

Supreme Court of India

Secy. To The Govt. Of Orissa vs Laxmikanta Nanda on 16 November, 1993

Equivalent citations: 1994 AIR 569, 1994 SCC (1) 587

Author: Y Dayal

Bench: Yogeshwar Dayal (J)

PETITIONER:

SECY. TO THE GOVT. OF ORISSA

Vs.

RESPONDENT:

LAXMIKANTA NANDA

DATE OF JUDGMENT 16/11/1993

BENCH:

YOGESHWAR DAYAL (J)

BENCH:

YOGESHWAR DAYAL (J)

KULDIP SINGH (J)

CITATION:

1994 AIR 569

1994 SCC (1) 587

JT 1993 (6) 531

1993 SCALE (4) 484

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by YOGESHWAR DAYAL, J.- Heard. Special leave granted. Since the matter was heard at length, the appeal arising out of the special leave petition is being disposed of as well.

2.The appeal is directed against the judgment dated May 7,.1990 passed by the Orissa Administrative Tribunal, Bhubaneswar in Original Application No. 282 of 1986.

3.The application itself was filed before the State Administrative Tribunal on behalf of the serving senior teachers in the Government Homoeopathic College as well as All Orissa Government Homoeopathic Medical College Teachers' Association against the Secretary to Government, Health and Family Welfare Department, Bhubaneswar and Dr Godavarish Mishra, Deputy Director, Homoeopathy, Bhubaneswar. In the original application the petitioners therein had prayed for quashing the Resolution of the Government of Orissa, Health and Family Welfare Department, No.

40481/H dated 15th December 1986 and the Notification No. VI Med. XXIA.2/86 40621/H dated 16th December 1986 whereby Dr Godavarish Mishra, (Respondent 2 before the Tribunal), Chief Medical Officer, Homoeopathy, was appointed as Deputy Director of Homoeopathy on ad hoc basis till February 28, 1987 or until further orders, whichever is earlier.

4. the aforesaid resolution dated December 15, 1986 provided as follows:

Sub:Refixation of the criteria for selection of Deputy Director of Homoeopathy in Class-I (Senior) in the Directorate of Indian System of Medicines and Homoeopathy. At present the criteria for promotion to the post of Deputy Director of Homoeopathy has been fixed as follows:

(1) A recognised qualification as prescribed under the Homoeopathy Central Council Act, 1973, Schedules 2 and 3. (2) Two years' experience as CMO or Inspector of Homoeopathy or 10 years' experience as Lecturer in Govt. Homoeopathy Medical College, Bhubaneswar.

'Lecturers with administrative experience would be preferred.' The question of fixation of a revised criteria for promotion to the rank of Deputy Director was under consideration of Government for some time past. Government after careful consideration have been pleased to decide that henceforth CMO Homoeopathy and Inspectors of Homoeopathy who have got a minimum period of 5 years of service shall be considered eligible for the post. Order:Ordered that the Resolution shall be published in the Orissa Gazette and copies forwarded to A.G. Orissa/All Deptts. of Govt./All Heads of Deptts./All Distt. Magistrates/Registrar, Orissa High Court/Secy. Orissa P.S.C. for information and necessary action. By order of the Governor C. Narayanswamy, Secretary to Government."

It is clear from the above resolution that the earlier criteria for selection of Deputy Director of Homoeopathy was changed. The material change was that Lecturers in the Government Homoeopathy Medical College, Bhubaneswar did not figure in the present eligibility criteria for consideration for promotion to the post of Deputy Director, Homoeopathy.

5.By the impugned notification dated December 16, 1986, Respondent 2, before the Tribunal, namely Dr Godavarish Mishra, Chief Medical Officer, Homoeopathy, was appointed as Deputy Director of Homoeopathy, as stated earlier.

6. We may mention that while the matter was pending before the State Tribunal the aforesaid resolution dated December 15, 1986 came to be superseded by another Resolution No. 40360/H dated November 25, 1987 which reads as follows: "Sub: Refixation of the criteria for selection of Deputy Director of Homoeopathy in Class-I (Senior) in the Directorate of Indian Medicines and Homoeopathy. In supersession of this Department Letter No. 21410 H dated July 19, 1984 and Resolution No. 40481 dated December 15, Government after careful consideration have been pleased to decide that henceforth only Chief Medical Officer Homoeopathy and Inspectors of Homoeopathy who have got a minimum period of 5 years of service shall be considered eligible for the above post.

