



2024:UHC:9603-DB

HIGH COURT OF UTTARAKHAND AT NAINITAL

HON'BLE THE ACTING CHIEF JUSTICE SRI MANOJ KUMAR TIWARI
AND
HON'BLE SRI JUSTICE VIVEK BHARTI SHARMA

Writ Petition (S/ B) No. 758 of 2024

17TH DECEMBER, 2024

Amarnath Singh

--Petitioner

Versus

State of Uttarakhand and others

--Respondents

Presence:-

Mr. Dushyant Mainali, learned counsel for petitioner
Mr. P.C. Bisht, learned Additional Chief Standing Counsel assisted by
Mr. Naveen Tewari, learned Brief Holder for the State of Uttarakhand
Mr. Ramji Shrivastava, learned counsel for respondent No. 2
Mr. Shivanand Bhatt, learned counsel for respondent No. 3

The Court made the following:

JUDGMENT: (per Hon'ble The Acting Chief Justice Sri Manoj Kumar Tiwari)

1. By means of this writ petition, petitioner has sought the following reliefs:-

“i) Issue a writ of certiorari quashing the order dated 18.11.2024 passed by the respondent No. 2, whereby, the petitioner has been declared as ineligible for being appointed on the post of Medical Officer (Ayurved) despite of qualifying the written examination and interview (annexed to Annexure no. 1 of the writ petition).

ii) Issue a writ, order or direction in the nature of mandamus directing and commanding the respondent no. 2 to forthwith recommend the name of the petitioner as a selected candidate for the post of Medical Officer (Ayurved).

2. Petitioner participated in a selection process, held by Uttarakhand Medical Service Selection Board (Respondent No. 2) for appointment to the post of Medical Officer (Ayurved). As per Clause 6 of the advertisement dated 11.03.2022, a candidate should



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be validly registered with Indian Medical Council, Uttarakhand, as Vaidya or Hakim on the last date of submission of online application. Petitioner responded to the said advertisement by making an application. On the date of making application, petitioner was duly registered with Indian Medical Council, Uttarakhand as Vaidya, however petitioner got his registration transferred to Indian Medical Council, Uttar Pradesh after about 8 months of submitting application. Petitioner's candidature was rejected by the Selecting Body by an order dated 25.04.2023, which was challenged by petitioner by filing Writ Petition (S/B) No. 188 of 2023. Pursuant to interim order, passed in said writ petition, petitioner was permitted to appear in interview. The Writ Petition filed by the petitioner was disposed of vide order dated 17.10.2024. Paragraphs 3 and 4 of the said order are reproduced for ready reference:-

“3. Learned counsel for the petitioner contends that on the date of making application pursuant to the advertisement, petitioner was registered with Bhartiya Chikitsa Parishad, Uttarakhand, however, subsequently, he got himself registered with Bhartiya Chikitsa Parishad, Uttar Pradesh. He submits that during the pendency of selection process, petitioner got his registration transferred to Bhartiya Chikitsa Parishad, Uttarakhand, and he is now validly registered with the Bhartiya Chikitsa Parishad, Uttarakhand, but respondents have overlooked this aspect. Thus, according to him, rejection of petitioner's candidature for appointment to the post of Medical Officer (Ayurved) only on this ground is unsustainable.

4. Since registration of petitioner has been transferred from Bhartiya Chikitsa Parishad, Uttar Pradesh to Bhartiya Chikitsa Parishad, Uttarakhand, as submitted by learned counsel, we therefore dispose of this writ petition with liberty to the petitioner to approach the Competent Authority by making a representation. If petitioner makes a representation within ten days from today, the Competent Authority shall take a decision thereupon within four weeks from the date of receipt of such representation.



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3. Pursuant to the order passed in WPSB No. 188 of 2023, petitioner made a representation which has been rejected by Selecting Body vide order dated 18.11.2024. In this writ petition, petitioner has challenged the said order dated 18.11.2024, which is on record as Annexure-1 to the writ petition.

4. Perusal of impugned rejection order reveals that petitioner has been held to be ineligible with reference to Clause 18(9) of the advertisement dated 11.03.2022. Clause 18(9), which is in Hindi, is extracted below:-

(9) अभ्यर्थियों को साक्षात्कार के समय अपने समस्त मूल प्रमाण-पत्र भी प्रस्तुत करने होंगे, जिनका मिलान अभ्यर्थी द्वारा ऑनलाईन आवेदन-पत्र में किये गये दावों से किया जाएगा। यदि अभ्यर्थी की अर्हता के सम्बन्ध में प्रस्तुत दावे में कोई कमी या असत्यता पायी जाती है तो उसे साक्षात्कार में सम्मिलित नहीं किया जायेगा तथा उसका अभ्यर्थन निरस्त कर दिया जायेगा।

5. Clause 18 contains instructions to the candidates and sub-clause (9) thereof provides that every candidate will be required to produce his original certificates at the time of interview, which shall be compared with the claim made by the concerned candidate in his online application. It further provides that if the claim made by the candidate is found to be lacking or incorrect, then he will not be permitted to appear in the interview and his candidature shall stand rejected.

