

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (S) No. 3602 of 2021

1. Dr. Ashish Kumar Pandey S/o Shri Ram Narayan Pandey, Aged About 38 Years R/o - H.No. 17/738 Behind Gyanam Palace, Sarju, Bagicha, Masanganj, Bilaspur Chhattisgarh.

---Petitioner(s)

Versus

1. State Of Chhattisgarh Through Secretary, Department Of Higher Education, Mantralaya, Mahanadi Bhawan, Atal Nagar, Nawa Raipur, Raipur Chhattisgarh., District : Raipur, Chhattisgarh
2. Secretary, Department Of Medical Education, Mantralaya, Mahanadi Bhawan, Atal Nagar, Nawa Raipur, Raipur Chhattisgarh., District : Raipur, Chhattisgarh
3. Chhattisgarh Public Service Commission, Through Its Secretary, Shankar Nagar Road, Raipur Chhattisgarh., District : Raipur, Chhattisgarh
4. Secretary, Department Of Pharmaceutical, Ministry Of Chemical And Fertilizer Address - 3rd Floor, B Wing, Janpath Bhawan, New Delhi, Delhi (Nct), 110001, District : New Delhi, Delhi
5. National Institute Of Pharmaceutical Education And Research (N I P E R), (Ministry Of Chemistry And Fertilizers Government Of India), Through Its Registrar, Sector 67, S.A.S. Nagar (Mohali) Punjab - 160062, Punjab
6. National Institute Of Pharmaceutical Education And Research (NIPER), (Ministry Of Chemistry And Fertilizers Government Of India), Through Its Head Of Department, Department Of Pharmacoinformatics, Sector 67, S.A.S. Nagar (Mohali) Punjab - 160062, Punjab

---Respondents

For Petitioner	:	Shri Ishan Verma, Advocate.
For State	:	Shri Amrito Das, Addl. Advocate General.
For PSC	:	Shri Anand Mohan Tiwari, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

14.07.2021

1. Aggrieved by the action on the part of the respondents in disqualifying the petitioner from being considered for appointment to the post of Assistant Professor (Botany), the present writ petition has been filed. The petitioner has been orally disqualified by the respondent authorities during the course of document verification.

2. Facts of the case in brief is that, the petitioner had applied for the said post of Assistant Professor from the advertisement that was issued on 23.01.2019. The last date for submission of the application was 04.02.2019. Subsequently the last date for submission of application was further extended up till 12.04.2019. The petitioner has got Master degree in Pharma-Co-informatics obtained from National Institute of Pharmaceutical Education and Research. The eligibility criteria under the advertisement for the said post was Master degree in the concerned subject with minimum 55 percent marks. The post for which the petitioner had applied was for the post of Assistant Professor (Botany) therefore it was necessary that a candidate who applies for the said post to have a Master degree in Botany.
3. The State Govt. subsequently vide their order dated 13.02.2019 provided a list of allied subjects to Botany and these allied subjects were notified by the Chhattisgarh Public Service Commission (in short, PSC) for the purpose of concerned applicants to apply vide corrigendum that was issued on 23.02.2019 (Annexure P/2). For ready reference the allied subjects to Botany are as under:

Subject	Allied subjects
Botany	Micro Biology Bio Technology Environmental Science Forestry Bio Chemistry Bio Informatics Science Genetics Industrial Microbiology Life Science Genetics Engineering

- 4.** One of the allied subjects notified by the PSC is Bio Informatics Science. The petitioner in the instance case who has in Master degree in Pharma Co-Informatics claims that the course which he has undergone is equivalent to Bio Informatics Science and when Bio Informatics Science has been accepted to be a subject by which the candidate would be eligible for applying for the said post, the petitioner's candidature with an equivalent course also should had been accepted and the candidature of the petitioner should not had been rejected.
- 5.** The contention of the petitioner is that in the previous recruitment process for the same post when advertisement was issued the petitioner had applied and he was also found meritorious and at the time of publication of the select list the name of the petitioner was placed in the waiting list, however, for want of vacancy the petitioner could not be considered. Once when the petitioner in the past have been permitted to participate for the same post with the same qualification, there is no reason why the petitioner should be rejected this time and the candidature of the petitioner therefore should be reconsidered.
- 6.** It is further contention of the petitioner that the University from where the petitioner had obtained his educational qualification i.e. Master degree, they themselves issued a certificate that the course that the petitioner had undertaken i.e. course of Pharma Co Informatics is equivalent to Bio Informatics Science.
- 7.** Per contra the counsel appearing for the State as also the counsel for the PSC submit that the petitioner right from the first instance was aware of his qualification and the required qualification. The petitioner at no point of time has challenged either advertisement or subsequent corrigendum

notifying the allied subjects to Botany and in the absence of any challenge to firstly the government decision so far as choosing of allied subjects are concerned and secondly the decision of PSC in issuance of the corrigendum notifying the allied subjects to the subject of Botany, the claim of the petitioner would not be sustainable. According to respondents, the petitioner having now being declared disqualified cannot be permitted to turn around and challenge the decision when right from the first day itself it was known to the petitioner as regards the minimum educational qualification required and the allied subjects which would be accepted to be an equivalent course for subject enabling a candidate to pursue.

