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HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 3095 of 2014**

- Dr. Rajesh Kumar Singh, S/o Shri Sukhpal Singh, Aged about 40 years Lecturer (Dravyagun) (On Contract) Shri Narayn Prasad Awasthi Government Ayurvedic College, P.S.-D.D. Nagar Thana, Civil and Revenue District-Raipur, Raipur (CG)

---- Petitioner**Versus**

1. State of Chhattisgarh through its Secretary, Department of Health and Family Welfare, Chhattisgarh Rajya Mantralaya, Mahanadi Bhavan, P.S.-Mandir Hasaud, Naya-Raipur (C.G.)
2. Additional Secretary, Department of Health and Family Welfare, Chhattisgarh Rajya Mantralaya, Mahanadi Bhavan P.S-Mandir Hasaud, Naya-Raipur (C.G.)
3. The Director, Directorate of Ayurved, Yoga and Naturopathy, Unani, Siddha and Homeopathy (Ayush), G.E. Road, Raipur (C.G.)
4. Registrar, Chhattisgarh Ayurvedic Tatha Unani Chikitsa Paddhati Evam Prakritik Chikitsa Board, Raipur, Raipur Ayurved Mahavidyalaya Chikitsalaya Bhawan, G.E. Road, Raipur (C.G.)

---- Respondents

For Petitioner : Shri CJK Rao, Advocate.
 For Respondent/State : Shri Chandresh Shrivastava, Panel Lawyer.
 For Respondent No.4 : Smt. Anubhuti Marhas, Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****28/04/2015**

1. The petitioner has preferred this writ petition seeking quashment of the impugned order (Annexure-P/1) whereby the respondent State of Chhattisgarh has rejected the petitioner's representation for treating the Certificate of Registration issued by the Chhattisgarh Ayurvedic Tatha Unani

Chikitsa Paddhati Evam Prakritik Chikitsa Board, Raipur (henceforth 'the Board') to have been issued from the date of registration i.e. 22.9.2009 and on that basis declare him qualified and eligible for recruitment on the post of Lecturer (Dravya Gun).

2. Admittedly, the petitioner appeared in the selection process for appointment on the post of Lecturer (Dravyagun) pursuant to the advertisement issued by the Chhattisgarh Public Service Commission (for short 'PSC') on 27.8.2009. Initially the last date for submission of application form was 3.10.2009 which was extended, by issuing corrigendum, till 27.1.2010. The petitioner was declared selected for the post and his name was recommended by the PSC for appointment.
3. When the petitioner's candidature was scrutinized by verifying the original certificates, it was found by the State Government that the petitioner's certificate issued by the Board has been issued on 15.9.2010 i.e. after the last date of submission of application form as fixed in the advertisement and as such, he was lacking in essential qualification, therefore, the petitioner has not been offered appointment.
4. The petitioner had earlier preferred WP(S) No.3830/2012 for a direction to the Board for treating his registration from the date of submission of application and not from the date of issue. The said writ petition was disposed of on 19.10.2012 in the following manner:-

“Limited grievance raised by the petitioner through this writ petition is that even though, statutory appeal against incorrect date of entry in the register has been preferred before the statutory appellate authority/respondent No.3 as back as on 26-03-2012, the appeal has remained pending without any decision, on account of which, the petitioner's candidature is liable to be rejected in the matter of selection to the post of Lecturer (Dravya Gun).

Learned counsel appearing on behalf of respondents No.3 & 4 submits that the appeal of the petitioner shall be decided within a period of two weeks from today.

In view of the submission made above, the respondent No.3 is directed to consider and decide the petitioner's appeal and pass appropriate orders in accordance with law within a period of two weeks from today.

With the aforesaid observation, the petitioner is finally disposed off.”

5. Prior to this writ petition, the petitioner had preferred another writ petition bearing WP(S) No.1766/2012 seeking direction to appoint him on the post of Lecturer (Dravya Gun). The said writ petition was dismissed on 25.4.2012. However, in Writ Appeal No.294/2012, the petitioner sought liberty to move representation and accordingly, the Writ Appeal was disposed of permitting the petitioner to submit a representation.
6. In the impugned order, there is reference to the order passed by the Division Bench on 21.8.2012 in Writ Appeal No.294/2012.
7. The issue to be adjudicated is – whether the petitioner should be treated to have been registered with the Board on 22.9.2009 with higher qualification of MD mentioned in the same or the date of registration should be taken as 15.9.2010 on which the certificate was in-fact issued?
8. The material available on record would indicate that when the petitioner's earlier Writ Petition (S) No.3830/2012 was disposed of on 19.10.2012, respondent No.3 therein i.e. the Board was directed to consider the petitioner's representation seeking correction in the date of entry of his qualification in the Register maintained by the Board. The petitioner's representation was in-fact considered and from the return filed by respondent No.4 in the present writ petition, it would appear that the Board is treating registration of additional qualification as 22.9.2009 for which a

