



2025:DHC:3896-DB



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

Date of decision: 16.05.2025

+ W.P.(C) 5648/2025 & CM APPL. 25712/2025
DELHI SUBORDINATE SERVICES SELECTION BOARD &
ORS.Petitioners

Through: Mr.Gaurav Dhingra and
Mr.Shashank Singh, Adv.

versus

PARVESH GAUTAM & ANR.Respondents
Through: Mr.Yashpal Rangi, Adv. for
R-1

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MS. JUSTICE RENU BHATNAGAR

NAVIN CHAWLA, J. (ORAL)

1. This petition has been filed by the petitioners challenging the Order dated 27.11.2024 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as, 'Tribunal') in OA No.2368/2016 titled ***Parvesh Gautam v. Ministry of Health and Family Welfare through Secretary, Govt. of NCT & Ors.***, allowing the O.A. filed by the respondent no.1 herein with the following directions:

"20. Given the above, offer of appointment should rightly have gone to the applicant instead of respondent no.4. However even R-4 is not at fault since no relevant information has been concealed by her for taking the appointment. Hence this is a fit case where



respondents, who are at fault for not being circumspect and meticulous earlier while processing the case of appointment; and are now morally and legally bound to make amends and ensure that there is no further miscarriage of justice. In our considered opinion ends of justice would be met if respondents are directed to issue an offer of appointment to the applicant, of course after due verification and on completing other formalities. The said appointment will be against any other sanctioned vacant post, in case a vacant post is not available then a supernumerary post be created temporarily to adjust the applicant till a vacancy arises.”

2. To give a brief background of the facts in which the present petition arises, the petitioners herein issued an Advertisement No.01/14 on 21.01.2014, *inter alia*, inviting applications for vacancies in the post of Occupational Therapist/Recreational Therapist under the Post Code 02/14. The posts advertised were 12 in number, out of which 3 were reserved for the Scheduled Caste category.

3. In terms of the Advertisement, the eligibility criteria was laid down as under:

“Essential Qualification: F.Sc./Pre-Medical/Hr. Secondary with Science and Diploma in Occupational Therapy from recognized institution.”

4. The respondents applied for the above post, and in the selection process, the respondent no.2 was declared successful and was offered employment *vide* result declared on 18.05.2015.

5. Aggrieved of the same, the respondent no.1 filed the above O.A. contending therein that the respondent no.2 was not entitled to be considered for employment inasmuch as she did not have a



registration with the Delhi Council of Physiotherapy & Occupational Therapy (hereinafter referred to as, 'Council') on of the cut-off date in the Advertisement and even at the time of offer of employment.

6. The learned counsel for the respondent no.1 submits that even at the time of assuming office, the respondent no.2 did not have the requisite registration.

7. The learned Tribunal, placing reliance on Section 41 of the Delhi Council for Physiotherapy and Occupational Therapy Act, 1997, (hereinafter referred to as, 'the Act'), held that registration with the Council is a mandatory requirement and, therefore, the respondent no.2 had been wrongly offered employment over and above the respondent no.1. However, it also observed that as no fault could be attributed to the respondent no.2 for the same, the petitioners were directed to appoint the respondent no.1 against any other sanctioned vacant post and if no such post was available, then against a supernumerary post, which was to be created temporarily and the respondent no.1 to be adjusted against the same.

8. The learned counsel for the petitioners submits that in the Advertisement, there was no requirement for the candidate to also be registered with the Council. He submits that, therefore, the petitioners could not have been faulted for offering employment to the respondent no.2 in spite of her not being registered with the Council.

9. He further submits that the respondent no.2 was far superior on merit in the selection process as compared to the respondent no.1, having secured 90 marks out of 100, as against the respondent no.1 securing only 73 marks out of 100 in the selection process.



10. He further submits that as far as the requirement of registration with the council is concerned, the learned Tribunal has also failed to not consider Rule 15.10 of the Delhi Council for Physiotherapy and Occupational Therapy Rules, 2014 (hereinafter referred to as the, 'Rules'), which states that a person desirous of renewal of his/her registration shall submit an application in the required form along with the required fee from time to time. He submits that the respondent no.2 duly obtained renewal of her registration at a later date and the same would, therefore, make her eligible for being considered for the post.

