

State Of Himachal Pradesh & Anr vs Padam Dev & Ors on 16 April, 2002

Equivalent citations: AIR 2002 SUPREME COURT 2477, 2002 AIR SCW 2769, 2002 (3) SLT 319, 2002 (2) LRI 529, 2002 (4) SCC 510, 2002 (5) SRJ 484, (2002) 4 JT 426 (SC), 2002 (3) SCALE 672, (2002) 2 LAB LN 897, (2002) 2 SCT 746, (2002) 3 SCJ 201, (2002) 4 SERVLR 1, (2002) 4 SUPREME 43, (2002) 3 SCALE 672, (2002) 3 ANDH LT 55, 2002 SCC (L&S) 548

Author: Ruma Pal

Bench: S. Rajendra Babu, Ruma Pal

CASE NO.:

Appeal (civil) 5858-5859 of 1999

PETITIONER:

STATE OF HIMACHAL PRADESH & ANR.

Vs.

RESPONDENT:

PADAM DEV & ORS.

DATE OF JUDGMENT: 16/04/2002

BENCH:

S. Rajendra Babu & Ruma Pal

JUDGMENT:

With C.A. No. 5859 Of 1999 J U D G M E N T RUMA PAL, J The question to be decided in both these appeals is whether the appellant could have, as a matter of policy, made available a facility for additional training exclusively for a particular group of trainees. The question arises in the context of two schemes formulated by the appellant to tackle the problem of rural poverty and unemployment amongst the rural educated youth. The first scheme which was formulated in 1981 (referred to as the Dairy scheme) sought to provide for those who had tiny pieces of land in the rural areas and who moved to urban areas in search of jobs. The State Government was of the view that there was a need to encourage such landed unemployed youths not to depend on cultivation or horticulture alone as these only provided seasonal income but to engage in dairy farming for which the State was both climatically and geographically well suited. In addition to easing the urban

population, it was felt that the production of dairy products would not only meet the growing demand but would afford a steady income to the dairy farmers. In this background, the Dairy scheme made elaborate provisions for achieving these objects the relevant aspects of which are paraphrased and summarised below:

As far as the State Government was concerned, it would impart technical know-how to the educated unemployed and under employed, economically weak, rural youths to perfect them in the skill of dairy farming. They would be trained in the rearing of calves, care of pregnant and milking animals, raising of fodder crops, conservation of fodder, veterinary first aid and insemination etc. On completion of the training, they would be given five cows from the Government on book value, if available, or would be assisted by the Government in procuring cross bred animals from the open market. As far as the finances were concerned, the Government would assist them in obtaining loans from financial institutions and as support for the insemination work they would be given insemination kits. It is not necessary to consider the details of the financial assistance nor the details of the training except to note that the training curriculum was as follows:

1. Cattle raising including first aid 10 weeks
 2. Fodder raising 2 weeks
 3. Artificial insemination 8 weeks
 4. Visit to out stations 4 weeks
- The only eligibility criteria was that the training would be open to persons permanently residing in the "milk shed areas" in villages located within 5 to 10 kilometers radius of chilling plants or 5 kilometers radius from collection points of the milk route.

The candidates would have to possess one hectare irrigated or two hectare un-irrigated land of which at least half an acre would have to be set apart for growing fodder. The candidates were required to have passed the matriculation examination and should preferably be about 27 years of age and physically fit to handle cattle. Ex-servicemen were encouraged to join the scheme. On completion of the training, a candidate was obliged to : (i) give an undertaking that he would take up cattle rearing and that the training would not in any way entitle him to get any government job; (ii) execute a bond to sell surplus milk to the Government run milk supply schemes for three years. 50% of the cost of the milk would be retained by the candidate and 50% would be taken up by the Government to repay the loan provided to the candidates by financial institutions.

The Dairy scheme proved successful and is still operative in the State. Between 1981 and 1996, 19 batches of candidates were trained and several of such trained persons have set up their own dairy units.

