

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No. 1967 of 2015**

Dr. Narayan Singh Gond S/o Shri Dayal Singh, Aged about 35 years, R/o Gram/Post Jeora, Tehsil Masturi, District Bilaspur (C.G.) Presently posted as Ayurvedic Chikitsa Adhikari at C.H.C Pratappur, Surajpur, Chhattisgarh.

--- Petitioner**Versus**

1. State of Chhattisgarh through the Secretary, Health & Family Welfare Department, Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur (Chhattisgarh)
2. Director, Medical Education, Raipur.
3. Chhattisgarh Ayush & Health Science University, Through its Registrar, G.E. Road, Amanaka, Raipur, Chhattisgarh.
4. Principal, Government Ayurvedic College, Raipur, Chhattisgarh.
5. Dr. Kailash Singh Markam, Age around 40 years, R/o Gram Jalso, Tehsil Masturi, District Bilaspur, Chhattisgarh.

---- Respondents

For Petitioner	:	Shri Mateen Siddique, Advocate.
For Respondent No. 1, 2 & 4	:	Shri UNS Deo, Government Advocate
For Respondent No. 3	:	Shri Narendra Kumar Vyas, Advocate.
For Respondent No. 5	:	Shri Chandresh Shrivastava, Advocate.

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri P. Sam Koshy, J.

Order on Board**Per Navin Sinha, Chief Justice****14/01/2016**

1. The Respondents held selection for admission, inter alia, to the discipline of MD and MS Course of Kaya Chikitsa for the session 2015-16 under the "Ayurved Vachaspati (MD Ayurved) Evam Ayurved Dhanvantari (MS Ayurved)" and the rules framed in this regard called the "Chhattisgarh Snatakottar Ayurved Shiksha Pravesh Pariksha Niyam, 2013" (hereinafter called 'the Rules').

2. The Petitioner and Respondent No. 5 both belonging to the Scheduled Tribe Category were applicants for the in-service category. The Rules provided separate seats for in-service candidates and general candidates. An in-service candidate, inter alia, was required to have a minimum service of five years with the Government. The Petitioner secured 43.43 marks and Respondent No. 5 secured 46.46 marks. The merit list of in-service candidates mentioned the name of the Petitioner at serial No. 1. The name of Respondent No. 5 did not find place in the list of in-service candidates. His candidature was considered against the quota meant for general candidates. The first list for Counseling scheduled on 26.10.2015 mentioned the name of the Petitioner only. The name of Respondent No. 5 did not find place in it. The Petitioner assails selection and admission to Respondent No. 5 on a second counseling list treating him as an in-service candidate.

3. Learned Counsel for the Petitioner submitted that the counter affidavit of the University leaves no doubt that Respondent No. 5 did not figure in the list of in-service candidates because he did not meet the requirement of minimum five years of government service. He was considered against the general category but could not secure admission. The fact that he achieved higher marks than the Petitioner becomes irrelevant. Respondent No. 5 then approached the State Scheduled Caste & Scheduled Tribe Commission (hereinafter called 'the Commission') and obtained a recommendation for his admission. The Respondent-University abdicated its powers and jurisdiction by acting at the behest and dictates of the Commission. It wrongly granted admission to Respondent No.5 as an in-service candidate at the cost of the Petitioner. In his representation to the University dated 16.10.2015, the Respondent No. 5 only claimed higher marks than the Petitioner and did not contend that he fulfilled the minimum 5 years eligibility in government service.

4. If a mistake was committed by Respondent No. 5 in filling up his application form with regard to completion of 5 years in Government service, the time fixed for removal of defects in the application form was till 12:00 pm on 5.10.2015. The defect was not removed within time. If Respondent No. 5 was not careful and vigilant while filling up his application form, he should not be given the benefit of his own negligence as it prejudicially affects the Petitioner by denying him admission. The Respondent University committed no error by not treating him as an in-service candidate. Respondent No.5 cannot invoke sympathy or contend that as a matter of fact he actually meets the five years requirement. It was also submitted that the time restriction for admission in medical courses laid down by the Supreme Court will not apply to admissions to the Ayurved discipline. Relying on paragraph 33.2 of (2014) 10 SCC 521 (Chandigarh Administration v. Jasmine Kaur) it was submitted that the present was an exceptional circumstance. If the fault was not attributable to the Petitioner and he has pursued his legal remedies and there was breach of rules and regulations, admission could be granted within the time scheduled if it subsisted. The admission of Respondent No. 5 as an in-service candidate is required to be cancelled and the Petitioner should be given admission. It was lastly submitted in the alternative that if the Petitioner is held not entitled to any relief, directions may be issued to consider him for admission as an in-service candidate in the next academic session for which reliance was placed on a Division Bench decision of the Madhya Pradesh High Court in Writ Petition No. 6394 of 2009 (Dr. Shweta Kujur v. State of Madhya Pradesh).

