

Court No. - 2

Case :- SPECIAL APPEAL No. - 112 of 2019

Appellant :- Dr. Ram Dutt And Another

Respondent :- Dr. Naval Kishor And Ors.

Counsel for Appellant :- Avinash Tiwari

Counsel for Respondent :- C.S.C.,Birendra Pratap Singh,Sameer Kalia,Vishwanath Pratap Singh

And

Case :- SPECIAL APPEAL No. - 111 of 2019

Appellant :- Dr. Vijay Prakash And Ors.

Respondent :- Dr. Naval Kishor And Ors.

Counsel for Appellant :- Vijay Kumar Tiwari,Birendra Pratap Singh

Counsel for Respondent :- C.S.C.,Avinash Tiwari,Avneesh Tripathi,Krishna Kumar Vishwakarma,R P Mishra,Sameer Kalia,Vishwanath Pratap Singh

Hon'ble Rajan Roy,J.

Hon'ble Om Prakash Shukla,J.

1. Heard.

2. By means of these appeals i.e. Special Appeal No.112 of 2019 and Special Appeal No.111 of 2019, the appellants have challenged the judgment and order dated 06.02.2019 passed in Writ Petition No.29138(S/S) of 2016 which are decided by way of a common judgment.

3. The facts of the case in brief are that a selection took place in the year 1988 in pursuance to an advertisement for filling of various posts of the State Ayurvedic & Unani Medical Officers' Cadre in the State of U.P. including Medical Officers for being posted in the Community Health Centre. The respondents herein were selected along with several other persons (total vacancies were 1400). The respondents herein were posted in the Unani Ayurvedic Hospitals whereas others were posted in

Medical Officers in Community Health Centre. According, to the respondents' counsel, the cadres were bifurcated only in the year 2003 but that is not very relevant at this stage.

4. The fact of the matter is that the initial appointment of the respondents was on ad-hoc basis but after due and proper selection against substantive vacancies. Such selectees and appointees were considered and regularized vide order dated 27.12.2003 while the services of the others were regularized vide order dated 06.09.2005. There were however five other Medical Officers whose services were regularized vide order dated 20.02.2005 w.e.f. 21.01.1991, as such, the others also claimed the same benefit and they were extended the same benefit vide order dated 12.01.2010. Now this order was cancelled vide subsequent order dated 06.04.2010. This order was put to challenge by some of the aggrieved parties belonging to the cadre of Medical Officers of Community Health by filing Writ A No.30339 of 2010 which was decided on 25.05.2010 in the following terms:

"Heard Shri Umesh Narain Sharma, Sr. Advocate assisted by Shri Chandan Sharma, learned counsel for the petitioners. Learned Standing Counsel appears for the respondents.

The petitioners are serving as Medical Officers (Community Health) under the Director, Ayurvedic Services, Government of U.P. It is alleged that they were appointed in the year 1986 on the dates given in the seniority list and were regularised w.e.f. 21.1.1991 after serving for 3 years under the U.P. Regularisation of Adhoc Appointments (On the Posts Outside the Purview of Public Service Commission) Rules, 1979. On their representation an order was passed on 12th January, 2010 rectifying the date of regularisation of the five Medical Officers named in the order, and consequently by the same order the date of regularisation of 1169 Medical Officers fixed on 27.12.2003 and 6.9.2005, was modified as 21.1.1991.

By the impugned order dated 6.4.2010 the order dated 12.1.2010 shifting the date of regularisation has been cancelled on the ground that some of the medical officers in the seniority list from Sl. No.454 onwards have been assigned wrong dates of regularisation. They did not complete 3 years of service on 21.1.1991 for being eligible to be considered for regularisation.

The cancellation of the list of regularisation does not prima facie affect

the petitioners. It is, however, submitted by Shri Umesh Narain Sharma that the benefits given to 5 Medical Officers, junior to the petitioners and the benefit, which have already accrued to the petitioners of promotional pay scale may be withdrawn from them. We do not find any good reasons for the petitioners to harbour such apprehensions. The regularisation order dated 12.1.2010 has been cancelled on the ground of certain errors in the order with regard to dates of regularisation of the Medical Officers. The State government is under a duty to issue a fresh corrected list without any delay.

