

## **WP-4380-2015**

*(DR. SHAIENDRA SINGH MANDLOI Vs AYUSH DEPARTMENT)*

**29-07-2016**

Shri Dharmendra Chelawat, learned counsel for the petitioner.

Shri Rohit Mangal, learned counsel for respondent no. 2.

Shri V.P. Khare, learned counsel for respondent no.3

The petitioner has filed this present petition seeking relief against the respondent/s being aggrieved by the condition of registration of the petitioner in Madhya Pradesh Ayurved Board, which is mandatory condition to permit the petitioner for participation in selection process.

2 The petitioner has passed High School Examination, Higher Secondary School Certificate Examination, BAMS Decree course from State of Madhya Pradesh. Thereafter, he acquired a Degree of Bachelor of Ayurvedic and Medicine and Surgery from Vikram Vishavidhyalay, Ujjain in the year 2009. The petitioner also got registered himself with the Central Council of Indian Medicine having central registration no. 192157.

3 That, in pursuance to the advertisement, vide order dated 03/05/2012, the petitioner got selected as Ayurvedic Medical Officer in the Government of Rajasthan for the period of two years. Thereafter, he also got himself registered with the Board of Indian Medicine, Rajasthan with registration no. 25390 dated 21/12/2011.

4 That, MPPSC has issued an advertisement for recruitment to the 722 Ayurvedic Medical Officer on 23/09/2013. In pursuance to the

said advertisement, the petitioner submitted an application on 20/10/2013. His application form was accepted and admission card was issued having Role no.101790. The examination was conducted on 15/03/2015 and out of 4384 candidates, 1979 candidates have been selected for interview, in which, the petitioner was one of them at serial no.555. The petitioner was not permitted to appear in the interview on the ground that he was not having registration with the Madhya Pradesh Ayurvedic / Unani Board, which was mandatory condition in the advertisement. Hence, he filed this present petition before this Court.

5 Shri Dharmendra Chelawat, learned counsel on behalf of the petitioner submits that the petitioner is a domicile of Madhya Pradesh having registration with the Central Council of Indian Medicine and as per Section 29 of the Indian Medicine Central Council Act 1970, he is entitled to practice in Indian medicine in any part of India. Once, enrollment of the Central Council has been done and he is permitted to practice in any part of India, then he cannot be debarred to participate in the interview for appointment in the State of Madhya Pradesh as Ayurvedic Medical Officer.

6 After notice, respondent nos. 1 and 2 have filed returns and submitted that the recruitment process of Ayurvedic Medical Officer is governed under the Madhya Pradesh AYUSH Department Gazetted Services Rules, 2013 and as per this Rule, a person who is applying for the post of Ayurvedic Medical Officer must possess the requisite qualification as mentioned in Rule 8 and which is mentioned in Schedule-III.

Schedule-III particularly serial no. 6 deals with the educational qualifications and experiences for the post of Ayurvedic Medical Officer, where a person should have got registered himself with the Madhya Pradesh Ayurved Board established by law, therefore, the petitioner lacking qualification prescribed under the statute is not entitled for appointment.

7 Shri Rohit Mangal, learned counsel for the respondent no. 2 submits that under the Rules framed by the State Government, it is mandatory that the petitioner must have registration with the Madhya Pradesh Ayurved Board established by law. The petitioner has not followed all the said Rules and the qualification provided therein, therefore, no relief can be granted to him.

8 Reply has been filed by MPPSC, in which, it is submitted that the similar issue was raised in Writ Petition no. 10336/2012 before this Court and vide order dated 01/11/2013, the Writ Petition was dismissed. Present petitioner has not raised any new ground in the present petition. It is further submitted that in the advertisement dated 26/10/2013, it is specifically mentioned that the essential qualifications is that the candidate must be registered with the Madhya Pradesh Ayurved Board, hence the petition is liable to be dismissed.

9 I have heard the learned counsel for the parties.

10 It is not disputed that the service condition and selection of Ayurvedic Medical Officer are governed under the Madhya Pradesh



10336/2012. Relevant findings are recorded in para nos-6 and 7, which are reproduced hereinunder :

â¶6. After having heard rival submissions at length and consideration of the material on record, we are of the opinion that this petition has no merit. No doubt, the Indian Medical Council Act, 1956 is an enactment passed by the Parliament. The perusal of various provisions would show that that it is a prerequisite for a member of medical profession to get enrolled and registered with the State Council then only he can be enrolled in the Medical Register maintained by the Indian Medical Council under the Central Act. See Section 15. Sub-section (2) of Section 15 also provides that no person belonging to medical profession can hold an office without getting enrolled on a State Medical Register. It is only after the enrollment in the State Medical Register person belonging to medical profession enjoys certain privileges. Thus, the Central Act itself envisages that the registration with the State Council is a prerequisite and ,therefore, if the condition requires a person to get enrolled with the State Medical Council in Madhya Pradesh for holding an office or appointment, there is nothing wrong or illegal with such condition. Undoubtedly recruitment rules have been framed by virtue of

proviso to Art. 309 and have the statutory force but these rules must give way to an Act of Legislature. This is clear from the language employed in Art. 309 itself. The Condition 'Ja' in the advertisement does not in any manner change the conditions of service. Petitioner has yet to acquire the status of government employee. Nor does the condition change the recruitment rules or fill up any gap in the recruitment rules.

7. Now coming to the cases cited at the Bar, both decisions, that is the judgment of ***Shamsher Jung and Dr. Vineet Kumar Gupta*** are clearly distinguishable on the facts and have no application to the case in hand. PSC as recruiting agency is bound to follow the law and the condition 'Ja' is in consonance with the law i.e. Madhya Pradesh Ayurvegyan Parishad Adhiniyam, 1987. Thus, the petitioner who admittedly is not registered with the State Medical Council in Madhya Pradesh was ineligible and her candidature was rightly rejected by the PSC.

13 Therefore, in view of the above findings and the law laid down by this Court, there is no substance in the present writ petition and is liable to be dismissed. Accordingly, present writ petition is dismissed. No order as to cost.

C c as per rules.

**(VIVEK RUSIA)**  
**JUDGE**