

## Central Council for Research in Unani Medicine, by Director and Another Vs Mohd. Abdul Waheed

**Court:** Andhra Pradesh High Court

**Date of Decision:** Nov. 8, 1996

**Citation:** (1996) 4 ALT 1129

**Hon'ble Judges:** P.S. Mishra, C.J; S.V. Maruthi, J

**Bench:** Division Bench

**Advocate:** T. Lakshminarayana, for the Appellant; T. Ramakrishna Rao, for the Respondent

**Final Decision:** Allowed

### Judgement

S.V. Maruthi, J.

This appeal is preferred by the Central Council for Research in Unani and Central Research Institute for Unani Medicine

against the judgment of the learned Single Judge in W.P.No. 1501 of 1994 allowing the Writ Petition filed by the respondent and directing the

appellants to promote him as Radiographer w.e.f. 1st April, 1991 by relaxing the Rules within one month from the date of receipt of a copy of the

judgment, granting all consequential benefits from 1st April, 1991. By the impugned judgment, the learned Judge also quashed the advertisement

issued by the 3rd respondent on 11-09-1991 inviting applications for the post of Radiographer on the ground that it is in violation of Article 14 and

Article 16 of the Constitution of India. The learned Judge also directed to pay revised pay scales to the petitioner with effect from 1st April, 1991

within a period of four months from the date of the receipt of the copy of the judgment.

2. The case of the respondent in the Writ appeal, is as follows:- The respondent was appointed as a Dark Room Assistant in the Central Research

Institute for Unani Medicine, Hyderabad w.e.f. 30-10-1975 in the pay scale of Rs. 260-400 with usual allowances. The regular Radiographer who

was discharging the duties in X-Ray Department left the appellant institute. Therefore, the respondent was made in-charge to function as

Radiographer in the X-Ray Department from 29-9-1978 to 1-12-1988. After one month Mr. Rajgopal was appointed as a Radiographer and he

worked upto 14th March, 1991. Consequent upon his resignation, the respondent was again put in Full Additional Charge in the X-Ray

department as Radiographer w.e.f. 15th March, 1991. Ever since he is discharging the duties of Radiographer in addition to his normal duties as

Dark Room Assistant. The service rendered by the respondent was commended by the Central Institute for Unani Medicine, Hyderabad, and he

was sent on deputation to undergo training in the Radiology Department, Osmania General Hospital, Hyderabad for a period of three months

w.e.f. 15-4-1991 and a certificate was issued certifying that he has undergone successful training in Radiologist Assistant Course. The Consultant

Radiologist of the appellant Institute also gave a certificate certifying that the respondent could work as a certified Radiologist Assistant

independently. After obtaining the necessary expertise, he approached the appellant to consider his case for promotion to the post of

Radiographer. The Deputy Director of the appellant institute recommended the promotion of the respondent to the post of Radiographer. The

respondent was paid enhanced salary by upgrading the post of Dark Room Assistant in the pay scale of Rs. 1200/- 2040/- on ad hoc basis by the

appellant upto 8-9-1993. However, the said payment was stopped. The appellants issued an advertisement on 11-9-1993 in Urdu News Paper

"Siyasat" inviting applications for direct recruitment from the eligible candidates for the post of Radiographer. The essential qualifications

prescribed for the post of Radiographer are (a) Metric or equivalent, (b) Diploma in Radiography for a minimum of one year duration from a

recognised Institute, (c) one year experience of handling X-Ray from a recognised institution and (d) aged below 30 years. Aggrieved by the

issuance of the advertisement he filed the writ petition on the ground that he was functioning as a Radiographer independently for more than 12 to

13 years and, therefore, he should be promoted as Radiographer. He further contends that the experience as Radiographer from 1978 to 1993 is

enough for appointment as Radiographer and having regard to the fact there is no further channel of promotion from the post of Dark Room

Assistant it is incumbent on the appellants to provide avenues of promotion in order to avoid stagnation in one post for over a period of years.

3. On the other hand the case of the appellants is that the appointment of the respondent as Radiographer is a stop-gap arrangement till a regular

incumbent is appointed in the vacancy and the respondent is not qualified to hold the post of Radiographer. The appellants further contended that

since the respondent is not qualified to be appointed as Radiographer as he did not possess a diploma in Radiography for a minimum period of one

year duration from a recognised institution, he cannot be appointed to the post of Radiographer.

