

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 3165 of 2018**

- Dr. Ajay Kumar Nayak S/o Shri Hariram Nayak Aged About 38 Years R/o C/o V.S. Samuel, Near Forest Depot, Beladula, Raigarh, District Raigarh (Chhattisgarh) Pin 496001.

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Department Of Health & Family Welfare, Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur (Chhattisgarh).
2. Union Of India Through Secretary, Ministry Of Ayurveda, Yoga & Naturopathy, Unani, Siddha And Homeopathy, Ayush Bhawan, B - Block, Gpo Complex, INA, New Delhi - 110023.
3. Director, Ministry Of Ayurveda, Yoga & Naturopathy, Unani, Siddha & Homeopathy, Ayush Bhawan, B-Block, GPO Complex, INA, New Delhi - 110023.
4. Director Ayush, Directorate Ayurved, Yog Evam Prakratik Chikitsa, Unani Siddha Evam Homyopathy, (AYUSH), Chhattisgarh. Old Nursing Hostel, D.K.S. Parisar, Raipur (Chhattisgarh).
5. Rashtriya Ayurved Sansthan, Through Its Director, Madhav Vilas Palace, Amer Road, Jaipur (Rajasthan).
6. Dr. Ashish Kumar Sharma, Ayurved Medical Officer, Government Ayurved Aushdhalaya, Biharpur Chandni, District Surajpur (CG)

---- Respondents

For Petitioner	:	Shri Sunny Agrawal, Advocate
For Respondent No.6	:	Shri YC Sharma, Advocate.

Hon'ble Shri Ajay Kumar Tripathi, CJ
Hon'ble Shri Parth Prateem Sahu, J

Order on Board**Per Ajay Kumar Tripathi, CJ****10/01/2019**

1. Petitioner is an Ayurvedic Doctor. He is in the service of the State of Chhattisgarh. His grievance in this writ application is that respondent No.6

has been illegally allowed admission in the Post Graduate Vachaspati Pratham Khand (Session 2018-19) Course in violation of his right as he claims himself to be senior to respondent No.6 and therefore had a better right for recommendation or grant of admission by the institution i.e. respondent No.5. He sought quashing of the office order dated 23.10.2018 (Annexure P-1) by virtue of which respondent No.6 was found to be eligible for admission.

2. It is contended on behalf of the petitioner that respondent No.6 made a false declaration by giving a wrong date of joining which in turn gave him advantage of being shown to be senior to the present petitioner and got benefit of pursuing the Post Graduate course for further future prospects.
3. The Court issued notice to the respondents, especially respondent Nos.5 & 6. Respondent No.5 is the institution who have not bothered to respond, but respondent No.6 has appeared through counsel and filed his return after due service upon the counsel for the petitioner. It is pleaded in the return of respondent No.6 that misleading statements had been made in the writ petition to derive undue advantage. There have been deliberate suppression of material facts to show that respondent No.6 is junior to the petitioner, whereas the facts and records show otherwise.
4. Petitioner along with respondent No.6 was selected and recommended by the Chhattisgarh Public Service Commission to be appointed as 'Medical Officer (Ayurved)'. Based on the recommendation of the Public Service Commission, which in turn was drawn-up on the merit list, order dated 21.6.2010 was issued by the Department of Health & Family Welfare, Govt. of Chhattisgarh, Raipur, a copy of which is annexed as Annexure R6/1. 287 candidates were recommended and appointed by the

department. From perusal of the order dated 21.6.2010 it is evident that respondent No.6 was shown at Sr. No.107 whereas name of petitioner figured at Sr. No.190.

5. Though 15 days time was granted to the candidates to join but the letter of appointment or order of appointment clearly indicated that the seniority of these officers *inter se* will stand on the basis of recommendation made by the State Public Service Commission, Raipur. Said clause reads as under:-

“(च). इन अधिकारियों की आपसी वरिष्ठता लोक सेवा आयोग, छत्तीसगढ़ रायपुर द्वारा निर्धारित वरिष्ठता के अनुसार होगी।”

6. In addition to above vital fact, a final gradation list of said medical officers dated 1.4.2018 has also been annexed with the return of respondent No.6 and in this gradation list as well the name of respondent No.6 figured at Sr. No.213, whereas name of petitioner figured at Sr. No.282. These two evidences clearly set to rest as to who is senior *inter-se* between the petitioner as well as respondent No.6.
7. Learned counsel representing the petitioner thereafter submits that it is the date of joining which will have significance. Petitioner had joined on 30.6.2010, whereas respondent No.6 on 3.7.2010, therefore, obviously the petitioner is senior by virtue of said joining.
8. The fallacy of such submission would be evident from the two materials which have been taken into consideration by us. Letter of appointment gave a window of 15 days to the selected candidates to join and it further clarified that the seniority position *inter se* will depend upon the list of recommendation made by the State Public Service Commission.

Therefore, the date of joining between 15 days of window provided to the selected candidates will be treated as one and any joining prior to a person's joining on an earlier date within those 15 days cannot draw advantage of seniority.

9. If there was any other argument on the issue of claim of seniority then the final gradation list dated 1.4.2018 surely puts the issue to rest because the latest gradation list also indicates that the petitioner is nowhere near to the seniority given to respondent No.6 and therefore he has been rightly recommended and granted admission under the State Quota. It was a writ application where the allegations were more made than made out, therefore, no relief or inference is warranted with the order dated 23.10.2018. Respondent No.6 has already been granted admission by the institution and he is pursuing his studies. The same will not be disturbed.
10. The writ petition is accordingly dismissed.

Sd/-
(Ajay Kumar Tripathi)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-