fresh certificate has been issued by the respondent No.4 Board, which is filed with this petition as Annexure-P/11. A comparison of the certificate issued earlier which is filed as Annexure-P/8 with the certificate issued subsequently filed as Annexure-P/11 would make it apparent that in the earlier certificate, only the date of issue of certificate was mentioned as 15.9.2010 whereas in the subsequent certificate, the date of entry of qualification is mentioned as 22.9.2009. Respondent No.4 has also stated in categorical terms that the said Board is treating the registration of additional qualification to be effective from 22.9.2009. Thus on the said basis, the petitioner is found to possess necessary qualification of post graduation with the same having been entered in his certificate issued by respondent No.4 Board on 22.9.2009 i.e. from the date prior to last date of submission of application form mentioned in the advertisement issued by the PSC.

9. In **Charles K. Skaria and others Vs. Dr. C. Mathew and others** {AIR 1980 SUPREME COURT 1230}, the Supreme Court has observed thus:-

“20. There is nothing unreasonable nor arbitrary in adding 10 marks for holders of a diploma. But to earn this extra 10 marks, the diploma must be obtained at least on or before the last date for application, not later. Proof of having obtained a diploma is different from the factum of having got it. Has the candidate *in fact*, secured a diploma before the final date of application for admission to the degree course? That is the primary question. It is prudent to produce evidence of the diploma along with the application, but that is secondary. Relaxation of the date on the first is illegal, not so on the second. Academic excellence, through a diploma for which extra mark is granted, cannot be denuded because proof is produced only later, *yet before the date of actual selection*. The emphasis is on the diploma, the proof thereof subserves the factum of possession of the diploma and is not an independent factor. The prospectus does say:

“(4)(b) 10% to diploma holders in the selection of candidates to M.S., and M.D., courses in the respective subjects or sub-specialities.

13. *Certificates to be produced:* In all cases true copies of the following documents have to be produced:-

xxx

xxx

xxx

(k) Any other certificates required along with the application.”

This composite statement cannot be read formalistic fashion. Mode of proof is geared to the goal of the qualification in question. It is subversive of sound interpretation and realistic decoding of the prescription to telescope the two and make both mandatory in point of time. What is essential is the possession of a diploma before the given date, what is ancillary is the safe mode of proof of the qualification. To confuse between a fact and its proof is blurred perspicacity. To make mandatory the date of acquiring the additional qualification before the last date for application makes sense. But if it is unshakeably shown that the qualification has been acquired before the relevant date, as is the case here, to invalidate this merit factor because proof, though indubitable, was adduced a few days later but before the selection or in a manner not mentioned in the prospectus, but still above-board is to make procedure not the handmaid but the mistress and form not as subservient to substance but as superior to the essence.

21. Before the selection committee adds special marks to a candidate based on a prescribed ground it asks itself the primary question, has he the requisite qualification? If he has, the marks must be added. The manner of proving the qualification is indicated and should ordinarily be adopted. But, if the candidate convincingly establishes the ground, though through a method different from the specified one, he cannot be denied the benefit. The end cannot be undermined by the means. Actual excellence cannot be obliterated by the choice of an incontestable but unorthodox probative process. Equity shall overpower technicality where human justice is at stake.”

(Emphasis supplied)

10. In the case in hand, the petitioner obtained qualification of MD in the year 2007 and thus he was having qualification on the relevant date. Similarly, the certificate issued by the Board was although issued on 15.9.2010 but as per the respondent/Board, the same was treated to have been registered on the date of moving application for registration i.e. on 22.9.2009. Thus, the registration was prior to the last date of submission of application form for the subject recruitment. The petitioner was thus having qualification as well

as registration on the last date of submission of application form.

11. For the foregoing, the impugned order (Annexure-P/1) is quashed. The respondents shall proceed further in accordance with law.

12. The writ petition is allowed.

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