A second scheme was formulated by the State Government in 1992. The scheme was called the 'Gopal Sahayak Yojana' and is referred to hereafter as the Veterinary Scheme. The object of the Veterinary scheme was two fold. In the first place it sought to reach veterinary assistance to those engaged in livestock breeding and farmers at their door steps. The second object was to train Gopal Sahayaks for this purpose so that at least one self- employed Gopal Sahayak was available in each Panchayat. The only eligibility criteria was that the candidate should be an unemployed male whose age should be between 18 and 40 years; he was required to be a permanent resident of the concerned Panchayat and he should be a matriculate. However, the candidates were subjected to a selection by a Selection Committee consisting of the Sub Divisional Officer, the Block Development Officer, and the concerned District Animal Husbandary Officer/Senior Veterinary Officer. Preference was given to candidates belonging to remote panchayats and 'antodaya families', scheduled castes/scheduled tribes/backward classes and to families living below the poverty line. The training covering various aspects of the treatment and breeding of livestock was for six months. During the period of the training the Gopal Sahayaks were to be attached with particular veterinary hospitals or dispensaries. After the training a Gopal Sahayak was required to work under the guidance of the Veterinary Officer of the panchayat. He would be paid an honorarium of Rs.350/- for 12 months by the Animal Husbandary Department and would be given a kit of veterinary medicines as well as an artificial insemination equipment, the purchase of which was to be substantially subsidised by the State Government. Ultimately, however, a Gopal Sahayak was to be self-employed and would be entitled to charge a prescribed fee for performing artificial insemination, giving veterinary first aid, castration, vaccination, dipping and drenching. The Veterinary Scheme was formally abandoned after the first year of its operation in March 1994 during which period 383 Gopal Sahayaks were trained.

Between the years 1993 to 1998, 808 Veterinary dispensaries were opened by the State Government with one dispensary to every two panchayats. A notification was issued by the State Government on 19th December 1994 promulgating regulations for selecting candidates to undergo training as veterinary pharmacists. According to the appellant, since there was in the circumstances no scope for self employment of the Gopal Sahayaks, a decision was taken in 1998 by the State Government for training the Gopal Sahayaks as Veterinary Pharmacists. The written test which had been held in 1997-98 for selecting Veterinary Pharmacists was accordingly scrapped and the Gopal Sahayaks were given the opportunity of availing of this additional training as Veterinary Pharmacists by condensing the two year training period into a 9-months training course. The object of this exercise was to ultimately absorb these Gopal Sahayaks as Veterinary Pharmacists against 700 posts lying vacant in the State Government at that time.

Those candidates who had been imparted training under the Dairy Scheme submitted representations to the State Government for being considered for the Veterinary Pharmacists' training course. Their request was rejected by the State Government.

The Dairy Scheme trainees then filed two writ petitions under Article 226 of the Constitution before the High Court at Himachal Pradesh challenging the Government's decision not to extend the benefit of the nine months condensed training course to persons other than Gopal Sahayaks and claiming a right to be considered along with Gopal Sahayaks for training as veterinary pharmacists.

The basis of the challenge in the writ petitions was Article 14 of the Constitution. It was urged by the writ petitioners that the Dairy scheme and the Veterinary scheme were both aimed at generating self-employment and that the training undergone by the candidates under the Dairy scheme was in fact wider than that undergone by the Veterinary Scheme. The State Government contested the writ applications. It was contended that the High Court did not have the jurisdiction to entertain the matter on the ground that the case related to employment under the State and was within the purview of the Administrative Tribunals Act, 1985. The second contention raised by the appellant was that the High Court should not interfere in its policy decision which could not be termed to be arbitrary or discriminatory as the candidates under the two schemes formed distinct classes.

The High Court negated both the contentions of the State and by a common judgment allowed both writ petitions. It was held that the issue raised in the writ petitions did not relate to a question of employment but to the issue of training and as such the High Court had the jurisdiction to judicially review the decision of the State Government. On the merits, the High Court was of the view that no rational distinction could be drawn between the candidates who had completed training under the Dairy scheme and the Veterinary Scheme and that the State Government should have considered all the persons trained under both schemes for veterinary pharmacists training. The writ petitions were accordingly disposed of with a direction to the State Government to consider the claim of the trainees under the Dairy Scheme alongwith Gopal Sahayaks for training as veterinary pharmacists. In the alternative, the State was directed to formulate a scheme for training the Dairy Scheme trainees as veterinary pharmacists.

The State Government has impugned the decision of the High Court before us. The respondents who were the writ petitioners in the High Court have sought to uphold the decision of the High Court not only on the basis of its reasoning but also on the ground that subsequent to the High Court's decision, the State Government had, in compliance with the High Court's decision, formulated an identical scheme on 16.4.1999 in respect of persons covered by the dairy scheme. It is contended that the appellant cannot now reopen the issue before us.

