

01.08.2023
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FMA 1377 of 2017
Binoy Kumar Mondal
– Versus –
The State of West Bengal & Others

Mr. Asit Kuamr Chakraborti
... for the Appellant.

The appellant applied to the respondents for registering his name in the first register of the State Pharmacy Council. According to the appellant, the notification as contemplated in Section 30(2) of the Pharmacy Act, 1948 (the Pharmacy Act, in short) was not considered and hence, he is entitled to be registered as pharmacist in the first register of State Pharmacy Council as per Section 31(d) of the Pharmacy Act.

The appellant's application was not considered by the respondents. Hence, he filed the writ petition No.9715 (W) of 2017. The respondents resisted the said writ petition and submitted that Sections 30 and 31 of the Pharmacy Act to be considered along with Sections 10 and 11 of the Pharmacy Act. Sections 10 and 11 of the Pharmacy Act prescribes education qualifications for registering as pharmacist. As per the proviso to Section 11 of the Pharmacy Act, the education regulations will come into force after three years from the date of establishing the State Pharmacy Council. The State Pharmacy Council was established

in the year 1956. The education qualification prescribed as per the regulations is diploma in pharmacy. The appellant does not possess such education qualification and prayed for dismissal of the writ petition.

The learned Judge considering Sections 10, 11, 30 and 31 of the Pharmacy Act and materials on record rejected the relief sought for by the appellant on 10th April, 2017. Against the said order the appellant has come out with the present appeal.

The learned counsel for the appellant contended that the Pharmacy Act is a Central Act and Section 31(d) of the Pharmacy Act is in existence. No amendment is made in the Pharmacy Act in the Parliament. Therefore, as per Section 31(d) of the Pharmacy Act the appellant is entitled to be registered as pharmacist in the register of State Pharmacy Council.

According the learned counsel for the appellant, the learned single Judge considered only the submissions made by the counsel for the respondents and did not consider the submission made by the learned counsel appeared for the petitioner/appellant. At the time of argument the learned counsel for the respondents produced certain photocopies of the documents and did not furnish the said copies to the

learned counsel for the appellant appeared before the learned single Judge in spite of request made by him.

The learned counsel for the appellant further contended that in the writ petition, being W. P. No.5854 (W) of 2017 the same issue was considered by this Court directed the third respondent to consider the representation of the petitioner therein in spite of objection raised by the respondents' counsel. In view of the said order and in view of the existence of Section 31(d) of the Pharmacy Act the appellant is entitled to be registered as pharmacist in the register of State Pharmacy Council and prayed for allowing the appeal.

No representation for the respondents.

Heard the learned counsel for the appellant and perused the materials on record.

The appellant is sought for registering himself as pharmacist in the first register maintained by the State Pharmacy Council. He has made this claim on the ground that he has vast experience in dispensing drugs as per the prescriptions issued by the medical practitioners. On the other hand, Sections 10 and 11 of the Pharmacy Act prescribes education qualification. As per the regulations diploma in pharmacy is prescribed education qualification. It is not the case of the appellant that he is possessing diploma in pharmacy. As per proviso to Section 11 of the Pharmacy Act the education qualification will come

into force after expiry of three years from the date of establishing of the State Pharmacy Council.

The contention of the respondents before the learned single judge that the State Pharmacy Council came into force in the year 1956, is not denied by the appellant. In view of the provision of the Pharmacy Act the appellant, who is not possessing either diploma or degree in pharmacy, is not entitled to be registered as pharmacist in the first register of State Pharmacy Council.

The contention of the learned counsel for the appellant that the learned single Judge did not consider the case of the appellant but considered the case of the respondents is not correct. The learned single Judge in the impugned order not only considered Sections 10, 11 of the Pharmacy Act but also Sections 30 and 31 of the Pharmacy Act and extracted all four Sections in the impugned order.

Considering the above materials in its entirety, this Court is of the view that the appellant is not entitled for the relief sought for.

The appeal fails and is dismissed.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

(V. M. Velumani, J.)

(Rai Chattopadhyay, J.)