



## **HIGH COURT OF UTTARAKHAND AT NAINITAL**

### **Writ Petition Service Bench No.467 of 2024**

**23 July, 2026**

Tanvi Gusain and Others

--Petitioners

**Versus**

State Of Uttarakhand and Others

--Respondents

#### **Presence:**

*Mr. B.D. Pande and Mr. Akshay Pradhan, learned counsel for petitioners.*

*Mr. K.N. Joshi, learned D.A.G. with Mr. S.S. Chaudhary, learned Standing Counsel for the State of Uttarakhand/ respondent Nos.1 and 3.*

*Mr. Gaurav Nagpal, learned counsel holding brief of Mr. Ramji Shrivastava, learned counsel for respondent No.2.*

*Mr. Anil Kumar Joshi, learned counsel and Mr. Hari Mohan Bhatia, learned counsel for private respondents.*

**Coram: Hon'ble Manoj Kumar Tiwari, J. (Oral)**  
**Hon'ble Pankaj Purohit, J.**

Uttarakhand Medical Service Selection Board issued an advertisement on 11.03.2022 inviting applications for appointment to the post of Medical Officer (Ayurveda). In that advertisement, it was provided that 02 marks would be given to a candidate for each completed year of service rendered in a Hospital run by Central/State Government or an autonomous body. The maximum marks which can be given for experience is indicated as 20. Petitioners responded to the advertisement and participated in the selection, but were declared unsuccessful. The selection process concluded in 2023 and all the selected candidates have been appointed.

2. Petitioners now contend that the Service Rules do not contain any provision for allocation of 02 bonus marks for each completed year of service, however, bonus



marks for experience were given to candidates, therefore, the selection is vitiated. By means of this writ petition, petitioners have sought the following reliefs:

- i. To issue a writ, order or direction in the nature of certiorari to set aside the result of final examination dated 30.05.2023, and the entire selections and selection process for the post of the medical officers (Ayurved) conducted by the Respondent No.2 vide the advertisement dated 11.03.2022 (Advertisement No. U. Che. Se. Cha. Bo/Pre (Ayur. U. Chiki)/08/2020-21/123 and all subsequent action for the appoint of medical officers (Ayurved) pursuant to the advertisement dated 11.03.2022 (Advertisement No. U. Che. Se. Cha. Bo/Pre (Ayur. U. Chiki)/08/2020-21/123 ;
- ii. To issue a writ in nature of mandamus to direct the Respondent No.2 to issued fresh result of final examination of the medical officers (Ayurveda) pursuant to advertisement dated 11.03.2022 (Advertisement No. U. Che. Se. Cha. Bo/Pre (Ayur. U. Chiki)/08/2020-21/123 as per/on the basis of the Part 6, Rule 15(3) of Uttarakhand Medical (Ayurved and Yunani) Group B Service Rules 2010.
- iii. To issue a writ in nature of mandamus to direct the Respondent No.2 to issued fresh result of the medical officers pursuant to advertisement dated 11.03.2022 (Advertisement No. U. Che. Se. Cha. Bo/Pre (Ayur. U. Chiki)/08/2020-21/123 as per/on the basis of the G.O. No.1144/Karmik/2001 dated 18.07.2001 and point no. 2 and 3 of order 589/Karmik-2/2002 dated 21.06.2002.  
Or in alternate of prayer No.(i), (ii) and (iii)
- iv. To issue a writ, order or direction in the nature of certiorari to set aside the advertisement dated 11.03.2022 (Advertisement No. U. Che. Se. Cha. Bo/Pre (Ayur. U. Chiki)/08/2020-21/123, and the result of final examination dated 30.05.2023 and preliminary written examination dated 22.07.2022, and the entire selections and selection process for the post of medical officers (Ayurved) conducted by the Respondent No.2 vide the advertisement dated 11.03.2022 (Advertisement No. U. Che. Se. Cha. Bo/Pre (Ayur. U. Chiki)/08/2020-21/123 and all subsequent action for the appoint of medical officers (Ayurved) pursuant to the advertisement dated 11.03.2022 (Advertisement No. U. Che. Se. Cha. Bo/Pre (Ayur. U. Chiki)/08/2020-21/123.
- v. To issue a writ, order or direction in the nature of mandamus to direct the Respondent No.2 to issued fresh advertisement for the posts of medical officers (Ayurved) which already published vide advertisement dated 11.03.2022 (Advertisement No. U. Che. Se. Cha. Bo/Pre (Ayur. U. Chiki)/08/2020-21/123 as per the Part 6, Rule 15 (3) of Uttarakhand Medical (Ayurved

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and Yunani) Group B service Rules 2010 and G.O. No.1144/Karmik/2001 dated 18.07.2001 and point no. 2 and 3 of order 589/Karmik-2/2002 dated 21.06.2002.

