

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision : May 15,2023*

+ **W.P.(C) 14250/2021**

PREETI KATE & ANR.

..... Petitioners

Through: Mr. Sanjay Kumar Visen, Advocate.

versus

GOVT OF NCT OF DELHI & ORS.

..... Respondents

Through: Mrs. Avnish Ahlawat, SC with
Ms.Tania Ahlawat, Mr. Nitesh Kumar
Singh, Ms. Palak Rohmetra,
Ms.Laavanya Kaushik and Ms. Aliza
Alam, Advocates.

Mr. Kunal Vajani, Mr. Kunal Mimani,
Mr. Shubhang Tandon and
Mr.Sandeep Rai, Advocates for R-4.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

V. KAMESWAR RAO (Oral)

1. The challenge in this petition is to an order dated July 08, 2023, passed by Central Administrative Tribunal ('Tribunal', in short) in C.P. No.17/2021 in O.A. no. 549/2013, whereby the Tribunal closed the Contempt Petition by holding in paragraph Nos. 6 & 7 as under:

"6. This case presents some peculiar features. applicant relied upon the outcome of OA No.165/2013 decided by this Tribunal which, in turn, was the subject matter of writ petition at that time. In that OA, the Tribunal observed that the training which the applicant therein has undergone, can be treated as holding good for the post. It was almost an

interpretative the process. Before the Hon'ble High Court, it was strongly urged that the Tribunal cannot stipulate new qualification altogether. Though that argument weighed with the Hon'ble High Court, no interference was made with the order in the OA mostly on the grounds that the respondent therein was a physically handicapped person. What is more important is that the Hon'ble High Court made it clear that the order in the OA shall not form a precedent for any other case. In this scenario, we cannot hold that the respondents have committed any contempt of court.

7. Accordingly, the contempt case is closed. There shall be no order as to costs.”

2. The petitioners had earlier approached the Tribunal in O.A. No. 549/2013 and the same was disposed of by the Tribunal on October 16, 2018, wherein the following has been stated:

“This OA is filed with a prayer to set aside the order dated 28.08.2012 and direct the respondents to appoint the applicants herein to the post of Ayurvedic Compounder with all consequential benefits.

2. We hear Shri M.K. Bhardwaj, learned counsel for the applicant and Shri Gyanendra Singh, Shri Predeep Singh Tomar for Ms. Sangita Rai and Ms. Anita Pandey, learned counsel for the respondents.

3. The issue pertaining to the eligibility criteria of appointment to the post of Ayurvedic Compounder was dealt with in detail by this Tribunal in OA No.165/2013. The respondents filed Writ Petition(C) No.3766/2017 and that the same is pending before the Delhi High Court.

4. We, therefore, dispose of the O.A directing that depending upon the outcome of the Writ Petition(C) No.3766/2017, the respondents shall pass appropriate orders as regards the applicants herein.

5. MA, if any, shall stand disposed of. There shall be no order as to costs.”

3. The issue primarily is whether the petitioner meets the eligibility criteria for appointment to the post of Ayurvedic Compounder. The Tribunal was of the view that the said issue which was decided by the Tribunal in O.A. No.165/2013 filed by Dr. Pradeep Kumar Goswami, which order became the subject matter of W.P.(C) 3766/2017, was not interfered with and this Court has stated that the judgment shall not form a precedent. Suffice to state this Court while deciding the said writ petition has stated as under:

“xxxxxxxxxx

The same was also assailed by the respondent before the Tribunal in O.A. in question. The Tribunal found that the respondent has obtained Bachelor of Ayurvedic Medicine and Surgery qualification from the University of Delhi in the year 1995. The same is of five and a half year regular degree programme, which also entails practical training for two years which was undergone by the respondent in the years 1993-94 to 1994-95. The respondent is a physically challenged candidate and considering the fact that he was a qualified Ayurvedic Doctor holding a Bachelor of Degree in Ayurvedic Medicine and Surgery, the Tribunal held that he could not be said to be less qualified for the post of Ayurvedic Compounder. The practical training undergone by the respondent for two years while taking Bachelor of degree course in Ayurvedic Medicine and Surgery was treated to be sufficient experience in terms of the advertisement. Though, counsel for the petitioner sought to urge that the tribunal has not appreciated the fact that the respondent does not have one of the enlisted qualifications, and that the experience earned in practical training cannot be a substitute for two years experience as an Ayurvedic Compounder, we are not inclined to go into the said issues in the special facts and circumstances of this case taking note of hereinabove. In exercise of our jurisdiction under Article 226 of the Constitution of India, while undertaking

judicial review, we are not obliged to interfere with each and every order of the tribunal, which may have been passed, if we are satisfied that the same meets the ends of justice. We, therefore, decline to interfere with the impugned order passed by the tribunal, while making it clear that the same shall not form a precedent for any other case. The petition stands dismissed in above terms.”

4. The learned counsel for the petitioner submits, in view of the law laid down by the Supreme Court in the case of ***State of Karnataka vs. V. Lalitha, (2006) 2 SCC 747***, similarly placed persons need to be granted the benefit, which has been granted in a litigation initiated by other similarly placed persons, is concerned, the same shall not be applicable to the facts of this case as we have been informed by Mrs. Avnish Ahlawat that order dated February 26, 2019 passed by this Court in the above writ petition, was challenged by the Corporation before the Supreme Court and the Supreme Court has dismissed the SLP by observing that question of law is left open. So in that sense the benefit of judgment as being sought by the petitioners cannot be granted in favour of the petitioners.

5. Even on merits, it is the submission of learned counsel for the petitioners that petitioner No. 1 fulfills the eligibility of two years by drawing our attention to an experience certificate issued by Shatayushi Super Specialty Ayurvedic Clinic, Akola, Maharashtra. In other words, he states petitioner No. 1 had worked as an Assistant Compounder in the said Ayurvedic Clinic between the period of January 12, 2001 to February 15, 2004 as such he has the experience of two years and his case should have been considered.

6. The said submission is opposed by Mrs. Avnish Ahlawat by drawing

our attention to the counter affidavit filed by the Corporation, more specifically paragraph No. 7, wherein the following has been stated:

“7. That main respondents in the present case is SDMC which is the user department in the case and the answering respondent is only a Performa party. It is pertinent to mention here that this Hon'ble Court while disposing the writ petition of Pradeep Kumar Goswami categorically held that order shall not form a precedent for any other case. The result of Pradeep Kumar Goswami was declared on the request of the user department i.e. SDMC and no request for declaration of result or, furnishing dossiers has been made to DSSSB by SDMC in the present case. In fact, SDMC has rejected the representations of the petitioners vide order dated 28.06.2021.”

7. We have considered the stand taken by the respondents along with the eligibility sought for in the advertisement. Advertisement clearly stipulates that two years' experience should be as an Ayurvedic Compounder in a recognized Ayurvedic Dispensary, Hospital or Pharmacy.

8. It is conceded by learned counsel for the petitioners that the experience of the petitioner No. 1 was not from a recognized Ayurvedic Dispensary, Hospital or Pharmacy. In so far as petitioner No. 2 is concerned, no submission has been made by the counsel that she also fulfils the eligibility.

9. We do not find any merit in the petition and the same is dismissed.

V. KAMESWAR RAO, J.

ANOOP KUMAR MENDIRATTA, J.

MAY 15, 2023/R