



2024:CGHC:45785

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 481 of 2015

Order Reserved on : 20.09.2024

Order Delivered on : 22.11.2024

- Smt. Sunita Devi W/o Shri K. Ramanna Rao, Aged About 28 Years R/o Utkarsh Nagar, Misiya Bada, Ward No. 7, Dongargarh, Distt. Rajnandgaon, Chhattisgarh

---- **Petitioner**

versus

1. State Of Chhattisgarh Through Secretary, Department Of Health And Family Welfare, Mahanadi Bhavan, Naya Raipur, Distt. Raipur, Chhattisgarh
2. Divisional Joint Director, Health Services, Raipur Division, Old Nurses Hostel, Dks Bhavan Parisar, Raipur CG
3. Director, Health Services, Directorate Of Health Services, 3rd Floor, Indravati Bhavan, New Raipur, Distt. Raipur CG
4. Chief Medical And Health Officer Rajnandgaon, Distt. Rajnandgaon, C.G.

---- **Respondents**

WPS No. 312 of 2015

1. Dolly Dewangan D/o Shri Umend Ram Dewangan, Aged About 25 Years R/o House No. 657, Ward No. 7, Post And Tehsil Mohla, District Rajnandgaon, C.G.
2. Dipty Dhangar W/o Shri Pramod Dhangar Aged About 26

Years R/o Qr. No. 4 /a, Street Cross- 1, Sector- 1, Bhilai District Durg , C.G.

3. Ku. Lata Deshlahra D/o Shri Gangaram Deshlahra Aged About 28 Years R/o Dani Tola Ward, Dhamtari, District Dhamtari , C.G.
4. Lalit Kumar Amaria S/o Shri K.R. Amaria Aged About 29 Years R/o Village Pandel, Post Khalari, Tehsil Doundi, District Balod, C.G.
5. Bhupendra Singh S/o Shri Nain Singh Aged About 26 Years R/o Qr. No. 115 / A, Single Quarter Township, Dallirajhara, District Balod, C.G.

----**Petitioners**

Versus

1. State Of Chhattisgarh Through The Secretary Department Of Health And Family Welfare, New Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur, C.G.
2. The Director, Health Services Directorate Health Services, 3rd Floor, Indravati Bhawan, New Raipur, District Raipur, C.G.
3. Divisional Joint Director Health Services Raipur Division, Old Nurses Hostel, Dks Bhawan Premises, District Raipur, C.G.
4. The Chief Medical And Health Officer Rajnandgaon District Rajnandgaon, C.G.

---- **Respondents**

(Cause title is taken from CIS Software)

For Petitioners	:	Mr. Naveen Shukla, Advocate in WPS No.481/2015 and Mr. Jitendra Pali, Advocate in WPS No.312/2015.
For State/Respondents	:	Mr. Ruhul Ameen Menon, P.L.
For Internenor	:	Mr. Ashok Patil, Advocate.

Hon'ble Smt. Justice Rajani Dubey

(C A V Order)

1. Since the aforesaid petitions arise out of common cause of action, they are being decided by this common order.
2. The petitioners have filed the aforesaid petitions under Article 226 of the Constitution of India seeking following relief (S) :-

3. **In WPS No.481/2015**

“(i). That, this Hon’ble Court may kindly be pleased to call the entire records concerning the case of the petitioner from the possession of the respondent authorities for its kind perusal.

(ii) That, this Hon’ble Court may kindly be pleased to issue an appropriate writ quashing/setting aside the impugned order dated 27.01.2015 (Annexure P/1) insofar as it relates to the petitioner.

(iii) Any other relief or relief(s) which this Hon’ble Court may deem fit or proper in the facts and circumstances of the case.”

In WPS No.312/2015

(i) To kindly call for the records of the case from the respondents.

(ii) To kindly quash the impugned order vide no./stha./Avi./Seventeen/2015/71 dated 22/01/2015 (Annexure P/1) issued by the respondent No.3.

(iii) To kindly direct the respondents to allow the petitioners to continue as Pharmacist Grade II in the respective place of posting.

(iv) To kindly make any other order that may be deemed fit and just in the facts and circumstances of the case including awarding of the costs to the petitioner.”

