

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 1607 of 2007**

Laxmi Narayan Dewangan, aged 54 years, S/o Chedilal, Posted as
Peon, Govt. Ayurvedic Hospital, Padarbhatta Mungeli, Bilaspur, CG

---- Petitioner**Versus**

1. State Of Chhattisgarh, Through Secretary, Medical Education Department, Bhartiya Chikitsa Padhati & Homeopathy, D.K.S. Bhawan, Raipur, District Raipur, Chhattisgarh.
2. Deputy Director, Bhartiya Chikitsa Padhati & Homeopathy Distt.Raipur (CG)
3. District Ayurved Officer, Bilaspur, District Bilaspur (CG)
4. Raj Narayan Yadav S/o not known, Posted as Up Vaidya, Govt. Ayurved Hospital, Basantpur, Surguja, CG
5. Kishun Lal S/o nont known, posted as Govt Ayurved hospital, Kathakoni, Bilaspur, CG
6. Ashok Kumar Baghel S/o not known, posted as Govt. Ayurved Hospital, Skarra, Bilaspur, CG
7. Krishna Kumar Dubey S/o not known, posted as Govt. Ayurved Hospital, Katekoni, Janjgir, District Champa-Janjgir, CG
8. Raj Kumar Kaushik S/o not known, posted as Aushadhi Sainyojak, Govt. Ayurved Hospital, Bodsara, District Bilaspur (CG)
9. Durga Prasad Induwa S/o not known, Posted as Aushadhi Sainyojak, Govt. Ayurved Hospital, Jawali, Korba, District Korba, CG
10. Girdhan Lal Patley S/o non known, Posted as Aushadhi Sainyojak, Govt. Ayurved Hospital, Budhwari Bilaspur, District Bilaspur (CG)

---- Respondents

For Petitioner	:	Mr. Ravindra Sharma, Advocate.
For State	:	Mr. Samir Behar, P.L.
For Respondent no.7	:	Ms. Astha Shukla on behalf of Shri Vaibhav Shukla, Advocate
For Respondents 5, 6, 8 & 10:	:	Smt. Rashmi Sen on behalf of Ms. Hamida Siddiqui, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

05.02.2019

1. The challenge in the present writ petition is to the order Annexure P-4 dated 10.01.2007 whereby the private respondents 4 to 10 who were working as Class-IV employee were considered for promotion to Class-III category on the post of Compounder Ayurved.
2. The grievance which the petitioner has raised is two folds; Firstly the petitioner is senior to private respondents 4 to 10 in all respects yet the respondent State have ignored promotion to him. Second contention of the petitioner is that respondents 4 to 10 are those candidates who do not have the requisite eligibility criteria as per the rules governing the field and if those persons could be considered for promotion, there is no reason why the petitioner should be left out.
3. So far as the first ground of the petitioner that he has all requisite eligibility criteria is concerned, perusal of the Schedule under the Madhya Pradesh Aarajpatrit Lipik/Aalipik Seva Bharti Niyam, 1987, the requirement was "H.S.S/Matriculate or equivalent with UpVaidya/Vaidya-Visharad from Hindi Sahitya Sammelan Prayag or equivalent compounder training or any other recognized qualification".

The petitioner admittedly had done his course of UpVaidya from Hindi Sahitya Sammelan, Alhabad which as per the instructions of the Central Council of Indian Medicine, Annexure R-3 dated 13.04.1999 itself is not a recognized institution to be accepted for grant of promotion. Thus, the said ground of the petitioner does not have much strength to sustain.

4. So far as the seniority is concerned, there is no dispute that the petitioner, as per the gradation list Annexure P-3 as it stood on 01.04.2005, was senior to respondents 4 to 10.
5. Now, the only issue left is whether respondents 4 to 10 did have the requisite eligibility criteria as was envisaged by the State Govt. in their reply.
6. Perusal of the writ petition would show that the petitioner in fact had not made any pleading in respect of the said ground, therefore, neither the State Govt. nor the private respondents could file their reply in this regard. The petitioner has also not filed any rejoinder raising such a ground.
7. However, column no.3 of Annexure P-3 shows the educational qualification of each of the candidates. From the qualification shown that of the respondents 4 to 10 it reflects that many of them did not have minimum eligibility criteria prescribed by the State Govt. for promotion. A couple of the private respondents are only 8th pass whereas the minimum requirement under the rules is higher secondary or matriculation and the petitioner admittedly in the gradation list has been shown as higher secondary pass.

8. In view of the aforesaid factual matrix, this Court is of the opinion that the only direction at this juncture this Court can grant is to direct respondents 2 & 3 to consider the case of the petitioner and compare the same with respondents 4 to 10 to ascertain whether respondents 4 to 10 were more qualified than the petitioner and whether respondents 4 to 10 also had the minimum eligibility criteria as is required under the rules. If the respondents 4 to 10 are found that they were not having the minimum eligibility criteria yet they had been promoted, under the said circumstances, the petitioner also would be entitled for similar treatment on the ground of parity from the date the respondents 4 to 10 have been granted promotion. Let this exercise be completed within a period of 4 months from the date of receipt of copy of this order. As far as the benefits which may be granted to the petitioner it is held that in case if the petitioner is found to be eligible for promotion from the date his juniours were promoted, the petitioner shall be granted notional fixation from the date his juniors were granted promotion, however, the petitioner would be entitled for all actual benefits and consequential benefits prospectively.
9. The writ petition accordingly stands partly allowed.

Sd/-
P. Sam Koshy
Judge