

(2003) 08 AHC CK 0171

Allahabad High Court

Case No: C.M.W.P. No. 9238 of 2000

Man Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: Aug. 14, 2003

Citation: (2003) 6 AWC 4888

Hon'ble Judges: Rakesh Tiwari, J

Bench: Single Bench

Advocate: A. Kumar Singh, for the Appellant;

Final Decision: Allowed

Judgement

Rakesh Tiwari, J.

Heard counsel for the parties and perused the record.

2. This petition has been filed challenging the impugned order of suspension dated 11.2.2000, passed by Respondent No. 4, which is appended as Annexure-5 to the writ petition.

3. At the time of admission, the following ad interim order was passed:

Heard learned Counsel for the Petitioner and learned standing counsel appearing for the Respondents. The standing counsel shall file counter-affidavit within two months.

Until further orders of this Court, the effect and operation of the impugned suspension order dated 11.2.2000 passed by Respondent No. 4, Annexure-5 to the writ petition, issued under the direction of Respondent No. 2 dated 29.1.2000, shall remain stayed.

4. The case of the Petitioner is that he was working under the Respondents as ward boy in Homeopathic Chikitsalaya, District Hospital, Etah, run under the Government of State of U.P. An inspection was made by the District Magistrate, Etah, on 17.11.1999. Sri Panna Lal Pharmacist was found on leave and the Chikitsa Adhikari

was also not found on duty. The District Magistrate had reported that instead of giving medicines in Sugar Pills to the patient, he was giving the medicine in the water and further that no material document could be produced by the Prabhari Adhikari. The inspection report, which is Annexure-1 to the writ petition, is as under:

other language

5. On the same day, the District Magistrate, Etah, also sent a letter to the Sachiv, Chikitsa Vibhag, U.P. Shasan, Lucknow, for taking necessary action against the illegalities and irregularities found in his inspection. The District Magistrate also mentioned the name of the Petitioner alleging to be involved in mixing the medicines in water.

6. The counsel for the Petitioner contends that inclusion of the name of the Petitioner is only based on mala fide intention of the District Magistrate, Etah and the Petitioner was unnecessarily dragged in this case. He is neither in any manner connected nor it was the duty of the ward boy to prepare and distribute medicines and that it was the duty of Pharmacist. The Joint Secretary, Chikitsa Vibhag, U.P., Lucknow vide letter dated 18.1.2000 directed the District Homeopathy, U.P., Lucknow, to conduct an enquiry in the matter and submit a report within one month. On the same date he also directed to suspend the Petitioner and Panna Lal, Pharmacist. On 11.2.2000 the Petitioner was suspended and was transferred to Rajkiya Homeopathic Chikitsalaya, Zila Hospital, Mathura. It further submitted that the action of the Respondent in attaching the Petitioner to the Rajkiya Homeopathic Chikitsalaya, Zila Hospital, Mathura, during his suspension period, is arbitrary.

7. In the writ petition, the Petitioner has claimed that he was appointed as seasonal Homeopathic Compounder on officiating basis in the pay scale of Rs. 1,350-2,200 by the order dated 20.7.1993. On 1.11.1993 the Petitioner was asked to join on the substantive post in Government Homeopathic Hospital in District Etah. It is stated that he had filed Writ Petition No. 39396 of 1993 for regularisation of his services on the ground that the orders dated 1.10.1993 and 29.9.1993 by which the Petitioner was not permitted to join as Pharmacist. The aforesaid orders were stayed by the order dated 14.10.1993. He claimed in the aforesaid writ petition that there are a large number of posts lying vacant and the ward boys junior to him, have been permitted to work as compounder, but the Petitioner was not permitted, even though he was a permanent ward boy. The order dated 14.10.1993, is as follows:

"Until further order, operation of the impugned orders dated 29.9.1993 and 1.10.1993 in so far as they relate to the Petitioners shall remain stayed.

Sd. M.K., J.

14.10.1993

8. It is further averred that as the Petitioner was not permitted to work on the post of Pharmacist and was only permitted to work as ward boy and therefore he filed

Contempt Petition No. 119 of 1994 against the Director Homeopathic, Lucknow and others, in which notices have been issued to the Respondents. The Writ Petition No. 39396 of 1993 was disposed of by order dated 14.5.1999 directing the Respondents to decide the representation of the Petitioner by speaking and reasoned order within a period of three months from the date of production of a certified copy of the order, in accordance with law, which is as under:

"Heard learned Counsel for the Petitioner and standing counsel for Respondents. The Petitioner was appointed as seasonal Homeopathic Compounder on officiating basis in the pay scale of Rs. 1,350-2,200 by order dated 20.7.1993. By the impugned order passed by Respondents on 1.10.1993 the Petitioner has been asked to join his substantive post of Government Homeopathic Hospital, District Hospital, Etah. Since the Petitioner was earlier appointed only on officiating capacity, no right answer to the Petitioner to hold the post on which he was officiating. I do not find any error in the impugned order.

Learned Counsel for the Petitioner contends that there are large numbers of posts lying vacant. However, in paragraph 15 of the rejoinder-affidavit, it has been stated that the ward boy, who were junior to the Petitioner, have been permitted as compounder, but the Petitioner, who is also a permanent ward boy, has not been promoted as compounder. In this regard the Petitioner shall make a fresh representation before the Respondent concerned within one month. In case such a representation is made, the concerned Respondent shall decide the same by a speaking order within a period of three months from the date of production of a certified copy of this order before him, in accordance with law.

With the aforesaid direction, this petition is disposed of. The stay order, if any, is vacated.

Sd. V. M. Sahai, J.

14.5.1999

9. The Petitioner alleges that due to filing of contempt petition, he was falsely implicated and is not connected with any illegalities or irregularities committed in the supply of sugar pills in the hospital during inspection.

10. According to his own showing, the Petitioner was a permanent compounder. From Annexure-2 to the writ petition, it appears that the Petitioner was found giving medicines to the patient in the water and had informed that the sugar pills were not being used.

11. No counter-affidavit has been filed and the Petitioner was suspended vide impugned order. It appears from the averment made in the writ petition that the Petitioner had been implicated as the real culprit and Pharmacist Panna Lal was conveniently removed from the scene of inspection. Probably he came to know earlier that the spot inspection was to be made. It appears from the inspection note

that the officer-in-charge also could not show any document regarding supply of sugar pills. It also appears from the record that when the officer-in-charge Dr. Smt. Aruna Sinha was asked about the distribution of medicines in the water, she had stated that she had issued directions to the Pharmacist for giving medicines in sugar pills, but he has always disobeyed her order. This appears from Annexure-2, which is as under:

other language

12. Neither the counsel for the Petitioner nor the standing counsel has informed this Court about the status of the enquiry. No counter-affidavit has been filed by the State. The Petitioner is already working in pursuance of the interim order and it appears that he has been falsely implicated as real culprit by Dr. Smt. Aruna Sinha.

13. For the reasons stated above, the writ petition is allowed. The impugned order dated 11.2.2000 is quashed. No order as to costs.