

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No. 3997 of 2016

DATE OF DECISION: 5.9.2017

Amandeep Singh Sirari and another

.....Petitioners

Versus

State of Punjab and another

.....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. R.K. Malik, Senior Advocate with
Mr. Mandeep Singh, Advocate
for the petitioners.

Mr. Harsimran Singh Sethi, Addl. A.G., Punjab.

DAYA CHAUDHARY, J.

Petitioners have approached this Court by way of filing the present petition under Article 226 of the Constitution of India for issuance of a writ in the nature of mandamus directing the respondents to treat all reserve category candidates who had obtained higher marks than the last general category candidate in general category and to appoint them as Veterinary Officers.

Briefly the facts of the case as made out in the present petition are that total 115 posts of Veterinary Officers were advertised by the Punjab Public Service Commission vide advertisement dated 23.1.2014 (Annexure P-1). In response to said advertisement, the petitioners applied for the post of Veterinary Officers. Petitioner No.1 belongs to SC category, whereas,

petitioner No.2 belongs to BC category. The petitioners were interviewed on 19.11.2014. Thereafter, the result of other candidates was declared on 21.11.2014 and qua the petitioners there was a note stating that as per Government letter No. 32/19/2013.PP.8/3241 dated 4.8.2014 and No. 32/19/13-PP8(9)/4253 dated 13.10.2014 result of certain candidates including the petitioners was to be declared on final confirmation from the Government. The candidates whose result was declared were allowed to join their duties in the month of August, 2015. There were 51 posts of General category but only 35 were appointed. Similarly in SC category, total 17 posts were advertised and 6 candidates were selected in general category and 10 candidates were selected in SC category. As per case of the petitioners, 7 posts of SC category are still lying vacant. There were 10 posts of BC category and 4 candidates of BC category had obtained higher marks than the last general category candidate.

The petitioners are claiming their right of appointment in view of judgment of Hon'ble the Apex Court in the case of **Apollo College of Veterinary Medicine Vs. Rajasthan State Veterinary Council and others** (Civil Appeal No. 6842 of 2014 arising out of SLP © No. 35057 of 2011 decided on 25.7.2014). The petitioners sought requisite information under RTI, whereby, they were informed that total 17 posts were meant for SC category and 23 candidates were called for interview. Similarly in BC category, total 10 posts were there and 17 candidates were called for interview. In the SC category out of total 23 candidates, 18 candidates appeared in the interview and 5 did not appear and 17 candidates were selected. In the BC category out of total 17 candidates, 6 candidates did not appear for interview and 10 candidates were selected. Petitioner No.1 was in

merit at Sr. No. 18 of SC category, whereas, petitioner No.2 was at merit No. 11 in BC category.

Learned senior counsel for the petitioners has vehemently argued that in case reserve category candidate has obtained higher marks than the last selected candidate in general category, then the reserve category candidate is to be treated in general category and next candidate in merit of reserve category is entitled to be considered for appointment. Learned senior counsel further contends that controversy involved in the present case is squarely covered by the decision of Hon'ble the Apex Court in **Apollo College of Veterinary Medicine's case (supra)**. Learned senior counsel also contends that 6 candidates of SC category and four candidates of BC category had obtained higher marks to the last general category candidate and the candidates who are having more marks than the last general category candidate are to be treated in general category. Petitioners have not been considered for appointment inspite of decision of this Court in the case of **Mohd. Rafeeq Ahmed Vs. State of Haryana and others** (C.W.P. No. 15415 of 2009 decided on 30.11.2009). It is also the argument of learned senior counsel for the petitioners that the petitioners are entitled for their appointment from the date of declaration of their result as their case has wrongly been rejected.