3. Per contra, learned State Counsel submits that in the advertisement, it was mentioned in Clause-21 that anyone who has served as Medical Officer in a Hospital run by State/Central Government or autonomous body; or in a Government Ayurvedic College would be given 02 marks for each completed year of service, subject to maximum of 20 marks. He contends that since petitioners responded to the advertisement and also participated in the selection despite the stipulation made in Clause 21 of the advertisement, therefore, they cannot have any grievance against awarding bonus marks for experience.

4. Learned State Counsel contends that petitioners took a chance by participating in the selection and when they were declared unsuccessful, they have challenged the selection. He submits that this issue was required to be raised by petitioners before participating in the selection, and now it is not open to them to challenge the selection on the ground taken in this writ petition.

5. We find substance in the contention raised by learned State Counsel. The deviation, if any, from the Rules was disclosed to the candidates by making provision for bonus marks in Clause 21 of the advertisement. If petitioners ignored that deviation and submitted application in response to that advertisement, they cannot thereafter raise a grievance after completion of selection process that selection was held contrary to the Rules.



6. Learned counsel for petitioners relies upon a judgment rendered by Hon'ble Supreme Court in the case of ***Dr. (Major) Meeta Sahai Vs. State of Bihar and Others***, reported in ***(2019) 20 SCC 17***. Para 17 of the said judgment is reproduced below:-

“17. However, we must differentiate from this principle insofar as the candidate by agreeing to participate in the selection process only accepts the prescribed procedure and not the illegality in it. In a situation where a candidate alleges misconstruction of statutory rules and discriminating consequences arising therefrom, the same cannot be condoned merely because a candidate has partaken in it. The constitutional scheme is sacrosanct and its violation in any manner is impermissible. In fact, a candidate may not have locus to assail the incurable illegality or derogation of the provisions of the Constitution, unless he/she participates in the selection process.”

7. Learned counsel for private respondents however relies upon the judgment rendered by Hon'ble Supreme Court in the case of ***Tajvir Singh Sodhi and Others Vs. State of Jammu and Kashmir and Others*** reported in ***(2023) 17 SCC 147***. Para 39 of the said judgment is reproduced below:-

“39. It is therefore trite that candidates, having taken part in the selection process without any demur or protest, cannot challenge the same after having been declared unsuccessful. The candidates cannot approbate and reprobate at the same time. In other words, simply because the result of the selection process is not palatable to a candidate, he cannot allege that the process of interview was unfair or that there was some lacuna in the process. Therefore, we find that the writ petitions in these cases, could not have questioned before a court of law, the rationale behind recasting the selection criteria, as they willingly took part in the selection process even after the criteria had been so recast. Their candidature was not withdrawn in light of the amended criteria. A challenge was thrown against the same only after they had been declared unsuccessful.”



8. The judgment relied upon by petitioners' counsel is of no help to them. In the case of **Dr. (Major) Meeta Sahai (Supra)**, the facts were different. There, advertisement did not indicate that criteria of selection would be slightly different from the one provided by the Rules, however, Selecting Body made some deviation from the criteria prescribed in the Rules. In the present case, deviation which was to be made, was disclosed to all candidates by the advertisement. If petitioners chose to respond to such advertisement and participated in the selection process without questioning the deviation indicated in the advertisement, they cannot now be permitted to raise the issue that selection is vitiated due to non-adherence to the Rules, that too when the selection process concluded in 2023. Thus, there is no scope for interference.

9. Accordingly, the writ petition fails and is dismissed.

10. Pending application stands disposed of.

**(Pankaj Purohit, J.)**

**(Manoj Kumar Tiwari, J.)**

**23.07.2026**

PN/-

PREETI  
NEGI