

IN THE SUPREME COURT OF INDIA
 CIVIL APPELLATE JURISDICTION
 CIVIL APPEAL No.4048 OF 2007

MAHENDRA KUMAR SHARMA

.....APPELLANT

VERSUS

STATE OF U.P. & ORS.

.....RESPONDENTS

O R D E R

Having failed to convince the U.P. Public Service Tribunal (for short, 'the Tribunal') and the Division Bench of the Uttarakhand High Court to entertain his prayer for treating him at par with Dark Room Assistant and for grant of the revised scale prescribed for the post of X-Ray Technician, the appellant has invoked the jurisdiction of this Court under Article 136 of the Constitution.

The appellant joined service in Rishikul Ayurvedic College, Haridwar as a X-Ray technician with effect from 27.06.1966 in the pay scale of Rs.75-5-120. His pay was revised in 1969 and was fixed in the scale of Rs.120-220. After about 15 years, Rishikul Ayurvedic College, Haridwar was taken over by the State Government. Vide order dated 27.08.1983, the appellant was absorbed in Government service. The pay scale of X-Ray Technician was revised in 1984 (Rs.430-685), but the benefit of revision was not extended to the appellant because he did not possess one of the qualifications, i.e., High School.

On the recommendations of the Anomaly Committee, the State Government issued Circular dated 15.09.1989 for revising the pay scale of the holders of various posts including X-Ray Technician. In the schedule appended to the circular, it was specifically mentioned that the revised pay scale of Rs.1350-2200 would be admissible to those X-Ray Technician who were having certificate or diploma prescribed by the Government of India. The benefit of this revision was also not given to the appellant because he did not possess even the qualification of High School what to say of diploma prescribed by the Government of India.

The application filed by the appellant before the Tribunal for grant of parity with Dark Room Assistant and revised pay scale prescribed for the X-Ray Technician was dismissed on 27.05.1995. The Tribunal held that X-Ray Technicians cannot be treated at par with Dark Room Assistants because their qualifications and sources of recruitment were different. The appellant's claim for being treated as a trained X-Ray Technician on the ground that he had completed 21 years service was also negated by the Tribunal in the following terms:

"First reason is that the petitioner/plaintiff has remained unsuccessful to prove the fact on the basis of any order of the Government that the post of the trained or untrained x-ray technician is higher or equivalent to the post of the dark room assistant. As against this, logical contention of the respondents is that both the posts are of two different cadres and their inter se comparison is not possible. Therefore, it is clear that on this ground, the petitioner is not entitled to get the pay in the pay scale of Rs.354-550 meant for the dark room assistant.

Second reason is that again the petitioner has remained unsuccessful to show through any Government order or departmental order, on the basis of which it could be assumed that an untrained x-ray technician completing 21 years of

MAHENDRA KUMAR SHARMA

Appellant (s)

VERSUS

STATE OF U.P. & ORS.

Respondent(s)

Date: 18/11/2013 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI

HON'BLE MR. JUSTICE C. NAGAPPAN

For Appellant(s) Mr.Puneet Jain, Adv.
Ms.Chhaya Kirti, Adv.

For Respondent(s) Mr.Irshad Ahmad, AAG
Mr.Sudeep Kumar, Adv.
Mr. Abhishth Kumar, Adv.

Ms. Rachana Srivastava, Adv.
Mr.Utkarsh Verma, Adv.
Ms.Pratiksha Chaturvedi, Adv.

UPON hearing counsel the Court made the following
O R D E R

The appeal is dismissed in terms of the signed order.

(Satish K.Yadav)
Court Master

(Phoolan Wati Arora)
Court Master

(Signed order is placed on the file)