Mr. H.S. Sethi, learned Addl. A.G., Punjab has raised a preliminary objection that the petitioners were not even eligible to be considered for appointment as they were not having valid degrees at the time of declaration of the result as per requirement of advertisement. As per letter dated 7.10.2014 issued by the Veterinary Council of India, the degrees of students who had passed from Apollo College of Veterinary Medicine,

Raipur on or before 11.7.2011 and also of students who had passed from Mahatma Gandhi Veterinary College, Bharatpur on or before 8.12.2011 were recognized as per judgment of Hon'ble the Apex Court in SLP No. 35057 of 2011 decided on 25.7.2014. Both the petitioners have passed their degrees from the aforesaid colleges on 25.11.2013 and 23.11.2012, respectively and as such they were not eligible to be considered for the posts of Veterinary Officer.

Mr. Sethi further submits that the result of the petitioners was not declared and it was kept in sealed cover. Thereafter, the petitioners filed C.W.P. No. 24124 of 2015 before this Court for declaration of their result of the interview and accordingly the result was brought before this Court in sealed cover at the time of hearing of the case. After perusing the result of both the petitioners, said writ petition was dismissed as infructuous as they secured less marks than the cut off marks in their respective category. Mr. Sethi also submits that recommendations for the advertised posts were sent to the Government vide letter dated 28.11.2014 and no other candidate was appointed by the Department who secured lesser marks than the petitioners in his/her respective category. It is also the submission of Mr. Sethi that the petitioners were not considered for appointment as they were not having valid degrees at the time of selection but subsequently when their degrees became valid after recognition as per direction of Hon'ble the Apex Court they were included in the subsequent merit list of 2017. Mr. Sethi also submits that the selected candidates against whom the petitioners are claiming their right to be appointed have not been impleaded as party respondents and an adverse order cannot be passed at their back. The selection has become final since long and the petitioners cannot take

advantage of earlier advertisement at this stage.

Heard the arguments advanced by learned counsel for the parties and have also gone through the documents available on the file.

The facts relating to advertisement of 115 posts of Veterinary Officers on 23.1.2014 by the Punjab Public Service Commission, submission of applications by both the petitioners in their respective category and appearing for interview before the Commission are not disputed. It is also not disputed that result was declared on 21.11.2014 but qua petitioners the result was to be declared on final confirmation from Government and was kept in a sealed cover. The candidates whose result was declared were issued appointment letters in the month of August, 2015. The petitioners made representation to Punjab Public Service Commission to declare their result and when no action was taken they filed C.W.P. No. 24124 of 2015 before this Court. During pendency of the said petition, the result which was kept in sealed cover was produced before the Court, which was opened under the directions of this Court. It was found that petitioner No.1 had obtained 155 marks, whereas, petitioner No.2 obtained 151.70 marks, which were lesser than the last selected candidate in their respective category.

As per case of the petitioners, the controversy in the present case is squarely covered by the judgment of Hon'ble the Apex Court in **Apollo College of Veterinary Medicine's case (supra)**. The aforesaid judgment of Hon'ble the Apex Court has been interpreted by both the learned counsel for the parties in their favour. The relevant portion of said judgment in para Nos. 49 and 50 is reproduced as under:-

“In the facts and circumstances of the case, we are of the view

that the Division Bench of the High Court should have given a possible legal solution in respect to the students who have already passed out from the Apollo College and the Mahatma Gandhi College affiliated to Swami Keshwanand Rajasthan Agricultural University, Bikaner by directing the Central Government to make appropriate amendment in the First Schedule of the Indian Veterinary Council Act, 1984 **so as to include the Apollo College and the Mahatma Gandhi College in the First Schedule for the purpose of recognition of B.V.Sc & A.H. degree on or before 11th July, 2011 in so far as it relates to Apollo College and 8th December, 2011 in respect of Mahatma Gandhi College. We direct accordingly.**

So far as the other students who have been admitted in the Apollo College and the Mahatma Gandhi College and are pursuing their studies are concerned the Central Government is directed to call for a fresh report from the Veterinary Council of India and to pass appropriate order u/s 15(2) r/w Section 21 (4) of the Indian Veterinary Council Act, 1984. In case it is not possible to recognize the Apollo College and the Mahatma Gandhi College beyond such date as ordered above, the Veterinary Council of India is directed to take steps to transfer the students to some other recognized Colleges against their corresponding year to complete the B.V.Sc. & A.H. course.

