

07.11.2024
(D/L-25)
Ct. No.4
(Naba)

W.P.S.T. 46 of 2024

Dr. Prasanta Kumar Ghorai
Vs.
The State of West Bengal & Ors.

Mr. Krishnendu Bera
... for the Petitioner.

Ms. Sonal Sinha,
Ms. Ashmita Chakraborty
... for the Respondents.

- 1. Affidavit-in-opposition and affidavit-in-reply filed by the parties, are taken on record.
- 2. Heard the learned Counsel for the petitioner as well as learned Counsel representing the respondents.
- 3. The petitioner’s claim for award of 5 marks for “other experiences” in the process of recruitment to the post of Homoeopathic Medical Officers has been found to be unsustainable by the West Bengal Administrative Tribunal, which order of the Tribunal is the subject matter of the present proceedings.
- 4. The petitioner participated in the process of the direct recruitment to the post of Homoeopathic Medical Officer in terms of an advertisement dated 20.12.2019. As per the advertisement the tentative marks distribution for the recruitment was as follows:

SL. No.	QUALIFICATION	MAXIMUM MARKS	REMARKS	
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1	Bachelor of Homoeopathic Medicine and Surgery (B.H.M.S.) from a recognized University or Institute.	75 (Max)	Marks obtained in Aggregate, (1 st BHMS to 4 th BHMS all together) [(0.5) mark will be deducted for supplementary in each subject or chance lost]	For e.g.-A student obtained 64% in aggregate, with supplementary in two subjects, the Scoring will be 65-(0.5*2)=65.1+64
			TOTAL: 50.00%-55.99%=60	
			TOTAL: 56.00%-65.99%=65	
			TOTAL: 66.00%-75.99%=70	
			TOTAL: 76.00%-99.99%=75	
2	House staff ship	5(Max)	For 6 months – 2.5 marks For 1 year – 5.0 marks	
3	Other experiences in Homoeopathy from any Government Institution or Government affiliated organization	5(Max)	1 mark for each completed year, Maximum 5 marks	Other experience should include Clinical, Teaching, Research and other experiences in Homoeopathy from any Government Institute or Government affiliated Organization excluding M.O. AYUSH under RBSK
4	INTERVIEW	15(Max)		
	TOTAL	100		

5. The petitioner has been granted 64 marks for his academics since it is his case that he had secured 58% in the aggregate. Insofar as House Staff Ship is concerned he has been granted full 5 marks. He claims to have conducted his house staff ship at Metropolitan Homoeopathic Medical College & Hospital. In the interview, he has been awarded 13 marks. The sum total of the marks acquired by the petitioner in the recruitment process was thus assessed at 82 out of 100. He failed to secure a place in the select list and being aggrieved by his exclusion in the recruitment, he approached the

Tribunal. Before the Tribunal, the petitioner's case was that the last selected candidate had secured 82.5 marks. The petitioner was claiming 5 marks under the heading "Other Experience" by virtue of the work he performed in the Metropolitan Homoeopathic Medical College & Hospital. If the 5 marks for his work, performed at the said Hospital were awarded to him, he would have surely gone above the cut off marks acquired by the last selected candidate i.e. 82.5 marks.

6. Denial of the 5 marks on "Other Experience", according to the learned Counsel for the petitioner is unjust and unsustainable. The submissions in this regard are that once the house staff ship conducted in the college has been recognised for the purposes of award of marks, the authorities could not have denied the 'other experience' acquired in the same college. Another submission which he has advanced is that two other doctors who are also working in the said college have been selected in the same recruitment process. In this regard, he has placed reliance on averments made in the O.A. to this regard in paragraph (xiv) and (xvii) which reads as follows:

"(xiv) The applicant states further that his two colleagues namely Dr. Prithu Nandan Roy and Dr. Atanu Majumder who are similarly working in the said Metropolitan Homoeopathic Medical

College & Hospital in the similar post of Residential Medical Officer also applied in the said Advertisement dated 20.12.2019 and has been selected for appointment to the post of Homoeopathic Medical Officer which is evident from the list of panel of recommended candidates as Sl. No. 6 and 14 by the W.B. Health Recruitment Board and Sl. No. 6 and 13 of the Medical Examination list.

.....(xvii) The applicant states that the decision of the respondent authorities is arbitrary, malafide and has no basis in the eye of law as the applicant on the face of the record is entitled to get 5 marks in House Staff Ship and 5 marks for other Experience and therefore the technical expert cannot simply state that the marks allotted to the applicant is correct after rechecking. It is respectfully stated that the respondent authorities treated the applicant unequally among the equals by violating Article 14 of the Constitution of India by not awarding 5 marks for House Staff Ship and 5 marks for other experience, when it is matter of record that the similarly placed other candidates got the said 5 marks. Therefore the respondent authorities forced the applicant from not getting employment only for 0.5 marks and if the said marks have been given in favour of the applicant in that event the total score would have been 87, when the applicant could easily been selected for appointment to the post of Homoeopathic Medical Officer.”

