

+ W.P.(C)No.10868/2009 and CM No.5875/2010Date of Decision : 2nd December, 2010

%

A.V. PAVITHRAN , & ORS. Petitioners
Through : Mr. P.S. Mishra, Adv.

versus

UOI & ORS. Respondents
Through : Mr. Ankur Chhibber, Adv.

CORAM :-**HON'BLE MS. JUSTICE GITA MITTAL****HON'BLE MR. JUSTICE J.R. MIDHA**

- | | | |
|----|---|-----------|
| 1. | Whether Reporters of Local papers may be allowed to see the Judgment? | NO |
| 2. | To be referred to the Reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

GITA MITTAL, J. (Oral)

1. The writ petitioners were appointed to the post of Assistant Sub Inspector/Pharmacist (unqualified) into the Border Security Force on different dates in 1991-92. The recruitment rules which govern the rights of the petitioners as well as the claims made in the present writ petition are undisputed. The petitioners have claimed entitlement to the pay scale which was admissible for the post of Assistant Sub Inspector/Pharmacist (qualified) with effect from the date on which they were recruited.

2. In view of the claim of the petitioner, it is necessary to consider the relevant provisions contained in Border Security Force (Group 'C' Combatised Para Medical Staff), Recruitment Rules-1991 admittedly applicable in the instant case which provides as follows:-

“The post of Pharmacist (Unqualified) (ASI) will be operated against the sanctioned posts of Pharmacist (Qualified) (ASI). The post of Pharmacist (Qualified) (ASI) cannot be filled up by direct recruitment by persons possessing the prescribed qualification.”

“Pharmacist (Unqualified) (ASI) shall be eligible for grant of the scale of pay of the post of Pharmacist (Qualified) (ASI) after rendering 10 years of service in the grade.”

2. So far as the post of Assistant Sub Inspector/Pharmacist (qualified) is concerned, the recruitment thereof is prescribed by the direct mode as well as by way of appointment from Assistant Sub Inspector/Pharmacist (unqualified) who have rendered 10 years of service in the Force. This has been appended by way of a note in the recruitment rules.

3. The respondents have placed before us the clear intimation in the advertisement for direct recruitment of Assistant Sub Inspector/Pharmacist published through the DAVP wherein it was mentioned that so far as the pay scale of Assistant Sub Inspector/Pharmacist (unqualified) is concerned, they would draw pay in the scale of ₹1200-1800/-. The petitioners were fully aware about this stipulation and have submitted accordingly their applications for appointment to the post of Assistant Sub Inspector/Pharmacist (unqualified). Upon

selection, they had undergone 12 years basic training at the TC&S School, BSF Hazaribagh. So far as pay scale which the petitioners were drawing at the time of the appointment is concerned, no legally tenable ground for challenge of the same is made out.

4. The other plea on which the petitioners rest their claim on the appointments of certain persons stated to be junior to the petitioners who according to the petitioner, have been appointed as Assistant Sub Inspector/Pharmacist (qualified) and given the higher pay scale at ₹1,350-2,200, with effect from 7th January, 1994.

5. So far as the persons whose names have been cited by the petitioners are concerned, the respondents have explained that such persons were initially appointed in the Border Security Force as Assistant Sub Inspector/Pharmacist (unqualified). Subsequent to their appointment, they separately applied for participating in the open competition for direct recruitment to the post of Assistant Sub Inspector/Pharmacist (qualified). After undergoing this process, these persons were selected by direct recruitment for the post of Assistant Sub Inspector/Pharmacist (qualified) in the year 1994 and consequently were appointed at the said post in the prescribed pay scale of ₹1,350-2,200. The petitioners did not apply or participate in the open competition held in 1994 when the other personnel who have been named in by the petitioners were selected and appointed. There is thus no connection

between the earlier appointments of these persons to the post of ASI/Pharmacist (unqualified) and their appointments in 1994 to the post of ASI/Pharmacist (qualified). For this reason, there is no merit in the submission that the persons junior to the petitioners in the post of Assistant Sub Inspector/Pharmacist (unqualified) have been appointed and given the scale of Assistant Sub Inspector/Pharmacist (qualified).

6. Another specific instance has been separately cited by the petitioner in support of the plea of discrimination. It has been urged by the petitioners that one Assistant Sub Inspector, Shiv Ram Singh had filed WP(C)No.6162/1995 in the High Court of Madhya Pradesh (Gwalior Bench). In these proceedings, it was directed that Assistant Sub Inspector Shiv Ram Singh would be granted the scale of Assistant Sub Inspector/Pharmacist (qualified) with effect from the date of his appointment. The petitioners have stated that on the same analogy, they would be entitled to the scale of Assistant Sub Inspector/Pharmacist (qualified) with effect from the date on which they were appointed inasmuch as they possess the requisite prescribed qualification for the post.

7. The respondents have explained the circumstances in which ASI Shiv Ram Singh was granted the scale of ASI/Pharmacist (qualified). We find that ASI Shiv Ram Singh was appointed in the Border Security Force as ASI/Pharmacist (qualified) prior to the publication of the recruitment rules, Border Security Force (Group 'C' Combatised Para Medical

Staff), Recruitment Rules-1991. The respondents have explained that the said recruitment was on the basis of the guidelines issued during 1974 in accordance with the provisions of Sections 31 and 32 of the Pharmacist Act, 1948.

The petitioners were admittedly appointed after the said Recruitment Rules of 1991 (extracted above) came into force and the appointment of the petitioners would be governed by the provisions thereof. For this reason, the petitioners can claim no parity in the manner in which ASI Shiv Ram Singh was appointed and treated.

8. In view of the above, the petitioners who admittedly had applied and had been appointed as Assistant Sub Inspector/Pharmacist (qualified) cannot assert or claim the entitlement to the benefits which were admissible against the post of Assistant Sub Inspector/Pharmacist (qualified). The plea of discrimination urged by the petitioner is arbitrary and the same is not sustainable in the instant case. So long as the recruitment rules prescribe different eligibility conditions and scale of pay, the petitioners cannot claim entitlement to the pay scale which has been prescribed for a different post on the plea that petitioners possess the requisite qualification for both. The petitioners have admittedly received the pay in the scale for the post in which they had been appointed.

In this view of the matter, we find no merit in the present writ petition which is hereby dismissed.

CM No.5875/2010

In view of the order passed in WP(C)No.10868/2009, this application is also dismissed.

GITA MITTAL, J

J.R. MIDHA, J

DECEMBER 02, 2010
HL