

A

STATE OF M.P. AND ORS.  
v.  
SHYAMA PARDHI ETC. ETC.

NOVEMBER 16, 1995

B

[K. RAMASWAMY AND B.L. HANSARIA. JJ.]

*Service Law :*

C

*M.P. Public Health and Family Welfare Department Non- Ministerial (Related to Directorate of Health Services) Class III Services Recruitment Rules, 1989 :*

D

*Auxiliary Nurse-cum-Midwife—Persons without the prescribed qualifications selected, and appointed—Later their services were terminated after serving notice—Tribunal directing reinstatement—Held : Since they did not possess the prescribed qualification their initial selection itself was per-se illegal—Violation of principles of natural justice did not arise—Administrative Law—Natural Justice.*

E

**M.P. Public Health and Family Welfare Department Non- Ministerial (Related to the Directorate of Health Services) Class-III Services Recruitment Rules, 1989 prescribed qualification for the appointment of Auxiliary Nurse-cum-Midwife (ANM), viz., 10+2 with Physics, Chemistry and Biology as qualitative subjects. The respondents had not possessed that qualification. The District Medical Officer wrongly selected the respondents and sent them to the training. After their successful completion of the training, they were appointed as A.N.M. The respondents were served with notices stating that their selection for training was illegal and their services would be terminated. The respondents challenged the cancellation of their appointment, before the Administrative Tribunal which held that the respondents having been selected and undergone the training and the competent authority having duly appointed them, cancellation of their appointment without any opportunity is violative of the principles of natural justice, and directed their reinstatement with consequential benefits. Hence these appeals.**

F

G

H

**Allowing the appeals, this Court**

**HELD :** Admittedly, the respondents had not possessed the pre-requisite qualification, namely, 10 + 2 with Physics, Chemistry and Biology as subjects. The Rules specifically provide that qualification as a condition for appointment to the post of ANM. Since prescribed qualifications had not been satisfied, the initial selection to undergo training is *per se* illegal. Later appointments thereof are in violation of the statutory rules. The Tribunal, therefore, was not right in directing the reinstatement of respondents. The question of violation of the principles of natural justice does not arise. [450-C-D]

*Shrawan Kumar Jha and Others v. State of Bihar and Others*, AIR (1991) SC 309 held inapplicable.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 11576 of 1995 Etc.

From the Judgment and Order dated 20.6.94 of the Madhya Pradesh Administrative, Tribunal Jabalpur in O.A. No. 640 of 1994.

Satish K. Agnihotri, for the Appellants.

Shiv Sagar Tiwari for the Respondents.

The following Order of the Court was delivered :

Delay condoned.

Leave granted.

These appeals by special leave arise from the order of the Administrative Tribunal, Jabalpur M.P. Public Health and Family Welfare Department Non-ministerial (Related to the Directorate Health Services) Class-III Services Recruitment Rules, 1989 (for short 'the Rules'), made under proviso to Article 309 of the Constitution, prescribed qualification for the appointment of Auxiliary Nurse-cum-Midwife (ANM), viz., 10 + 2 with Physics, Chemistry and Biology as qualitative subjects. Admittedly, the respondents had not possessed that qualification. It would be seen that the District Medical Officer, therefore, wrongly selected the respondents and sent them to the training. After their successful completion of the training, he made appointment as A.N.M. in the pay scale of Rs. 950-1350. The respondents were served with notice dated 31st January, 1994 intimating

A that their selection for training was illegal and their services would be terminated with effect from February 23, 1994. The respondents challenged the cancellation of their appointment.

B The Tribunal in the impugned order had held that the respondents having been selected and undergone the training and the competent authority having duly appointed them, cancellation of their appointment without any opportunity is violative of the principles of natural justice and it accordingly set aside the order and directed their reinstatement with consequential benefits. Hence, these appeals by special leave.

C It is now an admitted fact across the Bar that the respondents had not possessed the pre-requisite qualification, namely, 10 + 2 with Physics, Chemistry and Biology as subjects. The Rules specifically provide that qualification as a condition for appointment to the post of ANM. Since prescribed qualifications had not been satisfied, the initial selection to undergo training is *per se* illegal. Later appointments thereof are in violation of the statutory rules. The Tribunal, therefore, was not right in directing the reinstatement of respondents. The question of violation of the principles of natural justice does not arise. The ratio of *Shrawan Kumar Jha and Others v. State of Bihar and Others*, AIR 1991 SC 309, strongly relied on, has no application to the facts of this case. That was a case where appellants possessed initial qualifications but they did not undergo the training. Since the appointment was set aside on the ground of want of training, this Court interfered with; directed the Government to reinstate them into service and further directed them to send the appellants therein for training.

F The appeals are allowed and O.As. stand dismissed. No costs.

G.N.

Appeals allowed.