
Before J. S. Narang and Baldev Singh, JJ.

MANORMA DEVI—*Petitioner*

versus

STATE OF PUNJAB & OTHERS—*Respondents*

C.W.P. NO. 10818 OF 1999

28th September, 2005

Constitution of India, 1950—Art. 226—Punjab Ayurvedic Department (Class III) Technical Rules, 1963—Department of Ayurveda, Punjab (Class III Ayurvedic) Services Rules, 1989—Recruitment to the post of Lecturer (Sanskrit) in Government Ayurvedic College—Director, Ayurveda Punjab sending requisition for filling up the post prescribing M.A. Sanskrit as eligibility qualification—Control of College transferred to respondent No. 2—Respondent No. 2 advertising the post of Lecturer prescribing M. Phil eligibility qualification—Challenge thereto—Whether inclusion of prescribing the higher qualification M. Phil for the purpose of culling out the eligibility qualifications is correct—1989 Rules which laid down the academic qualification M. Phil for Lecturer Sanskrit have neither been published nor notified till date—The rules promulgated if not notified would not be accepted having been framed as rules under Art. 309—These rules cannot be relied upon nor claimed as an anchor for settling the qualifications for a post prescribed and described in the 1989 Rules—1963 Rules do not prescribe the qualifications for recruitment to the post of Lecturer—Petitioner failing to show as to from where the qualification of M.A. Sanskrit and experience of three years has to be adopted if such qualification has not been prescribed in the 1963 Rules—Petition liable to be dismissed.

Held, that the emphasis made in that prescription for the higher qualification M. Phil for the purpose of culling out the eligibility qualifications for the post of Lecturer Sanskrit, for the post in Government Ayurvedic College, Patiala, has not been correctly included. Firstly, on the basis that the requisition sent in the first instance by the Director Ayurvedic, Punjab, did not contain this higher qualification and that subsequently by virtue of communication dated 21st November, 1997, the Director, Research and Medical Education, Punjab, has included this higher qualification, which is against the rules and the

same could not have been based upon the basis of the Draft Rules, as the same do not have any force of law. We are of the considered opinion that the petitioner has not been able to lodge her claim under the provisions of law correctly. It has not been pointed out that the post of Lecturer Sanskrit falls fairly and surely within the domain of 1963 Rules.

(Paras 20 & 21)

Further held, that some qualification was required to be indicated for the post of Lecturer Sanskrit. No doubt, the official respondents have made a mention that the qualifications as spelt out by the Director, Research and Medical Education, Punjab have been made in the Draft Rules and the same has been mentioned in the requisition. The respondents have not been able to make out a case that the Draft Rules are applicable. It is the settled law that the Rules promulgated under Article 309 of the Constitution, if not notified would not be accepted having been framed as the rules under Article 309. However, if such rules are being acted upon by the Government and there is every intention to follow such rules in future for the purpose of regulating the service etc. in that case, such rules could be taken as Government instructions but this would not mean wherever it may suite the Government, Draft Rules may be followed and wherever it is inconvenient the Government would ignore such rules.

(Para 21)

R. N. Raina, Advocate, Rajinder Sharma, Advocate, *for the petitioner.*

Ashok Aggarwal, Addl. A. G. Punjab, with B. S. Chahal, A.A.G.,
Punjab for the State.

JUDGMENT

J. S. NARANG, J.

(1) The petitioner had filed the petition under Article 226 of the Constitution of India in the year 1999 and that notice of motion was issued,—*vide* order dated 5th August, 1999. During the pendency of the petition certain other acts/facts came into existence and resultantly, the petitioner sought permission to file the amended writ petition, which was taken on record by order dated 5th March, 2002,

passed by a Division Bench of this Court. The respondents have filed written statement. During the course of hearing, learned Additional Advocate General, represented respondent No. 1 to 4, had taken time for filing the additional affidavit in terms of the direction issued,—*vide* order dated 21st April, 2003. The respondents filed a short affidavit dated 8th January, 2004 of Dr. Vijay Kumar Sharma, Director, Research and Medical Education, Punjab, which was taken on record. However, learned counsel for the petitioner pointed out that the respondents have not submitted categoric reply; admitting or denying the contentions of para 13 of the amended writ petition. Consequently, the State had taken time to file the appropriate affidavit. An affidavit of Dr. J. S. Dalal, Director, Research and Medical Education, Punjab, dated 27th January, 2005, had been submitted on the date fixed i.e. 27th January, 2005. Mr. N. S. Boparai, learned Sr. Addl. Advocate General, Punjab, very fairly admitted that proper reply has not been submitted pertaining to para 13 of the writ petition. Consequently, another short affidavit dated 16th May, 2005, was submitted on the date fixed i.e. 16th May, 2005.

