment of the Apex Court in Secretary, State of Karnataka and Others Vs. Umadevi and Others, is totally misplaced. The Apex Court no doubt in the said case has clearly laid down that public appointments should normally be on regular basis and should be made on the basis of procedure established in that behalf. The Apex Court expressed its disapproval for appointments made on ad hoc basis without following the procedure prescribed by law, based on patronage or other consideration. The Apex Court also expressed its strong disapproval on employment through back door without following the procedure, making appointments on daily wages and such employees then seeking regular appointment. Here, it would be pertinent to mention that the basic issue before the Apex Court was whether persons appointed in violation of the regular procedure had a right to seek permanent employment or absorption in the Government service. The issue before this Court is different. Even in Uma Devi's

case the Apex Court held that once the State had made Rules and Regulations for making appointment then appointment must be made according to these rules. However, in spite of such rules when the sovereign State or its instrumentalities had to employ additional persons in posts which are temporary and take them in without following the required procedure then there is nothing in the Constitution which prohibits the State in engaging such person on a temporary basis to meet the needs of the situation. However, this cannot be resorted to defeat the very scheme of public employment. The Apex Court held as follows:-

43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a Court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules.

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44. The concept of "equal pay for equal work" is different from the concept of conferring permanency on those who have been appointed on ad hoc basis, temporary basis, or based on no process of selection as envisaged by the Rules. This Court has in various decisions applied the principle of equal pay for equal work and has laid down the parameters for the application of that principle. The decisions are rested on the concept of equality enshrined in our Constitution in the light of the directive principles in that behalf. But the acceptance of that principle cannot lead to a position where the court could direct that appointments made without following the due procedure established by law, be deemed permanent or issue directions to treat them as permanent. Doing so, would be negation of the principle of equality of opportunity.

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45. While directing that appointments, temporary or casual, be regularized or

made permanent, courts are swayed by the fact that the concerned person has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with eyes open. It may be true that he is not in a position to bargain -- not at arms length -- since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets.

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47. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in concerned cases, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees.

11. In fact this judgment in my opinion does not help the petitioner. As held in Rajiv Sharma's case (supra) the test conducted for recruitment to the Veterinary Pharmacist course was not for purpose of employment but for academic purpose. That written test and interview had no co-relation or connection with employment. After the petitioner successfully completed the course the Government took a decision to absorb them in Government service on contractual basis. The Council of Ministers took a conscious decision in this regard. The petitioner with open eyes accepted this contractual appointment. Now, even the rules have been amended. Even if the rules were not amended at the relevant time as held in Uma Devi's case there is nothing which prevents the sovereign State from making appointments on contractual basis and as held in the aforesaid judgment the employee cannot turn around and now argue that he should have been employed on regular basis.

12. If the rules were to be followed a test or interview had to be conducted by the H.P. Public Service Commission. The argument of Shri Keshav Thakur, Advocate, that then also so many seats were vacant and only the petitioner was eligible does not hold water. If the rules for selection by direct recruitment are to be followed then either viva-voce test or if considered necessary written test or practical test should have been conducted by the Public Service Commission. These posts would have been advertised and people from all over the country could have applied for these posts. These posts could not have been restricted only to the people who had qualified from the CSKHPKV. The petitioner got the job on contractual basis without having to appear in a written test or appearing in an interview. He did not even apply for the post or face an interview and at that time he accepted his appointment without even a murmur or protest. Such a

person cannot now turn around and argue that his appointment should be treated on regular basis. It is for the employer to decide whether the post which are lying vacant are to be filled in on regular basis or on contractual basis.

13. In this case the cabinet took a conscious decision after considering the opinion of the Animal husbandry department and the Finance Department that the appointment should be on contractual basis. Appointments on contractual basis are being resorted to in various departments throughout the State. These cannot be termed to be illegal or against the law.

14. In view of the above discussion, I find no merit in the petition, which is accordingly dismissed. No costs.