6. Learned counsel for respondent No. 2 also refers to Clause 19(7) of the advertisement, which reads as under:-

(7) जो अभ्यर्थी विज्ञापन की शर्तों के अनुसार पात्र नहीं पाये जाएंगे उनका अभ्यर्थन निरस्त कर दिया जाएगा तथा साक्षात्कार में प्रवेश हेतु



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उनका कोई दावा मान्य नहीं होगा। अभ्यर्थियों के अभ्यर्थन/अर्हता/पात्रता के सम्बन्ध में बोर्ड का निर्णय अन्तिम होगा। अनर्ह अभ्यर्थियों की सूची बोर्ड की वेबसाइट पर प्रकाशित की जाएगी।

7. Clause 19(7) provides that candidate who is found to be not eligible as per conditions of the advertisement, his candidature will be rejected and he will thereafter have no claim to participate in the interview, and decision of Uttarakhand Medical Service Selection Board regarding eligibility of a candidate shall be final and names of candidates found ineligible shall be published in the website.

8. Per contra, learned counsel for petitioner refers to the condition mentioned in Clause 6 of the advertisement, which reads as under:-

06. अभ्यर्थी का भारतीय चिकित्सा परिषद्, उत्तराखण्ड से वैद्य या हकीम के रूप में ऑनलाईन आवेदन करने की अन्तिम तिथि तक वैध/नवीनीकृत स्थाई पंजीकरण प्रमाण पत्र होना अनिवार्य है।

9. Clause 6 provides that a candidate who is validly registered with Indian Medical Council, Uttarakhand on the last date of submission of online application for the post in question, alone shall be eligible.

10. It is not in dispute that on the date of submitting online application i.e. 31.03.2022, petitioner was duly registered with Indian Medical Council, Uttarakhand and he was having a permanent registration certificate from the said Council. Petitioner subsequently got himself registered with Indian Medical Council, Uttar Pradesh on 23.01.2023, after withdrawing his registration from Indian Medical Council, Uttarakhand. However, the fact remains that on the relevant date i.e., last date of submitting application, petitioner was



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validly registered with the Indian Medical Council, Uttarakhand.

11. Clause 18(9) of the advertisement, relied upon by the Uttarakhand Medical Service Selection Board only provides that the claim made by a candidate in his online application shall be verified from his original certificates which one would be required to produce at the time of interview. There is no condition in the advertisement which requires that a candidate should be registered with Indian Medical Council, Uttarakhand on the date of interview or on the date of document verification. Document verification, which is provided for in Clause 18(9) is to ascertain whether petitioner possessed all conditions of eligibility on the date of making application and Clause 18(9) cannot be understood as permitting the Selecting Body to ascertain the status of registration of a candidate subsequent to the date of submission of application.

12. Since petitioner was validly registered on the last date of making online application, pursuant to advertisement dated 11.03.2022, therefore, his subsequent registration with Indian Medical Council, Uttar Pradesh, will not have the effect of taking away his eligibility for appointment. The fact of the matter is that he was registered in Uttarakhand on the relevant date and there is no condition that change of his registration at a later date will render him ineligible.

13. It is not in dispute that petitioner again applied for registration with Indian Medical Council, Uttarakhand and he was duly registered by the said Body on



25.08.2023, and his name is registered in the rolls of Indian Medical Council, Uttarakhand ever since then.

14. Learned counsel for petitioner has placed reliance upon judgment rendered by Hon'ble Supreme Court in the case of Bhupinderpal Singh & Others. Etc. vs. State of Punjab & Others, reported in (2000) 5 SCC 262. Paragraphs 13 ad 14 of the said judgment are reproduced below:-

