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SECRETARY TO THE GOVERNMENT OF ORISSA

v.

LAXMIKANTE NANDA AND ORS.

NOVEMBER 16, 1993

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[KULDIP SINGH AND YOGESHWER DAYAL, JJ.]

Service Law—Appointment—Whether doing away with the recognised qualification as prescribed under the Homeopathy Central Council Act, 1973 by resolution was violative of Ss. 15(2) & 15(3) thereof read with S.29(b) of

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The Orissa Homeopathy Act, 1956—Held—No.

Service Law—Selection—Whether total exclusion of the lecturers in Homeopathy, whereas earlier they were considered, for appointment as Deputy Director of Homeopathy is discriminatory or unfair—Held—No.

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The Govt. of Orissa, Health and Family Welfare Department passed a Resolution on 15th Dec. 1986, whereby the criteria for selection of Deputy Director of Homeopathy in Class-I (senior) in the Directorate of India system of medicines and Homeopathy was refixed Prior to the refixation, persons who, apart from having recognised qualifications as prescribed under the Homeopathy Central Council Act 1973, had 2 years experience as C.M.O. or Inspector of Homeopathy or 10 years experience as lecturer in Govt. Homeopathy Medical College, were eligible for consideration for appointment to the aforesaid post. After refixation of Criteria only C.M.O. or Inspector of Homeopathy with 5 years experience could be considered Lecturers were totally excluded from consideration for the post of Deputy Director. By a further Notification dt. 16th Dec. 1986, the resp. no. 2 before the Tribunal (earlier Chief Medical Officer, Homeopathy) was appointed as Deputy Director of Homeopathy on *ad hoc* basis.

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The respondents-surviving senior teachers in the Govt. Homeopathy College-as well as All Orissa Govt. Homeopathy Medical College Teachers Association filed an Original Application before the State Administrative Tribunal challenging the aforesaid Resolution dt. 15th Dec. 1986 and Notification dt. 16th Dec 1986. While the matter was pending before the Tribunal the resolution dt. 15th Dec. 1986 was superseded by another Resolution dt. 25th Nov. 1987; by the last Resolution, the State Govt. reaffirmed the Criteria refixed in the Resolution dt. 15th Dec. 1986. As per

the resolutions dt. 10th Dec. 86 and 25th Nov. 87 the requirement of recognised qualifications was given up. A

The Tribunal held the impugned Resolution was violative of Sections 15(2) and 15(3) of the Homeopathy Central Council, Act, 1973 read with Section 29(b) of the Orissa Homeopathy Act, 1956 as the Resolution does away with the recognised qualifications as prescribed under the Central Act. The Tribunal also took the view that it was absolutely unfair on the part of the Govt. to Completely exclude lecturers in Medical College from considering them for promotion to the post of Deputy Director under the revised Criteria, when they continued to belong to the same cadre and no bifurcation of teaching cadre and peripheral cadre had taken place. B C

Aggrieved By the impugned Judgment or order the Appellants came in appeal by way of Special Leave.

Allowing the Appeal, this Court

HELD : 1.The revised criteria as envisaged in the Resolution dated 15th December, 1986 and as specifically made clear in the Resolution dated 25th November, 1987 is not any way illegal or discriminatory and not in any way violative of the provisions of 1956 Act or the Central Act. D

[708-G-H, 709-A]

2. It is clear from the provisions of Section 15(1) of the Homeopathy Central Council Act itself that any medical qualification included in the Second or the Third Schedule shall be sufficient qualification for enrolment of any person on any State Register of homeopathy. Sub-section (2) of Section 15 makes it specifically clear that no person, other than a practitioner of Homeopathy who possesses a recognised medical qualification and is enrolled on a State Register or the Central Register of Homeopathy - shall hold office as Homeopathic physician or any other office (by whatever designation called) in Government or in any institution maintained by a local or other authority. Thus no body could be either Inspector or Chief Medical Officer, Homeopathy without having requisite qualification contemplated by section 15(2) of the Act. [708-A-C] E F G

3. Once the holding of the requisite qualification is *sine qua non* for employees working as Inspectors and Chief Medical Officer, Homeopathy, there was no necessity for providing the same qualification once again while making them eligible for promotion to the post of Deputy Director. [708-D] H

- A 4. Once the cadre of teachers is separate from the cadre of peripheral officers there is no question of discrimination. There is already a division among their personnel and the two belong to different categories and, therefore, the decision of the Government at a later stage to exclude teachers from eligibility to the post of Deputy Director, Homeopathy cannot be called discriminatory. It cannot be also called unfair on the ground that teachers could go to the level of Class I post, the persons belonging to peripheral field had to compete with teachers for aspiring to go to the post of Deputy Director. [708-F-G]
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C CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7022 of 1993.