Order: Ordered that the Resolution shall be published in the Orissa Gazette and copies forwarded to the A.G. Orissa/All Deptts. of Govt./All Heads of Deptts./All Distt. Magistrates/ Registrar, Orissa High Court/Secy., Orissa P.S.C. for information and necessary action. By order of the Governor C. Narayanswamy, Secretary to Government."

7. The State Administrative Tribunal, on reading of the revised criteria fixed in the resolution dated December 15, 1986 took the view that this resolution does away with the recognized qualifications as prescribed under the Homoeopathy Central Council Act, 1973 (hereinafter called 'the Central Act') and was thus violative of Sections 15(2) and 15(3) of the Central Act read with Section 29(b) of the Orissa Homoeopathic Act, 1956 (hereinafter referred to as 'the 1956 Act'). The Tribunal also took the view that "it was absolutely unfair on the part of the Government to completely exclude Lecturers in Medical College from considering them for promotion to the post of Deputy Director under the revised criteria, when they continued to belong to the same cadre and no bifurcation of teaching cadre and peripheral cadre had taken place" and held that the Tribunal is unable to accept the plea of the State Government that resolution is not arbitrary and discriminatory. The Tribunal accordingly declared the resolution dated December 15, 1986 as illegal and also quashed the appointment of Dr Godavarish Mishra as it was not sustainable in law and directed the Government to consider the petitioners before it for promotion to the post of Deputy Director if they fulfil the criteria which was in force prior to coming into force of the revised criteria, which had been set aside by the Tribunal, and the post of Deputy Director will be filled up accordingly.

8. The case of the State Government was stated on their behalf in their counter-affidavit filed before the Tribunal. It was stated inter alia that the post of Deputy Director was originally a promotional post for peripheral Medical Officers as well as the Lecturers of the Homoeopathy College. But it was found that although promotional avenues were available for Lecturers of the Homoeopathic Medical College, no such avenues were available for Medical Officers working in the field. It was pleaded that in the Homoeopathic College, Demonstrator can be promoted to the post of Lecturer and Lecturer in turn to the post of Associate Professor and the Associate Professor was eligible for promotion as Professor. It was stated that the post of Associate Professor is a Junior Class-I post whereas the post of Professor is the Senior Class-I post. The Medical Officers in the peripheral cadre had no promotional avenues beyond the post of Homoeopathy Inspector and Chief Medical Officer, Homoeopathy, both in Class-II rank. It was thus noticed by the Government that there was considerable discontentment in the matter of promotional avenues for the officers working in the college wing and those working in the field. With a view to set at rest the disparity, it was decided that the post of Deputy Director should be reserved as a promotional post for officers working in the field. At the same time the Government decided to prescribe the minimum qualification and eligibility for promotion to the higher post. Thus there was a reasonable basis for excluding the college teachers from being considered for promotion to the post of Deputy Director. There was thus no discrimination or arbitrariness in making the impugned resolution dated December 15, 1986. It was also pleaded that the resolution in no way contradicts the provisions contained in Section 15 of the Central Act. On the other hand the resolution conforms strictly to the provisions laid down in Sections 15(2) and 15(3) of the Central Act read with Section 29(b) of the 1956 Act.

9. It was further pleaded that the post of Deputy Director Homoeopathy is an administrative post and it was thus decided by the Government that the post should be filled up from among the Chief Medical Officer and Inspectors of Homoeopathy having minimum period of five years experience. The Government after consideration laid down the revised criteria for filling up of the post of Deputy Director of Homoeopathy. It was also pleaded that during the pendency of the application before the Tribunal vide resolution dated November 25, 1987 the Government of Orissa had decided that "henceforth only Chief Medical Officer of Homoeopathy and Inspectors of Homoeopathy who have got a minimum period of 5 years of service shall be considered eligible for the post of Deputy Director of Homoeopathy in the Directorate of Indian Medicines and Homoeopathy".

10. It was specifically pleaded that the appointment and promotion to teaching posts in Homoeopathic Medical Colleges in the State are governed by special rules framed under Article 309 of the Constitution of India which are called Orissa Homoeopathic Medical Teaching Service (Method of Recruitment and Conditions of Service) Rules, 1980 (hereinafter referred to as 'the 1980 Rules') and the teachers of the Homoeopathic Medical Colleges belong to a separate cadre.

