

State Of Rajasthan And Ors. vs Lata Arun on 17 July, 2002

Equivalent citations: AIR2002SC2642, JT2002(5)SC210, 2002(5)SCALE233, (2002)6SCC252, 2002(3)SCT667(SC), 2002(2)UJ1029(SC), (2002)3UPLBEC2001, AIR 2002 SUPREME COURT 2642, 2002 (6) SCC 252, 2002 AIR SCW 2966, 2002 (3) UPLBEC 2001, (2002) 5 JT 210 (SC), 2002 (4) SLT 424, 2002 (7) SRJ 191, 2002 (5) JT 210, 2002 (2) UJ (SC) 1029, 2002 (5) SCALE 233, 2002 (3) LRI 301, (2002) 3 ESC 49, (2002) 3 SCT 667, (2002) 4 SERVLR 775, (2002) 3 UPLBEC 2001, (2002) 5 SUPREME 33, (2002) 5 SCALE 233, (2002) 48 ALL LR 493, 2002 SCC (L&S) 859

Author: D.P. Mohapatra

Bench: D.P. Mohapatra, Brijesh Kumar

JUDGMENT

D.P. Mohapatra, J.

1. Leave granted.

2. State of Rajasthan through the Director, Medical and Health Services; the Rajasthan Nursing Council, through its Registrar, and the Principal Medical Officer, Government Hospital, Barmer, Rajasthan, have filed this appeal against the order of the Rajasthan High Court dated 6.7.2000 in D.B. Civil Special Appeal No. 917/99(Def.) titled State and Ors. v. Smt. Lata Arun. The order passed by the High Court reads as follows:

"However looking to all the facts and circumstances, we are of the opinion that the order of learned Single Judge is in the interest of justice. It does not require any interference of this Court. We do not find any merit in this appeal."

3. In the special appeal the appellants assailed the judgment of the learned single Judge allowing the Writ Petition No. 4433 of 1997, filed by the respondent. The operative portion of the said judgment runs as follows:

"In view of the above discussion, this petition is allowed. The impugned order at Annexure R/1 annexed to the reply affidavit and the order dated 3.9.1997 Annex.11 are hereby quashed and set aside. The respondents are directed to declare the result of the petitioner for General Nursing and Midwifery and Staff Nurse Course

examination forthwith."

4. The question which arises for determination in this case is whether the respondent had the eligibility qualification for admission in General Nursing and Midwifery and Staff Nurse Course (hereinafter referred to as 'nursing course') commencing in the year 1990? The Director, Medical and Health Services had invited applications by 15.12.1989 from eligible candidates for admission in the Nursing Course to be started from January, 1990. It was stated in the notification that the candidates should have passed first year of Three Years' Degree course (TDC) or 10+2; and that the candidates with science subjects (Biology, Chemistry, Physics) will be given preference. During the period the Indian Nursing Council had issued a set of Syllabi and Regulations for Courses in General Nursing and Midwifery in which the prescribed minimum educational qualification for all candidates was 12th class pass or its equivalent preferably with science subjects.

5. The respondent, who was then working as a female worker, submitted her application for joining the course. The educational qualification possessed by her was a Madhyama Certificate issued by the Hindi Sahitya Sammelan, Allahabad in 1984. This certificate was previously recognized as equivalent to a degree in Hindi. The said recognition had ceased to be operative with effect from 1.4.1985. The position was further clarified in the letter dated 4.12.1991 addressed by Shri K.C. Kalra, Deputy Secretary, Association of Indian Universities, New Delhi to the Registrar, Rajasthan Nursing Council, Jaipur, in which it was stated "Hindi Sahitya Sammelan, Prayag, Allahabad is one of the voluntary Hindi Institutions set up for promotion of Hindi. Its examinations are not equated with the regular examinations of Secondary Boards/Universities. The standard of Hindi, only of its examinations is accepted." Copies of the said letter were sent to the Secretary, Government of Rajasthan, Medical and Health Department, the Director of Medical and Health Services, Rajasthan, all Principal Medical Officers and others.

6. The respondent was given provisional admission in the nursing course which was subsequently cancelled when it was detected that she did not have the educational qualification prescribed for the course.

The respondent filed writ petition CWP No. 5995/91, praying inter alia that the authorities be directed to allow her to pursue General Nursing Course and permit her to sit in the examination. The learned single Judge disposed of the writ petition by the following order:

".....Therefore, instead of deciding the matter here I leave it for the Nursing Council to decide that whether a candidate who had obtained a Madhyama degree in the year 1984 which is said to be equivalent to B.A. for Hindi purposes should be admitted to the course or not. When the matter is already receiving consideration of the Nursing Council and since the Nursing Council is a competent body which can examine the matter after taking into consideration the necessary course and the fact that the candidate has already studied for a period of three years, it will not be proper for this court to examine this matter and I leave it to the Nursing Council to decide the matter sympathetically as the petitioner has rightly or wrongly studied for more than three years.