For the reasons aforesaid, we set aside the impugned common judgment and order dated 17th November, 2011 passed by the Division Bench of High Court of Judicature for

Rajasthan, Jaipur Bench, Jaipur; the judgment and order dated 23rd December, 2011 passed by the learned Single Judge of the High Court of Judicature for Rajasthan, Jaipur Bench, Jaipur and letters issued by the Veterinary Council of India directing the State Veterinary Council to delete the names of the doctors from their register. The appeals are allowed with aforesaid observations and directions. The interlocutory applications for intervention, impleadment and deletion stand disposed of in view of the finding recorded above. No costs.”

On perusal of aforesaid judgment, it is apparent that the students/candidates who had already passed out from the Apollo College and Mahatma Gandhi College affiliated to Swami Keshwanand Rajasthan Agriculture University, Bikaner by directing the Central Government to make appropriate amendment in the First Schedule of the Indian Veterinary Council Act, 1984 so as to include the Apollo College and the Mahatma Gandhi College in the First Schedule for the purpose of recognition of B.V.Sc. and A.H. Degrees on or before 11.7.2011 in so far as it relates to Apollo College and 8.12.2011 in respect of Mahatma Gandhi College, a direction was issued by Hon'ble the Apex Court to the Central Government to call for a fresh report from the Veterinary Council of India and to pass appropriate order u/s 15 (2) read with Section 21 (4) of Indian Veterinary Council Act, 1984 regarding other students who had been admitted in Apollo College and Mahatma Gandhi College and are pursuing their studies. Simultaneously, it was also mentioned that in case it was not possible to recognize the Apollo College and the Mahatma Gandhi College

beyond such date as ordered above, the Veterinary Council of India was directed to take steps to transfer the students to some other recognized colleges against their corresponding year to complete the B.V.Sc. and A.H. Courses. While allowing the appeal filed by the Apollo College of Veterinary Medicine by Hon'ble the Apex Court, the orders passed by the Division Bench and Single Bench of Rajasthan High Court were set aside along with letter issued by the Veterinary Council of India, whereby, State Veterinary Council was directed to delete the names of the doctors from their register.

As per advertisement dated 23.2.2014, the essential qualifications for the post of Veterinary Officers are as under:-

ESSENTIAL QUALIFICATIONS:-

- i) Bachelor Degree in Veterinary Science and Animal Husbandry from any Recognised University or Institution. Provided that the persons possessing qualification of Ph.D. or M.V.Sc. In any of the Branches of Animal Husbandry and Veterinary Science shall be given preference.
- ii) Punjabi of Matric or its equivalent standard.

(Relaxable for Sikh Migrants to the extent that they will have to acquire such qualification within two years after joining the service failing which their services shall liable to be terminated).

An important note has also been given after Essential Qualifications that the candidates must possess the requisite qualification mentioned at para 3 (i) and (ii) above on before 13.2.2014 (i.e. the last date

of submission of online application form).

