

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No.22907 of 2017 (O&M)
Date of Decision: 07.05.2019.

Ajesh Kumar and others

...Petitioners

Versus

State of Haryana and others

...Respondents

Coram : Hon'ble Mr. Justice B.S.Walia

Present: Mr. Athar Ahmed, Advocate for the petitioners.

Ms. Shruti Jain Goyal, DAG, Haryana.

B.S.Walia, J (Oral).

1. This order shall decide CWP No.22907 of 2017 as well as CWP No.24160 of 2017, since both the writ petitions involve identical questions of law and facts. Facts of the case are being taken from CWP No.22907 of 2017. Prayer in the writ petition is for the issuance of a writ of Mandamus directing the respondents to issue appointment letters to the petitioners for the post of Dispenser (Ayurvedic) in terms of final result declared on 17.03.2017 and recommendation list Annexure P/6 sent by the Haryana Staff Selection Commission (hereinafter referred to as 'the Commission') as also grant consequential benefits.

2. Grievance is that despite having been recommended for appointment by the Commission for the post of Dispenser (Ayurvedic), appointment letters have not been issued to the petitioners although candidates lower in merit had already been given appointment.

3. In the reply filed on behalf of respondent Nos.1 and 2, qualifications for the post of Dispenser (Ayurveda) as contained in notification dated 04.11.2004' issued by the 'Haryana Government, Health and Ayurveda Department have been mentioned. Relevant extract of the same is as under :

“1. UP Vaidya from any recognized University/Institution or Board of faculty of Indian System of Medicine established by law in India or recognized by the Government.

2. Matric or its equivalent.

3. Knowledge of Hindi/Sanskrit and English upto Matric standard.

OR

1. Diploma in Ayurvedic Pharmacy from any recognized University/Institution or Board of faculty of Indian system of medicine established by law in India or recognized by the Government.

2. 10+2 examination should be passed with Physics, Chemistry and Biology.

3. Knowledge of Hindi/Sanskrit and English upto Matric standard.”

4. Reply also mentions that although duration of UP Vaidya/Diploma in Ayurvedic Pharmacy is not mentioned in the notification stipulating the qualifications but the duration of such courses in the States of Haryana and Punjab was two years and all appointments in the department on the post of Dispenser (Ayurvedic)

were being made from amongst candidates possessing two years diploma of either UP Vaidya or Diploma in Ayurvedic Pharmacy. Stand is also that although respondent No.3 recommended the names of candidates including the petitioners for appointment to the post of Dispenser (Ayurvedic) but a committee was constituted to verify their qualifications and on scrutiny, the committee found that the subject / syllabus taught in Ayurvedic Dispenser Diploma/Certificate in the States of Jharkhand, New Delhi, Himachal Pradesh and Rajasthan did not include many subjects which were being taught to UP Vaidya Diploma students in the States of Haryana and Punjab, therefore it recommended that Diploma/Certificate issued to candidates such as the petitioners who had obtained their Diploma/Certificate from States other than Haryana and Punjab could not be termed genuine. Consequentially, the petitioners were not issued appointment letters as Dispenser (Ayurvedic).

5. Reliance has also been placed upon the decision of a co-ordinate bench of this Court in case titled as Manisha vs State of Haryana and others and other connected cases including CWP No.4265 of 2011, in case titled as Pushpa vs State of Haryana which was dismissed vide order dated 20.12.2011.

6. Learned counsel for the petitioners contended that as per the advertisement, a candidate was required to possess a diploma from a recognized University/Institution or Board of Faculty of Indian System of Medicine established by law in India and recognized by the government, that there was no decision of the competent authority that the Institution from which the petitioners had acquired the diploma

was not recognized by the government nor was there any condition in the advertisement or the rules applicable that the diploma in the concerned discipline was to be of a particular duration.

7. However, the aforementioned contention was repelled in CWP No.4128 of 2011, in case titled as Manisha versus State of Haryana and others on the ground that mere selection would not confer a right of appointment besides, the respondents were well within their rights to evaluate the veracity, utility and level of education imparted by an institution conferring degrees/diplomas as the same was imperative in the context of present day scenario on account of mushrooming growth of unwarranted institutions having poor credentials. Relevant extract of the decision in CWP No. 4128/2011 is as under :-

“An employer is very well within his right to meticulously examine the testimonials of a potential employee and if such a process has been adopted to scrutinize the testimonials of not only the petitioners but others who have acquired similar diplomas from other institutions then in the opinion of the Court when such a process has been fairly and uniformly applied to all and if the educational qualification possessed by the petitioners fall short of the standards expected by the respondents, then I do not consider it to be a change of criteria as has been projected before this Court. This is merely an ongoing process of selecting a better candidate for employment which process cannot be faulted with.

Hence, the instant petitions are held to be without any merit and the same are hereby dismissed.”

