

Court No. - 6

Case :- WRIT - A No. - 12212 of 2024

Petitioner :- Chandani Gupta And 2 Others

Respondent :- State Of U.P. Thru. Secy. Medical And Health Sectt. Ljko. And 3 Otjhers

Counsel for Petitioner :- S.P. Singh Somvanshi

Counsel for Respondent :- C.S.C.

Hon'ble Alok Mathur,J.

(Order on Amendment Application)

Heard Shri S.P. Singh Somvanshi, learned counsel for the petitioners and learned State counsel for the opposite parties.

In view of the facts stated in the accompanying affidavit filed in support of application for amendment, the application for amendment is allowed.

Let necessary amendment be made in the memo of writ petition during course of the day.

(Order on Writ Petition)

Heard Shri S.P. Singh Somvanshi, learned counsel for the petitioners and learned State counsel for the opposite parties.

Learned State Counsel has relied on the counter affidavit filed in the connected leading Writ Petition No. 3837 of 2020 (Radhika Kanojia & Ors. Vs. State of U.P. and others) involving the same controversy.

Learned counsel for the petitioners has submitted that an almost identical issue has already been decided by this Court vide its judgment and order dated 07.01.2020 in Writ Petition No. 33476 (S/S) of 2019; Bhawna Mishra Vs. State of U.P. and others with only distinction that the advertisement in the case of Bhawna Mishra (supra) is of 23.09.2013, whereas in the present case is of 10.07.2012. The judgment in the case of Bhawna Mishra (supra) reads as under:-

"Heard learned counsel for the parties.

Precisely, learned counsel for the petitioner has submitted that the advertisement for filling up post of Staff Nurse (Ayurvedic) was issued on 23.9.2013 in which eligibility and qualifications required for appointment

have been indicated. Pursuant to the aforesaid advertisement, the petitioner had applied and was selected but by means of impugned order dated 25.9.2019 issuance of appointment letter has been denied on the ground that service rules pertaining to the said post have been drafted and would be notified very soon, whereafter only appointment letters can be issued.

On the first date of admission, this Court has observed that the service rules, which have not even seen light of the day, cannot be basis of the present case and if any rules are promulgated and notified, that rules shall have prospective effect not the retrospective effect. Therefore, this Court directed to seek instructions in the matter. Learned State counsel has filed short counter affidavit. In the short counter affidavit, the specific query of the Court could not be satisfied. Short counter affidavit provides that appointment letters can be issued after promulgation of the rules.

Admittedly, no such rules have yet been promulgated.

Submission of learned counsel for the petitioner appears to be appropriate to the effect that the selected candidate does not have a right to be appointed but the State is not licensed to act in a capricious manner and then has to be a valid and lawful justification in not offering appointment to a validly selected candidate. There is no doubt that the petitioner has been duly selected and has completed the training, therefore, the prevalent policy, which is being followed in earlier cases, should be applied in the case of the petitioner. Further, it is not a case of the opposite parties that the advertisement in question was not appropriate or there is any fault or flaw in the selection process. Since the due procedure of law has been followed, therefore, issuance of appointment is a consequential exercise for the reason that if someone has been selected strictly in accordance with law and has completed requisite training, issuance of appointment order is a consequential order and that cannot be denied for the reason that there are no rules governing the service conditions of Ayurvedic Nurses and those rules would be promulgated very soon. Learned counsel for the petitioner has properly demonstrated some earlier instances whereby Ayurvedic Nurses have been appointed in the same manner batch-wise. Annexure No.9 to the writ petition is a letter dated 28.5.2015, which clarifies that Ayurvedic Nurses have been appointed year-wise and batch-wise.

Considering the aforesaid submission of learned counsel for the parties, I am of the view that the impugned order dated 25.9.2019, which is contained in Annexure No.1 to the writ petition, passed by the Director, Ayurvedic Service, U.P., Lucknow is not sustainable in the eyes of law, therefore, the same is liable to be quashed and accordingly, the impugned order dated 25.9.2019 (Annexure No.1) is hereby quashed.

A writ in the nature of mandamus is issued commanding the opposite parties to consider the candidature of the petitioner for appointment as Ayurvedic Staff Nurse in a Medical College, Hospital or Dispensary under the State Government strictly as per the prevalent policy as has been undertaken earlier. Such appropriate order shall be passed with promptness, preferably within a period of two months from the date of production of certified copy of this order.

The writ petition is allowed.

No order as to costs."

Learned counsel for the petitioners has submitted that the present issue may be settled in view of the operative portion of the order of this Court dated 07.01.2020 passed in re: Bhawna Mishra (supra), wherein a writ of mandamus is issued commanding the opposite parties to consider the candidature of the petitioner for appointment as Ayurvedic Staff Nurse in a Medical College, Hospital or Dispensary under the State Government strictly as per the prevalent policy as has been undertaken earlier.

He has further submitted that the present petitioners are of prior batch than Bhawna Mishra (supra) and in the case of Bhawna Mishra the impugned order was passed but in the present case no such impugned order has been passed, however, the Director has recommended the case of the present petitioners but no decision has been taken till date.

It is informed at the Bar that the orders passed by this Court in the case of Bhawna Mishra (supra) have been stayed by the special appeal Court and the special appeal is likely to be heard very soon.

Considering the said submission at the Bar, the present petition is ***disposed off*** leaving it open to the State Government to take an appropriate decision in terms of the order passed by this Court dated 07.01.2020 in Bhawna Mishra (supra) and also taking into account the order passed in Special Appeal No.214 of 2020 in accordance with law.

(Alok Mathur, J.)

Order Date :- 19.12.2024

Ravi/