5. Learned Counsel for the Respondent-University submitted that the matter was examined after recommendation was received from the Commission dated 28.10.2015. It was found as a matter of fact that Respondent No. 5 fulfilled the minimum eligibility requirement of five years in government service and that there was an inadvertent error in his application form. His candidature was required to

be dealt with appropriately as till then admission had been granted to none. It was denied that the University had acted on the dictates of the Commission.

6. Learned Counsel for the Respondent No. 5 submitted that in paragraph 4 of his counter-affidavit, it has been specifically asserted that he commenced government service at the Primary Health Center, Nanpur on 19.7.2007. The last date for submission of application was 26.9.2015. He therefore fulfilled the minimum requirement of five years in government service. There is no rejoinder to the same. He has more marks than the Petitioner. The present was not a case of an ineligible candidate getting back door admission or entry but the mere rectification of a wrong done to Respondent No. 5.

7. We have considered the submissions on behalf of the parties.

8. Yesterday, we had required the Respondent-University to produce the original applications of the Petitioner and the Respondent No. 5. The original applications uploaded by both of them has been placed before us. The application of the latter contains a reverse entry before the letter 5 while that of the Petitioner contains a forward entry. But it has now emerged as an undisputed fact that it was an inadvertent error and that Respondent No.5 does fulfill the five year requirement in government service.

9. The interpretation of law must be pragmatic and infused with life rather than a pedantic approach with reference strictly to the letters of the law unmindful of the consequences that may follow. It may be construed as justice to one but it may amount to injustice to another. Justice cannot be lopsided but has to be even handed. In (1977) 1 SCC 70 (Madhukar G.E. Pankakar v. Jaswant Chobbildas Rajani) it was observed :-

“39.....A practical view, not pedantic basket of tests, should guide in arriving at a sensible conclusion.”

9. In (2002) 5 SCC 397 (Joginder Pal v. Naval Kishore Behal) it was observed that “while casting its judicial verdict, the court shall adopt a practical

and meaningful approach guided by the realities of life.” Likewise in (2005) 7 SCC 764 (Ajit Kumar Nag v. Indian Oil Corporation Ltd.) it was observed :-

“44.....While interpreting legal provisions, a court of law cannot be unmindful of the hard realities of life. In our opinion, the approach of the Court in dealing with such cases should be pragmatic rather than pedantic, realistic rather than doctrinaire, functional rather than formal and practical rather than “precedential”.

10. It being an admitted fact now that Respondent No. 5 fulfilled the requirement for minimum 5 years in Government service and has been found to be more meritorious than the Petitioner in the competitive examination, then merely because he committed an error in filling up his application form and which has only been rectified subsequently but before admission was granted to the Petitioner, we do not consider the present a fit case in exercise of our discretionary jurisdiction to direct cancellation of admission of Respondent No. 5. Had there been the slightest of controversy with regard to his fulfilling the minimum eligibility requirement of five years in government service to be eligible for consideration as an in-service candidate, entirely different issues would have arisen for consideration.

11. In the facts and circumstances of the case, we find it difficult to hold that the University has abdicated its authority and powers in favour of the Commission. The fact that Respondent No. 5 in his application to the University did not mention the fact that he fulfilled the eligibility of five years in government service but that it was urged before the Commission which recommended his case, is considered inconsequential so long as there has been independent application of mind by the University. Had the University acted mechanically on the directions of the Commission only, matters would have been entirely different.

12. The order in Dr. Shweta Kujur (supra) came to be delivered on its own peculiar facts consequent to the historic event of reorganization of the State of Madhya Pradesh and consequent issues arising with regard to recognition of the

Scheduled Tribe in one State and not in the other. It was not a case relating to denial of admission to a candidate in preference to a more meritorious candidate. To accept the submission of the Petitioner on basis of the same, in the present facts would virtually amount to a judicial interdict to telescope one selection process with a subsequent selection process creating complete turmoil in the admission procedure, which we are not inclined to do.

13. In view of our conclusion as discussed above, we are not satisfied that the Petitioner is entitled to any relief. The writ petition is dismissed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE