

27 25.9.2023

Ct-08

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MAT 2053 of 2022

with

I.A No. CAN 1 of 2022

Council of Homeopathic Medicine & Anr.

Vs.

Ajit Chandra Saha & Ors.

Mr. Debraj Bhattacharyya

Mr. Subhrojyoti Bhowmick

... For the Appellant

Ms. Nandi Mitra

... For the Respondent no.1

Mr. Debapriya Gupta

... For the Respondent nos. 2

1. We have heard the learned counsel appearing for the parties.

2. The writ petitioner successfully completed his B.H.M.S degree from West Bengal University of Health Sciences in the year 2017. Thereafter he made an application for registration as a Homeopathy Doctor under the appellant, the Council of Homeopathic Medicine, West Bengal, (in short, "said council"). The said Council has declined to grant registration to the petitioner by a communication dated 2nd September, 2019. This was challenged in the writ petition.

3. Learned Single Judge in the impugned order set aside the communication dated 2nd September, 2019 by which the petitioner's registration was denied.

4. It is submitted by the appellant that for admission to BHMS Course, one requires to pass Higher Secondary Examination in 10+2 pattern following 12 years of study. Admittedly, the petitioner passed Higher Secondary examination from Tripura Board of Secondary Education in the year 1976 following 11 years of study, as was in West Bengal at the relevant point of time, before the introduction of 10+2 pattern.

5. The petitioner passed the Higher Secondary Examination in 2nd Division with Physics, Chemistry and Biology. Thus he fulfills Clause 4 of Homeopathy (Degree Course) Regulations 1983, which requires a candidate to pass the Intermediate Science or its equivalent examination with Physics, Chemistry and Biology as his subjects. The reason for denial of the registration is de hors the said provision. The Central Council of Homeopathy, in fact, accepted the said degree of the petitioner and directed the present appellant to accept the said degree and allowed registration.

6. Learned counsel for the appellant has submitted that a candidate who passed Higher Secondary Examination following 11 years of study was required to undergo a one-year pre-medical course to get admission to BHMS degree course. If

the candidate concludes one-year pre-medical course, then only his degree can be considered under Clause 4 of Homeopathy (Degree Course) Regulations 1983. We are of the view that the said submission is not acceptable in view of Clause 4(b) of the said Regulation, which requires a candidate to pass the Intermediate Science or its equivalent examination with Physics, Chemistry and Biology as his subjects. The petitioner passed Higher Secondary Examination from Tripura Board of Secondary Education in the year 1976 following 11 years of study. At the relevant point of time, there was no 10+2 pattern for Higher Secondary examination. It was introduced later on. All the candidates who passed the Higher Secondary examination in the year 1976 were treated to be as an eligible candidate for admission in the said course.

7. We feel that it was a clear misconstruction and misunderstanding of the said provision. Moreover, we find that the National Commission for Homeopathy formerly known as Central Council of Homeopathy had advised the present appellant to accept the said degree as it was found to be relevant and any applicant having such qualification would be considered eligible by the

said authority as they would accept the said degree as equivalent under similar circumstance. Although it is urged that the said National Commissioner of Homeopathy has no jurisdiction to decide on the eligibility of a candidate for registration the fact remains that the appellant sought the view of National Commission for Homeopathy and they have clearly stated before the learned Single Judge that the writ petitioner is eligible for registration under the appellant. In any event, in view of our acceptance of interpretation of Clause 4 in the judgment under appeal we record the inability to accept the submission of the appellant.

7. The appeal fails.

8. In view of the aforesaid the appeal being MAT 2053 of 2022 stands dismissed.

9. In view of dismissal of the appeal nothing remains to be decided in the application for Stay being CAN 1 of 2022 and the same is accordingly dismissed.

10. However, there shall be no order as to costs.

11. In the event, the order of the learned Single Judge is complied with within four weeks from date, the cost may not be paid.

12. Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Uday Kumar, J.)

(Soumen Sen, J.)