From the Judgment and Order dated 7.5.90 of the Orissa Administrative Tribunal, Bhubaneswar in O.A. No. 282 of 1986.

S.C. Roy, Attorney General and A.K. Panda for the Appellant.

D P.N. Misra for the Respondents.

B.A. Mohanty, A.Mariarputham and Ms. Aruna Mathur for M/s. Arputham Aruna & Co. for the Intervenor.

E The Judgment of the Court was delivered by

YOGESHWAR DAYAL, J. Heard. Special leave granted. Since the matter was heard at length, the appeal arising out of the Special Leave Petition is being disposed of as well.

F The appeal is directed against the judgment dated 7th May, 1990 passed by the Orissa Administrative Tribunal, Bhubaneswar in Original Application No. 282 of 1986.

G The application itself was filed before the State Administrative Tribunal on behalf of the serving senior teachers in the Government Homeopathic College as well as All Orissa Government Homeopathic Medical College Teachers' Association against the Secretary to Government, Health and family Welfare Department, Bhubaneswar and Dr. Godavarish Mishra, Deputy Director, Homeopathy, Bhubaneswar. In the original application the petitioners therein had prayed for quashing the
H Resolution of the Government of Orissa, Health and Family Welfare

Department, No. 40481/H dated 15th December, 1986 and the Notification No. VI Med. XXIA.2/86 40621/H. dated 16th December, 1986 whereby Dr. Godavarish Mishra, (respondent No. 2 before the Tribunal), Chief Medical Officer, Homeopathy, was appointed as Deputy Director of Homeopathy on *ad hoc* basis till 28th February, 1987 or until further orders, whichever is earlier.

The aforesaid Resolution dated 15th December, 1986 provided as follows :—

RESOLUTION

Sub : Refixation of the criteria for selection of Deputy Director of Homeopathy in Class-I (Senior) in the Directorate of Indian System of Medicines and Homeopathy.

At present the criteria for promotion to the post of Deputy Director of Homeopathy has been fixed as follows :

1. A recognised qualification as prescribed under the Homeopathy Central Council Act, 1973 Schedule 2 and 3.
2. Two years experience as C.M.O. or Inspector of Homeopathy or 10 Years experience as Lecturer in Govt. Homeopathy Medical College, Bhubaneswar.

"Lecturers with administrative experience would be preferred."

The question of fixation of a revised criteria for promotion to the rank of Deputy Director was under consideration of Government for some time past.

Government after careful consideration have been pleased to decide that henceforth C.M.O. Homeopathy and Inspectors of Homeopathy who have got a minimum period of 5 years of service shall be considered eligible for the post.

ORDER : Ordered that the Resolution shall be published in the Orissa Gazette and copies forwarded to A.G. Orissa/All Depts. of Govt./All Heads of Depts./All Distt. Magistrates/Registrar, Orissa High Court/Sec. Orissa

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P.S.C. for information and necessary action.

By order of the Governor.

C. Narayanswamy,
Secretary to Government."

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It is clear from the above Resolution that the earlier criteria for selection of Deputy Director of Homeopathy was changed. The material change was that Lecturers in the Government Homeopathy Medical College, Bhubaneswar did not figure in the present eligibility criteria for consideration for promotion to the post of Deputy Director, Homeopathy.

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By the impugned Notification dated 16th December, 1986, respondent No. 2, before the Tribunal, namely - Dr. Godavarish Mishra, Chief Medical Officer, Homeopathy, was appointed as Deputy Director of Homeopathy, as stated earlier.

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We may mention that while the matter was pending before the State Tribunal the aforesaid Resolution dated 15th December, 1986 came to be superseded by another Resolution No. 40360/H. dated 25th November, 1987 which reads as follows :

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Sub : Refixation of the criteria for selection of Deputy Director of Homeopathy in Class-I (Senior) in the Directorate of India Medicines and Homeopathy.

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In supersession of his Department letter No. 21410 H. dated 19.7.1984 and Resolution No. 40481 dated 15.12.1986 Government after careful consideration have been pleased to decide that henceforth only Chief Medical Officer Homeopathy and Inspectors of Homeopathy who have got a minimum period of 5 years of service shall be considered eligible of the above post.