As per details mentioned in judgment of the Apex Court, Apollo College and Mahatma Gandhi College are two private colleges in the State of Rajasthan offering the courses of Bachelor of Veterinary Science and Animal Husbandry. The candidates/students who have passed said examination from aforesaid two colleges were enrolled with Rajasthan State Veterinary Council. Aforesaid colleges were permitted to be opened by the State of Rajasthan subject to grant of affiliation with the University recognized by the Veterinary Council of India. Aforesaid two colleges were affiliated with Rajasthan Agriculture University. Subsequently the Veterinary Council of India recommended the Central Government to recognize the aforesaid two colleges and the degrees granted to the students who had passed out from said colleges but by order dated 20.2.2010 Government of India intimated that it was not found possible to grant recognition to the degrees awarded by the Apollo College of Veterinary Medicine, Jaipur. Said decision of Central Government was conveyed by the Veterinary Council of India vide letter dated 22.2.2010 and Rajasthan State Veterinary Council was also asked to delete the names of the Doctors from their register. The aforesaid orders refusing to grant recognition to the Apollo College and degrees granted to the students passed out from the said College were challenged by a number of alumni of the said college who were practicing doctors and had passed out from the said college and also by the students pursuing their studies in Apollo College as similar orders were passed refusing to recognize the Mahatma Gandhi College as well. The students and other alumni approached the Rajasthan High Court for issuing directions to Union of India to issue appropriate notification thereby

including the name of Mahatma Gandhi College and Apollo College in the First Schedule of Veterinary Council of India Act. During the pendency of said writ petitions, the Veterinary Council of India vide letter dated 8.12.2011 decided not to consider bachelor of veterinary science and animal husbandry courses in respect of Mahatma Gandhi College for recognition and intimated the same to the concerned authority. Said letter was also challenged before Rajasthan High Court. Both the cases were heard together and writ petitions were dismissed by Division Bench of Rajasthan High Court vide judgment dated 17.11.2011 and the notification issued by the Veterinary Council of India/Union of India refusing to grant recognition to Apollo College and degrees granted to students passed out from said college was upheld. By following aforesaid judgment, learned Single Judge of Rajasthan High Court also dismissed the writ petition preferred by the students who had passed out from Mahatma Gandhi College vide order dated 23.12.2011. The matter came before Hon'ble the Apex Court and ultimately the appeal filed by the Apollo College of Veterinary Medicine was allowed. While allowing the appeal and setting aside judgment of Division Bench and Single Bench of Rajasthan High court, a direction was issued to the Central Government to call for a fresh report from the Veterinary Council of India and to pass appropriate order under Section 15 (2) read with Section 21 (4) of the Indian Veterinary Act, 1984 regarding the students who have been admitted in the Apollo College and the Mahatma Gandhi College and were pursuing their studies. It was also mentioned that in case it was not possible to recognize the Apollo College and Mahatma Gandhi College beyond such date as ordered the Veterinary Council of India was directed to take steps to transfer the

students to some other recognized colleges against their corresponding year to complete Bachelor of Veterinary Science and Animal Husbandry Courses.

The in between period, which was not recognized was applicable to the case of the petitioners. Meaning thereby, at the time of issuance of advertisement, their degrees were not recognized and were not valid. Subsequently it was recognized but the validity was required on or before the last date of submission of the application i.e. 13.2.2014. It was clearly mentioned in the advertisement itself. Hence, it can be said that at the time of submission of applications, both the petitioners were not eligible to apply. No doubt, the applications of both the petitioners were entertained and were not rejected but during the pendency of writ petition, their result was opened in Court itself and they were found to be lower in merit. The writ petition filed by the petitioners was rendered infructuous on 25.2.2016. However, learned counsel for the petitioners on instructions from his clients made a statement to withdraw the writ petition with liberty to approach the Court to challenge the selection on available pleas on law and facts, including propounding the principle that reserved category candidates who had secured higher marks than the last selected candidate in the general category are required to be treated as general category candidates. By considering said submission of learned counsel for the petitioners and without expressing any opinion on the merits of the case, the request was accepted and the petition was dismissed as infructuous with the said liberty.

Now, the present writ petition has been filed but selection has not been challenged. The candidates who had been selected are having higher marks in reserve category and are going to be affected have not been

impleaded as party respondents. The present petition has been filed by the petitioners for issuing directions to the respondents to treat all reserve categories candidates who had obtained higher marks than the last general category candidate in general category and appoint them as Veterinary Officers.