7. He submits that since the other two doctors who had acquired their ‘other experience’ in the same college have been selected, rejection of the petitioner’s candidature is an act of discrimination, in violation of Article 14 of the Constitution of

India. The learned Counsel has further submitted that the college from where he has acquired the 'other experience' is affiliated to the West Bengal University of Health Sciences as is evident from the letter issued by the West Bengal University of Health Sciences dated 27.12.2021, wherein the affiliation of the said college with the West Bengal University of Health Sciences has been renewed for the academic session, 2022 to 2023. According to him the above circumstances leaves no room for exclusion of the 'other experience' acquired in the said college, to the detriment of petitioner's candidature in the process of selection.

8. The learned Counsel for the State on the other hand has drawn attention of this Court towards the affidavit-in-opposition filed by the respondents. It is their unequivocal stand that the college from which the petitioner claims to have acquired 'other experience' is not affiliated by the Government of West Bengal. Its affiliation with the West Bengal University of Health Sciences or with the Council of Homoeopathic Medicine West Bengal does not make the college a Government college or a college affiliated to the Government. The college continues to be a private college but having affiliation with the University of Health Sciences for the purposes of carrying out academic courses. She has also drawn

our attention to the tentative marks distribution which we have quoted above to submit that under unambiguous terms it states at serial 3 that 'other experience' is to be counted only if it is from "any Government Institution or Government affiliated organization". The college in question from where the petitioner claims to have acquired 'other experience' is neither Government Institution nor Government affiliated organization. Affiliation by the University of Health Sciences for the purposes of imparting education does not make it a Government affiliated organisation.

9. We have taken note of the rival submissions submitted by the parties and gone through the advertisement and the requirement, which we have taken note of above. We have no hesitation in concluding that 'other experience' in terms of the advertisement (relevant extract quoted above) contemplated experience only from a Government Institution or Government affiliated organisation. We are also in agreement with the submission of the learned Counsel for the State that affiliation with the Council or the West Bengal University of Health Sciences for the purposes of imparting education and ensuring academic standards does not make a college, a Government college or a Government affiliated college (organisation).

10. The issue has further been clarified by the learned Counsel for the State by referring to the list annexed with the reply by the petitioner containing the name of 13 affiliated homoeopathic colleges. She has pointed out that the colleges which are Government college, either owned by the Government of West Bengal or by the Government of India have clearly been indicated as such in the list. As against the college from where the petitioner has acquired the experience, there is no such indication. Therefore we find no force in the contention on behalf of the petitioner that the college where the petitioner claims to have acquired “other experience” can be said to be a Government affiliated organisation, or a Government Institution, merely because it is affiliated to the West Bengal University of Health Sciences. Such affiliations by university are only to ensure that even private colleges imparting education and granting degrees/diplomas maintain a requisite standard in terms of infrastructure, faculty, syllabus, human recourse etc. Such affiliation with university does not necessarily make an affiliate a Government Institution or a Government affiliated organisation. The petitioner’s Counsel has not been able to show that the Metropolitan Homoeopathic Medical College and Hospital is a “Government Institution”

or a “Government affiliated organisation”. The petitioner, therefore, is not entitled to any marks under the heading “other experiences”. Such experience is not from any Government Institution or Government affiliated organisation.

11. Insofar as the submission of the learned Counsel for the petitioner regarding the two other doctors with whom he claims parity, we proceeded to examine the same with reference to the averments made by the petitioner in the application filed before the Tribunal. In paragraph (xiv) the only statement made by the petitioner, is that two other doctors have been selected. It does not say that these two doctors have been awarded marks under the heading ‘other experience’, though the experience has been acquired from the same college as the petitioner. The petitioner has only stated that the said two doctors have been selected. Whether such selection is by virtue of higher marks granted to them under the heading academics; or for other experiences is not clear from the averments. There is no assertion by the petitioner that these two doctors have been given marks under the heading “other experiences” for work rendered in the Metropolitan Homoeopathic Medical College and Hospital, where the petitioners have allegedly worked, for which they are claiming

marks under the heading “other experiences”. Such statement is conspicuously absent even in the other paragraphs referred to by the petitioner, namely, paragraph (xvii). In this subsequent paragraph a vague reference has been made to “other candidates” who got the said 5 marks. The petitioner has not stated the identity of the “other candidates”, or how many “other candidates” have got the “said marks”. Whether the expression said marks in paragraph (xvii) quoted above has been used with reference to marks for “other experiences” or house staff ship has also not specifically been asserted by the petitioner. Such statements do not suffice to lay the foundation for claim of any kind of parity, with anyone. There is no statement that the other two candidates who have been named by the petitioner, were awarded marks under the heading ‘other experience’ having obtained work experience from the same college as the petitioner.

12. Another aspect of the matter worth mentioning is that the said two persons who have been selected have not been made a party to the proceedings either before the Tribunal or before this Court.
13. Keeping in view totality of the above noted facts circumstances and submissions, we find no force in the submissions advanced by the learned

Counsel for the petitioner that he is entitled to award of any marks for “other experiences”, having allegedly acquired experience in Metropolitan Homoeopathic Medical College and Hospital which is neither a Government Institution; nor a Government affiliated organisation.

14. We find no reason to interfere with the impugned order and judgement dated 22.02.2024 passed by the West Bengal Administrative Tribunal in the petitioner’s application number O.A. 643 of 2022.

15. The Writ Petition stands dismissed.

12. There shall be no order as to costs.

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

(Madhuresh Prasad, J.)

(Supratim Bhattacharya, J.)