

**IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
APPELLATE SIDE**

**FMA 284 of 2023
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IA NO:CAN/1/2023**

**Sri Jayanta Kumar Acharjya
Vs.
The State of West Bengal & Ors.**

Mr. Fazle Rabi,
Mr. Hare Krishna Halder

... For the Appellant.

Ms. Mousumi Choudhury,
Mr. Partha Sarathi Sen Sharma

... For the State.

By consent of the appearing parties, the appeal and the connected application are taken up together for hearing.

This appeal is directed against a judgment and order dated February 10, 2023, whereby the appellant's writ petition, being WPA 7095 of 2013, was in effect dismissed.

The appellant approached the learned Single Judge with the grievance that although, he qualified in the written test and viva-voce in the selection process conducted for engaging an Ayush Doctor in Homoeopathy under Kuliayan Gram Panchayat on contractual basis, he was not granted appointment.

The learned Judge called for a report from the State respondents. From such report, it transpired that as on the date of the appellant/writ petitioner applying for the post in question, he was not registered as a Homoeopathic Medical Practitioner

with the Council of Homoeopathic Medicine, West Bengal. The last date of making application was April 26, 2010. The appellant applied before that date. The Certificate of Registration was issued in his favour by the Council of Homoeopathic Medicine, West Bengal, on August 06, 2012.

The learned Judge, therefore, came to the conclusion that as on the date of making his application, the writ petitioner was ineligible for the post in question, since he was not registered with the Council of Homoeopathic Medicine, West Bengal.

The learned Judge further observed that the ineligibility of the appellant may have been detected after he participated in the written examination and the viva-voce, but that did not make any difference. No legal right to be appointed accrues in favour of a candidate just because he is empanelled or emerges as a successful candidate. In this connection, the learned Judge referred to several decisions of the Hon'ble Supreme Court, which we need not advert to as that is a settled principle of law.

The learned Single Judge disposed of the writ petition without passing any order thereon with the following observations:-

“ The law is well-settled that if the application is not in proper form and necessary documents are not submitted as per requirement, the candidature of the participants can be cancelled at any stage even after appointment, if such, illegality is detected. Mere selection of the petitioner by the committee would not itself confer a right on the petitioner. Right arises when an appointment is made. Admittedly, the petitioner did not have any registration or licence to practice at the time of filing the

application and such certificate was issued in favour of the petitioner on August 6, 2012. The facts and the documents produced by the respondents which are not disputed by the petitioner, clarify the position that the petitioner did not have the licence to practice and could not have been engaged as an Ayush Doctor without such licence, whether on permanent or contractual basis. Subsequent registration cannot relate back to the date of the application as at the time of making the application, the petitioner did not have the eligibility to practice homoeopathic medicine. ”

Being aggrieved, the writ petitioner is before us by way of this appeal.

We have heard learned advocate for the appellant at length. We have not called upon learned advocate for the State respondents to make submission. Although the concerned Zilla Parishad and the concerned Gram Panchayat are not represented, we are not inclined to defer disposal of this appeal, since we are not inclined to interfere with the order under appeal.

Learned advocate for the appellant submitted that as on the date of making application, the appellant was registered with the Odisha Homoeopathic Council. Hence, he is deemed to have been registered with the Central Homoeopathic Council in terms of Section 21(1) of the Homoeopathic Central Council Act, 1973.

The relevant clause in the concerned Notification for engagement of Part-Time Ayush Doctors in the Gram Panchayat level dispensaries on contractual arrangement stipulates that for a candidate aspiring to be appointed as Homoeopathy Ayush, he would require a Post Graduate Degree (MD), a Graduate

Degree (BHMS) or a Diploma (BMS/DHMS) in Homoeopathy from an Institution recognized by Central Council of Homoeopathy and must be registered with the State or Central Council of Homoeopathy. This Notification, which is issued by the West Bengal State Rural Development Agency, being an Agency of the Panchayats and Rural Development Department, Government of West Bengal, necessarily means, in our opinion, that insofar as West Bengal is concerned, an aspiring candidate for the post of Homoeopathy Ayush must be registered either with the West Bengal State Council of Homoeopathy or the Central Council of Homoeopathy. Admittedly, as on the date of submitting his application, the appellant was not registered with the West Bengal State Council of Homoeopathy.

The submission made on behalf of the appellant that by virtue of his registration with the Odisha Homoeopathic Council, he is deemed to have been registered with the Central Homoeopathy Council in terms of Section 21 of the Homoeopathic Central Council Act, 1973, is not acceptable to us. Section 21(1) of the Act enjoins a duty on the Central Council to cause to be maintained a register of practitioners of Homeopathy to be known as the Central Register of Homeopathy which shall contain two Parts. Part I shall contain the names of all persons who are for the time being enrolled on any State Register of Homeopathy and possess any of the recognized medical qualifications. Part II shall contain the names of all persons, other than those included in part I, who are for the time being enrolled on any State Register of Homeopathy. Section 21(2) imposes a duty on the Registrar of the Central Council to keep and maintain the Central Register of Homeopathy in

accordance with the provisions of the Act and of any orders made by the Central Council, and from time to time to revise the Register and publish it in the Gazette of India and in such other manner as may be prescribed. Section 23 of the Act provides that the Registrar of the Central Council may on receipt of the report of registration of a person in a State Register of Homeopathy or on application made in the prescribed manner by any person, enter his name in the Central Register of Homeopathy, provided that the Registrar is satisfied that the person concerned is eligible under the Act for such registration. Section 26 of the Act provides inter alia that subject to the conditions and restrictions laid down in the Act regarding practice of Homeopathy by persons possessing certain recognized medical qualifications, every person whose name is for the time being borne on part I of the Central Register of Homeopathy, shall be entitled according to his qualifications to practise Homeopathy, in any part of India.

What the appellant relied upon is a certificate issued by the Orissa University pertaining to his qualification in Homeopathy and not certificate of registration with the Orissa Council of Homeopathy., Even assuming that the appellant was, as on the date of applying for the post in question, registered with the Orissa Council of Homeopathy, nothing has been produced to show that his name was entered in part 1 or part 2 of the Central Register of Homeopathy as contemplated in Section 21 of the 1973 Act. There is no deeming provision in Section 21. On a joint reading of Sections 21 and 23, it will appear that the Registrar of the Central Council has to be informed by somebody or the concerned doctor has to apply to him, on the basis of which the Registrar shall enter the concerned doctor's name in the relevant part of the Central Register of Homeopathy. In other words,

there has to be an overt act of entering the concerned doctor's name in the Central Registrar of Homeopathy and the appellant cannot be deemed to have been registered with the Central Council.

In view of the aforesaid, it is absolutely clear that the appellant, as on the date of making application for the post of Homoeopathy Ayush, was not registered either with the West Bengal Council of Homoeopathy or the Central Council of Homoeopathy. Accordingly, he was ineligible for the post in question. Therefore, he was rightly not granted appointment and there is no infirmity in the order of the learned Single Judge sought to be assailed before us.

The appeal and the connected application, accordingly, fail and are hereby dismissed. There will be no order as to costs.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties on compliance of all necessary formalities.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)