4. Brief facts of the case, as projected by the petitioners in the aforesaid petitions, are that the Divisional Joint Director, Health Services Raipur Division (C.G.) had issued an advertisement (Annexure P/2) for appointment of 21 posts of Pharmacist Grade-II and 20 posts of Female Health Worker in District Rajnandgaon. The minimum educational and technical qualification for the post of Pharmacists Grade-II was prescribed in the advertisement was 10th/12th passed in science under 10+2 education system and candidates should have diploma in pharmacy from the recognized institutions having registration in Chhattisgarh Pharmacy Council. The petitioners having requisite qualification and registration submitted their applications in time. The petitioners along with other eligible candidates were considered for such selection and after due consideration they have been appointed as Pharmacist Grade-II vide order dated 08/06/2011 (Annexure P/4). The petitioners joined their respective post as per the appointment order issued by the respondent no. 4.
5. According to the petitioners, their appointments were made

in due observance of the Chhattisgarh Public Health and Family welfare Department Non-Ministerial (related to the Directorate to Health Services) Class III Service Recruitment Rules 1989 (in short Rules, 1989). The Rules, 1989 provides for the qualification for the post of Pharmacist Grade-II, which is Diploma in Pharmacy and registration with Chhattisgarh Pharmacy Council. The appointments of the petitioners have been made in full consonance of the constitutional scheme under Articles 14 and 16 of the Constitution of India. Initially the petitioners were posted on probation for a period of 2 years and after completion of probation period the services of petitioners were confirmed (Annexure P/5) in accordance with their service conditions. The respondents did not extend the probation period of the petitioners. Thus, they were deemed confirmed in their services.

6. During the service period of the petitioners, some aggrieved persons with the appointment of the petitioners, made a complaint behind the back of the petitioners. In pursuance of the complaint, some enquiry was conducted and report was submitted where it was recommended to cancel the appointment of the petitioners as the same was not in accordance with law. All of a sudden, the petitioners came to know that the Divisional Joint Director, Division Raipur

issued an order (Annexure P/1) directing to cancel the appointment order of the petitioners as the same has been directed by the Director, Health Services, Directorate of Health Services, Raipur (C.G.). Hence these petitions.

7. Learned counsel for the petitioner in WPS No.481/2015 submits that the impugned order dated 27.01.2015 has been passed in violation of Article 14, 19 (1)(g) and Article 20(1) of the Constitution of India and it is illegal, arbitrary and a colourable exercise of power. The impugned order has been passed without issuing show cause notice to the petitioner in grave violation of the principles of natural justice. Learned counsel further submits that any action involving civil consequences cannot be passed without following the principles of natural justice. Learned counsel also submits that on a complaint against the irregularities committed in the appointment to the post of Pharmacist Grade-I, an enquiry was conducted behind the back of the petitioner without considering the documents pertaining to the eligibility criteria and educational qualification, which the petitioner duly fulfills as per memo of the office of the respondent No.4 for the said post. It has also been submitted by learned counsel that the petitioner has completed her probation period and is a regular employee and without issuing any show cause notice or providing an

opportunity of hearing, her appointment has been cancelled abruptly after passing of almost three years in violation of Article 311 (2) of the Constitution of India.

8. Learned counsel for the petitioners in WPS No.312/2015 submits that the impugned order dated 22.01.2015 is illegal, arbitrary and is uncalled for. The State/respondent authorities cannot violate the fundamental rights of the petitioners as guaranteed under Articles 14 and 16 of the Constitution of India. Learned counsel further submits that before cancelling the appointment of the petitioners, the respondents were legally obligated to issue a show cause notice to the petitioners as the facts of the instant case are not admitted and an enquiry in consonance of the principles of natural justice is necessary. Learned counsel also submits that the petitioners whose rights were adversely affected deserved an opportunity of hearing before taking such action in consonance with the principles of natural justice which has not been done. The aforesaid so called inquiry has been conducted by the respondents behind the back of the petitioners and not even a show cause notice has ever been issued to the petitioners. The petitioners were not aware about any such inquiry as no such notice/information has ever been issued to the petitioners. It has been also submitted that that the above order which

