

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble **Justice Kausik Chanda**

W.P.A. No.22615 of 2022

POULAMI POREL

-VERSUS-

THE STATE OF WEST BENGAL AND OTHERS

For the petitioner : Mr. Uddipan Banerjee, Adv.

For respondent no.2 : Mr. Debraj Bhattacharya, Adv.,
Mr. Subhrojyoti Bhowmick, Adv.

Hearing concluded on : 21.12.2022

Judgment on : 15.05.2023

Kausik Chanda, J.:-

The petitioner passed the Higher Secondary Examination in the year 2016 with a subject combination of Bengali, English, Chemistry, Mathematics, Physics, and Biology as her optional subject. Thereafter, the petitioner enrolled herself in B.H.M.S Degree Course and duly completed the same. When the petitioner sought to register her name under the Council of Homoeopathic Medicine, West Bengal (in short, the Council), it was communicated to her that the Council, after scrutinizing her Higher Secondary mark-sheet, had found that she had failed in Physics. Therefore, she did not qualify to register her name under the Council in violation of the Regulation 4 of the Homoeopathy (Degree Course) B.H.M.S Regulations, 1983 (in short, the said Regulations of 1983).

2. Challenging the said communication dated August 31, 2022, the present writ petition has been filed.

3. The learned advocate appearing for the petitioner submits that the petitioner has duly passed the Higher Secondary Examination with a combination of Physics, Chemistry and Mathematics and after verifying her mark-sheet the petitioner was allowed to enroll herself in the Homoeopathy Degree Course by the relevant University. There was no material suppression or fraud practiced by the petitioner at any point of time against anyone. The petitioner, despite being an eligible candidate, has been deprived of her right to register her name under the Council.

4. The learned advocate appearing for respondent no.2 vigorously opposes the prayer of the petitioner. He submits that the petitioner failed the Physics paper in Higher Secondary but was declared passed treating the Biology paper as a compulsory paper, which was an optional paper. He submits that the issue as to whether such a candidate can be said to be eligible for registration under respondent no.2, has already been answered in negative by the different Division Benches of this Court. He places reliance upon the judgment reported at **(2014) 3 CLJ (Cal) 297 (Sneha Saha v. The State of West Bengal)** and the judgments delivered in **F.M.A. No.725 of 2005 (Prabir Kumar Moitra & Anr. V. Smt. Maitraiee Roopj)**, **MAT 920 of 2011 (Nazir Hossain v. State of West Bengal & Ors.)** and **MAT 162 of 2012 (Subhrajit Biswas v. The State of West Bengal & Ors.)** to contend that the petitioner was not at all eligible to be registered under the Council.

5. He, further, contends that since the petitioner was an ineligible candidate for registration in terms of Regulation 4 of the said Regulations of 1983, there should not be any direction from this Court to register an ineligible candidate. In support of his contention, he relied upon the decisions reported at **(2008) 17 SCC 611 (Mahatma Gandhi University v. GIS Jose)**, **(2011) 6 SCC 145 (Abhyudya Sanstha v. Union of India)** and **(2018) 12 SCC 564 (Medical Council of India v. G.C.R.G. Memorial Trust)**.

6. I am of the view that the petitioner was not an ineligible candidate for registration under the Council. The petitioner had English as one of her compulsory subjects. She had Chemistry, Mathematics and Physics as compulsory elective papers, with Biological Science as her optional elective paper. There is no dispute that the petitioner failed in Physics. The petitioner, however, was declared to have passed the Higher Secondary examination giving the benefit of interchanging Biology and Physics as her compulsory elective subject and optional elective subject respectively, in terms of Regulation 9 of the West Bengal Council of Higher Secondary Education (Examination) Regulations, 2006. The said Regulation 9 is quoted below:

“9. Option of changing compulsory elective subject as compulsory optional subject etc.

(1) If a candidate fails to obtain minimum pass marks in any compulsory subject excepting Environmental Education for the reasons of deficiency of less than five *per centum* of full marks, he shall, to make up the deficiency in the compulsory subject, be given credit by transfer of marks from the highest marks obtained by him in a compulsory subject excepting Environmental Education.

