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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(1) CWP-5588-2017
Date of decision: October 25, 2021

Dinesh Kumar and othersPetitioners
Versus
State of Haryana and othersRespondents

(2) CWP-6106-2017 (O&M)

Kapil Kumar and othersPetitioners
Versus
State of Haryana and othersRespondents

(3) CWP-8163-2017 (O&M)

RajeevPetitioner
Versus
State of Haryana and othersRespondents

(4) CWP-6313-2017 (O&M)

Parmod Kumar and othersPetitioners
Versus
State of Haryana and othersRespondents

(5) CWP-7140-2017 (O&M)

RameshwarPetitioner
Versus
State of Haryana and othersRespondents

(6)	CWP-7961-2017 (O&M)
Baljeet Singh	Petitioner
	Versus
State of Haryana and others	Respondents
(7)	CWP-11782-2017 (O&M)
Abhinandan Jain and another	Petitioners
	Versus
State of Haryana and others	Respondents
(8)	CWP-11626-2017 (O&M)
Sunder Lal	Petitioner
	Versus
State of Haryana and others	Respondents
(9)	CWP-16333-2017 (O&M)
Jitender and another	Petitioners
	Versus
State of Haryana and others	Respondents
(10)	CWP-15080-2017 (O&M)
Amandeep and another	Petitioners
	Versus
State of Haryana and others	Respondents
(11)	CWP-14353-2017 (O&M)
Rakesh Kumar and others	Petitioners
	Versus
State of Haryana and others	Respondents

(12) CWP-21979-2017 (O&M)

Raj SinghPetitioner
Versus
State of Haryana and othersRespondents

(13) CWP-14287-2017 (O&M)

Anurag and othersPetitioners
Versus
State of Haryana and othersRespondents

(14) CWP-13366-2017 (O&M)

Rajvinder SinghPetitioner
Versus
State of Haryana and othersRespondents

(15) CWP-10069-2017 (O&M)

VirenderPetitioner
Versus
State of Haryana and othersRespondents

(16) CWP-7396-2017 (O&M)

Subhash and othersPetitioners
Versus
State of Haryana and othersRespondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Vivek Goyal, Advocate,
Mr. Sandeep Panwar, Advocate,
Mr. Parminder Singh, Advocate,
Mr. Anil Kumar Saini, Advocate,
Mr. Rajesh Arora, Advocate,
Mr. K.S. Godara, Advocate,
Mr. Amit Rao, Advocate,
Mr. Lal Singh Sandhu, Advocate,

Mr. Anurag Goyal, Advocate,
Mr. Sukhdeep Singh, Advocate,
Mr. Mukul Goyal, Advocate,
Mr. S.K. Malik, Advocate
Mr. N.P. Bhardwaj, Advocate,
Mr. N.S. Kamboj, Advocate,
for the petitioner (s).

Mr. Saurabh Mohunta, DAG, Haryana.

Mr. R. K. Malik, Senior Advocate with
Mr. Digvijay Singh, Advocate,
for the petitioner (in CWP-6313-2017& CWP-7961-2017),
for respondents No.5 to 19 in CWP-5588-2017.

Mr. Ashish Gupta, Advocate,
for respondent No.6 in CWP-7961-2017 and
for respondents No.4 and 7 in CWP-10069-2017.

Mr. Angel Sharma, Advocate,
for respondent No.20 in CWP-5588-2017.

Mr. Kshitij Sharma, Advocate,
for respondents No.21 and 22 in CWP-5588-2017.

ARUN MONGA, J

Vide this common order/judgment, CWP Nos.5588, 6106 (O&M), 6313, 7140, 7396, 7961, 8163, 16333, 10069, 11626, 11782, 13366, 14287, 14353, 15080 and 21979 of 2017 are being disposed of, as facts are similar and material questions for adjudication, are common too.

2. The petitioners are aggrieved by the consideration of the private respondents with them, the latter's selection and the petitioners' non-selection for the posts of Ayurvedic Dispenser.

