

PETITIONER:
A.N. SHASHTRI

Vs.

RESPONDENT:
STATE OF PUNJAB & ORS.

DATE OF JUDGMENT 11/12/1987

BENCH:
MISRA RANGNATH
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DUTT, M.M. (J)

CITATION:
1988 AIR 404 1988 SCR (2) 363
1988 SCC Supl. 127 1987 SCALE (2) 1411

ACT:

Punjab Ayurvedic Department (Class I and Class II), Rules, 1963: Rule 6-Promotion as Director of Ayurved- Requisite qualification for promotion post same as that for the feeder post-Appointment to feeder post not challenged- Held promotion unassailable.

Constitution of India, Article 226: Malicious writ of quo warranto-Court to take notice of-Having regard to background and history of the case.

Civil Services-Reversion on wrong ground and subsequent superannuation-Employee to be treated as regularly appointed to and retired in the promotion post.

HEADNOTE:

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Rule 6 of the Punjab Ayurvedic Department (Class I and Class II) Rules, 1963 interdicts appointment to the service except duly qualified persons. The requisite qualification laid down by Appendix 'A' to the Rules for Class I post of Director of Ayurved includes (1) a five years' degree course in Ayurvedic system of medicine, and (2) Doctor of Science in Ayurvedic Medicine. For the posts of Professor, Assistant Director and deputy Director of Ayurved the requisite qualification is a five years regular course in Ayurvedic system of medicine.

The appellant had read as a regular student for three years in the first instance, and for the remaining two years he was directly under a qualified, Professor. He had then obtained a degree from a recognised University. Later he acquired the Doctor of Science Degree in Ayurved. He was appointed as a Professor of Ayurvedic Medicine under the Punjab Government and later as Deputy Director. He was further promoted as Director.

His appointment as Director was challenged for lack of requisite qualification in a writ of quo warranto by respondents, 2, 3 and 4. In the return made to rule he averred that the petitioners-respondents, his one time students, had filed the application on account of ill motive. He was reverted to the post of Deputy Director on October 21, 1981 during

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the pendency of the writ petition which he challenged in a

connected writ petition. he superannuated from the post of Deputy Director on October 31, 1987.

The High Court held that the appellant was not qualified to hold the post of Director since he had not studied in a regular course for five years to obtain the degree, though it found that he possessed the second qualification, namely, Doctor of Science Degree, and a degree in Ayurvedic system of medicine duly recognised by the Government of Punjab. Consequently, in the connected writ petition the High Court took the view that he was not entitled to challenge reversion to the post of Deputy Director.

Allowing the appeals with costs,

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HELD: 1.1. The writ petitioners have failed to establish that the appellant did not possess the requisite qualification. In fact he had read as a regular student for three years in the first instance and for the remaining two years he was directly under a qualified Professor. After reading for five years he had obtained the degree which has been from a recognised University. [368E]

1.2 The appellant had been serving as Professor for several years. As far as the qualification goes there is no difference in the case of a Professor and that of a Director. In giving appointment to the appellant as Professor, the Government must have been satisfied that he had the requisite qualification. [368B]

1.3 There was no challenge to the appointment of the appellant to the post of Deputy Director. The first item of the qualification is the same for the Director as also the Assistant Director and the Deputy Director. The appellant held a post between the two. The High Court should have looked into this aspect to find out what exactly was the requirement. [368D; A]

1.4 The High Court should have given due consideration to the background and the history of the matter. Ayurveda is the traditional method of medical attention. In the post-medieval India the system had suffered a set back but in the post-independence period it has been accepted as a regular course of study and recognised as a system of therapy. [369B; 368H]

1.5 The appellant has alleged that the writ petition was the out-
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come of malice and ill will. The High Court did not appropriately advert to this aspect. The petitioners-respondents were the once-upon-a-time students of the appellant. Ordinarily one would expect obligations, piety and reverence in their conduct towards the appellant, especially in the traditional system of Ayurved culture. Surprisingly that seems to have been totally wanting. [369C]

2. Since the reversion of the appellant was grounded upon non possession of the requisite qualification the order of the High Court in the connected writ petition cannot be sustained. [369F-G]

3. The appellant shall be treated to have been regularly appointed as Director of Ayurved and to have been retired in that post, the order of reversion notwithstanding. He shall be entitled to all the benefits prescribed for the post of Director from the date he came to the post till he retired. [369G-H]

Statesman (Private) Ltd. v. H.R. Deb & Ors., [1968] 3 SCR 614, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 8623-24 of 1983.

