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THE HIGH COURT OF MADHYA PRADESH
W.P.No.3585/2017
(Pankaj Masodkar Vs. M.P.Public Service Commission and others)

Indore, Dated: 1/05/2018

Shri Rishi Tiwari, counsel for the petitioner.

Shri V.P.Khare, counsel for the respondent No.1.

Shri Koustubh Pathak, G.A. for the respondent No.2.

Shri Vivek Sharan with Shri Ashutosh Nimgaonkar, counsel for the respondent No.3.

Heard finally.

The petitioner has filed the present petition being aggrieved by the order dated 25.5.2017(Annx.P/1) issued by the M.P.P.S.C. by which the candidature of the petitioner for the post of Specialist Ayurved has been cancelled for want of necessary educational qualification.

The petitioner had obtained the degree of Bachelor in Ayurvedic Medicine and Surgery in the year 2008 from the Barkatullah University, Bhopal. Thereafter he was awarded with the degree of M.D. Ayurveda in the subject of Rog Nidan Evam Vikriti Vigyan (AnnxP/3) by the Maharashtra University of Health Services Nasik (Maharashtra). Petitioner persuaded the M.D. Degree course from Loknete Rajarambhau Patil Ayurvedic Medical College which is recognized by the Central Council of Indian Medicine, New Delhi at the relevant time.

The MPPSC issued an advertisement dated 31.3.2015 inviting the application for recruitment to the post of Specialist Ayurveda which is a gazetted class-I post. As per advertisement the candidate must have post Graduate degree in any clinical subject from the college established by law and recognized by CCIM. The advertisement was issued for 8 posts and out of which, one post was reserved for S.C. Category. The petitioner being a member of SC category, applied for the said post. The written examination was conducted on 24.3.2017 and thereafter the result was declared. The name of petitioner appeared at S.N.5 of the merit list of eligible candidates who were called for

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interview by the MPPSC scheduled to be held on 16.5.2017. The respondent No.1 issued a list of candidates whose names have been cancelled for not possessing the requisite qualification and petitioner being one of them was also directed to produce the document in respect of his educational qualification. The petitioner appeared in the interview and finally the respondent No.1 vide order dated 25.5.2017 has cancelled the candidature of the petitioner for want of possessing essential educational qualification. The respondent No.3 has been selected for the post of Specialist Ayurved under SC category. Being aggrieved by the order dated 25.5.2017 the petitioner has filed the present petition.

After notice the respondent No.1-MPPSC has filed the reply by submitting that case of the petitioner was considered by the two member of experts in the subject and they opined that post graduate degree in the subject of Rog Nidan Evam Vikriti Vigyan is not in clinical subject of Ayurveda recognized by the CCIM. He is also not possessing the degree from the University in which the clinical subject of Ayurveda has been recognized by the CCIM. In the online application form in front of educational qualification, he has mentioned the words "yes" therefore he was permitted to participate in the written examination and later on called for interview. The written examination was held on 19.2.2017. The result was declared on 24.3.2017 with the instructions to the candidates that it is a provisional selection. When the petitioner submitted the document in respect of his educational qualification the same were examined by the experts called from the Ayush department. The petitioner gave an undertaking that he will produce the certificate issued by the CCIM, hence he was permitted to appear in the interview. Since the petitioner did not submit any document in respect of his educational qualification as per advertisement, his candidature has rightly been rejected. MPPSC has placed reliance upon various judgments of Apex Court as well as the judgment of this High Court on the point that

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court cannot interfere in the decision of academic authority in respect of the suitability of a candidate to be appointed to a particular post.

Respondent No.3 has also filed the detail return by submitting that the petitioner has obtained Masters degree in the subject of Rog Nidan Evam Vikriti Vigyan which is a “non clinical subject” as per Gazette notification dated 18.7.2012 issued by the Central Council of Indian Medicine under section 36 of IMCC Act, 1970. The answering respondent has obtained the Master degree in “Panchkarma” which is recognized as clinical subject hence she was rightly appointed by the respondent. By way of gazette notification dated 7.11.2016 issued under INCC (Post graduate Ayurveda Education) 2016 a list of subject has been published in which the subject Rog Nidan Evam Vikriti Vigyan has been placed under para clinical subject. The CCIM in its 38th meeting held on 23.3.2008 has also categorised clinical and non-clinical subjects in which the Rog Nidan Evam Vikriti Vigyan is in the list of non-clinical subject, therefore the respondent No.1 has rightly cancelled the candidature of the petitioner and the petition is liable to be dismissed.