(2) The petitioner has invoked the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, for issuance of a writ in the nature of certiorari quashing the order of appointment dated 20th September, 2001, copy Annexure P11, in favour of respondent No. 5. It is the claim of the petitioner that the petitioner, being eligible, has not been considered for direct recruitment for the post of Lecturer (Sanskrit). It is further the case of the petitioner that the qualification of M. Phil could not have been incorporated, being against the rules/instructions applicable for the purpose of spelling out the qualifications for being appointed as Lecturer (Sanskrit).

(3) The petitioner acquired the qualification of B. Ed. and Master of Arts (Sanskrit) from Punjabi University. She had taught the subject of Sanskrit at Shaheed Udham Singh, Senior Secondary School, Sanaur, Patiala from 1st April, 1991 to 15th December, 1994. She also possesses knowledge of Punjabi language upto Matric Standard. Later on she worked as Lecturer Sanskrit, Government Ayurvedic College, Patiala from 27th November, 1995 to 24th February, 1996.

(4) Respondent No. 3 sent a requisition,—*vide* communication dated 24th/25th June, 1996 to the Subordinate Services Selection Board, Punjab (hereinafter referred to as “the Board”) for filling up

various posts in the Ayurvedic Department including one post of Lecturer in the subject of Sanskrit in Government Ayurvedic College, Patiala. The qualifications prescribed for the post of Lecturer Sanskrit had been spelt out as :—

- (a) M. A. Sanskrit from recognised University/Institution ;
- (b) three years teaching experience ; and
- (c) Matriculation with Punjabi passed.”

(5) It is indicated that the control of Government Ayurvedic College, Patiala, was transferred to the control of respondent No. 2 i.e. Director, Research and Medical Education, Punjab, before the process of selection to the post could commence. A letter dated 21st November, 1997, reiterating the request was sent to the Board by respondent No. 2. The Board advertised the post including the post of Lecturer (Sanskrit),—*vide* advertisement No. 1/1998 and one such publication had appeared in “Daily Ajit” Jalandhar. The petitioner found that the qualification indicated in the letter of request and the qualifications spelt out in the advertisement were different from each other. The qualifications required and which has been added in the advertisement is :

“M. Phil from recognised University/Institution”.

The advertisement dated 1st January, 1998, has been appended as Annexure P-6.

(6) The petitioner made the representation to the concerned quarters that incorporation of the aforestated condition was not prescribed under the rules and that the petitioner would be entitled to be considered with the qualifications acquired by her.

(7) The representation remained unconsidered. The petitioner applied for the post of Lecturer Sanskrit mentioned at Category No. 64 in the aforestated advertisement. The petitioner was not called for interview, which was scheduled to be held on 8th July, 1999. Being aggrieved of the aforestated, the present petition has been filed.

(8) On the other hand, the stand of the respondents is that pursuant to the requisition made by Director, Research and Medical Education, Punjab, for filling up the single post of Lecturer Sanskrit,

the qualifications had been prescribed and indicated in the advertisement dated 1st January, 1998. The qualification of M. Phil has been specifically mentioned and that the petitioner had not acquired the aforesaid qualification. Resultantly, her application had been rejected and was not called for interview. It is also the stand that the previous requisition sent by the Director, Ayurveda, was not advertised by the Board and that the post in question was advertised by virtue of the requisition dated 21st November, 1997, made by the Director, Research and Medical Education, copy appended as Annexure R/1. The qualification prescribed by the Director Ayurveda, were different from those of the qualifications prescribed by the Director, Research and Medical Education. Thus, there was no illegality or infirmity in rejecting the application of the petitioner and not calling her for interview. In fact, the petitioner had been rightly and correctly ignored.

(9) The stand of respondent No. 5, who has been selected for the post, is that prescription of higher qualifications, if considered better or more advantageous for particular post, cannot be interfered with by the Court unless the same is shown to be *mala fide*ly prescribed or being against the provisions of law or rules applicable.