From the Judgment and order dated 3.6.1983 of the High Court of Punjab and Haryana in Writ Petition No. 1794 of 1980.

P.P. Rao and P.D. Sharma for the Appellant.

S.K. Bagga, C.M. Nayar, Mrs. Manik Karanjawala, R. Karanjawala and Mrs. Meenakshi Arora for the Respondents.

The Judgment of the Court was delivered by

RANGANATH MISRA, J. These appeals are by special leave and are directed against two separate judgments of the Punjab and Haryana High Court. The first one is against the decision of the High Court in a writ application for quo warranto filed by respondents 2 to 4 while the second one is against the dismissal of a writ petition filed by the appellant before the High Court challenging his reversion.

The short facts are that the appellant was appointed as a Professor of Ayurvedic Medicines under the Punjab Government. Later, he was appointed as Deputy Director from which post he was further

366 promoted as Director. By order dated 21.1.1981 he was reverted to the post of Deputy Director. On 31st October, 1987, the appellant has superannuated. The respondent Nos. 2, 3 and 4, once upon a time students of the appellant came before the High Court asking for a writ of quo warranto challenging the appellant's appointment as Director on promotion on the plea that he did not possess the qualification prescribed by the Punjab Ayurvedic Department (Class I and Class II) Rules, 1963. Rule 6 of these Rules prescribes:

"No person shall be appointed to the service, unless he possesses such qualifications, if any, as are shown in column 4 of Appendix 'A'."

In Appendix 'A' there is only one post under Class I—that being the post of Director of Ayurved. The requisite qualifications for that post as provided in Appendix 'A' are the following:

- "(1) A degree (5 years or more of regular course) in Ayurvedic system of medicine of a Medical Board or Faculty of Indian Medicine recognised by the Government.
- (2) Doctor of Science in Ayurvedic Medicine (Post Graduate) of any recognised University.
- (3) Must have worked as an organiser in some Ayurvedic Institution of repute such as Government Ayurvedic Department in any State for a period of at least ten years.
- (4) Has conducted original research in Ayurvedic Therapy.
- (5) Must be an Ayurvedic Physician of at least 15 years standing."

Challenge in the High Court was on the ground that the appellant did not possess the prescribed qualifications under Items 1 and 2. The writ petition was filed soon after the appellant was promoted to the post of Director, and during the pendency of the writ petition the order of reversion as referred to above had been passed.

The appellant opposed the writ application by contending that he

367 possesses the requisite qualifications and, inter alia,

averred in the return made to rule that the petitioners before the High Court were his students and on account of ill motive, they had filed the application challenging the appointment of the appellant as Director. The State Government initially supported the appellant but later took a different stand. The High Court has found that the appellant possessed the second qualification, namely, that he had obtained the Doctor of Science Degree in Ayurvedic as prescribed. In regard to the first qualification, the High Court found that the appellant had a Degree in Ayurvedic system of Medicine from a recognised Institution and the degree that the appellant possesses has been duly recognised by the Government of Punjab, but it found that the appellant had not studied in regular course for five years to obtain the degree and, therefore, came to the conclusion that the requisite qualification was not possessed by the appellant. Accordingly, it allowed the writ petition and came to hold that the appellant was not qualified to hold the post of Director. When the question of challenge to the reversion came for consideration in the connected writ petition, the High Court took the view that since the appellant did not possess the first qualification, he was not entitled to the post of Director and was not entitled to challenge the reversion to the post of Deputy Director.

