

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

CWP No. 26122 of 2014 (O&M)

Date of Decision: 24.08.2022

Piara Singh

..... Petitioner

Versus

State of Punjab and another

..... Respondent

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Arshdeep Bhullar, Advocate
for the petitioner.

Mr. Charanpreet Singh, Assistant Advocate General, Punjab.

MAHABIR SINGH SINDHU, J.

1. Present writ petition has been filed under Article 226 of the Constitution, *inter alia*, for quashing of the impugned order dated 10.09.2013 (P-11) as well as response dated 08.09.2014 (P-14), whereby claim of petitioner for promotion to the post of 'Vaid' was declined.

2. Facts are not in dispute.

3. In the year 1976, petitioner passed his Up-Vaid examination conducted by the Punjab State Faculty of Ayurvedic and Unani System of Medicine, Chandigarh (P-1). He was engaged as Dispenser on *ad hoc* basis vide order dated 14.05.1979 (P-2) by the Ayurveda Department, Punjab (for short "Department"). Thereafter, on recommendation of the Subordinate Services Selection Board, Punjab (for short "SSSB"), petitioner was appointed as Dispenser on temporary basis by the Department vide order dated 04.12.1979 (P-3). As per Condition No. 4 of the appointment order (*ibid*), his services were to be governed under the provisions of Punjab Ayurvedic Department (Class III-Technical) Services Rules, 1963 (for short

Rules of 1963"). It is claimed that later on nomenclature of Dispenser was

changed as Up-vaid by the Department. Ultimately, after attaining the age of superannuation, he retired from service as Up-Vaid w.e.f. 31.07.2012.

4. It is contended by learned counsel for the petitioner that in view of the provisions of Rule 8 of the Rules (*ibid*), 50% appointment(s) to the posts of *Vaid* in the Department are to be made by way of promotion from amongst the members of service. Also contended that under the aforesaid Rules, various *Up-Vaids* were promoted to the post of *Vaid*, but even after rendering 30 years of service, petitioner has been denied promotion without any valid reasons. Lastly contended that denial of claim of petitioner merely on account of framing new Rules, namely, the Punjab Ayurvedic (Group 'A') Service Rules, 2008 (*for short "Rules of 2008"*), amounts to deprive him from vested right of promotion to the post of *Vaid*, hence impugned action of the respondents is not legally sustainable.

5. On the other hand, learned State Counsel while opposing the prayer of petitioner, submitted that after coming into force of new Rules, earlier Rules of 1963 have been repealed and under Rules of 2008, the post of *Vaid* is no longer existing. Further submitted that under Appendix 'A' of the new Rules, post(s) of Ayurvedic Medical Officer was incorporated; but qualification for the same has been prescribed as "*degree of B.A.M.S. (Bachelor of Ayurvedic Medicine and Surgery) or its equivalent degree, from a recognized University or other teaching institution recognized by CCIM*", which, concededly, petitioner is not fulfilling.

While making reference to para No. 30 of the writ petition, learned State Counsel submitted that petitioner completed only first part of his Vaid Vishard Examination from Hindi Sahitya Samelan Paryag in the

year 1979, but this qualification was de-recognized in the year 1967, and due to that reasons also, he was not entitled for promotion to the post of *Vaid* even before repealing of the Rules of 1963.

6. Heard learned counsel for the parties and perused the paper-book.

7. There is no dispute that under the Rules of 1963, qualification prescribed for the post of *Vaid* was as under:-

“ A Diploma or Degree in Ayurveda of any recognized University or Board of Indian System of Medicine established by law in India or any teaching institution recognized by Government.”

From perusal of para-30 of the writ petition, it is discernible that *“petitioner completed his first part of the Vaid Visharad Examination from Hindi Sahitya Samelen Paryag in the year 1979”* and it is further acknowledged by the petitioner in this very paragraph that *“When in the year 1980, the second part was to be completed, subsequently, this examination was de-recognized”*.