involves serious, adverse civil consequences could not have been passed without affording an opportunity of hearing to the petitioners. The respondent Director, Health Services while taking such decision to remove the petitioners by cancelling their appointment was duty bound to follow the principles of natural justice which has not been done. The petitioners have completed more than 10 yrs of service and they are not at fault in any manner. There is no rival claim with respect to the appointment of the petitioners, therefore, it would be in the interest of justice to quash the order impugned and all subsequent actions. Learned counsel placing reliance on the decision of Hon'ble Apex Court in the matter of **Joint Action Committee of AIR Line Pilots' Association of India (ALPAI) and Others Vs. Director General of Civil Aviation and Others** reported in **(2011) 5 SCC 435** and this Court's order in **Ku. Punam v. State of Chhattisgarh and Ors.** reported in **(2008) 2 CGLJ 361, Mrityunjay Shukla v. Municipal Corporation Raipur and Ors.** reported in **(2009) 1 CGLJ 97** submits that that principles of natural justice are to be followed before taking any action involving civil consequences. In the instant case no such opportunity of hearing has been afforded to the petitioners which action of the President in Council as appointing authority is illegal and deserves to be quashed.

9. Per contra, learned State counsel appearing for respondents strongly opposed the prayer of the petitioners and submits that the impugned order dated 27.01.2015 is a reasoned and speaking order. There were complaints regarding irregularities in the selection process. An enquiry committee was constituted and Committee had submitted its report to the Director on 13.03.2012. Learned State counsel also submits that no advertisement was published for the recruitment process. It was only a press release on the basis of which, the appointments were made. Further there was total violation of procedures and rules in granting appointments including violation of the reservation roster. In other words, the entire recruitment process was illegal, therefore, it has been cancelled and orders of termination have been issued. Learned State counsel also submits that since the entire selection process was illegal, the issuance of show cause notice would have been a futile exercise and a useless formality. Even assume that a show cause notice was issued to the petitioners, the petitioners could not have replied upon the irregularities in the selection process. Thus, considering the factual aspects of the matter, the petitioners are not entitled for any relief as claimed by them.
10. Learned counsel for intervenor appearing in W.P.(S) No.312/2015 adopted the submission of learned State

counsel and submits that he is social worker and for the first time he had publicly made complaint before the General Administration Department, Raipur regarding the illegality committed in recruitment process. He further submits that the petitioners have challenged the order dated 22.01.2015 (Annexure P/1), whereas the order dated 27.01.2015 (Annexure D-1) ought to have been challenged whereby the entire selection process of appointment of Pharmacist Grade-2 was cancelled. Learned counsel also submits that the State/respondent authorities have rightly cancelled the recruitment process and prays for suitable action against the erring officials responsible for appointment of illegible candidates.

11. Heard learned counsel for the parties and perused the material available on record.
12. It is not disputed in this case that on 08.06.2011, the appointment order of Pharmacist Grade-2 was issued by the Chief Medical and Health Officer, Rajnandgaon and on complaints regarding irregularities in the selection process, an Enquiry Committee was constituted and a report was submitted by the Enquiry Committee on 13.03.2012 and by the impugned order dated 27.01.2015 (Annexure P/1 in WPS No.481/2015), these appointments were cancelled. It is also not disputed that the petitioner had joined their

respective posts as per the appointment order and they have been working on the post of Pharmacist Grade-II. It is also not disputed that in July, 2014, services of the petitioners were also confirmed on the said post.

13. According to the respondents, no advertisement was issued for the recruitment process. It was only a press release on the basis of which, the appointments were made and there was total violation of procedure and rule in granting appointments including violation of reservation roster. As such, the entire recruitment process was illegal and the impugned order is well reasoned and speaking order.
14. On 14.08.2024, additional documents were filed by the petitioners which are supported by affidavits of the petitioners. The advertisement was published on 27.03.2011 and in pursuance of the said advertisement, several candidates from various districts of the State of Chhattisgarh submitted their application (Annexure RJ/1 and RJ/3) and the objection of the Enquiry Committee is that the selection of B. Pharma candidates lacks merit but this Court has ruled out this objection in petition being **W.P. (S) No.2117/2012 [Domendra Kumar Sahu V. State of C.G. & Others]** observing in paras 6, 7 and 8, which read thus :-

“6. It is true that a qualification after issuance

of advertisement cannot be changed, as pleaded by learned counsel appearing for the petitioner; however, in case on hand, there is no change of qualification. Diploma in Pharmacy is the minimum qualification, as has been prescribed in the advertisement itself, and if a person is having superior qualification i.e. Bachelor of Pharmacy, his/her candidature cannot be rejected on the ground that he/she did not have Diploma in Pharmacy. Having Bachelor of Pharmacy qualification means that the candidate has better knowledge in the Pharmacy, which is required for appointment on the post of Pharmacist Grade-II. A better qualified can never be rejected on the ground that the candidates having lesser qualification i.e. Diploma in Pharmacy are available. This is also not the intention of the Government.