11. Lastly, he submits that there is no vacancy for the post and, therefore, a direction to create a supernumerary post could not have been passed by the learned Tribunal.

12. On the other hand, the learned counsel for the respondent no.1 submits that registration with the Council is a mandatory requirement for employment with the Government or a Local Authority like the petitioners herein. He submits that the mandate of the Act cannot be defeated by the petitioners by offering employment to the respondent no.2, who was not registered at the time of making her application, not at the time of offer of employment, and not even at the time of joining her duty. He submits that the registration obtained later cannot have a retrospective effect.

13. He further submits that there are at least 2 vacancies for the post in question in the SC Category and, therefore, the submission of the learned counsel for the petitioners to the contrary should not be accepted.



14. We have considered the submissions made by the learned counsels for the parties.

15. At the outset, we would note that it is now not disputed that the respondent no.2 did not hold a valid registration with the Council as on the date of her making the application and even on the date when offer of appointment was issued to her.

16. Section 41 of the Act reads as under:

“41. Rights and Privileges of Registered Member- No person, other than the Physiotherapist or the Occupational Therapists who possesses recognized Physiotherapy or Occupational Therapy qualification and is enrolled on the Register of Physiotherapists or the Register or Occupational Therapists, as the case may be, of the Council-

a) Shall hold office as physiotherapist or occupational therapist of any such office (by whatever designation called) in the Government or in any institution maintained by a local or other authority,

b) Shall practice physiotherapy or Occupational therapy, if he is a physiotherapist or occupational therapist, as the case may be, anywhere in Delhi and recover in respect of such practice any expenses of fees to which he may be entitled;

c) Shall be entitled to sign or authenticate any certificate required by any law to be signed or authenticated by a physiotherapist or an occupational therapist, as the case may be;

d) Shall be entitled to give any evidence at any inquest or in any Court as an expert under the Evidence Act, 1872 on any matter relating to the physiotherapy or occupational therapy, as the case may be.”

(Emphasis supplied)



17. A reading of the above provision would clearly show that a person can hold office as a Physiotherapist or Occupational Therapist in the Government or any institution maintained by a local or other authority, only if he/she holds a recognized Physiotherapy or Occupational Therapy qualification and is enrolled on the Register of Physiotherapists or the Register or Occupational Therapists, as the case may be, of the Council. In absence of the respondent no.2 having such registration, therefore, she was ineligible for being considered for appointment pursuant to the Advertisement in question. The relative merit of the respondent no.1 and the respondent no.2, therefore, pales into insignificance.

18. The learned Tribunal, in view of the above fact, has rightly considered the respondent no.2 to be not eligible for appointment and the respondent no.1, being the next candidate, to be granted employment pursuant to the Advertisement in question.

19. The reliance of the learned counsel for the petitioners on Rule 15.10 of the Rules also cannot be accepted as the said Rule merely prescribes the form and the fee on basis of which a renewal of registration can be obtained. It does not provide that such registration, if obtained later, will have a retrospective effect.

20. As far as the non-availability of the vacancies is concerned, this Court, taking note of the submissions made by the learned counsel for the respondent no.1 that such posts are available in the Schedule Caste category, had specifically directed the learned counsel for the petitioners to seek instructions on the same.

21. The learned counsel for the petitioners, today, is unable to state



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if such vacancy is available.

22. Be that as it may, we feel that the learned Tribunal has rightly directed that in case no such vacancy is available, a supernumerary post for the respondent no.1 should be created as the respondent no.1 cannot be faulted in the entire process of her not being offered employment at the relevant time.

23. We, therefore, find no merit in the present petition. The same is accordingly, dismissed. The pending application is disposed of as having been rendered infructuous.

NAVIN CHAWLA, J

RENU BHATNAGAR, J

MAY 16, 2025/sg/ik

Click here to check corrigendum, if any