Respondents in para-6 of preliminary objection specifically averred that *“as per Section 19 (C) of the Punjab Ayurvedic and Unani Practitioners Act, 1963, any person to be appointed as Ayurvedic Medical Officer / Vaid must be registered in part-1 of the register maintained with Board of Ayurvedic and Unani System of Medicine Punjab established under the Punjab Ayurvedic and Unani Practitioners Act, 1963”*. It is also averred in this very paragraph that *“Piara Singh has not acquired any such qualification on basis of which he may be registered with Board of Ayurvedic and Unani System of Medicine Punjab.”* Still further in para-7 of

preliminary objection, it is categorically averred by respondents that *“the qualification of Vaid Visharad from Hindi Sahitya Samelen Paryag was de-recognized in the year 1967 and from 2008 onwards, new Rules regarding the appointment of officers to Ayurvedic Medical Officers, have been made in which 50% quota of promotion has been abolished”*.

Also noteworthy that petitioner has not filed any counter affidavit to controvert the above factual as well as legal aspect in any manner.

8. Undisputedly, under the Rules of 2008, there is no post of *Vaid* available; rather as per Appendix 'A' thereof, there are 428 sanctioned posts of Ayurvedic Medical Officer in the Department and in terms of Appendix 'B', the qualification prescribed for the same is as under:-

“ Should possess a degree of B.A.M.S. (Bachelor of Ayurvedic Medicine and Surgery) or its equivalent degree, from a recognized University or other teaching institution recognized by CCIM.”

Concededly, petitioner is not having the aforesaid qualification; therefore, he cannot raise any claim for the post of Ayurvedic Medical Officer. Even the respondents also, while passing the impugned order dated 10.09.2013 (P-11), rejected the claim of petitioner on the premise (i) that qualification from Hindi Sahitya Samelen Paryag was de-recognized after 1967; (ii) after coming into force of Rules of 2008, 50% promotion quota for the post of *Vaid* has been abolished; thus *Up-vaid* cannot be promoted to the post of *Vaid*. For reference, the relevant part of the order is recapitulated as under:-

“ Accordingly it was analyzed that the degree of Ayurvedic Rattan which was obtained from Hindi Sahitya Samelan, Paryag which is not recognized because this Institution was de-recognized after 1967. After this in 2008 new rules for Ayurvedic Medical Officer have been framed according to which 50% promotion quota has been finished. Therefore, any Up-vaid cannot be made a Vaid officer. As per the recommendation of this office to the State Government who have analyzed it vide Memo No. 3/21/11-4C7/3387 dated 20.8.13 that the claim of Piara Singh is hereby rejected.”

Above all, learned counsel for the petitioner failed to point out that after coming into force of Rules of 2008, till his retirement, i.e. 31.07.2012 in the Department, any *Up-Vaid* has been promoted to the post of *Vaid*.

9. In view of the facts and circumstances here-in-above, the irresistible conclusion would be as under:-

- (i) Petitioner completed First Part of the Vaid Vishard Examination from Hindi Sahitya Samelan Paryag in the year 1979; but in the year 1980, he could not complete Second Part thereof due to the reason that said examination had been de-recognized from 1967.
- (ii) As per Section 19 (C) of the Punjab Ayurvedic and Unani Practitioners Act, 1963, for appointment to the post of Ayurvedic Medical Officer / *Vaid*, a person must be registered in Part-I of the Register maintained with the Department, but petitioner has neither acquired the requisite qualification; nor his

name is entered in the Register.

- (iii) After coming into force of the Rules of 2008, the Rules of 1963 have been repealed and as per Appendix 'A' thereof, there is no post of *Vaid* existing.
- (iv) In terms of Rules of 2008, petitioner is not fulfilling the requisite qualification for appointment to the post of Ayurvedic Medical Officer.
- (v) It not substantiated that after coming into force of the Rules of 2008, till retirement of petitioner, i.e. on 31.07.2012, any person has been promoted to the post of *Vaid* by the respondents.

10. In view of the above, there is no option except to **dismiss** the writ petition.

Ordered accordingly.

August 24, 2022
'geeta / dk kamra'

(MAHABIR SINGH SINDHU)
JUDGE

Whether Speaking/reasoned	Yes
Whether Reportable	Yes