7. *It is well settled by a catena of decision that classification on the basis of higher educational qualification to achieve higher administrative efficiency is permissible under our constitutional scheme. The Supreme Court in the matter of Government of Andhra Pradesh V. P. Dilip Kumar & another 1993 (2) SCC 310, considering the very issue observed as under :-*

“13.There is nothing arbitrary or unreasonable in the employer preferring a candidate with higher qualification for service. It is well settled by a catena of decisions that classification on the basis of higher educational qualification to achieve

higher administrative efficiency is permissible under our constitutional scheme. See Roshan Lal Tandon V. Union of India AIR 1967 SC 1889, State of J.K. v. Triloki Nath Khosa 1974 (1) SCC 19, Md. Sujat Ali v. Union of India 1975 (3) SCC 76, Roop Chand Adlakha v. Delhi Development Authority 1989 Supp (1) SCC 116, V. Markendeya v. State of A.P. 1989 (3) SCC 191 and Sanatan Gauda v. Berhampur University 1990 (3) SCC 23. We, therefore, do not agree that treating post graduates as a class and giving them preference in this manner is violative of Articles 14/16 of the Constitution”

15. In the instant case also, it is apparent that order dated 27.01.2015 (Annexure P/1) was passed without affording any opportunity of hearing to the petitioners. The petitioners have been working for more than 10 years and at the time of passing impugned order, they were in service and their services were also confirmed and by virtue of interim protection, at present the petitioners are still working for more than 9 years and that they are having higher qualification for the post.
16. The State/respondent authorities acting upon a complaint made by a social worker carried out enquiry and passed the impugned order. While dealing with the issue where

decision was taken by statutory body on the complaint/suggestion of a person who has no statutory role to play, the Hon'ble Apex Court in the matter of **Joint Action Committee** (*supra*), held in para 26 and 27 as under :-

*“26. The contention was raised before the High Court that the Circular dated 29-5-2008 has been issued by the authority having no competence, thus cannot be enforced. It is a settled legal proposition that the authority which has been conferred with the competence under the statute alone can pass the order. No other person, even a superior authority, can interfere with the functioning of the statutory authority. In a democratic set-up like ours, persons occupying key positions are not supposed to mortgage their discretion, volition and decision-making authority and be prepared to give way to carry out commands having no sanctity in law. Thus, if any decision is taken by a statutory authority at the behest or on suggestion of a person who has no statutory role to play, the same would be patently illegal. (vide *Purtabpore Co. Ltd. v. Cane Commr. Of Bihar* (1969) 1 SCC 308 : AIR 1970 SC 1896, *Chandrika Jha v. State of Bihar* (1984) 2 SCC 41 : AIR 1984 SC 322, *Tarlochan Dev Sharma v. State of Punjab* (2001) 6 SCC 260 : AIR 2001 SC 2524, and *Manohar Lal v. Ugrasen* (2010) 11 SCC 557 : (2010) 4 SCC (civ) 524: AIR 2010 SC 2210).*

*27. Similar view has been reiterated by this Court in *Commr. of Police v. Gordhandas Bhanji**

AIR 1952 SC 16, Bahadursinh Lakhubhai Gohil v. Jagdishbhai M. Kamalia (2004) 2 SCC 65 : AIR 2004 SC 1159 and Pancham Chand v. State of H.P. (2008) 7 SCC 117 : AIR 2008 SC 1888 observing that an authority vested with the power to act under the statute alone should exercise its discretion following the procedure prescribed therein and interference on the part of any authority upon whom the statute does not confer any jurisdiction, is wholly unwarranted in law. It violates the constitutional scheme.

17. Reverting to the facts of the case, it is apparent that the candidates are having higher qualification and on a complaint of social worker who has no statutory role to play, the impugned order has been passed, as such considering the facts and circumstances of the case, decision of Hon'ble Apex Court in ***Joint Action Committee*** (*supra*) and this Court in ***Domendra*** (*supra*), both the petitions are allowed and the impugned order dated 27.01.2015 cancelling the appointment of the petitioners is set aside.

Sd/-

(Rajani Dubey)
Judge