

THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH.

269

CWP-18561-2021 (O&M).

Date of Decision: 05.02.2024.

NEERAJ KUMAR SHARMA

... Petitioner

Versus

STATE OF HARYANA AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. H.S. Deol, Advocate, for the petitioner.

Mr. Vivek Chauhan, Addl. A.G. Haryana.

Mr. Gopal Sharma, Advocate, for respondents No.3 and 4.

VINOD S. BHARDWAJ, J. (ORAL)

The instant writ petition in the nature of quo warranto has been filed calling upon respondent No.4 to show as to how and under what authority he is occupying the position of President of the Haryana State Pharmacy Council, for want of notification issued by the State Government electing/appointing/nominating him as a President of the Council, on or after 17.11.2020.

Learned counsel for the petitioner contends that the Haryana State Pharmacy Council has been constituted under the provisions of the Pharmacy Act, 1948 and elections to the managing body of the Society is held from time to time, as per the Statutory provisions. The Council was re-

constituted in March 2014. Out of a total of 14 members of the Council, 06 are to be elected from amongst the Registered Pharmacists in the State of Haryana, 05 are nominated by the Government and 03 members are Ex-Officio members. The duly constituted Governing Body of the State Pharmacy Council was formed. A notification in this regard had been issued by the State Government on 03.03.2014. The office bearers of the Council were thereafter elected. However, in the year 2017, the then President was relived and the Vice President was given officiating charge of President. However, he unfortunately passed away after one month whereupon charge of President was handed over to one elected member in January 2018.

An election was later held in which respondent No.4 was elected as President and the earlier officiating President was elected as Vice President of the Council on 01.03.2019. A notification to the said effect was also published on 06.03.2019.

The elected President – respondent No.4, however, resigned as elected member of the State Pharmacy Council but was nominated as a member along with four others on 17.11.2020 and a Notification in this regard was issued. No order was, however, issued nominating him as the President and no Notification was issued but he assumed office, without any authority.

It is contended that the respondent No.4 was wrongly reappointed as President of the Haryana State Pharmacy Council even though no notification of the election was held and that he is not competent to hold the above office on following accounts:-

- (i) That no elections/re-election of respondent No.4 had been held and/or notified after his being inducted as a nominated member of the Haryana State Pharmacy Council for his being the President;
- (ii) That as per the proviso to Section 23, he could continue as President or Vice President only if he is re-elected or re-nominated as a member of the Council and in the same capacity and not otherwise;
- (iii) Since respondent No.4 was earlier elected member of the Haryana State Pharmacy Council, his subsequent induction as a nominated member cannot be said to be re-nomination and hence, his status as an elected member is distinct from his status as a nominated member and he could not have continued on the said post for the remaining tenure.

Reply on behalf of Haryana State Pharmacy Council-
respondent No.3 had been filed wherein it is averred that as per Section 19 of the Pharmacy Act, 1948, the Council consists of the following:-

- (a) six members, elected from amongst themselves by registered pharmacists of the State;*
- (b) five members, of whom at least 2 [three] shall be persons possessing a prescribed degree or diploma in pharmacy or pharmaceutical chemistry or registered pharmacists nominated by the State Government;*

- (c) one member elected from amongst themselves by the members of each Medical Council or the Council of Medical Registration of the State, as the case may be;*
- (d) the chief administrative medical officer of the State ex-officio or if he is unable to attend any meeting, a person authorised by him in writing to do so;*
- (dd) the officer-in-charge of drugs control organisation of the State under the Drugs and Cosmetics Act, 1940 (23 of 1940), ex officio or if he is unable to attend any meeting, a person authorised by him in writing to do so;*
- (e) the Government Analyst.*

The respondent No.4 was one of the registered Pharmacist and was an elected member of the Haryana State Pharmacy Council. He was elected as President by members of the Haryana State Pharmacy Council as per Section 23 of the Pharmacy Act, 1948. The President is to hold office for a term not exceeding five years and he is eligible for re-election. It is admitted that a Notification was even though issued by the Government of Haryana on 05.03.2019 notifying respondent No.4 as President of the Haryana State Pharmacy Council but it is not a Statutory requirement. It is submitted that respondent No.4 was nominated as a member of the Haryana State Pharmacy Council subsequent to his resignation and hence, he could continue to hold office for the remnant of his term for which he was elected as a President and was entitled to hold the said post. He further contends that as per the provisions of the Pharmacy Act, 1948 and the rules framed

thereunder, there is no mandate that an election of the President of the State Pharmacy Council is required to be published by way of a Notification and that merely because the State Government had been issuing such notifications earlier, does not make it a procedure provided under law.

A specific stand in this regard was also taken by respondent No.3 in its preliminary objections.

A separate reply has also been filed by respondent No.4 who has submitted his response on similar lines.