As per advertisement dated 31.3.2015 for the post of Specialist Ayurved the minimum essential qualification was M.D. in any clinical subject from the College established by law and recognized by the CCIM. Admittedly the petitioner is having post graduate degree in the subject of “Rog Nidan Evam Vikriti Vigyan.”

The issue is whether the subject of Rog Nidan Evam Vikriti Vigyan is a clinical or non-clinical subject. Learned counsel for the petitioner argued that for the examination held in the year 2016, MPPSC have called the candidates having P.G. Degree in Rog Nidan and Vikriti Vigyan whereas in the examination held in the year 2015 in which the petitioner participated the requirement was M.D. Degree in any clinical subject of Ayurveda. Respondent

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No.3 has obtained the information under RTI from the Maharashtra University and Health Science Nasik and vide letter dated 30.11.2017 the University has sent opinion that subject of Rog Nidan and Vikriti Vigyan is in the list of non-clinical subject published by the CCIM. (R/7).

The meaning of Rog Nidan in English is 'Pathology' which is admittedly a non-clinical subject. The meaning of Ayurvedi Vachaspati- Rog Nidan Evam Vikriti Vigyan is M.D. (Ayurveda)- Diagnostic procedure and pathology as per regulation 4-90/2016 of P.G. Regulation of Indian Medicine Central Council (Post Graduate Ayurveda Education) 2016.

Since the petitioner has obtained the post graduate degree in the field of Pathology and Diagnostic procedure therefore the same cannot be termed as clinical subject.

In the case of State of **Gujarat Vs.Chitraben, 2015(14) SCC 574** the Apex Court has declined to give compassionate appointment as the candidate was not eligible to claim appointment on the basis of non-fulfilment of educational qualification.

In the case of State of **Gujarat and others Vs. Arvind Kumar T.Tiwari and another, (2012) 9 SCC 545** the Apex Court has held that before the candidate is considered for the post even for admission to the institution, he must fulfill the eligibility criteria. It was held as under :-

9. The eligibility for the post may at times be misunderstood to mean qualification. In fact, eligibility connotes the minimum criteria for selection, that may be laid down by the executive authority/legislature by way of any statute or rules, while the term qualification, may connote any additional norms laid down by the authorities. However, before a candidate is considered for a post or even for admission to the institution, he must fulfill the eligibility criteria. (Vide: [Dr. Preeti Srivastava & Anr. v. State of M.P. & Ors.](#), AIR 1999 SC 2894).

10. The appointing authority is competent to fix a higher score for selection, than the one required to be attained for mere eligibility, but by way of its natural corollary, it cannot be taken to mean that

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eligibility/norms fixed by the statute or rules can be relaxed for this purpose to the extent that, the same may be lower than the ones fixed by the statute. In a particular case, where it is so required, relaxation of even educational qualification(s) may be permissible, provided that the rules empower the authority to relax such eligibility in general, or with regard to an individual case or class of cases of undue hardship. However, the said power should be exercised for justifiable reasons and it must not be exercised arbitrarily, only to favour an individual. The power to relax the recruitment rules or any other rule made by the State Government/Authority is conferred upon the Government/Authority to meet any emergent situation where injustice might have been caused or, is likely to be caused to any person or class of persons or, where the working of the said rules might have become impossible. (Vide: [State of Haryana v. Subhash Chandra Marwah & Ors.](#), AIR 1973 SC 2216; [J.C. Yadav v. State of Haryana](#), AIR 1990 SC 857; and [Ashok Kumar Uppal & Ors. v. State of J & K & Ors.](#), AIR 1998 SC 2812).