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ORDER : Order that the Resolution shall be published in the Orissa Gazette and copies forwarded to the A.G. Orissa/All Departments of Government/All Heads of Dept./All Dist. Magistrates/Registrar Orissa High Court/Secretary, Orissa Public Service Commission for information and necessary action.

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By order of the Governor.

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C. Narayanswamy,
Secretary to Government."

The State Administrative Tribunal, on reading of the revised criteria fixed in the Resolution dated 15th December, 1986 took the view that this Resolution does away with the recognized qualifications as prescribed under the Homeopathy Central Council Act, 1973 (hereinafter called 'the Central Act') and was thus violative of Sections 15(2) and 15(3) of the Central Act read with Section 29(b) of the Orissa Homeopathic Act 1956 (hereinafter referred to as 'the 1956 Act'). The Tribunal also took the view that "it was absolutely unfair on the part of the Government to completely exclude Lecturers in Medical College from considering them for promotion to the post of Deputy Director under the revised criteria, when they continued to belong to the same cadre and no bifurcation of "teaching cadre and peripheral cadre had taken place" and held that the Tribunal is unable to accept the plea of the State Government that Resolution is not arbitrary and discriminatory. The Tribunal accordingly declared the Resolution dated 15th December, 1986 as illegal and also quashed the appointment of Dr. Godavarish Mishra as was not sustainable in law and directed the Government to consider the petitioners before it for promotion of the post of Deputy Director if they fulfil the criteria which was in force of the revised criteria, which had been set aside by the Tribunal, and the post of Deputy Director will be filled up accordingly.

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The case of the State Government was stated on their behalf in their counter-affidavit filed before the Tribunal. It was stated *inter alia* :

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That the post of Deputy Director was originally a promotional post for peripheral Medical Officers as well as the Lecturers of the Homeopathy College. But it was found that although promotional avenues were available for Lecturers of the Homeopathic Medical College, no such avenues were available for Medical Officer working in the field. It was pleaded that in the Homeopathic College, Demonstrator can be promoted to the post of Lecturer and Lecturer in turn to the post of Associate Professor and the Associate Professor was eligible for promotion as professor. It was stated that the post of Associate professor is a Junior Class-I post whereas the post of Professor is the Senior Class-I post. The Medical Officers in the peripheral cadre had no promotional avenues beyond the post of

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A Homeopathy Inspector and Chief Medical Officer, Homeopathy, both in Class-I rank. It was thus noticed by the Government that there was considerable dis-contentment in the matter of promotional avenues for the officers working in the college wing and those working in the field. With a view to set at rest the disparity, it was decided that the post of Deputy Director should be reserved as a promotional post for officers working in the field. At the same time the Government decided to prescribe the minimum qualification and eligibility for promotion to the higher post. Thus there was a reasonable basis for excluding the College teachers for being considered for promotion to the post of Deputy Director. There was thus no discrimination or arbitrariness in making the impugned Resolution dated 15th December, 1986. It was also pleaded that the Resolution in no way contradicts the provisions contained in section 15 of the Central Act. On the other hand the Resolution conforms strictly to the provisions laid down in Sections 15(2) and 15(3) of the Central Act read with Section 29(b) of the 1956 Act.

D It was further pleaded that the post of Deputy Director Homeopathy is an Administrative post and it was thus decided by the Government that the post should be filled up among the Chief Medical Officer and Inspectors of Homeopathy having minimum period of five years experience. The Government after consideration laid down the revised criteria for filling up of the post of Deputy Director of Homeopathy. It was also pleaded that during the pendency of the application before the Tribunal vide Resolution dated 15th November, 1987 the Government of Orissa had decided that "henceforth only Chief Medical Officer of Homeopathy and Inspectors of Homeopathy who have got a minimum period of 5 years of service shall be considered eligible for the post of Deputy Director of Homeopathy in the Directorate of Indian Medicines and Homeopathy".

G It was specifically pleaded that the appointment and promotion to teaching posts in Homeopathy Medical Colleges in the State are governed by special rules framed under Article 309 of the Constitution of India which are called Orissa Homeopathic Medical Teaching Service (Method of Recruitment and Conditions of Service) Rules, 1980 (hereinafter referred to as 'the 1980 Rules') and the teachers of the Homeopathic Medical Colleges belong to a separate cadre.

