

Court No. - 34

Case :- WRIT - A No. - 13535 of 2022

Petitioner :- Lovely Singh

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Shivendu Ojha, Sneh Pandey, Sr.
Advocate

Counsel for Respondent :- C.S.C.

Hon'ble Ajit Kumar, J.

1. Heard Sri R.K. Ojha, learned Senior Advocate assisted by Sri Shivendu Ojha, learned counsel for the petitioner and learned Standing Counsel for the State-respondents.

2. The Regional Ayurvedic and Unani Officer, Kaushambi namely respondent No.3 issued an advertisement on 01.01.2020 inviting applications from the eligible persons for post of Yoga Assistant and Yoga Instructor. The period for submission of application was from 12.01.2020 till 05.00PM of 28.01.2020. For the post of Yoga Instructor, age prescribed was between 21 years to 65 years as on 01.07.2019. The essential qualifications prescribed were: (a) degree of five years course of Bachelor of Naturopathy and Yogic Science (B.N.Y.S.), or (b) M.Sc. (Yoga) from a recognised university (they will be given preference and exemption from training); or (c) P.G. Diploma (with minimum one year curriculum) with three years experience and having practical skill in Yoga. Petitioner applied for the post of Yoga Instructor within the time prescribed for and was finally selected and appointed under the order dated 14.02.2020 issued by the respondent No.3 for a period of one year.

3. From the record, it transpires that there arose some dispute between petitioner and one Arun Kumar Jaiswal and the petitioner reported the matter to the police for alleged misbehaviour by the said Arun Kumar Jaiswal and also his attempt to outrage her modesty in the open market place. After the petitioner reported the matter to the police on 21.10.2020, the said Arun Kumar Jaiswal reached to a compromise with the petitioner and this is how the controversy ended and the petitioner did not proceed any further. A copy of the compromise dated 22.10.2020 reached before the police has been brought on record as Annexure-14 to the writ petition. However, it appears that said Arun Kumar Jaiswal later on made a complaint regarding essential qualification of the petitioner

for the post in question on the Public Grievance Cell portal of Chief Minister and the Commissioner, accordingly, constituted a three-member committee with the Additional District Magistrate, Kaushambi as its Chairman to look into academic qualification required for the post in question in respect of the petitioner in light of the relevant government order. Petitioner submitted her reply to the notice issued to her on 07.03.2022 but since her payment was stopped, so she also made a complaint to the District Magistrate on 27.04.2022. The Three-member committee submitted a report on 04.04.2022 holding the petitioner to have not possessed valid diploma for the reason that the institute from which she had obtained diploma was not an affiliated to a recognised university and that petitioner had only one year experience certificate after obtaining PG diploma in the year 2018. Acting upon the report and without giving any opportunity of hearing to the petitioner, Regional Ayurvedic and Unani Officer, Kaushambi terminated services of the petitioner vide order dated 30.04.2022.

4. Challenging the order of termination dated 30.04.2022, petitioner approached this Court vide Writ-A No.7234 of 2022 and this Court disposed of the petition providing opportunity of post decisional hearing to the petitioner by the respondent with the observation that the order impugned dated 30.04.2022 would abide by the decision to be taken by the respondent No.3 after considering the reply of the petitioner, which the petitioner was permitted to make within a period of three weeks.

5. Petitioner did submit her reply, as directed by this Court, but the respondent No.3 passed the order impugned dated 05.08.2022 holding petitioner to have not possessed requisite experience of three years as was required under the advertisement from the date she completed her diploma.

6. Sri Ojha, learned Senior Advocate appearing for the petitioner has raised two grounds: i) the requirement was of three years experience only and there was no condition that a candidate should have it after obtaining diploma qualification; and ii) any subsequent change in the qualification by way of amendment under the government order issued, the said amended qualification would not be having retrospective application.

7. In support of his above submissions, learned Senior Advocate has drawn the attention of the Court to the Government Order dated 17.03.2018 that prescribed minimum essential qualification as PG diploma (with minimum one year curriculum) and three years experience. This qualification came to be modified under the

government order dated 19.10.2020 with a note appended to the said qualification and to the effect that the experience of working should be after the candidate has passed out the prescribed diploma/degree.

8. Thus, learned Senior Counsel submits that the amended government order having been issued on 19.10.2020 and petitioner having already been selected pursuant to the advertisement dated 01.01.2020, vide appointment order dated 14.02.2020, it could not be said that petitioner having possessed experience prior to obtaining diploma would not be eligible. For the purposes of experience certificate, he has taken the Court to the certificate dated 05.09.2017 issued by Gautam Budh Yoga Institute for Education and Training which certifies the experience from 14.07.2016 to 30.08.2017. This certificate has been brought on record as Annexure-5 to the writ petition. The other experience certificate is issued by the respondent No.3 himself where the petitioner has been working as Yoga Assistant since 26.02.2018. It is contended that petitioner has been working as Yoga Assistant with the respondent No.3 until she was issued with an appointment order. The attention of the Court has also been drawn to the Post Graduate Diploma certificate in Yoga issued by Maharshi Dayanand Saraswati Yoga Institute, which is a registered university by Government of NCT New Delhi, India.