(10) It is also the stand that the rules do not prescribe the qualifications for recruitment to the post of Lecturer and that respondent No. 5 fulfills the qualifications as prescribed and given in the advertisement. It has also been averred that in response to the advertisement, 31 candidates applied for the post, out of which seven candidates had been short listed, having been found eligible to be considered for the post. However, out of the aforesaid seven candidates, only three candidates presented themselves in the interview. Resultantly, the petitioner was declared as successful candidate and has been accordingly appointed to the post of Lecturer Sanskrit. The respondent has disclosed her academic warrants as well. It has been indicated that she has obtained 68% marks in Master of Arts, having passed in the examination held in 1988. She has also acquired M. Phil from Guru Nanak Dev University, Amritsar in the year 1989 in the aforesaid subject with the grading ; 5.49/6.00. She has also spelt out her teaching experience since 1990 upto 1996. It is also the claim of the respondent that she ranks much higher in qualification and experience than the petitioner.

(11) Learned counsel for the petitioner has argued that under Article 309, of the Constitution of India, the statutory rules have been framed which are defined as Punjab Ayurvedic Department (Class-III) Technical Rules, 1963 and that the list of posts has been mentioned in Appendix 'A' and the posts of Senior Lecturer and Junior Lecturer have been mentioned therein. Filling up of post of Lecturer under the aforesaid rules has come in for interpretation before a Division Bench of this Court and that in this regard a judgment has been rendered by a Division Bench of this Court in re: **Rakesh Kumar Singla versus Director, Research and Medical Education, Punjab and Others, CWP No. 15381 of 1997, decided in April 1998**. We have perused this judgment and we find that this judgment is not at all applicable to the point at issue in the present petition. In that case, the question was entirely different i.e. the private respondents in that case were not eligible for the post of Lecturers in the Government Ayurvedic College, Patiala. The respondents in that case were unable to produce the order by which the posts of Lecturers were actually created. It had also not been shown at the time of creation of the post that a conscious decision to treat them as separate category or cadre had been taken. No explanation whatsoever was forthcoming to indicate as to why no experience is required for the post of lecturer. In the case of a Junior Lecturer, it had been prescribed that unless he has a teaching experience of two years, would not be appointed on the said post. The post of lecturer is also in the same scale of pay, therefore, some such kind of experience was required and that a person could not have been appointed on the post of Lecturer without any experience. It has been held that the pay scale, the requirements of the job and the academic qualifications prescribed for the post can be a fair basis for taking a conscience decision. It has been observed that if experience is an essential qualification for appointment to the post of Junior Lecturer, it does not stand to reason as to why a similar requirement would not apply to the post of Lecturer. It is in this view of the fact, the petition had been allowed, categorically holding that respondents Nos. 3 and 4 in that case cannot be held to be eligible for the appointment to the post of Lecturer, as they did not have the teaching experience of two years.

(12) It has been further argued that draft rules known as the Department of Ayurveda Punjab (Class-III Ayurvedic) Service Rules, 1989 (hereinafter referred to as the "the Draft Rules") have neither

been published nor notified till date. These rules laid down the academic qualifications of Lecturer Sanskrit which include "M. Phil". These rules have no force of law, therefore, prescription of the inclusion of M. Phil as qualification is not sustainable under law. In support of his argument, learned counsel has placed reliance upon a judgment of this Court rendered in re: **Gulshan Nanda versus State of Haryana and others, (1)**. We have perused this judgment and we are of the opinion that this judgment would not apply to the case of the petitioner. A reference has been made to another Division Bench Judgment rendered by this Court in LPA No. 509 of 1968, decided on 16th April, 1970, wherein it has been observed that the draft rules have no force of law, though may be considered to be executive instructions if a conscious decision is taken by the concerned authorities that till the draft rules are published and come into force, the draft rules are considered as executive instructions. However, it has been observed that following the draft rules in a given case, would not amount to a conscious decision to treat the draft rules as executive instructions and that no such decision had been brought on record or to the notice of their lordships that a conscious decision was taken to treat the draft rules as executive instructions. Resultantly, the qualifying experience of six years for promotion to the post of Head Draftsman Grade-I had been ordered to be ignored.

(13) On the other hand, Mr. Ashok Aggarwal, Learned Additional Advocate General, Punjab, has argued on the basis of short affidavit dated 16th May, 2005, filed by the Director, Research and Medical Education, that the post of Lecturer Sanskrit is a general cadre post for which qualification in the Punjab Government Education Department have already been notified,—*vide* Punjab Government Gazette Notification No. 7456-IEID(1)-76/16711, dated 21st May, 1976. It is also the stand that the post in question has been included in the Punjab Ayurvedic Department (Class-III) Technical Service Rules, 1963 and that this is to be treated as Ex-cadre post. Respondent No. 5 has been selected by the Board on the basis of educational qualifications based on qualification equal to Lecturer Sanskrit in Technical Education and that she is holding higher qualification than

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the petitioner. It is also the stand that all such posts which do not appear in 1963 Rules are considered as Ex-cadre posts and that qualification and experience for such posts was considered as per the Draft Service Rules, 1989, which are not notified. It has also been averred that the Draft Service Rules of Ayurvedic Department were framed and submitted to the Government for final approval and implementation for betterment in the institutions and that for bringing Government Ayurvedic College, Patiala at par with Education Department of the Punjab Government.