Therefore, I leave it to the Nursing Council to decide the matter objectively and sympathetically and issue a categorical direction for all future times to come as the matter of Prathma and Madhyama has already evoked a controversy and such matters are agitated before this Court in number of writ petitions. As such the Nursing Council may now decide this controversy and give a clear direction that whether such candidate is to be admitted to the course or not.

With these observations I leave it to the Nursing Council to consider the matter sympathetically and dispose of the matter. The writ petition is accordingly dismissed."

7. Pursuant to the direction issued by the High Court the Rajasthan Nursing Council considered the matter and took the decision that the respondent was not eligible for admission to the General Nursing Course since she had no background in Biology and further she did not possess the requisite educational qualification. The respondent was informed of the decision of the Nursing Council vide letter dated 3.9.1997 of the Additional Director, Medical and Health Services. She filed Writ Petition, CWP No. 4433 of 1997 praying, inter alia, to quash/set aside the order communicated in the letter dated 3.9.1997 and for a direction to the respondents in the case to declare her result of the examination in which she had appeared under order of the High Court.

8. From the discussions in the judgment of the learned single Judge it appears to us that he has laid much stress on the order passed and the directions issued by the High Court in the previous writ petition filed by the respondent, S.B. Civil Writ Petition No. 5995 of 1991 directing the Nursing Council to decide the controversy and give a clear direction in the matter.

The learned single Judge felt that in view of the direction given by the High Court the Nursing Council ought to have taken a decision in favour of the respondent. This position is evident from the following observations in the judgment :

"When the Court directed the authority to consider the case objectively, and sympathetically that means that Court was inclined to interfere with the order, but instead of disturbing that order on a judicial side it had left it to the authority so that its grace and sentiments are not hurt. From the aforesaid portion of the order reproduced by me it is clear that the authority had to take a decision in the matter for all time to come but had never even remotely suggested that the Council can take its decision in its own way regarding the case of the petitioner.

xxxxx Coming to the facts of this case, it is clear from the orders at Annex. 11 and R/1 annexed to reply affidavit that respondents have not at all applied their mind to the order passed by the learned Single Judge of this Court on 12.10.1993 in writ petition No. 5995/91. It was not appreciated in its true spirit. When the learned Single Judge had observed that the petitioner has rightly or wrongly studied for more than three years, therefore, her case was required to be considered objectively and sympathetically, that means that respondent No. 2 had to accept her case. Therefore,

this petition was required to be allowed straightaway only on this ground."

9. We are of the view that the learned single Judge misread the order passed in SB Civil Writ Petition No. 5995 of 1991. All that had been ordered in that case was that the Nursing Council should decide the controversy and give a clear direction that whether such candidate has to be admitted to the course or not. We do not find any observation or direction therein which directly or by implication suggests that the educational qualification possessed by the respondent should be taken as duly recognized and relief should be given to her on that basis. In that case the observation in the order leaving the matter to the Nursing Council to decide objectively and sympathetically and issue a categorical direction for all future time to come, was irrelevant. The learned single Judge, in our view, was in error in holding that in view of the order passed by the High Court in the previous writ petition filed by the respondent the Nursing Council should have decided the matter granting relief to the respondent. The Division Bench was also in error in dismissing the special appeal in limini by passing a cryptic and unreasoned order.

10. The points involved in the case are two fold : one relating to prescription of minimum educational qualification for admission to the course and the other relating to recognition of the Madhyama Certificate issued by the Hindi Sahitya Sammelan, Allahabad as equivalent to or higher than +2 or 1st year of TDC for the purpose of admission. Both these points relate to matters in the realm of policy decision to be taken by the State Government or the authority vested with power under any statute. It is not for courts to determine whether a particular educational qualification possessed by a candidate should or should not be recognized as equivalent to the prescribed qualification in the case. That is not to say that such matters are not justiciable. In an appropriate case the Court can examine whether the policy decision or the administrative order dealing with the matter is based on a fair, rational and reasonable ground; whether the decision has been taken on consideration of relevant aspects of the matter; whether exercise of the power is obtained with malafide intention; whether the decision serves the purpose of giving proper training to the candidates admitted or it is based on irrelevant and irrational considerations or intended to benefit an individual or a group of candidates.