9. Thus, the argument of learned Senior Advocate is that petitioner did possess requisite qualification on the date of selection and appointment in respect of PG diploma as well as experience.

10. *Per contra*, learned Standing Counsel for the respondents tried to defend the order for the reasons assigned therein.

11. Having heard learned counsel for the respective parties and their arguments raised across the bar, the only issue that needed to be addressed to is; as to whether petitioner did possess the requisite qualification on the last date of submission of application form, as prescribed for under the advertisement and the relevant government order. It is otherwise well settled that any change in the essential qualification after selection and appointment has been held by amending rules or issuing government order in supercession to the earlier government order, will not have a retrospective effect and, therefore, selection and appointment would be held to be bad.

12. Advertisement that was issued on 01.01.2020 provided following eligibility qualification for Yoga Instructor:-

"मान्यता प्राप्त विश्वविद्यालयों/ संस्थानों से साढ़े पाँच वर्षीय कोर्स बैचलर आफ नेचुरोपैथी एण्ड यौगिक साइंस (बी०एन०वाई०एस०) या एम०एस० जी० (योग) की डिग्री प्राप्त । इनके अनुभव की छूट देते हुये वरीयता दी जायेगी ।

अथवा

पी०जी० डिप्लोमा (न्यूनतम एक वर्षीय पाठ्यक्रम) डिप्लोमा पाकर जिनकी तीन वर्षीय अनुभव हो तथा उक्त समस्त को यौगिक क्रियाओं के प्रदर्शन में व्यवहारिक दक्षता ।"

13. From the perusal of the government order dated 17.03.2018, it is also clear that PG diploma (with minimum one year curriculum) and three years experience is also one of the essential qualifications. In fact, there are three qualifications (a), (b) and (c) and a candidate was required to possess any of the three qualifications. The third qualification (c) was the one which the petitioner possessed at the time of selection and appointment. The essential qualification as prescribed under the government order dated 17.03.2018 is reproduced hereunder:

"i) योग प्रशिक्षक :-

(ए) मान्यता प्राप्त विश्वविद्यालयों / संस्थानों से साढ़े पाँच वर्षीय कोर्स बैचलर ऑफ नेचुरोपैथी एण्ड यौगिक साइंस (बी०एन०वाई०एस०) या एम०एस०सी० (योग) की डिग्री प्राप्त । इन्हें अनुभव की छूट देते हुए वरीयता दी जायेगी।

अथवा

(वी) बी०एस०सी० (योग) तीन वर्षीय डिग्री धारक/एम०ए० (योग) डिग्री धारक. जिनका एक वर्षीय अनुभव हो।

अथवा

(सी) पी०जी०, डिप्लोमा (न्यूनतम एक वर्षीय पाठ्यक्रम) डिप्लोमा धारक जिनका तीन वर्षीय अनुभव हो ।,"

(emphasis added)

14. From the perusal of the above qualifications as given in the government order and under the advertisement, I do not find there to be anything that can be suggestive of a condition that a candidate must possess experience after obtaining diploma. In the circumstances, therefore, a candidate could have obtained experience either before the diploma or subsequent to the diploma. This qualification came to be amended/modified under the government order dated 19.10.2020 by appending a note below the qualifications that the experience certificate must have been obtained subsequent to a candidate completing the diploma. Now the note that modified qualification as prescribed under the government order dated 19.10.2020 which was in fact introduced as answer to the query made as to the experience, is reproduced as

under:

"नोट:- कार्य का अनुभव प्रमाण पत्र निर्धारित डिग्री/पी०जी०डिप्लोमा के उत्तीर्ण करने के लिए मान्य होगा"

15. The experience certificate that the petitioner has brought on record as Annexure-5 & 6 to the writ petition have been referred to in para 11 and 12 of the writ petition which read as under:

"11. That the Petitioner before completing her Diploma in Yoga, she has obtained one year experience in between 14.7.2016 to 30.8.2017 from the Gautam Buddh Shikshan Evam Prashikshan Yog Sansthan, Amethi and the said Yoga Institute was also duly recognized by the MHRD. For kind perusal of this Hon'ble Court, True/ Photostat Copy of the Experience Certificate of the Petitioner dated 5.9.2017 is being filed herewith and marked as Annexure-5 to this Writ petition.