(14) It has been further contended that learned counsel for the petitioner has not been able to show as to what qualifications are prescribed for Lecturer in Sanskrit in the 1963 Rules and that if the Draft Rules are not taken to be applicable to such posts then the controlling authority would be well within its rights to issue requisition prescribing the standard of qualifications for the purpose of recruitment to be made on a post. Admittedly, the Director, Research and Medical Education, Punjab had issued the requisition dated 21st November, 1997,—*vide* which it has been categorically mentioned that the candidates must have the educational qualifications of M.A. Sanskrit from the recognized University/Institution, M. Phil in the subject of Sanskrit from recognized University/Institution; three years experience in the subject and knowledge of Punjabi upto Matric Standard. So far as the requisition by Director Ayurveda is concerned, no advertisement pursuant to the same had been made as the institution had been subject to the control of Director, Research and Medical Education, Punjab. Thus, any requisition made by Director, Ayurvedic Punjab, would be of no consequence.

(15) It is further the argument that if the argument of learned counsel for the petitioner is accepted that the qualification prescribed by Director, Research and Medical Education by virtue of the requisition cannot be sustainable under law. Would it mean that Lecturer Sanskrit is to be appointed without any qualifications? This would lead to an anomalous result. It has also been argued by the learned counsel for the petitioner that the 1963 Rules do not prescribe the qualifications for the post of Lecturer (Sanskrit). In that context, reference has been made to a Division Bench

Judgment of this Court in **Gulshan Nanda's case** (*supra*). In fact, the import of this judgment would go against the petitioner, as the same qualifications need to be prescribed for a person to be selected as Lecturer Sanskrit. For argument sake if the qualifications spelt out in the Draft Rules are not to be accepted, then nothing wrong can be found in the qualification prescribed by the Director, Research and Medical Education, Punjab,—*vide* notification dated 21st November, 1997, copy Annexure R/1. The perusal of the prayer of the petitioner shows that she would be selected if qualification of M. Phil from the advertisement is directed to be deleted, on what basis? If the qualifications have not been prescribed and described in the 1963 rules, for the post of Lecturer, from where it can be inferred that the qualification of M.A. in Sanskrit would be the qualification. This prayer has been made only for the purpose that it suits the petitioner and would be deemed to be fulfilling the qualification for the post of Lecturer. Such claim can never ever be accepted.

(16) However, learned Additional Advocate General, has also placed reliance upon a judgment of the Hon'ble Supreme Court in re: **Vimal Kumari versus State of Haryana and others**, (2) wherein it has been held that the option of the Government to regulate service conditions by Draft Rules would be permissible if the intention of the Government to enforce the Draft Rules in near future is clear, then Service conditions can be regulated under Draft Rules though such Draft Rules are not rules under Article 309 of the Constitution. A pointed reference has been made to para 6 of aforestated judgment, which reads as under :—

“6. The Draft Rules were prepared in 1983 and since then they have not been enforced. It is, no doubt, open to the Government to regulate the service conditions of the employees, or whom the Rules are made, by those Rules even in their “draft stage” provided there is clear intention on the part of the Government to enforce those rules in the near future. Recourse to such Draft Rules is permissible only for the interregnum to meet any emergent situation.

But if the intention was not to enforce or notify the rules at all, as is evident in the instant case, recourse to "Draft Rules" cannot be taken. Such Draft Rules cannot be treated to be rules made under Article 309 of the Constitution and cannot legally exclude the operation of any existing executive or administrative instruction on the subject covered by the Draft Rules exclude the jurisdiction of the Government, or for that matter, any other authority, including the appointing authority, from issuing the executive instructions for regulating the conditions of service of the employees working under them.'

(17) Learned Additional Advocate General has also made reference to a Division Bench judgment of this Court rendered in re: **Dr. J. B. Dilawari versus P. G. I. of Medical Education and Research Chandigarh, CWP 18118 of 1994 decided on 8th March, 1995 (3)** stressing on the point that the Courts are expected not to express opinion with regard to academic matters regarding equivalence of University Degrees and that the prescription of qualifications should not be interfered with as this act falls within the domain of the experts, unless, such decision by the experts is tainted with *mala fides* preferring one person over the other.

