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HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 7133 of 2017**

Harishankar Sahu Son of R. C. Sahu, Aged About 32 Years Occupation Pharmacist, R/o Q. No. 37, Om Sadan, Guru Vihar Colony, Sarkanda, Police Station Sarkanda, Tahsil And District Bilaspur, Chhattisgarh Mo. No. 9926124563, Chhattisgarh

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Versus

1. State Of Chhattisgarh Through Secretary Of Health And Family Welfare Department, Mahanadi Bhawan, New Mantralaya, Raipur, P. S. Kewli, Tahsil Civil And Revenue District Raipur, Chhattisgarh. Mo. No. Not Known, Chhattisgarh
2. Under Secretary, Health And Family Welfare Department, Mahanadi Bhawan, New Mantralaya, Raipur, P. S. Kewli, Tahsil Civil And Revenue District Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
3. Director, Health Services, Directorate, Indrawati Bhawan, New Raipur, P. S. Kewli, Tahsil And District Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
4. Chief Medical And Health Officer, Seepat Road Sarkanda, Bilaspur, Police Station Sarkanda, Tahsil And District Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh
5. Chandrika Prasad Tiwari, S/o Late Aatmaram Tiwari, Aged About 56 Years Occupation Compunder, Office Of Chief Medical And Health Officer, Seepat Road Sarkanda, Bilaspur, Police Station Sarkanda, Tahsil, Civil And Revenue District Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh

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WPS No. 7423 of 2017

Harishankar Sahu S/o R.C.Sahu Aged About 32 Years Occupation Pharmacist, R/o Q.No.37, Om Sadan, Guru Vihar Colony, Sarkanda, Police Station Sarkanda, Tahsil, Civil And Revenue District Bilaspur Chhattisgarh. Mo. No. 9926124563, Chhattisgarh

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Versus

1. State Of Chhattisgarh Through Secretary Of Health And Family Welfare Department, Mahanadi Bhawan, New Mantralaya Raipur, Police Station Kewli, Tahsil Civil And Revenue District Raipur Chhattisgarh. Mo. No. Not Known., Chhattisgarh
2. Under Secretary, Health And Family Welfare Department, Mahanadi Bhawan, New Mantralaya Raipur, Police Station Kewli, Tahsil, Civil And Revenue District Raipur Chhattisgarh. Mo. No. Not Known, District : Raipur, Chhattisgarh
3. Chief Medical And Health Officer, Seepat Road Sarkanda Bilaspur, Police Station Sarkanda, Tahsil, Civil And Revenue District Bilaspur Chhattisgarh. Mo. No. Not Known, District : Bilaspur, Chhattisgarh
4. District Malaria Officer, Composite Building, Infront Of Collectorate Bilaspur, Police Station Civil Lines, Tahsil, Civil And Revenue District Bilaspur Chhattisgarh. Mo. No. Not Known, District : Bilaspur, Chhattisgarh

---- Respondents

For Petitioner	:	Shri Ratnesh Kumar Agrawal, Advocate
For State	:	Shri S. Majid Ali, Dy. Govt. Advocate
For Respondent No.5 in WPS No.7133/2017	:	Shri Chandresh Shrivastava, Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

02/05/2018

WPS No.7133/2017 has been filed by the petitioner aggrieved by action of the respondents by which, the Chief Medical and Health Officer is not allowing him to join as Store Keeper pursuant to transfer order dated 13/08/2017 passed by the State Government. WPS No.7423/2017 has been filed aggrieved by order dated 14/12/2007 by which, respondent No.3 directed the petitioner to join and work in the office of respondent No.4.

2. Learned counsel for petitioner would argue that the petitioner is a substantive holder of the post of Pharmacist Grade-II and the post of Store Keeper could be held only by a qualified and registered Pharmacist as per order dated 20/02/2006 of the State Government. According to him, dealing with sale and purchase of medicine except by a qualified person is an offence under the Pharmacy Act, 1948. He would

submit that respondent No.5 is only a substantive holder of the post of Compounder and as he is not possessed of any qualification in Pharmacy, whether a degree or diploma so, he ought to be posted elsewhere and as per the order of the State Government, the petitioner is required to be posted at the place where he has been transferred and posted by the State Government vide order dated 13/08/2017.

3. Learned State counsel would submit that when the State Government passed the order, the fact that respondent No.5 was posted and working as Store Keeper as per order of the Director, Health Services passed on 28/03/2013, was not within the notice and knowledge of the State Government. Later on, when the petitioner was also posted as Store Keeper at the place where respondent No.5 has been posted, instructions have been sought from the higher authorities namely the State Government and the Director, Health Services with regard to the posting of the petitioner and respondent No.5.

4. Learned counsel for respondent No.5 in WPS No.7133/2017 would submit that though the respondent is a Compounder, considering that he is one of the senior most Compounder, an order was passed in the year 2013 by the Director, Health Services to post respondent No.5 treating him as Pharmacist Grade – II and since then, he was posted and working in the Government Hospital at Bilaspur. As this fact was not within the notice and knowledge of the Government at the time of passing of order dated 13/08/2017, respondent No.5 would not be affected by posting of the petitioner on the post, against which, respondent No.5 is posted and working.

5. It is clear from order dated 20/02/2006 of the State Government that only qualified and registered Pharmacist alone can be posted as Store Keeper in the Pharmacy Stores of Government Hospitals. Indeed, a person who is not qualified and possessed of relevant qualification as Pharmacist, cannot be allowed to work and discharge the duty of Store Keeper in Pharmacy stores. However, it appears that under some interim arrangement, the Director, Health Services passed an order way back in the year 2013 posting respondent No.5 as Store Keeper treating him as Pharmacist Grade -II.

At this juncture, it is relevant to note that the State Government has passed an order on 21/05/2004 (Annexure R-5/1) by which, it was ordered that those

Compounders who are possessed of registered Pharmacy degree / diploma would be re-designated as Pharmacist Grade-II. However, learned counsel for the respondents could not satisfy this Court that respondent No.5 is possessed of degree or diploma in Pharmacy and registered as Pharmacist. Obviously, he could not be treated as Pharmacist Grade – II. But then, under some arrangement, he was continued to hold the charge as Pharmacist and Store Keeper of the Government Hospital.

6. The petitioner substantively holds the post of Pharmacist Grade – II. Therefore, he alone can be allowed to work as Pharmacist and Store Keeper and not respondent No.5.

However, respondent No.5 will be required to be posted on his substantive post of Compounder, if there is vacancy in the same hospital or some other hospital. For this purpose, the State Government should make necessary arrangements but in any circumstance, a person who is not qualified as Pharmacist under the law, not possessed of degree / diploma of Pharmacist, cannot be allowed to deal with medicines as Store Keeper in the Pharmacy Stores of the hospital, as it deals with administration of health services in the hospital. The State or competent authority as may be directed by the State, shall pass necessary orders with regard to posting of respondent No.5 on substantive post of Compounder wherever vacancy is available. The petitioner has to be allowed to work as Pharmacist and In-charge, Store Keeper where he has been posted under the order of the State Government.

7. Accordingly, WPS No.7133/2017 is allowed and in view of above direction, the order impugned in WPS No.7423/2017 is also quashed. The impugned order and all subsequent orders passed by the authorities as interim arrangement shall have no effect. No order as to costs.

Sd/-
(Manindra Mohan Shrivastava)
Judge