3. Succinct facts first. Recitals and narrative thereof is as per CWP No. 5588 of 2017.

3.1 Respondent No. 2 Haryana Staff Selection Commission (hereafter referred to as the Commission), vide advertisement dated 01.12.2015

Annexure P-1 *inter alia* advertised 138 posts of Ayurvedic Dispensers in pay scale of Rs. 9300-34800+3200 GP and notified following essential requirements for eligibility of candidates:

- i) Up-Vaidya from recognized University/Institution or Board or Faculty of Indian System of Medicine established by law in India and recognized by the Government.
- ii) Matric or its equivalent,
- iii) Knowledge of Hindi/Sanskrit/English upto Matric standard or higher education

OR

- i) Diploma in Ayurvedic Pharmacy from any recognized University/Institution or Board or Faculty of Indian System of Medicine established by law in India and recognized by the Government.
 - ii) 10+2 examination should be passed with Physics, Chemistry and Biology.
 - iii) Knowledge of Hindi/Sanskrit/English upto Matric standard or higher education.
- Age: 20-42 years.

3.2 Being eligible, petitioners also applied. Written examination was held on 31.07.2016 and the candidates who had passed the written examination, including the petitioners, were called for scrutiny of documents and interview fixed for 16.03.2017 to 18.03.2017 vide notice Annexure P-3. During scrutiny of documents, the petitioners discovered that many BAMS pass candidates including the private respondents, who had not done D-Pharma or Up-vaidya, had also taken the written examination and were called for interview. Petitioners raised objections and moved an application Annexure P-4 before the Secretary of the Commission pointing out that BAMS pass candidates could not be considered for the post of Ayurvedic Dispenser. They were assured that only D-Pharma and Up-vaidya candidates would be considered. However, list Annexure P-5 of candidates subsequently uploaded on the department's website showed that BAMS candidates had

also been called for interview/viva-voce, even though they were not eligible for the post in question.

3.3 Petitioners assert that BAMS is a graduate degree. Syllabus of this course is a mixture of integrated topics of modern medicine and traditional Ayurveda. BAMS pass are doctors specialized in Medicine and Surgery, but they are not equipped with course content and training of D-Pharma Ayurvedic. The diploma in Ayurvedic pharmacy is a course intended to train the persons mainly for meeting the requirements of consumer sector of Ayurvedic drugs, acquainted with their manufacturing and qualified/competent to dispense, maintain stores of such drugs and their raw material. Duties and responsibilities of the dispensers are labelling of drugs and their compounding/preparation conforming to the prescription. BAMS degree holders are not trained for compounding and labelling and are thus not qualified for the post of dispenser. Job of the dispenser is dispensing, which means interpretation, evaluation, supply and implementation of the prescription, drug order including the preparation and delivery of drug or device to patient in suitable container labelled for subsequent administration, to control medication by monitoring drug therapy, advising intervention, protecting the patient and technicians by adhering to infection control protocols, maintaining safe and clean environment by following the procedure, rules and regulations. All this requires specialization. Persons who have not done D-Pharma or Up-vaidya course are not equipped to do the job of Ayurvedic dispenser. BAMS doctor is not trained for such work and such candidates could not be considered for the post of dispensers.

Petitioners seek quashing the action of official respondents in considering

BAMS pass private respondents for the posts of Ayurvedic Dispenser and prohibiting their appointment as such; a direction to interview the petitioners and their consideration for appointment as Ayurvedic Dispensers.

4. Official respondents No. 1 and 4 in their joint return, state *inter alia* that the issue raised by the petitioners has already been adjudicated by this Court in **CWP No. 12392/2011** titled as **Pankaj Sharma and another v. Secretary, Staff Selection Commission, Haryana** decided on 11/12.05.2015, holding that the candidates possessing higher qualification cannot be said as not possessing the requisite qualifications.

5. Private respondents filed separate written statements on the same lines, saying that as BAMS degree holders, they were equipped with higher and wider qualifications and training than that of the D-Pharmaor Up-vaidya course, were rightly considered and selected as Ayurvedic Dispensers.