- 8.** This court finds enough force in the submissions made by the respondents for the reason that if we look into the advertisement it would clearly reveal that the advertisement had very categorically specified that mandatory educational qualification was that of Post Graduation in the concerned subjects which in the instant case would be Botany with minimum 55 percent marks. The said clause subsequently was further broadened by incorporating certain allied subjects to the subject Botany and those allied subjects are already reproduced in the preceding paragraph, one of the subjects in the same being Bio Informatics Science.
- 9.** Admittedly in the corrigendum that was issued on 23.02.2019, Pharma Co Informatics is not notified as allied subjects. This fact was known to the petitioner all along. The advertisement at the first instance was published on 23.01.2019. The corrigendum was issued in a months time thereafter on 23.02.2019. In spite of that the petitioner took a calculated risk of pursuing for the recruitment process without challenging to the advertisement or for that matter the corrigendum that was subsequently

issued on 23.02.2019. Only because the petitioner in the past was permitted to participate in the recruitment process and was not disqualified by itself would not give force to the submissions made by the counsel for the petitioner making him eligible for participation when admittedly in the decision of the State Govt. dated 13.02.2019 and also in the corrigendum dated 23.02.2019 nowhere has it been mentioned that Pharma Co Informatics would be accepted to be an allied subject to Botany, enabling a candidate to participate in the same.

- 10.** There can be no dispute to the fact that so far as equivalence of qualification is concerned, it is exclusively within the realm of policy decision of the State Govt.. The High Court in exercise of its writ jurisdiction cannot decide the question of equivalence. The petitioner at the first instance itself ought to have challenged the advertisement as also the corrigendum that was issued seeking for incorporating Pharma Co Informatics also as one of the allied subjects. Whether a subject has to be accepted or not, so also whether a subject would be equivalent subject to the requisite qualification, the same is exclusively within the power and domain of the Government. The law in this regard stands well settled since long in case of State of Rajasthan and Others Vs. Lata Arun, 2002(6)SCC 252. The same has further been reiterated in Guru Nanak Dev University Vs. Sanjay Kumar Katwal and Another, 2009(1)SCC 610 wherein also the Supreme Court has in very categorical terms held that equivalence is a technical academic matter. It cannot be implied or assumed and it was observed that any decision of the academic body of the University relating to equivalence should be by a specific order of resolution duly published. There is no such specific order of resolution duly published in the instant

case whereby Pharma Co Informatics can be accepted to be an equivalent subject to the subject specified under the advertisement.

- 11.** The counsel for the petitioner submits that this perhaps would be the last attempt for government employment as he is on the verge of getting age barred for further employment and therefore his case may be considered sympathetically.
- 12.** The said contention of the petitioner outrightly stands rejected for the reason that sympathy would not be a parameter for deciding the eligibility of a candidate unless the rules provide and prescribe for the same and the petitioner would not be the only person who would be getting age barred. There would be a large number of similarly placed other persons also.
- 13.** The petitioner also relies upon a document in the nature of a certificate issued by the institute from where the petitioner has obtained his qualification whereby the said institute considers that the Masters in Pharma Co Informatics is equivalent to Masters in Bio Informatics Science.
- 14.** This submission of the petitioner also would not be acceptable for the reason that the said document is one which has been issued by the Institute, unless the same is accepted by the government and the government issues a specific order in this regard treating the two courses to be equivalent and thereby making all the candidates with the Masters in Pharma Co Informatics also eligible for participating for the post connected to Botany subject the prayer of the petitioner alone cannot be accepted in isolation. Issuance of a certificate by the Institute alone would not come to the aid of the petitioner.

- 15.** Given the said facts as narrated in the preceding paragraph and also the legal position as it stands, this court does not find any strong case made out by the petitioner calling for an interference with the action on the part of the respondents in declaring the petitioner as disqualified for not having requisite qualification.
- 16.** Rejection of the writ petition would not preclude the petitioner from approaching the respondents by way of representation seeking for treating the qualification of Master degree in Pharma Co Informatics also as a subject for bringing the said subject under the allied subjects for the subject Botany.
- 17.** The writ petition accordingly fails and is dismissed.

Sd/-
(P. Sam Koshy)
Judge

inder