“13. Placing reliance on the decisions of this Court in *Ashok Kumar Sharma v. Chander Shekhar* [(1997) 4 SCC 18 : 1997 SCC (L&S) 913 : JT (1997) 4 SC 99] , *A.P. Public Service Commission v. B. SaratChandra* [(1990) 2 SCC 669 : 1990 SCC (L&S) 377 : (1990) 13 ATC 708 : (1990) 4 SLR 235] , *District Collector and Chairman, Vizianagaram Social Welfare Residential School Society v. M. Tripura Sundari Devi* [(1990) 3 SCC 655 : 1990 SCC (L&S) 520 : (1990) 14 ATC 766 : (1990) 4 SLR 237] , *Rekha Chaturvedi v. University of Rajasthan* [1993 Supp (3) SCC 168 : 1993 SCC (L&S) 951 : (1993) 25 ATC 234 : JT (1993) 1 SC 220] , *M.V. Nair (Dr) v. Union of India* [(1993) 2 SCC 429 : 1993 SCC (L&S) 512 : (1993) 24 ATC 236] and *U.P. Public Service Commission U.P., Allahabad v. Alpana* [(1994) 2 SCC 723 : 1994 SCC (L&S) 742 : (1994) 27 ATC 101 : JT (1994) 1 SC 94] the High Court has held (i) that the cut-off date by reference to which the eligibility requirement must be satisfied by the candidate seeking a public employment is the date appointed by the relevant service rules and if there be no cut-off date appointed by the rules then such date as may be appointed for the purpose in the advertisement calling for applications; (ii) that if there be no such date appointed then the eligibility criteria shall be applied by reference to the last date appointed by which the applications have to be received by the competent authority. The view taken by the High Court is supported by several decisions of this Court and is therefore well settled and hence cannot be found fault with. However, there are certain special features of this case which need to be taken care of and justice be done by invoking the jurisdiction under Article 142 of the Constitution vested in this Court so as to advance the cause of justice.

14. In view of several decisions of this Court relied on by the High Court and referred to hereinabove, it was expected of the State Government notifying the vacancies to have clearly laid down and stated the cut-off date by reference to which the applicants were required to satisfy their eligibility. This was not done. It was pointed out on



behalf of the several appellant-petitioners before this Court that the practice prevalent in Punjab has been to determine the eligibility by reference to the date of interview and there are innumerable cases wherein such candidates have been seeking employment as were not eligible on the date of making the applications or the last date appointed for receipt of the applications but were in the process of acquiring eligibility qualifications and did acquire the same by the time they were called for and appeared at the interview. Several such persons have been appointed but no one has challenged their appointments and they have continued to be in public employment. Such a loose practice, though prevalent, cannot be allowed to be continued and must be treated to have been put to an end. The reason is apparent. The applications made by such candidates as were not qualified but were in the process of acquiring eligibility qualifications would be difficult to be scrutinised and subjected to the process of approval or elimination and would only result in creating confusion and uncertainty. Many would be such applicants who would be called to face interview but shall have to be returned blank if they failed to acquire requisite eligibility qualifications by the time of interview. In our opinion the authorities of the State should be tied down to the principles governing the cut-off date for testing the eligibility qualifications on the principles deducible from the decided cases of this Court and stated hereinabove which have now to be treated as the settled service jurisprudence.”

15. Per contra, Mr. Ramji Shrivastava, learned counsel appearing for the Selecting Body (respondent No. 2) has placed reliance upon judgment rendered by Hon’ble Supreme Court in the case of Bedanga Talukdar Vs. Saifudaullah Khan and others, reported in (2011) 12 SCC 85. Para 29 of the said judgment is reproduced below:-

“29. We have considered the entire matter in detail. In our opinion, it is too well settled to need any further reiteration that all appointments to public office have to be made in conformity with Article 14 of the Constitution of India. In other words, there must be no arbitrariness resulting from any undue favour being shown to any candidate. Therefore, the selection process has to be conducted strictly in accordance with the stipulated selection procedure. Consequently, when a particular schedule is mentioned in an advertisement, the same has to be scrupulously maintained. There cannot be any relaxation in the terms and conditions of the advertisement unless such a power is specifically reserved. Such a power could be reserved in the relevant statutory rules. Even if power of



relaxation is provided in the rules, it must still be mentioned in the advertisement. In the absence of such power in the rules, it could still be provided in the advertisement. However, the power of relaxation, if exercised, has to be given due publicity. This would be necessary to ensure that those candidates who become eligible due to the relaxation, are afforded an equal opportunity to apply and compete. Relaxation of any condition in advertisement without due publication would be contrary to the mandate of equality contained in Articles 14 and 16 of the Constitution of India.”

16. The judgment rendered in the case of Bendanga Talukdar (Supra) does not support the case of the selecting body and it is on the question of relaxation of eligibility conditions in a selection. As per the conditions mentioned in the advertisement, petitioner cannot be held to be ineligible.

17. For the aforesaid reasons, the impugned rejection order dated 18.11.2024, passed by respondent No. 2, cannot be sustained in the eyes of law, accordingly, the same is quashed. The Writ Petition is allowed. The Selecting Body (respondent No. 2) is directed to recommend the name of petitioner to the appointing authority, if he is otherwise found eligible for appointment.

MANOJ KUMAR TIWARI, A.C.J.

VI VEK BHARTI SHARMA, J.

Dt: 17th. December, 2024
Mahinder

MAHINDER SINGH

Digitally signed by MAHINDER SINGH
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