The writ petition is accordingly disposed of with directions that the State Government will issue fresh corrected list and consequential orders as expeditiously as possible and preferably within a period of 8 weeks. In the meantime the benefits drawn by the petitioners in terms of the regularisation orders in their favour shall not be withdrawn from them. It will be open to the petitioner to challenge, if any person, junior to them is placed higher to the petitioners, on account of such modifications or consequential orders."

5. Consequent thereto and in compliance thereof, an order dated 28.07.2011 was passed issuing the corrected list and granting the benefit of the earlier order dated 12.01.2010 i.e. regularisation w.e.f. the year 1991 to 1174 persons. After passing of the said order, the association of Medical Officers posted in the Ayurvedic and Unani Hospitals filed a writ petition bearing Writ A No.56455 of 2011 which was disposed of on 31.10.2011 with the observation / direction to decide the representation.

6. The said representation was rejected on 14.03.2012 on the ground inter alia that there is nothing on record to show that the services of any person, junior to the said persons, may have been regularized earlier and that the cadres of the Medical Officers posted in Ayurvedic and Unani Hospitals vis-a-vis those posted in Community Health Centre were different. Moreover, reference was made to Rule 7 to the Regularization Rules, 1979 which made it impermissible to grant seniority consequent to such regularisation from any date prior to the date of regularization under the said rules and according to State Government, based thereon, it was opined that the Rules did not permit retrospective regularization.

7. It is not out of place to mention that in the interregnum, the services of the respondents were regularised vide order dated 16.03.2005 which was never challenged by the respondents and they accepted their regularization as it is. It is only after passing of the order dated 14.03.2012 and that too after more than four years of its passing that a writ petition was filed bearing No. 29138(S/S) of 2016 from which these appeals arise and the writ Court has allowed the writ petition only on the ground of parity with those other Medical Officers albeit belonging to a different cadre i.e. the cadre of Medical Officers meant for Community Health Centre whose services had been regularized earlier with retrospective effect i.e. from the date on which they have completed three years of services and in this context has rejected the reliance placed by the appellants' counsel on a judgment of this Court in the case of Mahendra Vs. State of U.P. and Others in Writ A No.66250 of 2013 wherein it has been held that the learned counsel for the petitioner failed to show that the regularization of others from back date was consistent with the scheme of statutory provisions and therefore was made validly. It is well settled that if a wrong has been committed by the respondents with respect to some other persons, that will not provide a cause of action to claim parity on the ground of equal treatment since the equality in law under Article 14 is applicable for claiming parity with respect to legal and authorised acts. Two wrongs will not make one right. The writ Court has been persuaded only by the fact that others, similarly situated, were granted the said benefit already referred hereinabove even if belonging to a different cadre.

8. In this context, on the issue of the cadre being different, Shri Kalia submitted that the bifurcation of the cadre only took place in the year 2003 otherwise the selection is same and the select list was also the same. It is just that after selection, some were

posted in the Community Health Centres while others were posted in Ayurvedic & Yunani Hospitals.

9. Be that as it may, the fact is that the only rule which governs the regularisation of services of such officers were the rules known as *U.P. Regularisation of Adhoc Appointments (On the Posts Outside the Purview of Public Service Commission) Rules, 1979* and these rules have been amended from time to time. In the year 1991, the cut-off date mentioned in the Rule 4 of the Rules, 1979 was 01.10.1986. Now admittedly, the respondents herein were appointed on 18.06.1988, therefore, in the year 1991 they were not covered by the said rules for the purpose of regularization. In fact, they were not eligible under it for being considered for regularization. The cut-off date was amended thereafter by the third amendment to the said rules which was notified on 20.12.2001 and by this notification, cut-off date was changed to 30.06.1998. Therefore, it is inexplicable as to how the respondents could be considered and their services were regularized on the post in question from a date prior to 20.12.2001. They acquired the eligibility only after this amendment which became effective from 20.12.2001. This fact was noticed by the writ Court.

10. It appears that when the State Government cancelled the order dated 12.01.2010 vide its order dated 06.04.2010, the reason given by it was that the three years service had not been completed by many of the persons. It appears that the actual reasoning behind this may have been as stated by us hereinabove but the order was not happily worded. The said order was, however, quashed by the Division Bench of this Court without going into the provisions of the Rules, 1979 as to whether the persons were at all eligible for being considered for regularization in the year 1991 considering the then existing

cut-off date which was 01.10.1986 as the selection itself had been held in the year 1988. The State Government for some inexplicable reason did not challenge the said judgment dated 20.05.2010 rather it complied with vide order dated 20.07.2011 as already discussed hereinabove.