6. An order dated 08.09.2017 was passed by the learned Bench then seized of the case observing that it had been contended on behalf of the private respondents that BAMS doctors in fact teach students of the Diploma course and directing the Principal, Shri Krishna Government Ayurvedic College, Kurukshetra to file an affidavit giving details of which part of the course of Upvaidya and the course of Diploma in Ayurvedic Pharmacy is not covered in the course content for obtaining a degree of BAMS, giving therein as to whether a person possessing a BAMS degree can be considered eligible and appropriately qualified to be appointed as a Dispenser of Ayurvedic Medicines and if not, why not.

7. Pursuant thereto, an affidavit dated 06.10.2017 was filed by Dr. Usha Dutt, Principal, Shri Krishna Government Ayurvedic College, Kurukshetra stating inter alia as under:

“4. That the subject of Paricharya (care) and Hospital Management which is taught in Upvaid & Diploma in Ayurvedic Pharmacy is not included in the syllabus of BAMS. The subject of Hospital Management has the following topics which is needed for a pharmacist to perform their duty.

- (i) Management of Bahiranga Vidbhaga (Out Patient Department);*
- (ii) Aushadhiya Room (Dispensary Room);*
- (iii) Knowledge of keeping visha (poisonous) medicines at separate places;*
- (iv) Daily maintenance of Out Patient Department register;*
- (v) Daily Patient record and to keep appropriate management of the store;*
- (vi) Practical knowledge of keeping updation of registers of medicine; instruments etc are taught in detail to Upvaid & Diploma in Ayurvedic Pharmacy course.*

All the above topics are not covered in the course content for obtaining a degree in BAMS.

5. It is a fact that BAMS and BAMS, MD (Ayurveda) doctors are teaching students of Diploma in Ayurvedic Pharmacy course in Shri Krishna Government Ayurvedic College and Hospital, Kurukshetra.

6. That the deponent is of the opinion that the BAMS doctors ought not be appointed as an Ayurvedic Dispenser/Pharmacist due to the following reasons:

“That neither in the statutory rules annexed as Annexure R-7 nor in the advertisement annexed as Annexure R-8 there is a mention of that BAMS doctors can be considered for the post of Ayurvedic Dispenser/Pharmacist therefore, in the absence of such provisions as well as not mentioning in the advertisement, the deponent is of the opinion that in case the candidature of BAMS doctor is considered for the post of Ayurvedic Dispenser/Pharmacist would squarely be contrary to the said statutory rules and the advertisement.”

8. Later, another order dated 08.11.2017 was passed by the then learned Bench impleading respondent No. 20 (the Central Council of Indian Medicine, New Delhi) with a direction to file an affidavit giving reasons as

to whether a person possessing a BAMS degree can be considered eligible and appropriately qualified to be appointed as a Dispenser of Ayurvedic Medicines and if not, why not.

9. Accordingly, respondent No. 20 through its Registrar (Dr. Shamshad Bano) filed affidavit dated 17.02.2020 stating *inter alia* as under:

“7. That as per section 17 of IMCC Act 1970, which is self explanatory, states that the BAMS degree holders are possessing necessary qualifications for appointment as a Dispenser in Ayurvedic Medicine being a higher degree in Indian Medicine than the Diploma courses in Ayurveda. Hence, it is admitted that the BAMS degree holder possesses required qualifications, therefore eligible for appointment to the post of Dispenser of Ayurvedic Medicine.”

10. For ready reference, Section 17 *ibid* is appositely being reproduced as under :-

“17. Rights of persons possessing qualifications included in Second, Third and Fourth Schedules to be enrolled.—(1) Subject to the other provisions contained in this Act, any medical qualification included in the Second, Third or Fourth Schedule shall be sufficient qualification for enrolment on any State Register of Indian Medicine.

(2) Save as provided in section 28, no person other than a practitioner of Indian medicine who possesses a recognised medical qualification and is enrolled on a State Register or the Central Register of Indian Medicine,—

(a) shall hold office as Vaid, Siddha, Hakim or 1 [physician or] any other office (by whatever designation called) in Government or in any institution maintained by a local or other authority;

(b) shall practise Indian medicine in any State;

(c) shall be entitled to sign or authenticate a medical or fitness certificate or any other certificate required by a law to be signed or authenticated by a duly qualified medical practitioner;

(d) shall be entitled to give evidence at any inquest or in any court of law as an expert under section 45 of the Indian Evidence Act, 1872 (1 of 1872), on any matter relating to Indian medicine.