8. The aforementioned decision was challenged in LPA No.284 of 2012, in case titled as Manisha versus State of Haryana and others but the same was dismissed vide order dated 20.12.2012. Relevant extract of LPA No. 284/2012 is as under:-

“(5) In our considered view, no interference with the impugned order passed by the learned Single Judge is called for. The appellant’s contention, with full vehemence, that the ‘duration’ of Diploma of Up-Vaid is nowhere prescribed in the Haryana Ayurvedic/Homoeopathic/Unani/Technical (Group C) Service Rules as amended in 2004, hence the one-year Diploma Course obtained by the appellant(s) ought to be accepted as a valid qualification, must fail. The answer to this contention lies in the following categoric plea taken by the Department in its written statement:-

“On scrutiny, it has been found that the petitioner who has obtained the Diploma/certificate of Up Vaidya from the Singhania University, Pacheri Bari (Jhunjhunu) Rajasthan is only of one year duration of Diploma course of Up Vaidya in Haryana and Punjab of 2 years duration. Secondly where the subject/syllabus being taught by the Singhania University, Pacheri Bari (Jhunjhunu)

Rajasthan was examined by the committee vis-à-vis the syllabus being taught by the Ayurvedic Colleges/Institutes of Haryana and Punjab, it was found that this University does not taught [sic teach] many subjects which are being taught to the Up Vaidya Diploma students in Ayurvedic Colleges of Haryana and Punjab. It is also worthy [sic worth to] mention here that only the duration of Diploma certificate is shorter but the number of subjects being taught to Up Vaidya students is also less in this University. As such the Committee was in the opinion that the Diploma/Certificate issued by this University of the petitioner cannot be turned as genuine...”

(6) The respondents have placed on record the proceedings of the meeting of the Expert Committee (Annexure R7) along with comparative details of the syllabus of Up-Vaid Course of the University from where the appellant(s) have obtained the Diploma vis-à-vis the syllabus prescribed for such Diploma Course in the States of Haryana and Punjab (Annexure R8). We find that the competent authority has objectively considered the whole issue before taking a conscious decision not to recognize the Diploma certificate possessed by the appellant(s).

(7) While relying upon the qualification prescribed in the statutory rules, the appellant(s) have overlooked the fact that the eligibility rule does give some room

to the authority of the State to recognize the Diplomas even if obtained from recognized University/Institution or Board.

(8) The record bears out that the duration of the Diploma Course in the States of Haryana and Punjab much before the 2004 rules came into force, is of two-years. The rule-making authority was obviously guided by the prevailing duration and cannot be said to have accepted all sorts of Diploma Courses irrespective of the time-period consumed in awarding such Diplomas. There is nothing on record to suggest that the so-called deemed University was in existence before 2004 or the Diploma Course claimed to have been imparted by it was ever recognized by Government of Haryana as a valid qualification

(9) An Up-Vaid is meant to provide Ayurvedic medical facilities in the rural areas. The duty essentially involves possession of reasonable knowledge of Ayurvedic stream of medicine and proper practical training as the incumbent is to deal with human lives. Such an onerous duty cannot be entrusted to quacks with doubtful academic credentials.

(10)For the reasons afore-stated, we do not find any ground in these appeals which are accordingly dismissed.

9. I have considered the submissions of learned counsel.

10. Admittedly the petitioners have done diploma of one year in UP Vaidya/Ayurvedic Pharmacy from States other than the States of Haryana and Punjab. No doubt the petitioners participated in the selection process, they were selected and their names were recommended for appointment by the Commission. However, they were not given appointment on account of recommendations of a Committee constituted by the respondents to verify the qualifications of candidates as the committee on scrutiny/verification concluded that the Diploma/Certificate issued to the petitioners could not be termed genuine as the subjects taught in the Universities/Institutions in the State of Punjab and Haryana were much more elaborate than the subjects taught in institutions from where the petitioners had obtained diplomas/certificates.

11. Besides, same arguments as have been made on behalf of the petitioners stand considered and rejected in CWP No.4128 of 2011 and said decision upheld in LPA No.284 of 2012 by taking into account that the competent authority had considered the entire issue before taking a conscious decision in respect of the qualifications possessed by the appellants therein, besides, rules stipulating eligibility prescribed under the statutory rules, gave leverage to the State to recognize the diplomas even if obtained from a recognized University/Institution or Board and as per record, duration of diploma

course in the States of Haryana and Punjab, much before the 2004 Rules came into force, was two years, consequentially, the rule making authority was obviously guided by the prevailing duration and could not be said to have accepted all sorts of Diploma courses irrespective of duration of study for award of such diplomas. Moreover, there was nothing on the record to suggest that the so-called deemed university was in existence prior to the year 2004 or that the diploma course claimed to have been conducted by it was ever recognized by the Government of Haryana as a valid qualification. Hon'ble the Division Bench further held that a UP Vaidya was meant to provide Ayurvedic medical facilities in rural areas and the same essentially involved possession of reasonable knowledge of Ayurvedic stream of medicine and proper practical training as the incumbent of the post was to deal with human life and such an onerous duty could not be entrusted to quacks with doubtful academic credentials. Decision in LPA No. 284/2012 is stated to have attained finality.

12. In the light of the position noted above, no interference is called for with the decision of the respondents in not offering appointment to the petitioners. The writ petitions are bereft of merit and are accordingly dismissed.

(B.S.Walia)
Judge

07.05.2019
rajesh.k.khurana

Whether speaking/reasoned
Whether reportable

: Yes / No
: Yes / No