

18.09.2023
Item No.30
Ct. No.5
CHC
(disposed of)

WP.ST 120 of 2018
IA NO: CAN/4/2023

Avijit Das & ors.
Vs.
The State of West Bengal & ors.

Mr. Uday Narayan Betal
...for the petitioners

Mr. Tapan Kr. Mukherjee, Sr. Advocate & A.G.P.
Mr. Somnath Naskar
...for the State respondents

The writ petition is directed against an order dated September 27, 2018 passed by the West Bengal Administrative Tribunal in O.A.1046 of 2017.

By the impugned order, the Tribunal, rejected the claim of the writ petitioner.

During the pendency of the present writ petition, by an order dated January 28, 2020, the coordinate Bench found that the petitioner nos.1, 3 and 4 were with requisite qualification and entitled to appointment. The coordinate Bench, therefore, directed that, State to appoint the petitioner nos.1, 3 and 4 as Inspector of Drugs.

The Court is informed that, petitioner nos.1, 3 and 4 received appointment subsequent to the order dated January 28, 2020 of the coordinate Bench.

The order dated January 28, 2020 of the coordinate Bench kept the writ petition alive for the claims of petitioner nos.2 and 5.

By an order dated August 22, 2023, it was submitted on behalf of the petitioner no.5 that, he did not possess requisite qualification. The writ petition was therefore dismissed for the petitioner no.5.

The writ petition survives for the petitioner no.2.

Petitioner no.2 participated in selection process initiated by an advertisement dated February 22, 2016 by the West Bengal Health Recruitment Board for the post of Inspector of Drugs under the Directorate of Drugs Control, West Bengal.

The issue with regard to the selection process was decided by the coordinate Bench by the order dated January 28, 2020. The assessment of the candidature of the participants were decided upon.

Today, the candidature of the petitioner no.2 hinges upon the eligibility criteria prescribed by the advertisement.

The eligibility criteria prescribed is as follows:-

“Qualification:

A. Essential:

- i) *A Degree in Pharmacy or Pharmaceutical Chemistry or Medicine with specialization in Clinical*

Pharmacology or Microbiology from a University established in India by Law and

- ii) *Experience of work in recognized institutions in the manufacture or testing of drugs or enforcement of the provisions of the Drugs and Cosmetics Act, 1940 (23 of 1940) for a minimum total period of five years;*

Provided that the specialization in Clinical Pharmacology or Microbiology shall have to be certified by the Dean of the Faculty of Medicine of the concerned University and the experience in the manufacture of drugs or experience in the Testing of Drugs or experience in the enforcement of the provisions of the Drugs and Cosmetics Act, 1940 (23 of 1940); for a minimum total period of five years has to be certified by the Head of the recognized Institution wherefrom the said experience was obtained.”

Petitioner no.2 qualifies the first criteria prescribed by possessing the requisite degree.

Experience of work in any recognized institution is the criteria in respect of which, the parties are not ad idem.

State authorities submitted an affidavit where, it is claimed that, the work experience of the petitioner as Senior Research Scientist with Emami Limited did not fulfil the criteria laid down as,

according to the technical expert, the petitioner no.2 was engaged only in documentation of data with Emami Limited and not directly related with manufacture or testing of drugs or enforcement of provisions of Drugs and Cosmetics Act, 1940.

In arriving at such a conclusion, the technical experts were with the benefit of a certificate dated April 20, 2017 issued by Emami Limited which stated that, the petitioner no.2 worked in such organization with effect from February 18, 2013 designated as Senior Research Scientist.

In the exception to such affidavit petitioner no.2 enclosed his job description. The job description of petitioner no.2 entails *inter alia* testing of drugs and compliance with the provisions of the Drugs and Cosmetics Act, 1940.

The quantum of experience required under the advertisement, was also fulfilled by the petitioner no.2 by dint of his appointment with Emami Limited.

In such circumstances, we are of the view that the petitioner no.2 possessed the essential qualification as prescribed by the advertisement concerned.

It is the contention of the State that, vacancies for consideration of the candidature of the petitioner no.2 is not available. We are unable to accept such a contention since, the coordinate Bench

while passing the order dated January 28, 2020 recorded that, the candidature of the petitioner nos. 2 and 5 will be considered for appointment if they succeeded in their claim.

We are not favoured with any document showing that the order dated January 28, 2020 was assailed before any higher forum.

The order dated January 28, 2020 is binding upon the parties.

In such circumstances, since the petitioner no.2 possessed the requisite qualification, he should also be granted the appointment, since, we are told, he secured higher marks than the last candidate appointed in the selection process.

By the order dated January 28, 2020, the coordinate Bench directed that, the appointment of the petitioner nos.1, 3 and 4 to relate back to the date on which candidates in the merit list who secured marks equal to or lesser than the petitioner nos.1, 3 and 4, came to be appointed. Coordinate Bench also gave other direction so far as petitioner nos.1, 3 and 4 were concerned. Similar direction so far as petitioner no.2 is also granted.

The appointment of petitioner no.2 shall relate back to the date on which candidates in the merit list, who secured marks equal to or lesser than the petitioner no.2 came to be appointed. The

petitioner no.2 shall not be entitled to any arrears of financial benefits but benefits shall flow to him on and from date of his appointment. The period during which the petitioner no.2 could not discharge duty as Inspector of Drugs shall be counted from calculating qualifying service for pension and other benefits, which would have accrued to him but for the late appointment. In so far as seniority in service is concerned, he shall rank below the candidates already appointed. The State Government is directed to appoint the petitioner no.2 as Inspector of Drugs immediately but not later than a fortnight from the date of receipt of this order.

WP.ST 120 of 2018 alongwith all connected applications are **disposed of** accordingly, without any order as to costs.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)