

A

DR. CHITTARANJAN SHARMA AND ORS.

v.

THE STATE OF HIMACHAL PRADESH AND ANR.

SEPTEMBER 19,1996

B

[K. RAMASWAMY, FAIZAN UDDIN AND G.B. PATTANAIK, JJ.]

Service Law :

C

Absorption of employees of Ayurvedic Degree College taken over by the State Government—Regular absorption made on the basis of recommendations made by screening committee constituted for this purpose—Appellants not possessing the requisite qualifications—Hence absorbed in suitable administrative posts to which they were eligible—Challenged before the Tribunal and it directed to maintain their scale of pay and to absorb them in the post of Ayurvedic Chikitsa Adhikaris—On appeal held, directions of Tribunal based on equity and hence no interference called for.

D

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1248-49 of 1987.

E

From the Judgment and Order dated 15.12.86 of the State Administrative Tribunal, Shimla in T. No. 74 and 77 of 1986.

S.V. Deshpande for the Appellants.

F

T. Sridharan, T.A. Khan, Shiva Pujan Singh and Rajiv Nanda for the Respondents.

The following Order of the Court was delivered :

G

These appeals by special leave arise from the order of the Administrative Tribunal made on December 15, 1986. Admittedly the H.I.M. Ayurvedic Degree College, Paprola, District Kangra was taken over by the Government and handed over to the H.P. Health and Family Welfare Department. Clause (3) of the agreement envisages as under :

H

"The service of the existing staff, principal, Teaching Administrative and other employed on regular basis in the college who fulfil the requisite qualifications and age conditions may be taken over

with effect from 3.3.1978 after due screening if done by a screening committee constituted for this purpose by the Government in which 2 members i.e. principal and Manager from the Managing Committee shall also be included. Service of the present employees will be protected according to Government rules." A

In accordance therewith, the existing staff, principal, teaching, administrative and other employees employed on regular basis in the college were eligible to be absorbed on regular basis provided they fulfilled the following conditions : (1) they were appointed on regular basis in the college before taking over; (2) they possessed the requisite qualifications prescribed for the posts; and (3) they fulfilled the age condition at the time of taking over w.e.f. March 3, 1978. On fulfilment of all these conditions, they would be sent to a screening committee constituted for the purpose by the Government including to members, i.e., the Principal and Manager to the Managing Committee to represent the employees in the screening committee. On recommendation made by the Committee, the regular absorption could be made. B C D

Unfortunately, the appellants were not regularly appointed; nor did they possess the requisite qualifications for absorption on regular basis in the posts as on the date of the take over. Resultantly, instead of throwing them out of service by retrenchment, the Government issued the order exercising the power under proviso to Article 309 of the Constitution on May 24, 1980 in consultation with the Himachal Pradesh Public Service Commission and Rules for Recruitment and Promotion of the Ayurvedic College employees, Paprola, District Kangra. Admittedly, the appellant even than did not satisfy those qualifications prescribed under the Rules. Resultantly, they were absorbed in suitable administrative posts to which they are eligible. When they challenged their absorption, the Tribunal in the impugned order directed to maintain the scale of pay which they were drawing on the date of the take over and directed their absorption in the posts of Ayurvedic Chikitsa Adhikaris etc. Thus, these appeals by special leave. E F G

It is seen that since the appellant had not fulfilled the requisite qualifications either when they were initially appointed by the committee before take over nor when statutory rules were made by the Governor so as to enable for absorption. Instead of retrenching them from service due H

- A** to non-fulfilment of the requisite qualifications, the Government came to absorb them in the Ayurvedic Chikitsa Adhikaris posts etc. to which they are eligible. The Tribunal has given the direction to maintain the pay-scales and to make adjustment and absorption. In our view directions are correct and based on equity and do not call for any interference. They may also
- B** be considered for further promotion from the absorbed posts in accordance with the rules.

The appeals are accordingly dismissed. No. costs.

G.N.

Appeals dismissed.