(2) Notwithstanding anything contained in regulations 6, 7 and 8, a regular candidate or continuing candidate or special candidate who cannot be declared passed in the examination by reason of his -

(a) not appearing in the examination of a compulsory elective subject, or

(b) failure in obtaining the minimum pass marks in a compulsory elective subject, but has obtained the minimum pass marks in the optional elective subject, shall be declared passed by giving him the benefit of interchanging the compulsory elective subject as the optional elective subject and *vice versa* :

Provided that if a candidate does not, for any reason, intend to take the benefit of interchanging the subjects, he shall, through his institution, intimate his intention as such, and surrender his mark-sheet for necessary correction therein, to the Council within thirty days from the date of publication of results.”

7. It is true that a Division Bench of this Court, in **F.M.A. No.725 of 2005 (*Prabir Kumar Moitra & Anr. V. Smt. Maitraiee Roop*)**, upon consideration of Regulation 4 of the said Regulations of 1983 held such a candidate to be ineligible for registration under the said Council.

8. The said judgment has been followed in **MAT 920 of 2011 (*Nazir Hossain v. State of West Bengal & Ors.*)**, **MAT 162 of 2012 (*Subhrajit Biswas v. The State of West Bengal & Ors.*)** and **(2014) 3 CLJ (Cal) 297 (*Sneha Saha v. The State of West Bengal*)**.

9. The relevant part of the judgment passed in ***Subhrajit Biswas*** case is quoted below:

“Regulation 4 of the 1983 Regulation provides for the minimum qualifications

needed by a candidate for admission to the DHMS (Diploma) Course and is mandatory in nature by the very words used therein. Regulation 4 is set-out below: -

“4. Minimum qualifications: No candidate shall be admitted to D.H.M.S. (Diploma) Course unless he has,

- (a) Passed in the Intermediate Science or its equivalent examination with Physics, Chemistry and Biology as his subjects;

Therefore no candidate who has passed the Intermediate Science examination or its equivalent without Physics, Chemistry and Biology as his subjects is eligible for entrance to the said course. In fact, by failing in any one subject the combination is not available and requirement of Regulation 4(a) of the 1983 Regulation not satisfied. On failure the subject gets eclipsed as the marks of such subject is not even counted and to say that the combination exists even on failure will be a fraud on the Regulation and contrary to the legislative intent.

The appellant passed the H.S. Examination with English, Vernacular, Biology, Chemistry and Mathematics as compulsory subjects and Physics as the optional elective subject.

In reaching the total marks, the marks obtained in the compulsory subject by appellant was added. The marks obtained in Physics was excluded and the treatment of “with” as “in” in Rooj’s case cannot be faulted.”

10. It is important to note that all the aforesaid judgments were passed on the unamended Regulation 4 of the said Regulations of 1983.

11. The said provision has undergone substantial changes through amendments. The Regulation 4, before the amendment, stood as follows:

“4. Minimum qualifications: No candidate shall be admitted to D.H.M.S. (Diploma) Course unless he has,

(a) Passed in the Intermediate Science or its equivalent examination with Physics, Chemistry and Biology as his subjects;”

12. There is no doubt that the petitioner completed her Higher Secondary Examination in the year 2016 and the B.H.M.S Degree Course in the year 2022. Therefore, she is governed by the amended Regulation 4 of the said Regulations of 1983. The Regulation 4 as amended upto March, 2016, is quoted below:

“4. Eligibility criteria.- (i) No candidate shall be admitted to B.H.M.S Degree Course unless he has passed–