(18) We have not been shown by the Government *vis-a-vis* the status of the applicability of Draft Rules. Admittedly, the Draft Rules have not been notified but there is no plea that the Draft Rules are being followed as executive instructions and there is all the intention of the Government to follow the same as instructions in all cases without any exception and that the same have been followed in all such cases similarly. In the absence of the same, it cannot be accepted that the Draft Rules can be relied upon or claimed as an anchor for settling the qualifications for a post prescribed and described in the Draft Rules.

(19) We have heard learned counsel for the parties and have also perused the paper book as also the respective pleas accordingly. We have also perused the judgments cited at the bar, we have expressed our views as well, which are reiterated.

(20) The emphasis made is that prescription of the higher qualification M. Phil for the purpose of culling out the eligibility qualifications for the post of Lecturer Sanskrit, for the post in Govt. Ayurvedic College, Patiala, has not been correctly included. Firstly, on the basis that the requisition sent in the first instance by the Director, Ayurvedic Punjab, did not contain this higher qualification and that subsequently by virtue of communication dated 21st November, 1997, the Director Research and Medical Education, Punjab, has included this higher qualification, which is against the rules and the same could not have been based upon the basis of the Draft rules, as the same do not have any force of law.

(21) We are of the considered opinion that the petitioner has not been able to lodge her claim under the provisions of law correctly. It has not been pointed out before us that the post of Lecturer Sanskrit falls fairly and surely within the domain of 1963 Rules. The reference made to **Rakesh Kumar Singla's case (supra)**, is not at all applicable to the case of the petitioner rather the observation has been made by the Division Bench that the qualification for the post of Lecturer in regard to experience has not been made and, therefore, the experience as indicated for the post of Junior Lecturer should have been adopted as no person can be appointed upon the post of Lecturer without any experience as the same does not fall to the reasonable reason attributable accordingly. In the case at hand also some qualification was required to be indicated for the post of Lecturer Sanskrit. No doubt, the official respondents have made a mention that the qualifications as spelt out by the Director, Research and Medical Education, Punjab have been mentioned in the Draft Rules and the same has been mentioned in the requisition. The respondents have not been able to make out a case that the Draft Rules are applicable. It is the settled law that the Rules promulgated under Article 309 of the Constitution, if not notified would not be accepted having been framed as the rules under Article 309. However, if such rules are being acted upon by the Government and there is every intention to follow such rules in future for the purpose of regulating the service etc; in the case, such rules could be taken as Government instructions but this would not mean wherever it may suite the Government, Draft Rules may be followed and wherever it is inconvenient the Government would ignore such rules.

(22) However, Learned counsel for the petitioner has not been able to give any answer as to from where the qualification of M.A. Sanskrit and the experience of three years has to be adopted, if such qualification has not been prescribed in the 1963 Rules, for the post of a Lecturer, then in that case, the qualification prescribed by the Director, Ayurvedic, Punjab controlling the aforesaid institution at that time ought to be accepted and that the qualification prescribed by the the Director, Research and Medical Education, Punjab, cannot be accepted. It is the admitted case that pursuant to the requisition sent by the Director Ayurvedic, Punjab, no publication had been made advertising the filling up of the posts accordingly. However, the institution was admittedly taken over and fall under the control of Director, Research and Medical Education, Punjab and that the requisition was sent to the Board,—*vide* communication dated 21st November, 1997, indicating the qualifications required for filling the posts of Lecturer Sanskrit.

(23) In view of the aforesaid facts which have emerged, we refrain ourselves from opining *vis-a-vis* the applicability of the Draft Rules in the case at hand. If the argument of learned counsel for the petitioner is accepted that the Draft Rules are not applicable and that he has not been able to spell out what are the qualifications prescribed under the 1963 Rules for the post of Lecturer Sanskrit, there is no option open but to accept that the Director, Research and Medical Education Punjab was well within his rights and a competent authority as also an expert to spell out the requisite qualification for the post of Sanskrit, to be kept in mind by the Board for selecting candidate for the post of Lecturer Sanskrit. Admittedly, respondent No. 5 fulfilled these qualifications but the petitioner does not fulfill these qualifications. The respondents had correctly rejected the application of the petitioner and as a sequel thereto had not been called for interview. The cumulative effect is that we find no merit in the petition and the same is dismissed with no order as to costs.

R.N.R.