

CWP Nos.1424, 3964 & 4719 of 2016

[1]

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**(1) CWP No.1424 of 2016
Date of decision:25.04.2016**

Jeewan Singh and others ...Petitioners

Versus

State of Punjab and others ...Respondents

**(2) CWP No.3964 of 2016
Date of decision:25.04.2016**

Durga Professional Educational Society and others ...Petitioners

Versus

State of Punjab and others ...Respondents

**(3) CWP No.4719 of 2016
Date of decision:25.04.2016**

Arun Kundra and others ...Petitioners

Versus

State of Punjab and others ...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Puneet Sharma-I, Advocate,
for the petitioners.

Mr. R.S.Pathania, DAG, Punjab.

Mr. R. Kartikey, Advocate,
for respondent No.3.

Rakesh Kumar Jain, J.

This order shall dispose of three petitions bearing CWP
Nos.1424, 3964 and 4719 of 2016 as the issue involved in all these cases is
the same.

CWP Nos.1424, 3964 & 4719 of 2016

[2]

The petitioners in CWP No.1424 of 2016 are Class IV employees of the Ayurveda Health Centres in Himachal and have passed their 10+2 examinations from the National Institute of Open Schooling (NIOS). They had applied for admission in the Diploma of Pharmacy/Up-Vaid (Ayurvedic) for the session 2015-16 and filled their application forms which were submitted before the last date i.e. 25.08.2015. The 1st centralized counselling was conducted on 30/31.08.2015 at Govt. Ayurvedic College, Patiala, in which the petitioners were not considered because they had passed their 10+2 examinations from NIOS but according to them, they were informed lateron that they would be considered in the 2nd counselling. The 2nd counselling was notified to be conducted on 27/28.11.2015 in which the petitioners were not considered again because of the reason that they had passed their 10+2 examination from the NIOS and not as regular students. The 3rd counselling has not been notified and the petitioners came to know that they are not being considered because of Clause 2.1 of the notification No.12/1/2008-5HB-III/8023 dated 29.11.2013 wherein it is provided that the candidate, seeking admission in Diploma in Pharmacy/Up-Vaid (Ayurvedic) course, must have passed 10+2 examination or its equivalent examination as regular candidate. Aforesaid Clause 2.1 is reproduced as under:-

“2.1 Qualifying Examination: Candidate must have passed 10+2 examination or its equivalent examination as regular candidate from a recognized institution situated in Punjab. Preference will be given to candidates who have passed 10+2 Examination or its equivalent examination in the subjects of Physics, Chemistry & Biology/Mathematics. If candidate(s) from Punjab are not available then candidate from other States shall also

CWP Nos.1424, 3964 & 4719 of 2016

[3]

be considered. Amendment of Corrigendum of Govt. of Punjab of Medical Education & Research (Health Br.III) vide No.12/1/2008-SHB-III/8023 dated 29.11.2013.”

The petitioners have, thus, prayed for a writ in the nature of *certiorari* for quashing Clause 2.1 contained in the notification dated 29.11.2013 and also prayed for a writ in the nature of *mandamus* to consider the petitioners for 3rd counselling which has not been notified. In support of their case, the petitioners have referred to the decision taken by the Pharmacy Council of India in its 97th Central Council meeting held in June 2015 to the following effect:-

“The Council's earlier decision on NIOS was reviewed. Keeping in view the larger interest of the country where thrust is given to skill development, the Council considered the issue of students who have passed from Open School system for admission to pharmacy courses. The Council reviewed its policy with the condition that quality assurance in the standards of education should be maintained by all stakeholders and if necessary evolve a mechanism for the same such as the conduct of an exit examination after the completion of the D. Pharm course and before the registration of the candidate as a pharmacist under the Pharmacy Act and approved that a student who has passed from Open School education system of the Central Govt./State Govts. institutions be made eligible for admission to pharmacy courses as per the concerned Education Regulations.

It was further decided that an exit examination for the purpose of registration as a pharmacist will be in respect of all D. Pharm pass out students.”

It is alleged that the condition of minimum educational qualification to be obtained as a regular student is demoralizing for those candidates/students who cannot afford to pursue their education being employed because of their circumstances.

