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G. SUNDARESWARARAO

v.

THE GOVERNMENT OF A.P. AND ORS.

FEBRUARY 26, 1996

B

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

Service Law :

A.P. Institute of Preventive Medicine Service Ad hoc Rules :

C

Rule 4(b)—Promotion to the post of Senior Scientific Officer—G.O. Ms. No. 219 Health Medical & Family Welfare dated March 26, 1987—Stipulating 5 years service after acquisition of post-graduation qualification—Not less than signifies legislative intention of mandatory character of 5 years minimum experience after acquired post-graduation—Being a legislative policy, it cannot be said that the rules is ultra vires or arbitrary—If subsequently the minimum experience after post-graduation is done away with the petitioner is entitled to be considered for promotion.

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Sheshrao Janglujibagde v. Bhaiyya, [1991] Supp. 1 SCC 367, distinguished.

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CIVIL APPELLATE JURISDICTION : Special Leave Petition (C)
No. 5934 - 35 of 1996.

F

From the Judgment and Order dated 28.3.95 of the Andhra Pradesh Administrative Tribunal Hyderabad in O.A. No. 81344/90 with M.A. No. 664 of 1995.

L.N. Rao and S. Uday K. Sagar for the Petitioners.

The following Order of the Court was delivered :

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This special leave petition has been filed against the order of the Administrative Tribunal, Hyderabad dated March 28, 1995 made in O.A. No. 81344/90. It is the case of the petitioner that he had the requisite qualification for promotion as a Senior Scientific Officer. But he was unduly denied of his right for consideration for promotion from Junior

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Scientific Officer. Mr. L.N. Rao, the learned counsel, contends that Rule

4(b) of the A.P. Institute of Preventive Medicine Service *Ad hoc* Rules to the post of Chief public Analyst, Senior and Junior Scientific Officers, issued in G.O. Ms. No. 219 Health Medical & Family Welfare, dated March 26, 1987 is ultra vires of the power. Once the petitioner acquired post-graduate qualification, the insistence of 5 years service after the acquisition of the post-graduation is not warranted. In support thereof, he placed reliance on a judgment of this Court in *Sheshrao Janglujibagde v. Bhaiyya*, [1991] Supp. 1 SCC 367. A B

Rule 4 (b) reads thus :

"Must have not less than 5 years experience as Post- Graduate in the analysis of Food under the control of Chief Public analyst/Government Analyst who is appointed under the prevention of Food Adulteration Act, 1954." C

In view of that mandatory rule that the candidate must have not less than 5 years experience as post-graduate in the analysis of the food, the intendment of the rule is manifested that after acquiring post-graduation, one must necessarily have not less then 5 years experience in the analysis of food. It would be relevant to mention that when the analysis of food for adulteration is to be made the senior Scientific Officer is required to counter test the report of the analyst sent in that behalf, the Rules appears to have intended that he must have expert knowledge after acquiring post graduation and minimum period of not less than 5 years experience has been prescribed and insisted under the rule. The words "not less than" furnishes the legislative intention of mandatory character 5 years minimum experience after getting post-graduate. Therefore, it being the legislative policy, it cannot be said that the rule is ultra vires or arbitrary. D E F

It is true that in the above-cited judgment, this Court has stated thus:

"Normally, when we talk of an experience, unless the context otherwise demands, it should be taken as experience after acquiring the minimum qualifications required and, therefore, necessarily will have to be posterior to the acquisition of the qualification. However, in the case of a promotion the same interpretation may not be just or warranted." G

But later this Court also explained that it would depend upon the H

A relevant provisions as also the particular type of experience which is required. In that case, on the basis of the language contained in the rules, this Court had held that the insistence 10 years experience after post-graduate was not required. In view of the above mandatory language, we cannot say that the rule made was not correct in law.

B It is then contended that the Government have done away with the minimum experience after post-graduation in the subsequent rules and that, therefore, the petitioner is entitled to be considered. We have no doubt that his case will be considered according to rules.

C The SLP is accordingly dismissed.

G.N.

Petition dismissed.