11. The courts and tribunal do not have the power to issue direction to make appointment by way of granting relaxation of eligibility or in contravention thereof. [In State of M.P. & Anr. v. Dharam Bir](#), (1998) 6 SCC 165, this Court while dealing with a similar issue rejected the plea of humanitarian grounds and held as under:

“31. The courts as also the tribunal have no power to override the mandatory provisions of the Rules on sympathetic consideration that a person, though not possessing the essential educational qualifications, should be allowed to continue on the post merely on the basis of his experience. Such an order would amount to altering or amending the statutory provisions made by the Government under [Article 309](#) of the Constitution.”

12. Fixing eligibility for a particular post or even for admission to a course falls within the exclusive domain of the legislature/executive and cannot be the subject matter of judicial review, unless found to be arbitrary, unreasonable or has been fixed without keeping in mind the nature of service, for which appointments are to be made, or has no rational nexus with the object(s) sought to be achieved by the statute. Such eligibility can be changed even for the purpose of promotion, unilaterally and the person seeking such promotion cannot raise the grievance that he should be governed only by the rules existing, when he joined service. In the matter of appointments, the authority concerned has unfettered powers so far as the procedural aspects are concerned, but it must meet the requirement of eligibility etc. The court should therefore, refrain from interfering, unless the appointments so made, or the rejection of a candidature is found to have been done at the cost of ‘fair play’, ‘good conscious’ and ‘equity’. (Vide: [State of J & K v. Shiv Ram Sharma & Ors.](#), AIR 1999 SC 2012; and [Praveen Singh v. State of Punjab & Ors](#) (2000) 8 SCC 436)

13. [In State of Orissa & Anr. v. Mamta Mohanty](#), (2011) 3 SCC

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436, this Court has held that any appointment made in contravention of the statutory requirement i.e. eligibility, cannot be approved and once an appointment is bad at its inception, the same cannot be preserved, or protected, merely because a person has been employed for a long time.

14. A person who does not possess the requisite qualification cannot even apply for recruitment for the reason that his appointment would be contrary to the statutory rules is, and would therefore, be void in law. Lacking eligibility for the post cannot be cured at any stage and appointing such a person would amount to serious illegibility and not mere irregularity. Such a person cannot approach the court for any relief for the reason that he does not have a right which can be enforced through court. (See: [Prit Singh v. S.K. Mangal & Ors.](#), 1993(1) SCC (Supp.) 714; and [Pramod Kumar v. U.P. Secondary Education Services Commission](#)).

15. The claim of the respondent was earlier rejected on the ground that, the family had adequate financial status and the amount of pension being given was actually over and above the limit fixed by the appellant issuing the guidelines. Subsequently, when the case was reconsidered upon the direction of the court, it was found that the respondent did not meet the requisite eligibility criteria i.e., 10th standard certificate. Admittedly, the respondent is 8th standard fail, and thus, he can be considered only as 7th standard pass and we must therefore consider, whether he could have been offered appointment to a Class IV post.”

In the case of **Central Electricity Supply Utility of Odisha Vs. Dhobei Sahoo and others, 2014(1) SCC 161** the Apex Court has held that suitability or eligibility of a candidate for appointment to the post is within the domain of the appointing authority. The only thing which is required to be seen by the court is whether the procedure adopted was just, fair and reasonable.

In the case of **Public Service Commission and others Vs. Arvind Singh Chauhan and others, 2009(9) SCC 135** the Apex Court has held that the candidate who has passed the preliminary examination does not mean that his application/candidature is valid. P.S.C. Is fully authorised to cancel the candidature at any stage without prior intimation.

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In the case of State of Madhya Pradesh Vs. Dr.Divya Darshan Sharma and others, the Division Bench of this court vide judgment dated 23.3.2018 has held that decision of expert in respect of eligibility of a candidate cannot be interfered by the High Court in absence of any allegation of malafide. Para 20 is reproduced as under :-

“The candidature of the petitioners has been rejected by the Public Service Commission presumably on the basis of opinion of experts. Generally speaking such decision of the experts cannot be interfered with in the writ petition as in exercise of power of judicial review, this Court does not sit as a court of appeal but only examines the decision making process. The decision making process cannot be said to be wanting in any manner except that the reasons for rejection have not been communicated.”

In view of aforesaid discussion and the decisions of this court as well as the Hon.Apex Court, no case for interference is called for.

Writ Petition is accordingly dismissed.

(Vivek Rusia)
Judge

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