



2025:DHC:1645-DB



\$~110 & 111

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

+ W.P.(C) 780/2020, CM APPLs. 2380/2020 & 39616/2021

S FARHAN HUSAIN

.....Petitioner

Through: Mr. Wajahat Ansari, Advocate

versus

DR. SHAMIM & ORS

.....Respondents

Through: Mr. R.V. Sinha and Mr. A.S. Singh, Advocates for R2

Mrs. Avnish Ahlawat, SC with Mr. Nitesh Kumar Singh, Ms. Laavanya Kaushik, Ms. Aliza Alam and Mr. Mohnish Sehrawat, Advs. for GNCTD

+ W.P.(C) 1689/2020 & CM APPL. 5850/2020

UNION PUBLIC SERVICE COMMISSION

.....Petitioner

Through: Mr. R.V. Sinha and Mr. A.S. Singh, Advocates

versus

DR. SHAMIM AND ORS.

.....Respondents

Through: Mrs. Avnish Ahlawat, SC with Mr. Nitesh Kumar Singh, Ms. Laavanya Kaushik, Ms. Aliza Alam and Mr. Mohnish Sehrawat, Advs. for R3 & 4/ GNCTD

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE AJAY DIGPAUL

JUDGMENT (ORAL)

13.02.2025

%



2025:DHC:1645-DB



C. HARI SHANKAR, J.

1. *Vide* Advertisement 10/2018, the Union Public Service Commission¹ invited applications from candidates who aspired to the post of Assistant Professor (Unani), A & U Tibbia College & Hospital², a hospital under the Department of Health and Family Welfare, Govt. of NCT of Delhi. Two posts of Assistant Professors were unreserved. The advertisement stipulated the following essential qualifications for appointment to the posts:

“QUALIFICATIONS: ESSENTIAL: (A) EDUCATIONAL:

(i) Degree in Unani Medicine from a University established by Law or a Statutory Board/Faculty/Examining Body of Indian Medicine or equivalent as recognised under Indian Medicine Central Council Act, 1970. (ii) A Post Graduate Degree in the subject/speciality concerned included in the Schedule to the Indian Medicine Central Council Act, 1970³.”

2. Applications were to be submitted on or before 14 June 2018.

3. Among the applicants were Syed Farhan Hussain⁴, the petitioner in WP (C) 780/2020 and Dr. Shamim⁵, Respondent 1 in the said writ petition. They, among others, were shortlisted for interview. 22 persons were called for interview, which was conducted by the UPSC on 14 and 15 March 2019.

4. Two candidates were selected, and three candidates were placed

¹ “UPSC” hereinafter

² “AUTCH” hereinafter

³ “the IMCC Act” hereinafter

⁴ “Farhan” hereinafter

⁵ “Shamim” hereinafter



2025:DHC:1645-DB



in the reserve list for appointment to the post of Assistant Professor. Farhan was the second candidate in the list of selected candidates and Shamim was the third in the reserve list.

5. Shamim represented, to the UPSC, that Farhan, and the first and second candidate in the reserve list, were ineligible for appointment as Assistant Professors. The representation was rejected on 18 January 2019.

6. Aggrieved thereby, Shamim filed OA 1301/2019 before the Central Administrative Tribunal⁶, seeking a direction to the respondents to remove Farhan, and the two reserve list candidates from the list of selected candidates, which would result in Shamim's becoming the second selected candidate. The basis for Shamim's contention that Farhan, and the two reserve list candidates were not qualified, was that they did not possess a post-graduate degree in the subject/speciality from an institute included in the Schedule to the IMCC Act. All these candidates had obtained their post-graduate qualification from the National Institute of Unani Medicine, Bangalore⁷. Shamim's contention was that, on the last date for submission of application forms, which was 14 June 2018, NIUM was not recognised under the IMCC Act. It came to be included in the Schedule to the IMCC Act only by a notification dated 25 July 2018, albeit with retrospective effect from 2008.

7. As such, on 14 June 2018, which was the last date for

⁶ "Tribunal" hereinafter

⁷ "NIUM" hereinafter



2025:DHC:1645-DB



submission of applications and with reference to which date, therefore, the eligibility of candidates to be selected as Assistant Professors was required to be reckoned, NIUM, which was the institute from which Farhan and the two reserve list candidates had obtained their MD (Unani), was not included in the Schedule to the IMCC Act. Even though it came to be included in the said Schedule on 25 July 2018, and even though the inclusion was retrospective with effect from 2008, Shamim contended that the retrospective application of the gazette notification dated 25 July 2018 would not *ipso facto* render the selection of Farhan and of the two reserve list candidates legal as, on the last date for submitting applications, i.e. 14 June 2018, the degree of MD (Unani) obtained from the NIUM was yet not included in the Schedule to the IMCC Act and was not, therefore, recognised.