(a) the higher secondary examination or the Indian School Certificate Examination which is equivalent to 10+2 Higher Secondary Examination after a period of twelve years’ study, the last two years of study comprising of Physics, Chemistry, Biology with Mathematics or any other elective subjects with English at a level not less than core course of English as prescribed by the National Council of Educational Research and Training after the introduction of the 10+2+3 years educational structure as recommended by the National Committee on Education;

or

(b) the intermediate examination in science of an Indian University or Board or other recognised examining body with Physics, Chemistry and Biology which shall include a practical test in these subjects and also English as a compulsory subject;

or

(c) the pre-professional or pre-medical examination with Physics, Chemistry and Biology, after passing either the higher secondary school examination, or the pre-university or an equivalent Examination, which shall include a practical test in Physics, Chemistry and Biology and also English as a compulsory subject;

or

(d) the first year of the three years' degree course of a recognised University, with Physics, Chemistry and Biology including a practical test in these subjects provided examination is a University Examination and candidate has passed 10+2 with English at a level not less than a core course;

or

(e) any other examination which, in scope and standard is found to be equivalent to the intermediate science examination of an Indian University or Board, taking Physics, Chemistry and Biology including practical test in each of these subjects and English as a compulsory subject;

(ii) No candidate shall be admitted to B.H.M.S Degree Course unless he has attained the age of 17 years' on or before 31st December of the year of his admission to the first year of the course.

(iii) No candidate shall be admitted to B.H.M.S Degree Course if he is blind (including colour blindness), deaf, dumb, deaf and dumb.”

[Emphasis is supplied]

13. While in terms of the unamended Regulation 4, a candidate had to “pass” the intermediate examination in science or its equivalent examination with Physics, Chemistry and Biology as his subjects, the legislature, in the amended provision, has consciously introduced the words “the last two years of study comprising of Physics, Chemistry, Biology with Mathematics. ...”

14. It is settled rule of interpretation of statutes that if the language and words used are plain and unambiguous, full effect must be given to them as they stand and in the garb of finding out the intention of the legislature no words should be added thereto or subtracted therefrom.

15. I am of the view to be eligible for admission to B.H.M.S Degree Course, as per the amended Regulation 4, a candidate needs to, *inter alia*, meet the following conditions:

- a) He has passed the Higher Secondary Examination or its equivalent examination after a minimum period of twelve years study.
- b) His last two years of study must have included Physics, Chemistry, Biology with Mathematics or any other elective subjects as well as English.

16. It is not necessary to pass all subjects namely, Physics, Chemistry, Biology or Mathematics separately. If a candidate has the combination of the aforesaid subjects and is declared to have passed by the Higher Secondary Council or any other competent authority, he becomes eligible to be admitted to B.H.M.S Degree Course under the amended Regulations.

17. Therefore, I am of the view that the petitioner was an eligible candidate for admission in the B.H.M.S degree course in terms of the amended Regulation 4 of the said Regulations of 1983.

18. The judgments reported at **(2008) 17 SCC 611 (*Mahatma Gandhi University v. GIS Jose*)**, **(2011) 6 SCC 145 (*Abhyudya Sanstha v. Union of India*)** and **(2018) 12 SCC 564 (*Medical Council of India v. G.C.R.G. Memorial Trust*)** have got no manner of application in this present case since they deal with the admission of ineligible students. It is reiterated that the judgment reported at **(2014) 3 CLJ (Cal) 297 (*Sneha Saha v. The State of West Bengal*)** and the judgments delivered in **F.M.A. No.725 of 2005 (*Prabir Kumar Moitra & Anr. V. Smt. Maitraiee Rooj*)**, **MAT 920 of 2011 (*Nazir Hossain v. State of West Bengal & Ors.*)** and **MAT 162 of 2012 (*Subhrajit Biswas v. The State of West Bengal & Ors.*)** do not apply to the petitioner since those judgments were passed on the unamended Regulation 4 of the said Regulations of 1983.

19. In the above facts and circumstances, the communication dated August 31, 2022, issued by respondent no. 2 is set aside and this writ

petition is allowed with a direction upon respondent no.2 to register the name of the petitioner under the Council of Homoeopathic Medicine, West Bengal, within a period of two weeks from date of communication of this order.

20. Accordingly, W.P.A. No.22615 of 2022 is allowed.

21. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

(Kausik Chanda, J.)