

M/L 541
10.02.2023
Court. No. 19
GB

W.P.A. 7095 of 2013

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

*Mr. S.M. Obaidullah,
Mr. Hare Krishna Halder.*

...for the Petitioner.

*Mr. Biswajit De,
Ms. Rajlakshmi Ghatak*

...for the State.

The writ petition has been filed by a person who had applied for the contractual post of Ayush Doctor in Homoeopathy under Kuliayan gram panchayat. An advertisement dated March 29, 2010 was published inviting application for such post. In the paragraph marked as 'General Instruction for Candidates', it had been categorically mentioned that attested copies of mark sheets, other certificates along with age proof and permanent residential proof should be enclosed along with the application.

According to the petitioner, when the petitioner had qualified at the written test and viva voce in the selection process, he automatically had a right to be appointed. As appointment was not given to the petitioner, this writ petition had been filed.

The State respondents had filed a report in the form of affidavit, inter alia, explaining the reasons as to why the petitioner was not granted appointment on contractual basis as an Ayush Homoeopathic Doctor. It has been stated that the advertisement was published on March 29, 2010. The

general instruction to the candidates categorically mentioned that attested copies of mark sheets and all documents should be submitted along with the application. The petitioner submitted his application pursuant to the advertisement, on April 23, 2010 but his registration certificate as a Homoeopathic Doctor indicating that he had a licence to practice was not submitted along with the application. This fact is also admitted by the petitioner.

The certificate of registration was issued by the Counsel of Homoeopathic Medicine West Bengal, on August 6, 2012 and the viva voce test was held on August 10, 2012. At the time of viva voce test, such registration certificate was supplied by the petitioner. Clearly, when the application was filed by the petitioner for the selection to the post of Homoeopathic Doctor (Ayush) on contractual basis, the petitioner did not have any registration certificate. He was not authorized to practice. The mark sheet of the petitioner cannot be used as a substitute for the requirement to have a registration to practice the relevant field of medicine.

The selection committee had conducted the selection process for a Ayush Doctor and the petitioner was selected. The Secretary, Paschim Medinipur Zilla Parishad was intimated about such selection. Such intimation was given by the Executive Officer, Gopiballavpur-II panchayat samity on October 3, 2012.

However, the call letter for the viva voce examination clearly stated that all documents would have to be produced for verification at the time of viva voce. The document

verification was done at the time of viva voce and the ineligibility of the candidate was detected. Appointment letter was not issued and the ineligibility was pointed out. There is also no dispute with the settled legal position that selection by the committee, would not itself vest a right on the petitioner to be engaged on contractual basis, if the other criteria required by the advertisement was not fulfilled.

In this case, the petitioner did not have a registration to practice homoeopathic medicine. He was not a registered doctor. The Secretary, Paschim Medinipur Zilla Parishad pursuant to the letter of the Executive Officer, Gopiballavpur-II panchayat samity informed the said authority by a letter dated December 12, 2012 that the registration certificate had been issued by the Counsel of Homoeopathic Medicine, West Bengal after the last date for filing application for such selection process had expired. The Executive Officer, Gopiballavpur-II panchayat samity was asked to further clarify the matter. The Additional Chief Executive Officer, SPHC, WBSRDA and Special Secretary to the Government of West Bengal intimated the Additional Executive Officer, Paschim Medinipur Zilla Parishad that as the petitioner did not submit his medical registration certificate along with the application within April 26, 2010, that is the last date of filing the application and as the registration was issued to the petitioner after the application had been filed just before the viva voce test, the petitioner did not have the minimum eligibility criteria to be appointed as a Ayush Doctor at the time of initiation of the selection

process. In order to practise medicine or alternate medicine a registration or a licence is mandatory.

In the matter of ***Rakesh Kumar Sharma v. State*** reported in ***2013 SCC OnLine SC 676*** the Hon'ble Apex Court held as follows:-

“11. There can be no dispute to the settled legal proposition that the selection process commences on the date when applications are invited. Any person eligible on the last date of submission of the application has a right to be considered against the said vacancy provided he fulfils the requisite qualification.

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20. This Court lately in *State of Gujarat v. Arvindkumar T. Tiwari* [(2012) 9 SCC 545 : (2012) 9 SCC (L&S) 795 : AIR 2012 SC 3281] held : (SCC p. 550, para 14)

“14. A person who does not possess the requisite qualification cannot even apply for recruitment for the reason that his appointment would be contrary to the statutory rules, and would therefore, be void in law. Lacking eligibility for the post cannot be cured at any stage and appointing such a person would amount to serious illegality and not mere irregularity. Such a person cannot approach the court for any relief for the reason that he does not have a right which can be enforced through court. (See *Prit Singh v. S.K. Mangal* [1993 Supp (1) SCC 714 : 1993 SCC (L&S) 246 : (1993) 23 ATC 783] and *Pramod Kumar v. U.P. Secondary Education Services Commission* [(2008) 7 SCC 153 : (2008) 2 SCC (L&S) 244] .)”

(emphasis supplied)

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A similar view has been reiterated by this Court in *Pramod Kumar v. U.P. Secondary Education Services Commission* [(2008) 7 SCC 153 : (2008) 2 SCC (L&S) 244] and *State of Orissa v. Mamata Mohanty* [(2011) 3 SCC 436 : (2011) 2 SCC (L&S) 83] .

23. There is no obligation on the court to protect an illegal appointment. The extraordinary power of the court should be used only in an appropriate case to advance the cause of justice and not to defeat the rights of others or create arbitrariness. Usurpation of a post by an ineligible candidate in any circumstance is impermissible. The process of verification and notice of termination in the instant case followed within a very short proximity of the appointment and was not delayed at all so as to even remotely give rise to an expectancy of continuance.”

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. Accordingly, the writ petition is disposed of without any orders.

However, there will be no order as to costs.

All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)