CWP Nos.1424, 3964 & 4719 of 2016

[4]

In the reply filed by respondent Nos.1 to 3, it is averred that the condition of regular student was there in the notification dated 03.03.2008 but at that time the minimum qualification was Matric. Clause 2.1 of the notification No.12/1/08-5HB-III/1906 dated 03.03.2008 is reproduced as under:-

“2.1 Qualifying Examination: Candidate must have passed Matric with science subject examination or its equivalent examination as regular candidate from a recognized institution situated in Punjab. Preference will be given to candidates who have passed Matric Examination or its equivalent examination in the subjects of Physics, Chemistry & Biology/Mathematics. If candidates from Punjab are not available then candidate from other States can also be considered. ”

It is further submitted that by way of corrigendum issued by the Department of Medical Education & Research (Health Br.III) vide No.12/1/2008-SHB-III/8023 dated 29.11.2013, the minimum qualification has been raised from Matric to 10+2, otherwise the condition of being regular candidate from a recognized institution situated in Punjab remained the same. It is also alleged that at the time of admission, only those candidates were considered who had submitted certificate of having passed their 10+2 examination as regular candidates. The 1st counselling was conducted on 30/31.08.2015. The session 2015-2016 started in the month of September, 2015 and the 2nd counselling was conducted on 27/28.11.2015, whereas the cut off date for admission was determined as 30.11.2015, which could not have been extended. It is further averred that the Government has not held 3rd counselling because about seven months of the session is over and 40% syllabus/lecturers are completed till now. It is

CWP Nos.1424, 3964 & 4719 of 2016

[5]

also averred that no candidate who has not passed 10+2 examination as a regular student was considered for admission. However, it is also averred in the reply that the Government has now decided to amend the notification dated 29.11.2013 by allowing all 10+2 pass candidates for admission into Diploma of Pharmacy/Up-Vaid (Ayurvedic) course from the coming session 2016-17 whether they have passed 10+2 examination as regular candidates or through open school.

In the other two petitions, the prayer has been made for quashing the the corrigendum bearing No.INE3-PB-2015/19796 dated 06.11.2015 whereby the Directorate of Research and Medical Education, Punjab has restricted the admission to Diploma in Pharmacy- Ayurvedic (Upvaid) to 30.11.2015 and conducted only 1st and 2nd counsellings without considering the fact that the third counselling is yet to be conducted as forms of 53 candidates were lost by the Govt. Ayurvedic College, Moti Bagh Road, Patiala during 2nd counselling and the candidates having their eligibility of qualifying examination from NIOS were asked to wait for the 3rd counselling apart from the fact that 1907 seats in 60 colleges have been left vacant. The prayer has, thus, been made further to direct respondent No.1 to conduct 3rd counselling of the candidates who have passed their qualifying examination from the NIOS.

In the reply filed to these petitions on behalf of the State, it is averred that it is the prerogative of the State to determine the number of counsellings and the cut off date for admission to a course and since the cut off date for admission in Diploma of Pharmacy/Up-Vaid (Ayurvedic) course

CWP Nos.1424, 3964 & 4719 of 2016

[6]

has been fixed as 30.11.2015, therefore, the Government has decided not to conduct the 3rd counselling so that the course may start finally and by now approximately 40% syllabus has been completed and the annual examinations are to be conducted in the month of August-September 2016.

I have heard learned counsel for the parties and examined the available record.

There is no dispute that in the notification dated 03.03.2008, Clause 2 lays down the eligibility criteria, in which Clause 2.1 deals with the eligibility of qualifying examination which was Matric with science subjects as a regular student from the recognized institutions situated in the State of Punjab. By virtue of corrigendum much-less notification dated 29.11.2013, only the eligibility of qualifying examination was raised from Matric to 10+2 and rest of the conditions were kept intact. The petitioners' claim is solely based upon a decision of the Pharmacy Council of India taken in its 97th Central Council meeting held in June 2015, allowing the candidates who have passed their 10+2 examination from open school system as well to take admission in the Diploma in Pharmacy but it is also an admitted fact that all the writ petitions have been filed by the petitioners in the year 2016 even after the admissions were over after holding the 1st and 2nd counsellings and providing the cut off date vide corrigendum dated 06.11.2015 which has also been challenged.

The respondent-State has categorically taken a stand that for the session 2016-2017, the Government has decided to bring change in aforesaid Clause 2.1, allowing the students who have passed their 10+2

CWP Nos.1424, 3964 & 4719 of 2016

[7]

examination from open school to be eligible for seeking admission in the Diploma of Pharmacy/Up-Vaid (Ayurvedic) course, but insofar as the present petitioners are concerned, no relief can be granted to them at this stage because of the reason that half of the course of the first year is over and the annual examination are likely to take place in the month of August/September 2016.

Thus, in view of the aforesaid facts and circumstances, all the three petitions are hereby dismissed. However, the petitioner-candidates are at liberty to apply for admission in the Diploma of Pharmacy/Up-Vaid (Ayurvedic) course for the next session 2016-17 on the basis of their qualification of 10+2 examination acquired from the NOIS as the respondent-State has categorically taken a stand that there would be a change in Clause 2.1, allowing the candidates from NIOS as well to get admission in the Diploma of Pharmacy/Up-Vaid (Ayurvedic) course from the next session 2016-17.

April 25, 2016
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(Rakesh Kumar Jain)
Judge