4. On consideration of the respective pleadings, the learned Judge held that since the respondent has been functioning as Radiographer w.e.f. 1978

without any cause or complaint, the appellants cannot throw him out on the ground that he does not possess the requisite qualifications; that the

appellants could have relaxed the relevant Rules to appoint the respondent as Radiographer since they could not get a regular qualified

Radiographer for the purpose of filling up of the vacancy which is lying vacant from 1978, and that the appellants have exploited the respondent as

they have taken his services as Radiographer without paying the regular salary. Relying on the judgment of the Supreme Court in ""Bhagawati

Prasad v. Delhi State Mineral Development Corporation 1992 (8) SLR 784, he observed that practical experience as Radiographer is a sure

guide to assess the suitability of the respondent for promoting to the post of Radiographer. He accepted that the post of Dark Room Assistant is

not a channel of promotion to the post of Radiographer, that it is incumbent on the appellants to provide at least two promotions to an employee

and he cannot be allowed to stagnate in one post throughout his tenure, and denying promotion of Radiographer to the respondent is in violation or

Article 14 and Article 16 of the Constitution of India and thus allowed the Writ Petition.

5. The only argument of the appellants before us is that the respondent does not possess the requisite qualification of diploma in Radiography

which is an essential qualification for the purpose of appointment as Radiographer. In the absence of essential qualification no person can be

considered for appointment to the post. Essential qualification cannot be relaxed and, therefore, the learned Judge is not right in directing the

appointment to promote the petitioner by relaxing the essential qualification. On the other hand, the learned counsel for the respondent contended

that having regard to the fact that the respondent was working as Radiographer successfully right from 1978 it is incumbent on the appellants to

relax the rules and appoint the respondent as Radiographer.

6. To consider the issue that arises for consideration, it is necessary to refer to the rules regulating the appointment of Radiographer. The relevant

recruitment rules reads as follows:-

25. 1. Radiographer

2. Three

3. Class III

4. Rs. 330-10~380-EB-12-500-EB-15-560.

5. ...

6. 25 years and below

7. Essential:

1. Metric or equivalent
2. Diploma in Radiology of minimum of 2 years duration from a recognised Institution.
3. 1 year experience in handling X-Ray equipment in a recognised Institution.
8. Does not arise
9. 2 years
10. 100% by direct recruitment
11. ....
12. ....

The learned counsel for the appellants submits that the minimum of two years duration has now been reduced to one year for the purpose of

obtaining diploma in radiology. It is not disputed that the respondent did not possess the qualification of diploma in Radiology and the post of

Radiographer is to be filled up by direct recruitment only. Since the respondent does not possess the requisite qualification he cannot be

considered for appointment to the post of Radiographer. The post of Radiographer being a technical post, deals with technical work. In the

absence of essential qualification he cannot be considered for appointment as Radiographer which is to be filled only by direct recruitment and not

by promotion. No direction can be issued directing the appellants to promote the respondent to a post which under rules requires to be filled by

direct recruitment as it amounts to directing the respondent to take action in violation of Rules. Further, no direction can be given for relaxing the

essential qualification. Since the Rules provide for possession of Diploma in Radiology to be eligible for appointment as Radiographer and since the

respondent did not possess the said qualification he cannot be considered for the purpose of appointment as Radiographer. Further the post of

Radiographer is to be filled only by direct recruitment. Therefore, no direction could be issued to the appellants directing them to fill up the post by

promotion which is in violation of Rules.

7. The case of H. C. Putta Swamy v. Chief Justice of Karnataka 1991 (2) SCC 421 is a case wherein violation of procedure contemplated under

the Rules, recruitment to the post of second Division Clerk which requires a qualification of S.S.L.C. was made by recruiting Graduates, Post-

Graduates and double Graduates. In that context, the Supreme Court taking into account that these second Division Clerks were even promoted

to higher posts and they were over-aged for entry into any other service and if they are left in a mid-stream their family members have to face

untold miseries, adopted a humanitarian approach and directed those candidates to be treated on regular basis.

8. It is true in Council of Scientific and Industrial Research and Another Vs. K.G.S. Bhatt and Another, the Supreme Court observed that an

organisation should develop a satisfactory procedure for promotion and refused to interfere with the orders of the tribunal which granted relief to

the respondent by applying a rule which is not applicable to the respondent on the ground that the respondent stagnated for 20 years due to

defective promotional policy.

9. The case in Bhagawathi Prasad v. Delhi State Mineral Development Corporation 1992 (8) SLR 784 deals with daily rated workers and the

question involved was the confirmation of the daily rated workers in various posts to which they were appointed. Since the incumbents of various

posts were working from 1983 and 1986 and they were allowed to work for a considerable length of time, In that context it was held that it would

create hardship to deny their confirmation in the respective posts on the ground that they lack prescribed educational qualifications.

10. These three cases are not relevant to the facts of the present case as the question of recruiting an unqualified person to a post did not arise for

consideration.

11. For the foregoing reasons, the Writ Appeal is allowed; and the judgment under Writ Petition is set aside. No costs.