

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 2096 of 2016

- Onkar Prasad Deshmukh S/o Soman Lal Deshmukh, Aged About 32 Years R/o. Village Dhangaon, Tahsil Gunderdehi, District Balod (Chhattisgarh)

---- Petitioner

Versus

1. State Of Chhattisgarh Through : Secretary, Health Department, Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur (Chhattisgarh)
2. Director, Ayurved Yog Awam Prakritik Chikitsa, Unani Sidh Awam Homeopathic (Ayush), Chhattisgarh, Directorate, D.K.S. Parisar, Raipur, District Raipur (Chhattisgarh)
3. Registrar, Chhattisgarh Sah Chikitsiya Parisar, Para Medical Council, Directorate, D.K.S. Parisar, Raipur, District Raipur (Chhattisgarh)

---- Respondents

And

WPS No. 3106 Of 2016

- Assen Kumar Sidar S/o Bhagau Ram Sidar, Aged About 38 Years R/o Village Tupakdhar, Post Taparda, District Raigarh Chhattisgarh

---- Petitioner

Vs

1. State Of Chhattisgarh Through The Secretary, Health Department, Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur Chhattisgarh
2. Director, Ayurved Yog Awam Prakritik Chikitsa, Unani Sidh Awam Homeopathic Ayush Chhattisgarh Directorate, D.K.S. Parisar, Raipur, District Raipur Chhattisgarh
3. Registrar, Chhattisgarh Sah Chikitsiya Parisar, Para Medical Council Directoate, D.K.S. Parisar, Raipur, District Raipur Chhattisgarh

---- Respondents

For Petitioners	: Shri Raghvendra Pradhan, Advocate
For State/	
Respondents No.1 & 2	: Shri Prafull N. Bharat, Additional Advocate General
For Respondent No.3	: Shri Kishore Bhaduri, Advocate

Hon'ble Shri Deepak Gupta, Chief Justice

Hon'ble Shri Justice Sanjay Agrawal

Order on Board

Per Deepak Gupta, Chief Justice

01.02.2017

1. Since the issue involved in both the writ petitions is same, they are being disposed of by this common order.

2. By means of these petitions, the petitioners have challenged the advertisements inviting applications for filling up the posts of Pharmacist Ayurved and also prayed for quashing of the notification dated 09.12.2015.
3. Briefly stated facts of the case are that advertisements were issued by respondent No.2 inviting applications for various posts including the post of Pharmacist Ayurved. One of the essential conditions in the advertisement was that applicants for the said post should be registered under the Chhattisgarh Paramedical Council Act, 2001 (for short, 'the Act'). The grievance of the petitioners is that at the relevant time there was no requirement under the provisions of the Act that the persons who have passed D. Pharma (Ayurved) should be registered under this Act. Basically, the grievance of the petitioners is that since there was no provision under the Act to register the Pharmacist (Ayurved / Homoepathy / Unani) or Diploma in Ayurvedic Pharmacy (D. Pharma Ayu.), such a condition could not have been imposed in the advertisements.
4. It is not disputed that on the date when the advertisements were issued, there was no such provision and therefore, persons having qualification of Pharmacist (Ayurved / Homoepathy / Unani) or Diploma in Ayurvedic Pharmacy (D. Pharma Ayu.) could not have been registered under the Act. It is however not disputed that vide Notification dated 13.05.2016, Schedule to the said Act has been amended and now these subjects have also been included and it is not disputed by Shri Pradhan that now there is a requirement for being registered under the Act. Since these subjects have now been included in the Schedule to the Act, it has become necessary for the persons holding the educational qualifications of Pharmacist

(Ayurved / Homoeopathy / Unani) or Diploma in Ayurvedic Pharmacy (D. Pharma Ayu.) to be registered under the Act. However, Shri Pradhan has urged that on the dates when the advertisements were issued, there was no such requirement. Shri Bhaduri, counsel for respondent No.3 submits that since the amendment has been incorporated in the Act after issuance of the advertisements, how can the applicants be registered prior to that. Therefore, though we reject the challenge to the Notification as such, in view of the subsequent amendment, we hold that the advertisements were improper.

5. We therefore, set aside the impugned advertisements with liberty reserved to the respondents to issue fresh advertisements including the condition of registration also and after the advertisements are issued all persons, who are registered under the Act, can only apply.
6. With the aforesaid observations, the writ petitions are disposed of.

Sd/-
(Deepak Gupta)
CHIEF JUSTICE

Sd/-
(Sanjay Agrawal)
JUDGE