(3) Nothing contained in sub-section (2) shall affect,—

(a) the right of a practitioner of Indian medicine enrolled on a State Register of Indian Medicine to practise Indian medicine in any State merely on the ground that, on the commencement of this Act, he does not possess a recognised medical qualification;

(b) the privileges (including the right to practise any system of medicine) conferred by or under any law relating to registration of practitioners of Indian medicine for the time being in force in any State

on a practitioner of Indian medicine enrolled on a State Register of Indian Medicine;

(c) the right of a person to practise Indian medicine in a State in which, on the commencement of this Act, a State Register of Indian Medicine is not maintained if, on such commencement, he has been practicing Indian medicine for not less than five years;

(d) the rights conferred by or under the Indian Medical Council Act, 1956 (102 of 1956)[including the right to practise medicine as defined in clause (f) of section 2 of the said Act], on persons possessing any qualifications included in the Schedules to the said Act.

(4) Any person who acts in contravention of any provision of sub-section (2) shall be punished with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.”

11. Having heard the rival contentions, I shall now proceed to deal with the same and record my discussion/opinion thereof.

12. Learned counsel for the petitioners contended that a substantial part of the course content and training for the Diploma in Ayurvedic Pharmacy/Up-vaidya are not included in the course content and training for BAMS/GAMS, even though it is a longer duration degree course; that the holders of BAMS/GAMS degree are not trained/equipped to perform the specialized functions/duties of the Ayurvedic Dispenser/Up-vaidya; that the advertisement did not speak of their eligibility and thus they were/ are not eligible for consideration/ appointment as such.

13. Per contra, learned counsel for the respondents vehemently refuted these contentions. They argued that BAMS/GAMS degree courses and Upvaids & Diploma in Ayurvedic Pharmacy courses are all in the same field of the system of Indian Medicine; that the duration of degree course of BAMS/GAMS is much longer and their course content and training are far higher and wider than the Diploma course in Ayurvedic Pharmacy/Up-vaidya; that BAMS/GAMS are qualified doctors and in fact they are *inter*

alia teaching students of Diploma in Ayurvedic Pharmacy course. Their qualifications are higher than the Diploma in Ayurvedic Pharmacy/Up-vaiddya in the same field. Possessing higher qualifications was/is no bar against their consideration and appointment to the posts of Ayurvedic Dispenser, which requires lower qualifications in the same field/system of medicine and that the absence of specific provision in the advertisement excluding BAMS/GAMS pass candidates in fact shows that they were/are eligible for the post of Ayurvedic Dispenser.

14. Short but crucial, point herein for determination is whether or not BAMS/GAMS degree course is a higher qualification than Diploma in Ayurvedic Pharmacy/Up-vaiddya ?

15. Admittedly, BAMS and GAMS which are equivalent degree courses and the Diploma course in Ayurvedic Pharmacy/Up-vaiddya are in the same field of Indian System of Medicine. The duration of said degree course is much longer than that of the diploma course. It is not disputed that BAMS degree holders in fact teach students of the Diploma course of Ayurvedic Pharmacy/Up-vaiddya. Broadly understood, thus the Degree course would be more extensive and intensive than the Diploma course in the same field of Indian System of Medicine.

16. In any case, the question is no more *res integra*. It directly fell for consideration in CWP No. 12392/2011 titled as **Pankaj Sharma and another v. Secretary, Staff Selection Commission, Panchkula and others** decided on 11/12.05.2015 by this Court. In that case, the petitioner, Diploma holders, had challenged the selection and appointment of respondents No. 4

to 55 as Ayurveda Dispensers. Speaking for this court, my learned brother Amit Rawal J. (as he then was, in this court), held as under:

“..... Admittedly, respondent No. 54, 55 and 56 are/were having BAMS degree, which is higher than the diploma and, therefore, the said respondents having BAMS degree cannot be termed to be not possessing necessary qualifications as nothing has been mentioned in the advertisement that the degree holders shall not be eligible to apply for such post. De hors of the fact that all the seats have not been filled, but the fact remains that the petitioners have only a right of consideration and not right of selection.....”