11. This Court in Delhi Pradesh Registered Medical Practitioners v. Director of Health, Delhi Admn. Services and Ors., , rejecting the contention that proper consideration had not been given to the standard of education imparted by the Hindi Sahitya Sammelan, Prayag and expertise acquired by the holders of the degrees awarded by the said institution, made the following observations :

"....It is not necessary for this Court to consider such submissions because the same remains in the realm of policy decision of other constitutional functionaries. We may also indicate here that what constitutes proper education and requisite expertise for a practitioner in Indian Medicine, must be left to the proper authority having requisite knowledge in the subject. As the decision of the Delhi High Court is justified on the face of legal position flowing from the said Central Act of 1970, we do not think that any interference by this Court is called for...."

12. In the case of Dr. Ravinder Nath v. State of H.P. and Ors., , this Court considered the question whether a diploma/degree of Vaidya Visharad or Ayurveda Ratna obtained from Hindi Sahitya Sammelan, Allahabad, which institution was recognized for the period from 1931 to 1967 only, could be accepted as educational qualification fulfilling the eligibility conditions for promotion to the post of Ayurvedic Chikitsa Adhikari (Vaidya) under the State of Himachal Pradesh. This Court held that the Second Schedule to the Indian Medical Central Council Act, 1970 came into force in the State of Himachal Pradesh on 15.8.1971 which clearly mentioned the period for which diploma/degrees awarded by the Hindi Sahitya Sammelan were recognized. The respondent obtained qualification after this period for which there was no recognition, and they were aware of the fact which itself disentitled them from claiming promotion. Their contention that the condition regarding degree from a recognized body is prescribed for direct recruitment only in Rule 7 of 1974 Recruitment Rules while there is no such condition in Rule 11 which governs promotion, was rejected by this Court holding that the recruitment rules have to be read consistently with the 1970 Act and 1968 Act as well as the Government Notification dated 21.2.1978 which recognizes diploma/degrees awarded by the Hindi Sahitya Sammelan during the period 1931 to 1967 only. This Court declared that the qualifications acquired by the respondent for the HSS which were admittedly after 1967 did not entitle them to be considered for promotion to the post of Vaidya.

13. From the ration of the decisions noted above it is clear that the prescribed eligibility qualification for admission to a course or for recruitment to or promotion in service are matters to be considered by the appropriate authority. It is not for courts to decide whether a particular educational qualification should or should not be accepted as equivalent to the qualification prescribed by the authority.

14. Testing the facts of the case in hand on the touchstone of the principles it is clear that on the date of submission of the application for joining the course the respondent did not possess the prescribed qualification of 10+2 or 1st year TDC from a recognized institution. The Madhayama Certificate from Hindi Sahitya Sammelan Prayag, Allahabad had been deleted from the recognized qualification by the notification dated 28.6.1985. The respondent submitted the application for admission to the course in December, 1989. In the circumstances the High Court was in error in issuing a direction to the appellants to treat the respondent as a candidate possessed of the prescribed educational qualification and to declare her result on that basis.

15. At this stage we may take note of the decision of this Court in Suresh Pal and Ors. v. State of Haryana and Ors., , on which much reliance has been placed by learned counsel appearing for the respondent. In that case this Court issued a direction to the Government of the State of Haryana to recognize the certificate obtained by the petitioners therein and other similarly situate candidates in completing the certificate course in Sri Hanuman Vayayam Prasarak Mandal, Amaravati, Maharashtra for the post of Physical Training Instructor in Government Schools in Haryana. This Court appears to have issued such direction taking note of the factual position that the petitioners had joined the institution relying on the recognition granted by the State of Haryana to the Certificate course of Physical Education in that institute and while they were in the midst of the course the State Government had derecognised the certificate course of the institute. Taking note of the particular facts of the case this Court issued the direction noted above and made it clear that if

any person who has joined the course after 9th January, 1985 i.e. the date of derecognition he would not be entitled to the benefit of the order and any certificate obtained by him from the said institute would be of no avail. The decision in our view does not lay down any general principle of law applicable in all cases. It was based on the facts and circumstances peculiar to that case. Therefore, the decision cannot be of any avail to the respondent in this case.

16. In the result, the appeal is allowed. The judgment of the learned single judge dated 14 July 1999 in SB Civil Writ Petition No 4433/97 which was confirmed by the division bench by its judgment dated 6 July 2000 in DB Civil Special Appeal No 917 of 1999 (Def) is set aside and the writ petition filed by the respondent is dismissed. However, it is made clear that if in the meantime the respondent has been given any financial benefit on the basis of the qualification obtained on completion of the course the same will not be recovered from her. There will be no order as to costs.