8. By judgment dated 21 October 2019, the Tribunal has accepted Shamim's contentions and set aside the appointment of Farhan as Assistant Professor.

9. The reasoning of the Tribunal is to be found in the following paras of the impugned judgment:

9. The UPSC vide its advertisement No. 10/2018, invited applications for 02 (UR) posts of Assistant Professor (Unani) Dawasazi/Murakkabat/Ilmus/Saidla, A&U Tibbia College & Hospital, Department of Health and Family Welfare, Govt. of NCT of Delhi, prescribing the following educational qualifications: -

“QUALIFICATIONS ESSENTIAL: (A) EDUCATIONAL:
(i) Degree in Unani Medicine from a University established by Law or a Statutory Board/Faculty/Examining Body of Indian Medicine or equivalent as recognised under Indian Medicine Central Council Act, 1970. (ii) A Post Graduate Degree in the subject/specialty concerned included in the



2025:DHC:1645-DB



Schedule to the Indian Medicine Central Council Act, 1970.”

10. The educational qualification clearly mentions a Post Graduate Degree in the subject/specialty concerned included in the Schedule to the Indian Medicine Central Council Act, 1970. The closing date for submission of the online application was 14.06.2018. It was also indicated in the advertisement that "date for determining the eligibility of all candidates in every aspect shall be prescribed closing date for submission of online recruitment application". The applicant also applied, in response to the advertisement. The UPSC shortlisted 22 candidates for interview on 14th and 15th March, 2019. The result was made available on the website. The UPSC recommended two selected candidates namely (i) Mr. Mohd. Nauman Saleem, who secured 72 marks and (ii) Mr. S. Farhan Husain, who secured 70 marks. The applicant obtained 63 marks and has been kept at Sl. No. 03 of the Reserve List. The applicant contends that on verification of the list of shortlisted candidates for the interview, he came to know that certain candidates have not fulfilled the essential qualification as on the last date of submitting the online form i.e. 14.06.2018. He submitted a representation dated 17.12.2018 addressed to the first Respondent. In the representation, the applicant had mentioned that some candidates are ineligible as they had obtained their degrees from NIUM, Bangalore, which has been notified in the Gazette Notification only on 25.07.2018, i.e, after the last date of submission of application and, therefore, such candidates are ineligible. The respondents rejected the representation of the applicant vide their letter dated 18.01.2019, stating the following: -

“I am directed to refer to your representation dated 18/12/2018 on the above-mentioned subject and to say that the candidate who fulfil the eligibility criteria/shortlisting criteria have been shortlisted to be called for interview.

2. As regards, short listing of candidates from National Institute of Unani Medicine, Rajiv Gandhi University of Health Science, Bangalore, they have been shortlisted based on the Gazette Notification dated 25/07/2018, as per which their PG degree has been included in the schedule to the Indian Medicine Central Council Act, 1970 retrospectively w.e.f. 2011 onwards. The Central Council of Indian Medicine had also sent its recommendation in favour of the said institution on 26/04/2018 to Ministry of Ayush for continuation of MD/MS (Unani) qualification for inclusion in the schedule with effect from 2011 onwards."

11. The Gazette Notification of 25.07.2018, reads as under: -



2025:DHC:1645-DB



**“MINISTRY OF AYURVEDA, YOGA AND
NATUROPATHY, UNANI, SIDDHA AND
HOMEOPATHY
NOTIFICATION**

New Delhi, the 25th July, 2018

S.O.3655(E): - In exercise of the powers conferred by subsection (2) of section 14 of the Indian Medicine Central Council Act, 1970 (48 of 1970), the Central Government, after consulting the Central Council of India Medicine, hereby makes the following further amendments in the Second Schedule to the said Act, namely: -

In the said Second Schedule, in Part II relating to "Unani", under the heading "Karnataka", against serial number 15B, for the entries in Column 4, the following entries shall be substituted, namely: -

1	2	3	4
			"From 2008 onwards, if granted to the students admitted with permission of the Government of India in following college, namely: - National Institute of Unani Medicine. Kottige Palya, Magadi Main Road, Bangalore 560091."