11. It had been submitted before us that it was unnecessary to incorporate the specific provision in the Government's resolution laying down the qualification when the post of Deputy Director Homoeopathy itself was required to be filled up from among the Inspectors and Chief Medical Officers of Homoeopathy. In other words it was submitted that the Medical Officers, in any case, have to be those possessing the basic qualifications as required under Schedules Second and Third of the Central Act, are eligible for promotion to the post of Chief Medical Officer/Inspectors of Homoeopathy. In that view of the matter when the promotion was only to be available to the Inspectors and Chief Medical Officer of Homoeopathy, specific provision of qualification, in the opinion of the State Government, was not necessary at all.

12. It was submitted that the administrative experience is necessary to man the post of Deputy Director. Hence it has been provided in the resolution that the Inspector/Chief Medical Officer (Homoeopathy) with five years of experience will only be considered for promotion to the post of Deputy Director (Homoeopathy).

13. As regards the justifiability of excluding the Lecturers of Government Homoeopathy College the plea, as mentioned in the counteraffidavit before the Tribunal, of promotional avenues being available to the college teachers as opposed to the field staff was again re-submitted before us. It was also submitted that the assumption of the Tribunal that the teachers of the Homoeopathy College and Medical Officers in the peripheral institutions belong to one cadre is entirely misconceived. It was pleaded that the 1980 Rules merely regulate the Medical College teachers only. It has no applicability to peripheral doctors and, therefore, it was not correct to say that Inspectors and CMO belong to the cadre of Lecturers or Senior Lecturers who were recruited under the provisions of 1980 Rules.

14. This Court had occasion to examine the provisions of the Central Act as well as the 1956 Act in the case of State of Orissa v. Radheshyam Nandal. After considering the provisions of Sections 15(2) and 15(3) of the Central Act as well as Section 29(b) of the 1956 Act this Court held that in view of

the provisions of Section 15(3) of the Central Act the right conferred on the Registered Homoeopathic Practitioner under the 1956 Act is not affected by the conditions under Section 15(2) of the Central Act and indeed such a right or privilege has been specifically preserved by Section 15(3)(b) of the Central Act.

15. It is clear from the provisions of Section 15(1) of the Central Act itself that any medical qualification included in the Second or the Third Schedule shall be sufficient qualification for enrolment of any person on any State Register of Homoeopathy. Sub-section (2) of Section 15 makes it specifically clear that no person, other than a practitioner of Homoeopathy who possesses a recognised medical qualification and is enrolled on a State Register or the Central Register of Homoeopathy shall hold office as Homoeopathic physician or any other office (by whatever designation called) in Government or in any institution maintained by a local or other authority. Thus nobody could be either Inspector or Chief Medical Officer, Homoeopathy without having requisite qualification contemplated by Section 15(2) of the Act. It was not the case of teachers before the Tribunal that Inspectors and Chief Medical Officer, Homoeopathy were disqualified under the Central Act for holding any office in Government. Once the holding of the requisite qualification is sine qua non for employees working as Inspectors and Chief Medical Officer, Homoeopathy, there was no 1 1991 Supp (2) SCC 404: 1992 SCC (L&S) 141: (1992) 19 ATC necessity for providing the same qualification once again while making them eligible for promotion to the post of Deputy Director.

16. We are thus constrained to hold that the Tribunal had erred in holding that the resolution of December 15, 1986 was in any way violative of Section 15(2) or 15(3) of the Central Act or Section 29(b) of the 1956 Act. Again the finding that the exclusion of Lecturers in Medical College from being eligible for promotion to the post of Deputy Director, Homoeopathy being unfair or discriminatory is not correct. Once the cadre of teachers is separate from the cadre of peripheral officers there is no question of discrimination. There is already a division among their personnel and the two belong to different categories and, therefore, the decision of the Government at a later stage to exclude teachers from eligibility to the post of Deputy Director, Homoeopathy cannot be called discriminatory. It cannot be also called unfair as pointed out in the counter-affidavit filed on behalf of the State of Orissa that whereas teachers could go to the level of Class-I post, the persons belonging to peripheral field had to compete with teachers for aspiring to go to the post of Deputy Director. It cannot be said that the exclusion, on the facts and circumstances, suffer from any unfairness. We thus find that the revised criterion as envisaged in the resolution dated December 15, 1986 and as specifically made clear in the resolution dated November 25, 1987 read with the averments made in the counter-affidavit is not in any way illegal or discriminatory and not in any way violative of the provisions of the 1956 Act or the Central Act and, therefore, the appointment of Dr Godavarish Mishra could not have been quashed by the Tribunal.

17. We accordingly accept this appeal with costs and set aside the impugned order of the Tribunal dated May 7, 1990.