H It had been submitted before us that it was unnecessary to incor-

porate the specific provision in the Government's Resolution laying down the qualification when the post of Deputy Director Homeopathy itself was required to be filled up from among the Inspectors and Chief Medical Officers of Homeopathy. In other words it was submitted that the Medical Officers, in any case, have to be those possessing the basic qualifications as required under Schedule Second and Third of the Central Act, are eligible for promotion to the post of Chief Medical Officer/Inspectors of Homeopathy. In that view of the matter when the promotion was only to be available to the Inspectors and Chief Medical Officer of Homeopathy, specific provision of qualification, in the opinion of the State Government, was not necessary at all.

It was submitted that the administrative experience is necessary to man the post of Deputy Director. Hence it has been provided in the Resolution that the Inspector/Chief Medical Officer (Homeopathy) with five years of experience will only be considered for promotion to the post of Deputy Director (Homoeopathy).

As regards the justifiability of excluding the Lecturers of Government Homoeopathy College the plea, as mentioned in the counter-affidavit before the Tribunal, of promotional avenues being available to the College teachers as opposed to field staff was again re-submitted before us. It was also submitted that the assumption of the Tribunal that the teachers of the Homeopathy College and medical officers in the peripheral institutions belong to one cadre is entirely misconceived. It was pleaded that the 1980 Rules merely regulate the Medical College teachers only. It has no applicability to peripheral doctors and, therefore, it was not correct to say that Inspectors and C.M.O. belong to the cadre of Lecturers or Senior Lecturers who were recruited under the provisions of 1980 Rules.

This court had occasion to examine the provisions of the Central Act as well as the 1956 Act in the case *State of Orissa and another v. Radheshyam Nanda*, [1991] Supp. 2 S.C.C. 404. After considering the provisions of Section 15(2) and 15(3) of the Central Act as well as Section 29(b) of the 1956 Act this Court held that in view of the provisions of Section 15(3) of the Central Act the right conferred on the Registered Homeopathy Practitioner under the 1956 Act is not affected by the conditions under Section 15(2) of the Central Act and indeed such a right or privilege has been specifically preserved by Section 15(3) (b) of the Central

A Act:

B It is clear from the provisions of Section 15(1) of the Central Act itself that any medical qualification included in the Second or the Third Schedule shall be sufficient qualification for enrolment of any person on any State Register of Homeopathy. Sub-section (2) of Section 15 makes it specifically clear that no person, other than a practitioner of Homeopathy who possesses a recognised medical qualification and is enrolled on a State Register on the Central Register of Homeopathy - shall hold office as Homeopathic physician or any other office (by whatever designation called) in government or in any institution maintained by a local or other authority. Thus no body could be either Inspector or Chief Medical Officer, Homeopathy without having requisite qualification contemplated by Section 15(2) of the Act. It was not the case of teachers before the Tribunal that Inspectors and Chief Medical Officer, Homeopathy were disqualified under the Central Act for holding any office in Government. Once the holding of the requisite qualification is *sine qua non* for employees working as inspectors and Chief Medical Officer, Homeopathy, there was no necessity for providing the same qualification once again while making them eligible for promotion to the post of Deputy Director.

E We are thus constrained to hold that the Tribunal had erred in holding that the Resolution of 15th December, 1986 was in any way violative of Section 15(2) or 15(3) of the Central Act or Section 29(b) of the 1956 Act. Again the finding that the exclusion of Lecturers in Medical College from being eligible for promotion to the post of Deputy Director, Homeopathy being unfair or discriminatory is not correct. Once the cadre of teachers is separate from the cadre of peripheral officers there is no question of discrimination. There is already a division among their personnel and the two belong to different categories and, therefore, the decision of the Government at a later stage to exclude teachers from eligibility to the post of Deputy Director, Homeopathy cannot be called discriminatory. It cannot be also called unfair as pointed out in the counter-affidavit filed on behalf of the State of Orissa that whereas teachers could go to the level of Class I post, the persons belonging to peripheral field had to compete with teachers for aspiring to go to the post of Deputy Director. It cannot be said that the exclusion, on the facts and circumstances, suffer from any unfairness. We thus find that the revised criteria as envisaged in the Resolution dated 15th December, 1986 and as specifically made clear in

the Resolution dated 25th November, 1987 read with the averments made in the counter-affidavit is not in any way illegal discriminatory and not in any way violative of the provisions of the 1956 Act or the Central Act and, therefore, the appointment of Dr. Godavarish Mishra Could not have been quashed by the Tribunal. A

We accordingly accept this appeal with costs and set aside the impugned order of the Tribunal dated 7th May, 1990. B

A.G.

Appeal allowed.