

04.11.2022

WPST 98 of 2022

Court : 04
Item : 25
Matter : WPST
Status : DCW
Transcriber: nandy

Gita Mondal
Vs.
The State of West Bengal & Ors.

Mr. S.P. Pahari, Advocate

.....for the Petitioner

Mr. Biswabrata Basu Mallick, Advocate

Mr. Sayan Ganguly, Advocate

.....for the State

The beleaguered litigant has attempted to take advantage of the mistakes and/or the error committed by an authority upon issuance of a letter for interview that he is found eligible for the post advertised by the concerned authority despite the fact that he does not acquire requisite qualification for such post. The Department of Health issued an advertisement for filling up the post of a General Duty Medical Officer who had the requisite medical qualification/post-graduate degree/valid registration as Medical Practitioner by the Medical Council of India/ State Medical Council.

It is not in dispute that such post is meant for the Doctors who had the MBBS degree or the degree equivalent thereto and does not invite any application from the candidate who have acquired a degree for Homoeopathy. Admittedly the petitioner is not a member of Medical Council of India/State Medical Council nor has the requisite medical degree earmarked for such post. The Tribunal was approached challenging the action of the authorities in rejecting the candidature of the petitioner as he does not have the requisite educational qualification that even if he is not qualified for such post, such application could have been considered under the Ayush Scheme where he fulfils the educational qualification. The Tribunal

rejected the said application solely on the ground that the petitioner does not have requisite educational qualification earmarked for such post and the said order is challenged in the instant writ-petitioner.

The learned Advocate appearing for the petitioner submits that an innocuous prayer was made in the tribunal application to forward the said application before the concerned authority of Ayush for consideration of his candidature.

We are unable to comprehend the aforesaid submission, more particularly, the innocuous submission made before us. The advertisement was made for the Medical Practitioners who have acquired the MBBS degree or the equivalent degree in relevant medium of treatment. It is unconceivable that a person qualified as a Homoeopathy Doctor will threaten the patient who have come for Allopathy treatment. There is no post earmarked for the Homoeopathy Medical Practitioner in the hospital for the post of a General Duty Medical Officer and, therefore, there is no infirmity in the order of the Tribunal in rejecting the said application. There is a separate establishment i.e. Ayush who will advertise the recruitment notice for filling up the post, if fall vacant and if the petitioner duly qualified and/or fulfils the educational qualification, may offer his candidature. The circuitous route to be attempted with the so-called innocuous prayer that the said application should have been routed under the Ayush Scheme, shall offend Article 14 of the Constitution of India. There must be an equal opportunity in the public employment and the eligible candidates should be invited to offer their candidature. The manner in which the so-called innocuous prayer is made has ramification to such constitutional ethos as the other

eligible candidates would be deprived to offer their candidature.

The mistake committed by an authority neither confers any legal right nor any legally enforceable right to the petitioner. Such mistake is capable of being correct which, in fact, has been done by the authority in denying the candidature of the petitioner for appointment to such post.

We thus find that the writ-petition sans merit. The writ-petition being **WPST 98 of 2022** is hereby **dismissed**. No order as to costs.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)