We shall first deal with the appeal arising out of the quo warranto proceedings. The first qualification which we have referred to above appears to be a common qualification for almost all the ranks covered by Appendix 'A', namely, that a degree should have been obtained after five or more years of regular course having been gone through. No dispute has been raised to the appellant's appointment as Deputy Director. Learned counsel appearing for the respondents who had petitioned the High Court pointed out with reference to the correspondence with the State Public Service Commission that in regard to the qualification for the post of Deputy Director, a degree or diploma was considered sufficient. The State Public Service Commission had raised objection to the Government's proposal of fixing the degree qualification by pointing out that since a degree after studying for five or more years of regular course was the requirement for the higher post of Director, a lesser qualification should be prescribed for the post of Deputy Director and accordingly the alternates had been adopted. When we pointed out to her that for the post of Assistant Director-it cannot be disputed that Deputy Director's is a superior post-the requirement was five years or more of regular course in Ayurvedic with a diploma, there was really no answer. We would accordingly hold that the High Court should have looked into this

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aspect to find out what exactly was the requirement. In view of the fact that there was no challenge to the appointment of the appellant to the post of Deputy Director and the first item of the qualification is the same for the Director as also the Assistant Director and as Deputy Director, the appellant held a post between the two, we are not impressed by the stand of the respondents that the appellant was not possessed of the requisite qualification. There is no dispute that the appellant had been serving as Professor for several years. The requisite qualification for that post as per Appendix 'A', as far as relevant is:

"A Degree (five years regular course) in Ayurvedic system of Medicine of a recognised university, or of a board of Indian System of Medicine established by law or from any Ayurvedic College

recognised by Government."

As far as this qualification goes, there is indeed no difference in the case of a Professor and that of Director. In giving appointment to the appellant as Professor, it must follow that Government were satisfied that appellant had the requisite qualification.

There is material on record to show that in regard to the degree obtainable on completion of the five year course, the appellant had read as a regular student for three years in the first instance and for the remaining two years he was directly under a qualified Professor though it was not study in a regular institution. After reading for five years he has obtained the degree which has been from a recognised University. In the circumstances, it has become difficult to agree with the reasons given by the High Court for its conclusion that the appellant was not having the requisite qualification prescribed under the Rules.

Mr. Rao, counsel for the appellant relied upon a decision of this Court in *Satesman (Private) Ltd. v. H.R. Deb & Ors.*, [1968] 3 SCR 614 at page 621 of the Reports, Hidaytullah, CJ. speaking for the Constitution Bench indicated:

"The High Court in a quo warranto proceeding should be slow to pronounce upon the matter unless there is a clear infringement of the law"

It the circumstances which we have narrated, it is indeed difficult to hold that the appellant did not have the requisite qualification.

Ayurveda is the traditional method of medical attention prevalent in this country. Modern science and people associated with the medical faculties of the modern age have gradually accepted the position that Ayurveda provided a fully developed medical process. In the post medieval India the system had suffered a set back but in recent years, the Ayurved system has been revived. In the post-independence period, the system has been accepted as a regular course of study and recognised as a system of therapy. The High Court should have given due consideration to the background and the history of the matter.

There is clear material that the petitioners before the High Court were the once-upon-a-time students of the appellant. Ordinarily one would expect obligations, piety and reverence in the conduct of the writ petitioners towards the appellant. This expectation would be more justified in the traditional system of Ayurved culture. Surprisingly that seems to have been totally wanting. The appellant has, on the other hand, alleged that the writ petition was the outcome of malice and ill will. The High Court did not appropriately advert to this aspect.

We are of the view that in the facts of this case, the reasonable conclusion to reach should have been that the writ petitioners had failed to establish that the appellant did not possess the requisite qualification. The appeal has, therefore, to be allowed, the judgment of the High Court has to be set aside and the writ petition has to be dismissed with costs.

Now we come to the appeal challenging the reversion. The writ petition has been dismissed on the sole ground that the appellant was not possessed of the requisite qualification and, therefore, was not entitled to continue as Director. Now that we have reversed the finding of the High Court on that score, the judgment of the High Court cannot be sustained. Reversion as admitted by the State

Government in its counter in the High Court was grounded upon non-possession of the requisite qualification. With our finding in the connected appeal, the order of the High Court cannot be sustained. Nor can the order of reversion be. The other appeal too is allowed with costs. The appellant shall be treated to have been regularly appointed as Director and shall be treated to have retired in the post of Director-the order of reversion notwithstanding. He shall be entitled to all the benefits prescribed for the post of Director from the date he came to the post till he retired. All his dues shall be paid to him within three months from today. Consolidated hearing fee of Rs.5,000 is allowed to the appellant and this shall be paid by the respondent-State alone.

P.S.S.

Appeals allowed.

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