12. It is thus evident that in terms of the notification issued by Ministry of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homoeopathy in exercise of the powers conferred by sub-section (2) of section 14 of the Indian Medicine Central Council Act, 1970 (48 of 1970), the Central Government, after consulting the Central Council of Indian Medicine, has made amendment to the Second Schedule of the said act by including NIUM from 2008 onwards. It is thus undisputed that by 14.06.2018, the last date of submission of the applications, the notification for including this Institute had not been issued.

13. The respondents stated that they had recommended 02 candidates as finally selected and the user department has issued offer of appointment to Respondent No. 05 for the post of Assistant Professor (Unani). However, in view of Tribunal's order dated 27.08.2019, joining process has been deferred until further orders.



2025:DHC:1645-DB



14. The UPSC has relied upon the fact that recognition of medical qualification granted by certain medical institutions in India is done in terms of Section 14 of the Indian Medicine Central Council Act, 1970 and is considered as continuation of the recognition. The provision reads as under: -

“14. Recognition of medical qualifications granted by certain medical institutions in India: -

(1) The medical qualifications granted by any University, Board or other medical institutions in India which are included in the Second Schedule shall be recognized medical qualifications for the purpose of this Act.

(2) Any University, Board or other medical institution in India which grants a medical qualification not included in the Second Schedule may apply to the Central Government to have any such qualification recognized, and the Central Government, after consulting the Central Council, may, by notification in the Official Gazette, amend the Second Schedule so as to include such qualification therein, and any such notification may also direct that an entry shall be made in the last column of the Second Schedule against such medical qualification declaring that it shall be recognized medical qualification only when granted after a specified date.”

15. It is also stated that the NIUM was recognised in 2008 and included in the 2nd Schedule to the Indian Medicine Central Council Act, 1970 w.e.f. 2008 till 2011 and thereafter the Secretary CCIM addressed a letter to Ministry of Ayush regarding continuation of inclusion of MD (Unani) from the year 2011 upto 2020-2021 in the 2nd Schedule to the IMCC, Act, 1970. The Ministry of Ayush included that very course in the 2nd Schedule from 2008 vide their notification 25.07.2018. Issuance of notification through gazette makes it amply clear that such a recognition was not available prior to the last date of submission of application form. First respondent's assertion that the process of recognition has started on 26.04.2018 itself when the CCIM recommend to the Ministry is not tenable since the final notification was issued only on 25.07.2018.

16. The sanctity of recruitment conditions laid down and legality of such provisions like closing date and qualification etc.



2025:DHC:1645-DB



has been adjudicated very often and the law in this regard is fairly settled. In the case of ***Rakesh Kumar Sharma v State (NCT of Delhi) and Others***⁸, the Hon'ble Supreme Court has held as under:

“23. There is no obligation on the court to protect an illegal appointment. The extraordinary power of the court should be used only in an appropriate case to advance the cause of justice and not to defeat the rights of others or create arbitrariness. Usurpation of a post by an ineligible candidate in any circumstance is impermissible. The process of verification and notice of termination in the instant case followed within a very short proximity of the appointment and was not delayed at all so as to even remotely give rise to an expectancy of continuance.

24. The appeal is devoid of any merit and does not present special features warranting any interference by this Court. The appeal is accordingly dismissed.”

It has been made very clear that no benefit can be granted to the candidates who were not eligible as per Recruitment Rules/Advertisement as the same would deprive a large number of similarly placed candidates who may not have applied in the selection process by considering them as ineligible. It was ruled that usurpation of a post by an ineligible candidate, in any circumstance, is impermissible.

17. In the case of ***The state of Tamil Nadu & Ors. v G. Hemalathaa & Anr***⁹, the Hon'ble Supreme Court has held as under: -

“12. After giving a thoughtful consideration, we are afraid that we cannot approve the judgment of the High Court as any order in favour of the candidate who has violated the mandatory Instructions would be laying down bad law. The other submission made by Ms. Mohana that an order can be passed by us under Article 142 of the Constitution which shall not be treated as a precedent also does not appeal to us.”

18. In the case of ***Gujarat Electricity Board v Girdharlal Motilal and Anr***¹⁰, the Hon'ble Supreme Court has held as under: -

⁸ (2013) 11 SCC 58

⁹ (2020) 19 SCC 430

¹⁰ 1969 AIR 267



“6....In advancing these arguments, the learned Attorney-General overlooked the fact that notice required by Section 6(1) is not a notice of an action to be taken or merely a procedural step. It is a mode of exercising the power conferred on the State Electricity Board by the exercise of which the property rights of the licensee can be affected. Section 6 (i) confers power on the State Electricity Board to take away the property of the licensee. Such a power must be exercised strictly in accordance with law. The legislature has prescribed the manner of its exercise. It must exercise in that manner and in no other way....”