I am in respectful agreement with the observations made above and the view taken by the learned co-ordinate bench in **Pankaj Sharma’s case** (supra).

17. Aforesaid view is buttressed by Apex Court judgment in **State of Haryana and another v. Abdul Gaffar Khan and another, 2006(11) SCC 153**, wherein the relevant eligibility requirement for the post of Unani Dispenser was Unani Dispenser or Up-vaidya from a recognized University/Board of Indian System of Medicine. Advertisement did not expressly exclude the holders of degree in Unani Medicine and Surgery. They were held eligible and entitled to appointment. Relevant part thereof is as under :-

“6. We have perused the order passed by the High Court. As rightly pointed by the High Court and as per Haryana Ayurvedic/Homeopathic and Unani Technical Group (C) Service Rules, 1997, they do not expressly exclude the degree in Unani Medicine and Surgery for the post of Unani Dispenser. Admittedly, the respective contesting respondents in these appeals possess required qualifications from a recognized University/Institution or Board and are thus, in our opinion, eligible for appointment to the posts of Unani Dispenser. A close scrutiny of the advertisement issued does not anywhere stipulate the diploma as the required qualification. We, therefore, affirm the order passed by the High Court and direct the appellant-State of Haryana to appoint the respective respondents to the posts of Unani Dispenser within a period of one month from the date of receipt of the order from this Court or on production of the same by the respective respondents herein whichever is earlier”

18. BAMS degree is thus higher than the diploma in Ayurvedic Pharmacy/Up-vaidya as already held by the Apex Court judgement in **Abdul Gaffar Khan** *ibid*.

19. It is, therefore, neither necessary nor appropriate to go into the gamut of material including the course content and training of the students for BAMS/GAMS degree course vis-à-vis that of the Diploma in Ayurvedic Pharmacy/Up-vaidya and to decide the same question *de novo*. Rival contentions qua the same put forth by the parties are, really speaking, quite irrelevant to be adverted to.

20. Admittedly, the petitioners took the written examination, participated in the selection process and were considered but not selected for the post in question. The petitioners had only a right of consideration, which has been duly availed by them. Beyond that, they had no vested right of selection.

21. In **Yogesh Kumar and Ors. V. Government of NCT and Ors. 2003(2)SCT 280** cited by learned counsel for petitioners, the requisite qualification for eligibility for appointment as Assistant Teacher in Primary Schools was TTE. For ready reference relevant is as below :-

“A. (I) Higher Secondary pass of recognised board/ University with an elective subject in the Matric level.

(II) Two year teacher training certificate from the recognised institute OR

B (I) Intermediate or equivalent from a recognised board/ university with an elective subject in the required language at the Matric level.

(II) One year Teacher Training Certificate from a recognised institution.

Note: *The candidate applying for the post of Assistant Teacher (Primary) – Hindi must have passed Hindi as an elective subject at the Matric level.”*

Perusal of above would reveal that, it has been held that B.Ed. diploma/degree holders cannot be considered for the post of Assistant Teacher, who are required to teach small children observing that Training for B.Ed and TTE were totally different and B.Ed. diploma/degree cannot be considered to be just a higher qualification because the Assistant Teachers holding the TTE diploma are also eligible for promotion as B.Ed. teachers. The analogy is not applicable in present case. The judgment *ibid* does not, therefore, apply to the instant case or help the petitioners.

22. This being the position, it cannot be said that the petitioners have any legal right to challenge the selection and appointment of the private respondents to the post of Ayurvedic Dispenser and for direction to the official respondents to interview and consider the petitioners for appointment as Ayurvedic Dispensers.

23. As a result of above discussion, the petitions are dismissed.

24. No order as to costs.

25. Photocopy of this order be placed on the other connected case files.

(ARUN MONGA)
JUDGE

October 25, 2021

vandana/mahavir

Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No