The second objection is in the nature of a demurrer and is considered at the outset. We are of the view the objection is untenable. According to the appellant, the scheme dated 16.4.1999 had been prepared under threat of contempt proceedings initiated by the respondents before the High Court on 11.3.1999. This appears to be correct. Although special leave petitions had been filed against the impugned judgment on 6.4.1999, the matters were listed before this Court for the first time on 5.5.1999 when this Court directed issuance of notice to both sets of respondents. The scheme was prepared in the interregnum. On 28.5.1999 the High Court dropped the contempt proceedings against the State Government. A second contempt proceeding was filed by the respondents before the High Court on 16.9.1999. On 4.10.1999, this Court granted leave in the special leave petitions filed and stayed the operation of the judgment of the High Court. In these circumstances, the mere formulation of the scheme on 16.4.1999 cannot debar the appellant from questioning the correctness of the impugned judgment.

We are also of the view that the judgment of the High Court cannot be sustained on the merits. The decision to make a special concession for Gopal Sahayaks in the matter of additional training as

Veterinary Pharmacists was admittedly a policy decision. The framing of administrative policy is within the exclusive realm of the Executive and its freedom to do so is, as a general rule, not interfered with by Courts unless the policy decision is "demonstrably capricious or arbitrary and not informed by any reason whatsoever or it suffers from the vice of discrimination or infringes any statute or provisions of the Constitution".

The appellant has given reasons why it made special provisions for the Gopal Sahayaks, reasons which in our view cannot be termed to be irrational or arbitrary. The Dairy Scheme was for small landholders, who came and continue to come from villages in the milk shed areas. The object of the Dairy Scheme was not only to provide a steady source of income for such small land holders but also to develop the production of dairy products. All applicants under the scheme fulfilling the requisite criteria were allowed to participate. There was no process of selection. The training was given and the facilities were afforded to the candidates under the Dairy Scheme with both these objects in view. The emphasis in the training was in cattle rearing and fodder raising for such purpose. The course on the treatment of animals was limited and subsidiary to this main object. The governmental assistance to candidates under the Dairy Scheme was directed towards helping them set up dairy farms by providing them cattle after completion of their training and the finances requisite for rearing cattle. The candidates had also given undertakings to take up cattle rearing.

The candidates under the Veterinary Scheme on the other hand were not land holders but had to be permanent residents of the panchayat where they would ultimately serve. The applicants had to be selected by a Committee set up under the Scheme. The object of training Gopal Sahayaks under the Veterinary Scheme was to equip the candidates to prepare them to practice basic veterinary medicine at the panchayat level. The assistance to Gopal Sahayaks after completion of the training was limited to a period of service of 12 months with Veterinary Officer at an honorarium of Rs.350/- and kits of veterinary medicines and for artificial insemination.

The classification between the candidates under the two schemes was therefore distinct and clearly defined as regards the eligibility criteria of candidates, the choice of candidates, the training and post training assistance and most importantly the objectives of such training. The distinction made between the candidates of the two Schemes was permissible according to the principles enumerated by this Court as the classification was founded on an intelligible differentia which distinguished Gopal Sahayaks from the Dairy farmers. The further question remains did this differentia have a rational relation to the object sought to be achieved by the policy decision? The Veterinary Scheme was not concerned with any productive activity as the Dairy Scheme was. The Gopal Sahayaks were trained to set up practice to render basic veterinary services at the panchayat level. When this possibility was effectively blocked by the setting up of dispensaries to serve the panchayats, it was not unreasonable for the Government to consider the Gopal Sahayaks for appointment in the dispensaries after the additional training particularly when the training as Veterinary Pharmacists was to be a stepping-stone to employment in the dispensaries. The appellant took the decision to train Gopal Sahayaks having assessed the need for Veterinary Pharmacists in the State, the special training already undergone by the Gopal Sahayaks, and their inability in the changed scenario to otherwise be gainfully employed as independent para-veterinary doctors. As we have already noted the Dairy Scheme was aimed at making the candidates dairy farmers thereby also boosting the rural

economy. It was not necessary for the candidates under the Dairy Scheme to take up training as Veterinary Pharmacists to fulfil their role as dairy farmers. If the candidates of the Dairy Scheme had been allowed to take up training as Veterinary Pharmacists, this might have equipped them to work in Dispensaries but it would have defeated the very purpose of the Dairy Scheme. Besides, the respondents had chosen to avail of the benefits of the Dairy Scheme. They are, therefore, obliged to accept the terms and conditions on which the benefit was made available namely take up cattle rearing . In the circumstances, the refusal of the appellant to treat the respondents on par with the Gopal Sahayaks as far as the additional training as Veterinary Pharmacists was concerned was not unwarranted. The respondents having failed to discharge the onus of establishing their allegations against the appellant of hostile discrimination, it was not for the Court to interfere with the decision taken by the appellant . The decision of the High Court is accordingly set aside and the appeals allowed without any order as to costs.

J.
(S. Rajendra Babu)

.J.
(Ruma Pal)

April 16, 2002