12. That, thereafter, the Petitioner was appointed in District Fatehpur itself as Yoga Assistant under the Regional Ayurvedic and Unani Officer, Fatehpur and in this regard an experience Certificate has also been issued by Dr. Sudhir Ranjan, Regional Ayurvedic Evam Unani Officer, Fatehpur in favour of the Petitioner. For kind perusal of this Hon'ble Court, True/ Photostat Copy of the experience Certificate issued by Dr. Sudhir Ranjan, Regional Ayurvedic Evam Unani Officer, Fatehpur in favour of the Petitioner is being filed herewith and marked as Annexure-6 to this Writ petition."

16. In counter affidavit, duly sworn by Dr. Anita Singh, the then Regional Ayurvedic and Unani Officer, the averments of paragraph 11 have been denied vide paragraph 5 of the counter affidavit but the denial is on the ground that it should have been after passing the PG diploma. Regarding other experience certificate issued by respondent No.3 there is no denial at all in paragraph 6 of the counter affidavit. Paragraphs 5 & 6 of the counter affidavit are being reproduced as under:

"5. That the contents of paragraph nos. 9, 10 and 11 of the writ petition are not admitted, misconceived, hence denied. In reply, it is submitted that the work experience shall be sustainable after passing the fixed Degree/P.G. Diploma.

6. That the contents of paragraph nos.12, 13, 14, 15 & 16 of the writ petition do not call for any reply."

17. Thus, it is clear that the diploma certificate of the petitioner has not been doubted at all. What has been doubted is the experience which the petitioner was possessing.

18. Now having perused the government order and the advertisement, I find that as on date of selection and appointment, the government order dated 17.03.2018 prevailed which did not

prescribe for any experience that a candidate should have obtained after completing the diploma. This prescribed qualification of experience came to be modified by appending note under the government order issued only on 19.10.2020 whereas petitioner was already appointed and issued with appointment order on 14.02.2020.

19. It is settled legal position that the rules that prescribe for qualification at the time of selection and appointment would prevail and no subsequent modification to the rules whether by way of statutory rules or by way of government order would be given retrospective effect *qua* the selection and appointment underway or already held and made. The law is that; while any selection is underway and the rules laying down criterion is subjected to change in the meanwhile then the proper course would be to stop selection process and recall the advertisement, issue fresh advertisement and then to proceed afresh. In the case of **Madan Mohan Sharma & anr vs. State of Rajasthan & ors; 2008 (3) SCC 724**, vide paragraph 12, it has been thus:

"12. As per the circular which was obtaining at the time when the advertisement was issued was dt. 4.7.1995, the criteria for selection to the post of Teacher Grade III was Secondary Examination though this was changed during the pendency of the advertisement. Subsequent amendment of the Rules which was prospective cannot be made retrospective so as to make the selection on the basis of the Rules which were subsequently amended. If this was to be done, then the only course open was to recall the advertisement No.1/1996 and to issue fresh advertisement according to the Rules which had come into force. Secondly, this was not done and erroneously the authorities made the amended Rules applicable and proceeded with the selection which resulted into litigation and ultimately Radhey Shyam Sharma succeeded in that litigation and it was held that the selection should be made as per Secondary Examination marks, the criteria which was prevalent at the time when the advertisement was issued."

20. Upon the applicability of amended rules to the selection process in progress, the law is that except where rules are made retrospective in their application, such amended rules would not apply to an ongoing selection process. In the case of **Assam Public Service Commission & ors vs. Pranjal Kumar Sarma & ors; 2020 (20) SCC 680**, vide paragraph 15, it has been held thus:

"15. The law with regard to applicability of the Rules which are brought anew during the selection process have been crystalized by this Court. It has been held that the norms existing on the date when the process of selection begins, will control the selection and the alteration to the norms would not affect the ongoing process unless the new Rules are to be given retrospective effect. Similarly in N.T. Devin Katti v. Karnataka Public Service Commission; 1990 (3) SCC 157, this Court held that a candidate has a limited right of being

considered for selection in accordance with the Rules as they existed on the date of advertisement and he cannot be deprived of that limited right by amendment of the Rules during the pendency of the selection, unless the Rules are to be applied retrospectively. "

21. It is submitted by learned Senior Advocate that though appointment is for one year on contract basis upon honorarium to be paid, but it is renewed every year. Learned Standing Counsel does not dispute the above factual position.

22. In view of the above, the order impugned terminating the services of the petitioner is held unsustainable.

23. Accordingly, writ petition succeeds and is ***allowed***. The order impugned dated 30.04.2022 is hereby quashed. Petitioner's status is restored to the position of Yoga Instructor. Since it is a contract appointment, her claim for renewal shall be considered accordingly and order shall be passed. Petitioner shall be entitled to salary for the period she has worked as Yoga Instructor prior to passing of the order impugned and shall also be entitled to salary from the date she assumes the charge of Yoga Instructor as a consequence to the writ petition being allowed today.

24. There will be no order as to cost.

Order Date :- 27.10.2023

P Kesari