19. The ratio of these judgments, therefore, is very clear that once certain conditions have been specified in the advertisement they must be strictly adhered to by the respondents and strictly followed by the candidates. In this case, it was categorically mentioned in the advertisement that Post Graduate degree in the subject/specialty concerned included in the Schedule to the Indian Medicine Central Council Act, 1970 was essential educational qualification. The applicant contends that one of the candidates selected by UPSC did not have such a degree and that the gazette notification regarding that came after the cutoff date, making such candidates ineligible for this selection. Various judgments quoted above clearly establish the sanctity of the conditions prescribed in the advertisement and also to the injustice that many candidates may suffer who abide by the conditions laid down and did not participate in the selection for want of eligibility. It is expected from any recruiting agency and in the instant case, the UPSC, that such verification and checks should be conducted thoroughly so as not to leave any scope of doubt and to provide level playing field to every candidate.”

10. Following the above, the Tribunal held that Farhan as well as the two reserve list candidates were ineligible for selection and appointment as Assistant Professors. His selection was, therefore, set aside.

11. The UPSC has been directed to consider the candidature of Shamim for selection against the vacancy which resulted as a consequence of the setting aside of the appointment of Farhan.



2025:DHC:1645-DB



12. Aggrieved thereby, Farhan and the UPSC have approached this Court by way of individual writ petitions.

13. We heard Mr. Ansari, learned counsel for the petitioner and Mr. Sinha, learned counsel for the UPSC, at length.

14. The Post Graduate qualification of MD (Unani), possessed by Farhan, as also by the two reserve list candidates, was obtained from the NIUM. On the last date for submission of application forms, the qualification did not find place in the Schedule to the IMCC Act. In *Divya v UOI*¹¹, the Supreme Court has held that the relevant date for determining eligibility in the case of selection is the last date for submission of the application in the absence of any other stipulation to be found in the advertisement inviting applications, or elsewhere. Ergo, the eligibility of the candidates for selection as Assistant Professor, following Advertisement 10/2018, had to be reckoned as on 14 June 2018. On that date, there is no dispute that the NIUM was not included in the Schedule to the IMCC Act. Farhan and the two reserve list candidates, were not, therefore, eligible to apply for the post of Assistant Professor.

15. The fact that the NIUM may have later been included in the Schedule to the IMCC Act retrospectively from 2008, by Notification dated 25 July 2018, can make no difference. By then, the date by which Farhan and the two reserve list candidates were required to have been eligible for the post of Assistant Professor, had passed. The

¹¹ (2024) 1 SCC 448



2025:DHC:1645-DB



Notification dated 25 July 2018 might have granted recognition to the MD (Unani) qualification provided by the NIUM recognition with retrospective effect, but it could not turn back time. Expressed otherwise, the Notification dated 25 July 2018, Farhan and the two reserve list candidates did not retrospectively become eligible for the post of Assistant Professor, and alter the *status quo* which existed on 14 June 2018.

16. Mr Sinha earnestly sought to contend that steps towards inclusion of the NIUM in the Schedule to the IMCC Act were in progress, and that, having been informed of the fact, the UPSC deemed it appropriate to consider the candidature of applicants who had obtained their MD (Unani) qualification from the NIUM also for selection to the post of Assistant Professor. We are of the view that this approach, if adopted, was flawed in law. Recognition, or inclusion, in the Schedule to the IMCC Act, is the indispensable *sine qua non* for eligibility to the post of Assistant Professor, as per the Advertisement. *Impending* inclusion is clearly not sufficient. The UPSC could not have considered the case of candidates who possessed qualifications which were not included in the Schedule to the IMCC Act. Else, the Advertisement should have so provided. It did not.

17. We, therefore, find no error in the view expressed by the Tribunal that, inasmuch as NIUM, from which Farhan and two reserve list candidates had obtained their MD (Unani) qualification, was not included in the Schedule to the IMCC Act till the last date for



2025:DHC:1645-DB



receiving applications, the said candidates were not eligible for selection.

18. The result would be that Shamim would become *ipso facto* eligible and would be the second selected candidate.

19. The Tribunal is, therefore, justified in the view it took.

20. The writ petitions are, accordingly, dismissed.

C. HARI SHANKAR, J.

AJAY DIGPAUL, J.

FEBRUARY 13, 2025/ar/yg

Click here to check corrigendum, if any