
(1998) 02 AHC CK 0057

Allahabad High Court

Case No: No. 20454 of 1997

Ramesh Chandra

APPELLANT

Vs

State of U.P.& Ors.

RESPONDENT

Date of Decision: Feb. 2, 1998

Hon'ble Judges: O.P.Garg, J

Final Decision: Dismissed

Judgement

O.P. Garg, J.

In a programme launched by Central Government as well as State Government, known as Post Portem Programme, a large number of appointments were to be made on different technical posts. This programme was running under the Department of Obst. and Gynaecology of Moti Lal Nehru Medical College, Allahabad at S.R.N. Hospital Campus. The technical posts included the post of Projectionist. One Mohd. Rizvi was holding the said post in Moti Lal Nehru Medical College under the Principal, M.L.N. Medical College, Allahabadrespondent No. 3. Sri Rizvi died on 1671993 and consequently, the said post had fallen vacant. The petitioner applied for the said post. The Principal of the College sought, clarification from the Director General, Medical Education and Training U.P. Lucknowrespondent No. 2 by letter dated 961994. The Director General, in his turn, recommended the appointment of the petitioner by his letter dated 3031995 after verification of the services and other papers of the petitioner. Dr. K.N. Singh, the then Principal of the MLN Medical College, Allahabad appointed the petitioner on 1761995 in the pay scale of Rs. 9501500 on temporary basis vide Annexure 6 to the writ petition. The services of the petitioner were terminable at any time, without notice. The petitioner joined on 171995. After the removal of Dr. K.N. Singh from the post of Principal, Dr. (Smt.) Krishna Mukherjee took over as Principal. An enquiry was initiated against the irregular and illegal appointments made by Dr. K.N. Singh and the committee, which was formed for the purpose came to the conclusion that Dr. Singh had made appointments of 39 posts of class III cadre and 43 posts of class IV cadre. The services of 21 illegally appointed Staff Nurses were dispensed with. It was also found

that the appointment of the petitioner too was against the rules, inasmuch as, he was appointed without having the minimum requisite qualifications for the post and that the procedure prescribed by the rules for appointment was not followed.

2. It is an admitted fact that the service conditions of the petitioner are governed by U.P. Chikitsa Adhinastha Karyalaya Samuh "Ga" Takniki Rules, 1991 (hereinafter referred to as "the Rules"). Under item No. 15 of the Rules, the post of ProjectionistcumMechanic is mentioned and the minimum requisite qualification for the post is High School with Science and Maths by U.P. Board of High School and Intermediate Education, or, equivalent thereto and a certificate from the recognised Industrial Training Institute (for brevity called TIT) in the relevant field/profession, duly recognised by the State Government. Admittedly, the petitioner does not fulfil the aforesaid basic qualification as he is not possessed of a certificate from any recognised ITI in the discipline, of Projection. The petitioner could not produce the certificate, as aforesaid, though he submitted a reply on 2151997, which is contained in Annexure 10 to the writ petition, to the show cause notice dated 1651997 (Annexure 9" o the writ petition). Not satisfied with the explanation submitted by the petitioner, his services were terminated by the impugned order dated 3051997 (Annexure 11 to the writ petition) and steps had been taken to call for the list of the eligible candidates from the Employment Exchange.

3. The petitioner has challenged the order of termination as well as the letter dated 2371997, which has been written by the Principal to the Employment Exchange calling for the name of eligible candidates. He has prayed by means of the present writ petition that the termination order dated 3051997, Annexure 11 to the petition and the communication dated 2371997 made to the Employment Exchange be quashed and the respondents be restrained from preventing the petitioner to discharge his duties as Projectionist.

4. Counter, rejoinder and supplementary affidavits have been filed. Heard Sri H.N. Singh, learned Counsel for the petitioner as well as the learned Standing Counsel.

5. As said above, there is no dispute about the fact that the petitioner does not have the requisite qualification in the form of certificate from ITI, as is, required for the post of Projectionist under the rules. Learned Counsel for the petitioner pointed out that in none of the ITIs, the aforesaid course is available and, therefore, the petitioner could not fulfil the qualification and, hence, the provision of qualification in the rules is otiose and unworkable. According to learned Counsel, the work assigned to the Projectionist is to operate the Projectors to teach public at large, showing the films relating to the Family Planning; that the petitioner has the capability and efficiency as well as familiarity with the operation of the Projectors and it was for this reason that the District Magistrate Allahabad, who is licensing authority, has granted a licence to the petitioner under Rule 26 (b) of the Cinematography Rules, 1951 and on the basis of this licence, the petitioner is competent to hold the said post. Learned Standing Counsel was directed to obtain

instructions as to whether professional course, which is required for the post of Projectionist, as mentioned in item 15 of the Rules, is available in any ITI of the country. Dr. Krishna Mukherjee, Principal, MLN Medical College, Allahabad by her letter dated 20.1.98 which has been placed on record has intimated that there are as many as four Institutes in the country, namely, (i) Institute of Technology (N.C.E.R.T Campus, Arlindo Marg, New Delhi; (ii) Satyajit Ray Institute, Calcutta; (iii) Bangalore Institute, Bangalore and (iv) Poona Institute, Pune, in which professional certificate in the Projection Course is granted. The submission of the learned Counsel for the petitioner that in none of the Training Institute the above professional course is available, therefore, is wrong. The fact remains that the petitioner does not fulfil the minimum qualification, as laid down in item No. 15 of the Rules for the post of Projectionist-cum-Mechanic and, therefore, he was not eligible for appointment on the said post. The petitioner was straight away appointed on the said post on the basis of the letter written by Director General without adopting the due procedure prescribed for recruitment under the Rules. The appointment of the petitioner was totally de hors the procedure and it was for this reason that an objection was raised by the Director General, Medical Education and Training, U.P. by letter dated 25.1.1997. It is a case in which a full fledged enquiry was conducted in regard to the appointment which of the petitioner as well as other appointments were made by Dr. K.N. Singh in an illegal manner. The petitioner was served with show cause notice and his appointment was rightly cancelled as he did not fulfil the minimum requisite qualification for the post on which he was appointed. Hon'ble Supreme Court in a series of decisions has approved the cancellation of appointments, if they are de hors the procedure prescribed by rules or, in any manner, illegal for want of minimum requisite qualification. In this connection, reference may be had to the cases, AIR 1993 SC 796, Union Territory Chandigarh v. DilBagh Singh and others; 1994 (5) SCC 695, Preet Pal Singh. State ; JT 1996 (8) SC 510, Hanuman Prasad & Ors. v. Union of India & Anr.; JT (1996) 6 SC 515, Biswa Ranjan Sahoo & Ors. v. Sushant Kumar Dinda & Ors. ; (1996) 7 SCC 118, State of Madhya Pradesh & Ors. v. Shyama Pardhi & Ors. and (1997) 2 SCC 1, Ashwani Kumar & Ors. v. State of Bihar & Ors..

6. In view of above discussions, the petitioner has no case to challenge the impugned orders, which have been rightly and appropriately passed by the respondent No. 3.

7. In the result, the writ petition fails and is accordingly dismissed. Costs easy.