Learned counsel for respondent No.4 contends that in so far as the contention of the petitioner that respondent No.4 could not continue for the remainder of the term of the President on the objection that he has not been re-nominated as a member of the said Council since earlier he was an elected member is concerned, the same is mis-conceived. The provisions of the Pharmacy Act, 1948 provide for a tenure of five years for a member to hold the office of the President of the Haryana State Pharmacy Council. It is contended that the explanatory proviso to Section 23 (2) provides that if tenure of a person as a member of the Haryana State Pharmacy Council expires before the expiry of his full term, he may continue to hold office for the full term for which he is elected as President in case, he is re-elected or re-nominated as a member of the Haryana State Pharmacy Council. It is argued that expression “or” is of significance and it is not mandated in the above said proviso that the person must be re-inducted in the Council in the same capacity in which he previously was, when he was elected as President or Vice President of the Haryana State Pharmacy Council.

No replication or counter was filed on behalf of the petitioner controverting the stand taken in the written statement. Hence, the factual aspects raised therein remained unrebutted.

No other argument has been addressed.

I have heard the learned counsel appearing for the respective parties and have also gone through the documents appended along with the present petition with their able assistance.

The core question which arises for consideration is as regards the interpretation of Section 23 (2) of the Pharmacy Act, 1948. The relevant extract thereof reads thus:-

“23. President and Vice-President of State Council.—

(1) The President and Vice-President of the State Council shall be elected by the members from amongst themselves:

Provided that for five years from the first constitution of the State Council the President shall be a person nominated by the State Government who shall hold office at the pleasure of the State Government and where he is not already a member, shall be a member of the State Council in addition to the members referred to in section 19 or section 21, as the case may be.

(2) The President or Vice-President shall hold office as such for a term not exceeding five years and not extending beyond the expiry of his term as a member of the State Council, but subject to his being a member of the State Council, he shall be eligible for re-election:

Provided that if his term of office as a member of the State Council expires before the expiry of the full term for

which he is elected as President or Vice-President, he shall, if he is re-elected or re-nominated as a member of the State Council, continue to hold office for the full term for which he is elected as President or Vice- President.

(Emphasis supplied)

It is evident from a perusal of the aforesaid Section and the proviso that in the event of term of the President is coming to an end prior to his complete term on account of expiry of term as member such person is entitled to continue to hold office for the remainder of his term for which he was elected to such office provided he is “re-elected or re-nominated” as a member of the said Council.

The use of expression “re-elected or re-nominated” is in relation to the status of the person so as to be inducted as a member of the Haryana State Pharmacy Council. A reading of the proviso does not make it mandatory that a person must be re-inducted as a member of the Haryana State Pharmacy Council in the same shoes or the same capacity in which he was initially inducted as a member of the Haryana State Pharmacy Council. The expression “or” between the prefix ‘re-elected’ and a suffix ‘re-nominated’ makes it interchangeable and the capacity in which the person is re-inducted as a member of the Haryana State Pharmacy Council is inconsequential. The object of the proviso is to provide continuity in office and security of tenure in office. The same being the object, the proviso would spring in force once such person becomes a member again – irrespective and notwithstanding the mode and manner of his being inducted as a member. In case the Legislature wanted such a member to get himself inducted in the Haryana State Pharmacy Council in the same

capacity, the expression would have been differently used by the Legislature and such clarification would have been prescribed by the Statute.

Thus, the mode of election in the Haryana State Pharmacy Council i.e. either by way of a 're-election' or by way of a 're-nomination' is inconsequential for the person to complete his tenure as per the proviso. Assigning any such restrictive meaning, as is being proposed by the petitioner, would mean that there would be a prohibition to complete the term merely on account of change in the manner of induction as member of the Haryana State Pharmacy Council and that continuation and completion of the term as the elected President/Vice President would be dependent upon the manner in which he is brought in the Haryana State Pharmacy Council and that the moment his mode of entry in the Haryana State Pharmacy Council undergoes a change, the proviso shall fail to have any bearing.

The above said interpretation would be a restrictive interpretation and defeat the purpose. The proviso intends to confer the benefit of continuity on a person who has been elected as an office bearer of the Haryana State Pharmacy Council and to protect his tenure in the event he gets re-inducted as a member of the Haryana State Pharmacy Council.

The counsel for the petitioner has also not been able to refer to any provision as per which the election of the President or Vice President of the Haryana State Pharmacy Council is required to be notified notwithstanding that the specific stand in this regard had been taken by the respondents in the written statements filed by them. Even though the above

said written statement had been filed on 04.04.2022, and a period of nine months has elapsed since then, however, no rejoinder/replication controverting the said specific assertion has been filed.

Considering it from another perspective, since the continuation of respondent No.4 as President is as per the proviso to Section 23 (2) of the Pharmacy Act, 1948, such continuation is deemed as a continuation of the original notification only and once an initial mandate is deemed continued to enure in favour of an elected President on publication of a Notification, there is no reason as to why a separate notification is required to be issued for completion of the remainder of the tenure.

Considering from either of the angles, it cannot be held that the office of the President of the Haryana State Pharmacy Council held by respondent No.4 is without any authority or eligibility. The present writ for seeking qua warranto therefore fails and the same is dismissed.

February 05, 2024

raj arora

Whether speaking/reasoned

Whether reportable

(VINOD S. BHARDWAJ

JUDGE

: Yes/No

: Yes/No