
(2001) 01 P&H CK 0214

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 12620 of 1995

Kashi Nath Sharma

APPELLANT

Vs

Secretary to
Government, Punjab
Health Deptt.

RESPONDENT

Date of Decision: Jan. 4, 2001

Acts Referred:

- Constitution of India, 1950 - Article 14, 16, 226

Citation: (2001) 01 P&H CK 0214

Hon'ble Judges: R.C. Kathuria, J; N.K. Sodhi, J

Bench: Division Bench

Advocate: Mr. V.K. Jindal, for the Appellant; Mr. Gurminder Singh, DAG, for the Respondent

Final Decision: Dismissed

Judgement

N.K. Sodhi, J.

Petitioners are working as Up-Vaids in the State of Punjab and are members of the Punjab Ayurvedic Department (Class-III Technical) Service. The only grievance made by them in this petition filed under Article 226 of the Constitution is that the Department is not treating them as eligible for promotion to the post of Vaidya against 50% quota as provided in Rule 8 of the Punjab Ayurvedic Department Class-III (Technical Service) Rules, 1963 (for short "the Rules"). The prayer made in the petition is for a direction to the respondents to consider the petitioners for promotion to the post of Vaidya against the promotion quota with effect from the date their juniors had been promoted.

2. It is not necessary for us to examine the contentions raised by the petitioners in detail as we are of the view that the writ petition deserves to be dismissed on the short ground that it is barred by res judicata. It is now common case of the parties that all the petitioners along with others had filed Civil Writ Petition 4877 of 1981 in this Court in which a similar prayer had been made and a direction was sought to the respondents to

promote the petitioners to the post of Vaidya against the promotion quota. The Department even then treated them as ineligible in view of the fact that the diploma and degree obtained by them were not from a recognised University/Institute as is the requirement of Appendix "A" to the Rules. The matter was examined on merits and similar contentions advanced in behalf of the petitioners were considered by the Division Bench and it was held that they were not eligible for promotion. The learned Judges while dismissing the writ petition observed in paragraph-9 of the judgment as follows :-

"It is not a matter of dispute that letter Annexure P-1 stood superseded vide order of the State Government dated June 5, 1972 and Hindi Sahitya Sammelan Pariyag remained no more a recognised institution. The factum of petitioners being in service prior to 1972 does not in any way affect or is even relevant to the question of the validity of their degrees acquired during the years 1974 to 1978. As already pointed out now even this order of June 5, 1972 stands superseded by the later order dated March 7, 1980 the contents of which have already been reproduced above. As per entry No. 105 of Schedule II to the Indian Medicine Central Council Act, 1970, degree of Ayurveda Rattan awarded by Hindi Sahitya Sammelan Pariyag during the years 1931 to 1967 only was a recognised degree. The reason seems to be obvious in the light of the history of this institution as detailed in Smt. Damyanti Naranga's case (supra) where it is pointed out that the affairs of the Cooperative Society which was running this institution were in a mess by the time Central Act No. 13 of 1962 was passed by the Parliament. In all probability it is on account of the decaying standards of this institution that the Central Council derec-ognised the degrees awarded by this institution subsequent to the year 1967. As already pointed out, the petitioners claim to have acquired their degrees during the year 1974 to 1978. It is thus established that neither Hindi Sahitya Sammelan Pariyag was one of the institutions recognised for purposes of the Rules after June 5, 1972 nor was the degree of Ayurveda Rattan a recognised one after 1967 as per Indian Medicine Central Council Act, 1970."

In view of the dismissal of the earlier writ petition, the present petition is not maintainable because the prayer made in both the petitions is the same.

3. The writ petition deserves to be dismissed also on the ground that the petitioners did not disclose to this Court that they had filed an earlier writ petition with a similar prayer which had been dismissed on 8.8.1983. On the other hand, they have made the following averment in paragraph-25 of the writ petition :-

"That the petitioners have not filed any petition on the same or similar grounds either in this Hon"ble Court or the Supreme Court of India."

It were the respondents who in their reply brought to the notice of this Court by way of a preliminary objection that the earlier writ petition filed by the petitioners had been dismissed and, therefore, the present one was not maintainable. In the rejoinder filed by the petitioners, they have admitted that they filed the earlier Writ petition but have tried to

justify that the present writ petition is based on a subsequent cause of action, which contention in our opinion has no merit. We are satisfied that the petitioners have deliberately withheld this important fact from the court and are, therefore, not entitled to any relief. Assuming that the notification dated 27.1.1994, on which reliance is sought to be placed by the petitioners, furnished a fresh cause of action to them, it was necessary for them to have referred to the filing of the earlier writ petition and its dismissal, whatever be its effect. Not having done so, they have, thus, not come to this Court with clean hands and are guilty of suppression of a material fact which was necessary to be mentioned.

4. It is true that after the dismissal of the earlier writ petition holding that the petitioners were not eligible for promotion to the post of Vaidya, the State Government issued a notification on 27.1.1994 declaring that with effect from the date of the notification Institutions or Universities awarding degrees or diplomas as mentioned in the Second, Third and Fourth Schedule of the Indian Medicine Central Council Act, 1970, shall be recognised Institutions or Universities under sub-clause (iii) of clause (g) of Rule 2 of the Rules, but this notification did not make the petitioners eligible for promotion to the post of Vaidya and therefore it did not furnish any fresh cause of action. A reference to item No. 105 in the Second Schedule to the aforesaid Act would show that Vaidya Visharad (diploma) and Ayurved-Ratna (degree) obtained from Hindu Sahitya Sammelan, Prayag, was recognised provided it had been obtained between the years 1931 to 1967. Admittedly, the petitioners had obtained their diploma from this Institution long after 1967 and, therefore, they were not eligible for promotion to the post of Vaidya.

In the result, the writ petition fails and the same is dismissed with costs. Since the petitioners tried to mislead the Court by withholding vital information from this Court by not disclosing the fact of their filing the earlier writ petition, we assess the costs at Rs. 10,000/-.

5. Writ petition dismissed.