It is relevant to mention here that in case the candidates who were not fulfilling the requisite criteria/qualification as has been specified in the advertisement at the particular time then such like candidates cannot be considered. Same view was taken by Hon'ble the Apex Court in the case of **District Collector and Chairman Vizianagaram (Social Welfare Residential School Society) Vs. M. Tripura Sundari Devi** 1990 (4) SLR 237. The relevant portion of said judgment in para nos. 4 and 6 is reproduced as under:-

“It has been brought to our notice during the course of the arguments that the original selection was made by mistake on the presumption that the respondent had satisfied the qualification requirements as stated in the advertisement, without scrutinizing the certified copies of which were sent with her application. The Selection committee presumed that all those who had applied in response to the advertisement must have had the requisite qualifications needed for the posts. However, the order appointing the respondent had made it clear that the respondent should come along with the original certificates. When the respondent approached the appellants with the originals of the certificates which were scrutinized, it was found that in fact she was short of the qualifications. It is

in these circumstances, that she was not allowed to join the service. It cannot, therefore, be said that the appellants had selected the respondent with the knowledge that she was under qualified. According to us, there is a good deal of force in this contention. It is common knowledge that sometimes either by mistake or otherwise the notes put up before the Selection Committee contain erroneous data prepared by the office, and sometimes the Selection Committee proceeds on the basis that all those who appear before it, are otherwise qualified. However, the second stage at which the documents are scrutinized is when the higher authorities go through them at the time the candidate concerned approaches them for resuming duties along with the original certificates. It is at that stage that the mistake was discovered in the present case and the respondent was not permitted to resume her duties. We see nothing wrong in this action.

It must further be realized by all concerned that when an advertisement mentions a particular qualification and an appointment is made in disregard of the same, it is not a matter only between the appointing authority and the appointee concerned. The aggrieved are all those who had similar or even better qualifications than the appointee or appointees but who had applied for the post because they did not possess the qualifications mentioned in the advertisement. It amounts to a fraud on public to appoint persons with inferior qualifications in such circumstances unless it is clearly stated that the

qualifications are relaxable. No court should be a party to the perpetuation of the fraudulent practice. We are afraid that the Tribunal lost sight of this fact.”

Similar view was taken by this Court in the case of **Dr. Arunpreet Kaur and others Vs. Managing Director, Punjab Health Systems Corporation, Phase-VI, Mohali and others** 2012 (4) SCT 808.

In the present case, the petitioners were at Sr. No.1 of the waiting list in their respective category. The claim of the petitioners could not be considered as the degrees from Apollo College of Veterinary Medicine, Jaipur and Mahatma Gandhi Veterinary College, Bharatpur, were not recognized and valid. The degrees of only those students who passed out from said colleges on or before 11.7.2011 and 8.12.2012, respectively were recognized. Both the petitioners had obtained their degrees from said colleges on 25.11.2011 and 23.11.2012, respectively. It is also relevant to mention here that subsequently the degrees from said colleges were validated vide notification dated 7.8.2015. The recruitment process took place in between this period and the degrees of the petitioners could not be recognized and, therefore, they were not found eligible to be considered. Total 84 candidates, who were found to be eligible, were selected and were given appointments. The result of the petitioners was produced in the Court in a sealed cover at the time of hearing of the petition filed by them. After perusing the result of both the petitioners, said writ petition was dismissed as infructuous as they secured less marks than the cut off marks in their respective category. It is also relevant to mention here that names of the petitioners were considered and included in the subsequent merit list of the year 2017 as at that particular time, their degrees

were recognized in view of judgment of Hon'ble the Apex Court in **Apollo College of Veterinary Medicine's case (supra)**, . Moreover, the petitioners have not impleaded the affected persons as party respondent and their appointments cannot be made applicable from the date of earlier advertisement.

Accordingly, there is no merit in the contentions raised by learned counsel for the petitioner and petition being devoid of any merit is hereby dismissed.

5.9.2017
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes