

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11279 OF 2016

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| 1] Satyajit Pandurang Kulkarni, |] |
| Aged 35 years, Occu : Professor, |] |
| C/o. Mr. G. A. Patil |] |
| Gangatara Colony, Shete Mala, |] |
| Kodoli, Tal. Panhala City, Kodoli, |] |
| Dist. Kolhapur 416 114. |] |
|
2] Dr. Mrs. Manjusha Sunil More |] |
| Aged 41 years, Occu : Professor, |] |
| Residing at More Niwas, Jai Ambe Nagar, |] |
| Behind K. K. Wagh Engineering College, |] |
| Panchavati, Nashik-3. |]..Petitioners |

Versus

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|-----------------------------------|---|
| 1] The State of Maharashtra, |] |
| Through The Secretary Ministry |] |
| of Medical Education and Drugs |] |
| Department, Mantralaya, Mumbai. |] |
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2] The Vice Chancellor, |] |
| Maharashtra University of Health |] |
| Science, Nashik. |] |
|
3] The Director of Ayurved, |] |
| State of Maharashtra. |] |
|
4] The Principal, |] |
| Ayurveda Mahavidyalala, Nashik |] |
| Ganeshwadi, Panchvati, Nashik. |] |
|
5] Savita Ambadas Kulkarni |] |
| Aged 50 years, Occu : Professor, |] |
| Residing at Rajendra Apartment, |] |
| Rajendra Colony, Shastri Path, |] |
| Opp. Police Station, Nashik Road, |] |
| Nashik 422 101. |] |

- 6] The President,]
Central Council of Indian Medicine,]
(C.C.I.M.) Jawaharlal Nehru,]
Bharatiy Chikitsa Avum Homeopathy]
Anusandhan Bhavan, 61-65,]
Institutional Area, Janakpuri,]
New Delhi 110 058.]
- 7] Directorate of Ayush,]
Maharashtra State, Mumbai.]
Having office at Govt. Dental College,]
And Hospital Building, 4th floor,]
St. George Hospital, Fort.]..Respondents

Ms. Preeti Walimbe i/b Mr. Bhushan Walimbe, for the Petitioners.

Mrs. R. M. Shinde, AGP, for Respondent Nos. 1 and 3.

Mr. R. V. Govilkar a/w Ms. Shaba N. Khan, for Respondent No.2.

Mr. A. K. Jalisatgi i/b Mr. T. R. Yadav, for Respondent No.4.

Mr. R. S. Apte, Senior Advocate a/w Mr. Vinod Joshi, for Respondent No.5.

CORAM : B. R. GAVAI &
B. P. COLABAWALLA, JJ.
DATE : 16th JANUARY, 2018

JUDGMENT (Per B. R. Gavai, J)

1] The Petitioners had initially approached this Court seeking writ of mandamus for directing the Respondents to disclose the result of the selection process conducted on 19th November 2015 for the post of Associate Professor in Panchkarma in Respondent No.4 College. However, since during the pendency of the Petition, the Petitioners came to know that the Respondent No.5 has been appointed as the Associate Professor

in the department of Panchkarma in Respondent No.4 College, the Petitioners have amended the Petition seeking a prayer for quashing the said appointment.

2] The facts in brief giving rise to the present Petition are as under :-

The Respondent No.4 had published an advertisement on 19th October 2015 inviting applications for the various posts in various subjects including the post of Associate Professor in the subject of Panchkarma (hereinafter referred to as the “said post”). The Petitioners being eligible had applied for the said post. The Petitioners in response to their applications were invited for the interviews. However, after the interviews were held, since no result was declared for a considerable period of time, the Petitioners have approached this Court. However, during the pendency of the Petition, since the Petitioners noticed that the Respondent No.5 was appointed, the Petitioners have amended the present Petition. The main contention of the Petitioners is that the advertisement stipulated that, the posts would be filled in accordance with the rules notified by the Government of Maharashtra. It is the contention of the Petitioners that according to the rules framed by the Government of Maharashtra, it is necessary to have a Post Graduate

Degree in the subject/speciality concerned. It is the submission of the Petitioners that, only in the event a candidate possessing a Post Graduate Degree in the subject/speciality concerned being not available, a candidate possessing a Post Graduate Degree in the allied subject can be selected. It is therefore submitted that the Respondent No.5 who has a Post Graduate Degree in Kayachikitsa and not the Panchkarma could not have been appointed, when various candidates including the Petitioners who were having Post Graduate Degree in Panchkarma were available.

3] As against this, Mr. R. S. Apte, learned Senior Counsel appearing on behalf of Respondent No.5 submits that, since the Respondent No.5 had been considered eligible in 2011 for the post of lecturer in the subject of Panchkarma, she can be considered to be eligible to be appointed as Associate Professor in the subject of Panchkarma, though she does not possess a Post Graduate Degree in Panchkarma. It is further submitted that, as per the rules framed by the Central Council of Medical Education also, the Respondent No.5 is eligible to be appointed. It is further submitted that, the Petitioners are much below in the merit list of selection and as such even if the appointment of Respondent No.5 is set aside, the Petitioners could not be appointed against the said post.

4] The Respondent – State Government and the Respondent – University of Health Science are supporting the case of the Petitioners. The Respondents have relied on the communication of Central Council of Indian Medicine (for short “CCIM”) dated 2nd September 2004, wherein it is stated that if a candidate has a Post Graduate Degree in allied subject, then it is not necessary to have a Post Graduate Degree in concerned subject for selection of teacher.

5] Undisputedly, in the advertisement issued by the Respondent No.4, it is categorically stated that the selection process would be in accordance with the rules framed by the State Government. The relevant rules are framed by the Government of Maharashtra vide notification dated 26th July 2013. It would be relevant to refer to Rule 4 of the said Rules.

“4. Appointment to the post of Associate Professor in the Maharashtra Ayurvedic Service Group 'A', in the Government Ayurvedic College in the Directorate shall be made either, -

(a) by promotion of a suitable person on the basis of strict selection with due regards to seniority from amongst the person holding the post of Assistant Professor having not less than five years regular service in that post:

Provided that, Associate Professor in Sanskrit or Sanskrit Samhita Siddhanta who do not possess qualification prescribed for appointment by nomination under clause (b) (ii) of this rule, will not be eligible for promotion on the

post of Professor in Ayurveda Subject, or

(b) by nomination from amongst the candidates, who, -

(i) are not more than fifty years of age :

Provided that, the age limit may be relaxed by five years in case of candidates who are already in the serve of Government ; and

(ii) Possess qualification mentioned in Parts A, A-1, B or C in the Schedule appended to the Maharashtra Medical Practitioner's Act, 1961 (Mah.XXVIII of 1961) or an equivalent qualification specified by the Central Council of Indian Medicine, New Delhi, from time to time, under the Central Council of Indian Medicine Act, 1970 (48 of 1970) and possess post-graduate degree in concerned subject of Ayurved, obtained from Recognised Institution ;

(iii) possess total teaching experience of 5 years in the concerned Ayurvedic subject out of which there should be 3 years teaching experience as Assistant Professor in the concerned Ayurved subject from Recognised Institution ;

(iv) possess adequate knowledge of English, Marathi, Sanskrit and Hindi language:

Provided that, preference may be given to those candidates whose original research paper has been published in indexed journals on National level or books in Ayurvedic recognised by Central Council of Indian Medicine.”

It could thus be seen that, the said Rules provide two modes of appointment of Associate Professor : (a) by promotion (b) by nomination. In so far as appointment by promotion is concerned, it can be done by promotion of a suitable person on the basis of strict selection with due regards to seniority from amongst the person holding the post

of Assistant Professor, having not less than five years regular service in that post. It could thus be seen that for appointing a candidate on the post of Associate Professor by promotion, the criteria is selection with due regards to seniority from the cadre of Assistant Professor, having not less than five years regular service in that post. In so far as by nomination is concerned, there are four requirements. The first being, he should not be more than 50 years of age. However, the age limit would be relaxed by 5 years in case the candidates who are already in the service of State Government. Secondly, they should possess the qualification mentioned in Part-A, Part-A-1, Part-B or Part-C in the schedule appended to the Maharashtra Medical Practitioner's Act, 1961 or an equivalent qualification specified by CCIM under the Central Council of Indian Medicine Act, 1970. It also requires that, a candidate should possess a Post Graduate Degree in concerned subject of Ayurveda, obtained from the Recognized Institution. Thirdly, regarding experience it is provided that a candidate shall have teaching experience of 5 years in the concerned Ayurveda subject out of which, there should be 3 years teaching experience as Assistant Professor in the concerned Ayurveda subject from Recognized Institution and fourthly, the candidate should possess adequate knowledge of English, Marathi, Sanskrit and Hindi language. It could thus clearly be seen that the requirement of having a

Post Graduate Degree in the concerned subject and 5 years experience in the concerned subject out of which 3 years teaching experience should be as Assistant Professor, are the essential requirement for the post of Associate Professor in the concerned subject, in case the post is filled by selection.

6] Since, it is the case of the Respondents that the Respondent No.5 is qualified in accordance with the rules framed by the CCIM, it would also be relevant to refer to the said Rules :-

“12. Qualifications & Experience for teaching staff for UG teachers:

(Applicable for direct recruitment but age will be relaxed in case of promotion)

i) **ESSENTIAL:**

a) A degree in Ayurved from a University established by law or a statutory Board/Faculty/Examining Body of Indian Medicine or its equivalent as recognized under Indian Medicine Central Council Act, 1970.

b) A Post-graduate qualification in the subject/speciality concerned included in the schedule to Indian Medicine Central Council Act, 1970.

ii) **EXPERIENCE:**

a) **For the Post of Professor:**

Total teaching experience of ten years in concerned subject is necessary out of which there should be five years teaching experience as Reader/Associate Professor in concerned subject.

- b) **For the Post of Associate Professor (Reader):**
Teaching experience of five years in concerned subject.
(Reader will be treated as Associate Professor).
- c) **For the Post of Asst. Professor (Lecturer): (age not exceeding 40 years).**
No teaching experience is required. Lecturer will be treated as Asst. Professor.
- d) **Qualification for the Post of Head of the Institution (Principal/Dean/Director):**
The qualification and experience prescribed for the Post of Professor shall be essential for these Posts.

Note:- In absence of the candidate of Post-graduate qualification in concern subject the candidate of the following subjects as mentioned against them shall be eligible for the post of Lecturer/Asstt. Professor :-

Speciality required	Name of the allied subject.
1. Swastha Vritta	1. Kayachikitsa
2. Agadtantra	2. Dravyaguna/Rasashastra
3. Rog Vigyan	3. Kayachikitsa
4. Rachna Sharir	4. Shalya
5. Kriya Sharir	5. Samhita Siddhant
6. Shalakya	6. Shalya
7. Panchkarma	7. Kayachikitsa
8. Balroga	8. Prasuti & Striroga/Kayachikitsa
9. Kayachikitsa	9. Manasroga
10. Shalya	10. Nischetana evam Ksha-kirana

- a. The above provision of allied subject will be allowed for five years.
- b. The teacher(s) who had been considered eligible in the past on the basis of previous Regulations shall not be considered ineligible on the basis of amendment.”

7] It could thus be seen that, even as per the Rules framed by the CCIM, for all the posts including the post of Professor, Associate Professor (Reader), Assistant Professor (Lecturer), a Post Graduate qualification in the subject/speciality concerned included in the schedule to Indian Medicine Central Council 1970, is necessary for the post of Associate Professor and teaching experience of 5 years in the concerned subject is also required. No doubt, that note provides that in the absence of the candidate having Post Graduate qualification in the concerned subject, the candidate having the Post Graduate Degree in allied subject shall be eligible for the post of Lecturer/Assistant Professor. Clause (b) of the note provides that, the teacher(s) who had been considered eligible in the past on the basis of previous Regulations shall not be considered ineligible on the basis of amendment.

8] It could thus be clearly seen that, there is not much of difference in the rules framed by the State Government and the rules framed by the CCIM. In so far as the selection by nomination is concerned, both the rules require that, there has to be Post Graduate Degree in the subject/speciality concerned and that a candidate must possess total teaching experience of 5 years in the concerned Ayurveda subject. The only difference is that the note in the rules framed by the CCIM provides that, in the absence of the candidate of Post Graduate

qualification in concern subject, the candidate of allied subject would be eligible for the post of Lecturer/Assistant Professor. Clause (b) of the note which provides that the teacher(s) who had been considered eligible in the past on the basis of previous Regulations, shall not be considered ineligible on the basis of amendment. In this respect the only contention is that since the Petitioners were appointed in the year 2011 as a lecturer in Panchkarma, they should be considered as eligible for the post of Associate professor.

9] No doubt that in accordance with rules framed by the State Government, if the post was to be filled in by promotion, the Petitioners could have been considered. It is to be noted that in the year 2011, the Respondent No.5 had competed with other candidates who were having Post Graduate in Panchkarma. However, since the candidate who was having Post Graduate Degree in Panchkarma did not join, the Respondent No.5, who was next in the merit list not having a Post Graduate Degree in Panchkarma, but having a Post Graduate Degree in the allied subject i.e. Kayachikitsa, came to be appointed. As such, the Respondent No.5 is having a requisite experience in the subject of Panchkarma. In the event, the post was to be filled in by promotion, then the Respondent No.5 could have been considered for the said post, in as much as the promotional post of Associate Professor is required to be filled in on the

basis of suitability and seniority in the subject concerned.

10] However, it is not disputed that the post is being filled in by a process of selection. In that view of the matter, a candidate not having the Post Graduate Degree in Panchkarma could have been considered, only if a candidate having a Post Graduate Degree in Panchkarma was not available. In so far as the clause (b) is concerned, the Respondents have not pointed out any previous regulations on the basis of which the Respondent No.5 could be considered to be eligible for the post of Associate Professor.

11] A Division Bench of this Court had an occasion to consider an issue with respect to the appointments made by the State Government for the post of Professor in Panchkarma in Government Ayurveda College. The very same rules of the State Government, which govern the present appointment of the Associate Professor fell for consideration before the Division Bench. It would be relevant to refer paragraph 11 of the said judgment.

“11. It can thus be seen that the advertisement as well as the rules prescribed the Post Graduate Degree and experience of not less than four years in the concerned subject. In our considered view, the matter will have to be looked from the angle as to what would be the meaning of the term “concerned”. In our view, no principle of

interpretation of law is required to be applied to come to a conclusion that the term “concerned” would mean the “concerned subject”. The advertisement clearly specifies the subject for which the applications are invited i.e. “Professor – Panchakarma”. Thus, the word “Concerned” in the Sub Clauses (two), (three) and (four) of Clause 4.7, therefore, will have to be meant to be experience and Post Graduate Degree in the subject of “Panchakarma”. As a natural corollary, we are of the view that a person to be eligible to apply, must have possessed a Post Graduate Degree in Panchakarma and must have possessed the experience of not less than 4 years in the subject of Panchakarma.”

In the present case also, the advertisement specifically provides that the post would be filled in accordance with the rules framed by the State Government. In the rules framed by the State Government, there is no provision with regard to a candidate having a Post Graduate Degree in allied subject being eligible, in the event of non-availability of a candidate having a Post Graduate Degree in the concerned subject. However, even if we accept the contention of the Respondents that, the rules framed by the CCIM would be applicable and it will be permissible to select a candidate not possessing a Post Graduate Degree in the concerned subject, but possessing a Post Graduate Degree in allied subject, still in our view, the rules framed by the CCIM could also not come to the rescue of the Respondents. The perusal of the rules would clearly reveal that only in the event a candidate possessing a Post Graduate Degree in allied subject can be considered, if there is no candidate available who is having Post Graduate Degree in concerned

subject.

12] In that view of the matter, we find that the Petition deserves to be allowed.

13] Rule is made absolute by quashing and setting aside the appointment of Respondent No.5 as Associate Professor in the subject of Panchkarma.

14] At this stage, Mr. Apte, the learned Senior Counsel appearing for Respondent No.5 seeks a stay of the judgment and order delivered by us for a period of six weeks.

15] Taking into consideration the fact that Respondent No.5 is still in employment, and that the effect of our order would be discontinuation of her services as Associate Professor, we grant stay to our order for a period of six weeks from today.

[B. P. COLABAWALLA, J.]

[B. R. GAVAI, J.]