11. It is only thereafter that the association of officers tried to take advantage of the benefit already granted to some of the persons albeit of different cadre, by then and filed a writ petition in the year 2012 as already referred and in pursuance to which the claim was considered and rejected as already discussed.

12. After such rejection on 14.03.2012, more than four years thereafter, the respondents file the writ petition claiming the said benefit. As already stated that the writ Court omitted to consider the Provisions of Rule 4 of the Regularization Rules, 1971 as applicable in 2001. It also failed to consider that the earlier orders were in the teeth of Rule 4 of the Rules, 1979 as existing in the year 1991 therefore the judgment cited by the learned counsel for the appellants before the writ Court as referred in the case of **Mayank Singh (supra)** squarely applied. The benefit of parity could not be extended by the writ Court as the earlier regularization orders with retrospective effect were inconsistent with the scheme of statutory provisions i.e. Rules, 1979, therefore, there could be no negative parity. The writ Court failed to appreciate this aspect of the matter because it omitted to consider the Rule position as discussed.

13. Learned counsel for the appellants has also referred to various decisions wherein grant of retrospective regularization which effect the seniority of person on a large scale have been deprecated. In this regard, reliance has been placed on the judgments of the Hon'ble Supreme Court in the cases

of **Surendra Kumar & Oth. Vs. Greater Noida Industrial Development Authority & Others 2015 (14) SCC 382** and **Registrar General of India & Oth. Vs. Thippa Setty 1998 (8) SCC 690**. Reliance has also been placed on the judgment of the Co-ordinate Bench of this Court passed in the **Writ Petition No.1801(S/B) of 2014** Inre; **State of U.P. and Another Vs. R.S. Yadav** wherein it was held that there is no provision for retrospective regularization of services. We have perused the said judgment.

14. Learned counsel for the appellants has also placed reliance on the judgments of the Hon'ble Supreme Court in the cases of **T.K. Lathika Vs. Seth Karsandas 1999 (6) SCC 632**, **Union of India Vs. Ranbir Singh Rathaur & Others 2006 (11) SCC 696**, **State of Bihar Vs. Kameshwar Prasad Singh & Oth. 2000 (9) SCC 94**, **Style (Dress Land) Vs. Union Territory, Chandigarh 1999 (7) SCC 89**, **Union of India Vs. International Trading Co. & Others 2003 (5) SCC 437**, **Usha Mehta Vs. Government and Others 2012 (12) SCC 419**.

15. Learned counsel for the appellants states that in fact based on the judgment impugned herein, several persons have taken the same benefit without the writ court having delved into the rule position.

16. In view of the apparent error in the impugned judgment the contention of Sri Kalia that appellants are not adversely affected by it is misconceived. The judgment is apparently dehors the statutory provisions and once it is pointed out to the Court that it is so and the Court is satisfied that the Rules have not been seen, then the judgment of the writ Court is to be set aside as it would set a very bad precedent. Moreover, it is said that some of the appellants are still in service whereas all the respondents herein as claimed by Shri Kalia have retired yet they would

claim financial benefits in the form of time scale/ financial upgradation based on the impugned judgment.

17. In view of the above, we are of the opinion that the judgment of the writ Court cannot be sustained.

18. Accordingly, the appeals are **allowed**. The judgment and order dated 06.02.2019 passed in Writ Petition No.29138(S/S) of 2016 is **quashed**.

19. At this stage, Shri Kalia submits that the respondents' cases may be considered for regularization w.e.f. 20.12.2001 when the amendment came, however, we find that this was not the relief claimed before the writ Court. Nevertheless, we leave it open for the respondents to raise this claim for being considered for regularization w.e.f. the relevant date in year 2001 when the third amendment came into force subject to the objections which may be raised herein with regard to delay and laches etc. and, if it is otherwise permissible in law.

Order Date :- 1.10.2024
S. Shivhare

[Om Prakash Shukla,J.] [Rajan Roy,J.]