

AD-13
Ct No.09
30.01.2024
TN

WPA No. 29174 of 2023

Nazir Hossain and another
Vs.
The Government of West Bengal and others

Mr. Robiul Islam,
Mr. Raju Mondal,
Mr. Masooq Rahman

.... for the petitioners

Mr. Sk. Md. Galib,
Mr. Abu Siddique Mallik

.... for the State

Mr. Debraj Bhattacharyya,
Mr. Subhrojyoti Bhowmick

.... for the respondent
nos.3 & 4

- 1.** The petitioners have sought a Rule of mandamus directing the respondent-authorities to grant registration of Homeopathy Doctor in favour of the petitioners.
- 2.** The bone of contention is whether the petitioners are entitled to be registered as Homeopathy practitioners. It is contended that initially the petitioners were not awarded their mark-sheets. Subsequently, upon intervention of the court, the mark-sheets were handed over while the petitioners did not get their medical certificates and registration certificates to participate in the internship course.

- 3.** Thereafter upon the petitioners having moved court, the matter went up to the Division Bench where such prayer was refused.
- 4.** Yet, subsequently, the petitioners were permitted to participate in the internship course by the college which they have now completed and seek registration to practise as Homeopathy Doctors. It is argued that in view of completion of the course of internship, the petitioners are entitled to registration and such registration cannot be refused.
- 5.** Learned counsel appearing for respondent nos.3 and 4 vociferously opposes the prayer. It is reiterated that the petitioners have suppressed previous orders of court. It is argued that the petitioners completed internship as per certificates issued by their college although the respondent no. 3, that is, the Council of Homeopathic Medicine had not issued any such certificate.
- 6.** It is further clarified by learned counsel for the respondent no.3 that a provisional certificate is required to be issued for the candidate to continue with the internship course. However, no such provisional certificate was issued by the Council.

7. Thereafter, the petitioners preferred a challenge before this court and sought to assail the non-issuance of medical certificates and registration certificates to the petitioners. The matter went up to Division Bench in appeal. The Division Bench vide order dated November 21, 2011 passed in MAT 920 of 2011, turned down the petitioner's prayers.
8. As such, the petitioners are not only guilty of suppression of such facts in the writ petition, the petitioners are, it is argued, debarred by *res judicata* from raising the same issue all over again.
9. Learned counsel for the petitioners reiterates that the previous challenge was at the stage where the petitioner was unable to pursue internship training. As mentioned in the last three lines of page-2 of the certified copy of the order dated November 21, 2011 of the Division Bench, the Council had refused to issue medical certificate and registration certificate, so as to enable the writ petitioner to pursue internship training as per the Rules and Regulation of 1983. It is contended that thereafter the petitioners duly concluded the internship training and as such are now entitled to get registration for practising Homeopathy.

- 10.** Heard learned counsel for the parties.
- 11.** A careful scrutiny of the order of the Division Bench dated November 21, 2011 shows that, as rightly argued by the respondent no.3, the issues sought to be raised now have been conclusively determined by the Division Bench. The premise on which the Division Bench refused the petitioner's prayer then was that the petitioner was unsuccessful in Chemistry, for which he was not entitled to participate in the internship course at all.
- 12.** Let alone internship, the petitioner was not eligible to pursue the DHMS course at all.
- 13.** Certain portions of the Division Bench order are illustrative in that regard.
- 14.** The Division Bench, in its order, had *inter alia* observed that Regulation 4(a) of the 1983 Regulations mandate that a candidate should be successful in passing examination, which may be intermediate or an equivalent examination, with Physics, Chemistry and Biology as subjects.
- 15.** In the instant case, it was observed, it was not in dispute that Chemistry was one of the compulsory Elective subjects, which was interchanged with Mathematics and the marks secured in Chemistry was less than the pass marks. In view of the aforesaid, the Division

Bench proceeded to observe that having regard to the fact that the petitioner was ineligible and permitting him in the name of equity to obtain certificate would be contrary to the provision of law and the judgment of the previous Division Bench. It was further expressed by the Division Bench in the order dated November 21, 2011 that in spite of all sympathies that the writ petitioner may deserve by reason of initial admission, the Division Bench was unable to entertain the petitioner's plea. Even the recent trend of decisions with regard to irregular admission in schools and colleges having no affiliation, it was observed, would show that no equity was extended in spite of the fact that the candidates may be innocent.

- 16.** Thus, in the present case, the ineligibility of the petitioners as candidates for DHMS course for Homeopathy has been conclusively determined by the Division Bench.
- 17.** In the teeth of the said order, the petitioners were not ineligible even to pursue the DHMS course. As such, there is no scope or opportunity to direct the respondents to issue registration in favour of the petitioners to practise as Homeopathy Doctors under the said course.

- 18.** In such view of the matter, the petitioners are debarred by the principle of *res judicata* from re-agitating the issue which has already been decided finally by the Division Bench, that is, the petitioners' ineligibility to pursue the DHMS course itself.
- 19.** In view of the above observations, there is no merit in the present writ petition.
- 20.** Accordingly, WPA No. 29174 of 2023 is dismissed without any order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)