

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE**

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 17th OF NOVEMBER, 2022

WRIT PETITION No. 2000 of 2022

BETWEEN:-

KALYAN SINGH JADON S/O MUNNA SINGH JADON, AGED ABOUT 42 YEARS, OCCUPATION: HOMEOPATHIC DOCTOR 154, SARASWATI NAGAR, DHAR (MADHYA PRADESH)

.....PETITIONER

(BY SHRI JITENDRA VERMA, ADVOCATE)

AND

- 1. THE STATE OF MADHYA PRADESH THROUGH SECRETARY VALLABH BHAWAN (MADHYA PRADESH)**
- 2. CHAIRMAN/SECRETARY PUBLIC SERVICE COMMISSION, INDORE RESIDENCY AREA, DISTRICT INDORE (MADHYA PRADESH)**
- 3. COMMISSIONER/DIRECTOR HOMEOPATHY (AYUSH) BASEMENT AREA, VINDHYANCHAL BHAWAN, PASCHIM KHAND, NEAR SBI BANK (MADHYA PRADESH)**
- 4. MISSION DIRECTOR NATIONAL RURAL HEALTH MISSION, RAJYA SWASTHYA SAMITI, BANK OF INDIA, BUILDING III FLOOR, JAIL ROAD (MADHYA PRADESH)**
- 5. OFFICER ON SPECIAL DUTY SANCHALNALAYA AYUSH, BASEMET 'GHA' WING, SATPURA BHAWAN (MADHYA PRADESH)**

.....RESPONDENTS

(SHRI MANISH NAIR, DEPUTY ADVOCATE GENERAL FOR STATE, SHRI V.P. KHARE, ADVOCATE FOR RESPONDENT NO.2 AND SHRI ROMESH DAVE, ADVOCATE FOR RESPONDENT NO.4)

This petition coming on for admission/orders this day, the court passed the following:

ORDER

1] This petition has been filed by the petitioner under Article 226 of the Constitution of India against the advertisement No.13/2021, dated 28.12.2021, issued by respondent No.3/Commissioner/Director, Homeopathy (Ayush), Bhopal whereby, applications have been invited for the post of Homeopathic Doctor in the State of Madhya Pradesh as 43 such posts under various categories were to be filled through the aforesaid advertisement.

2] The grievance of the petitioner is in respect of the age relaxation as, according to the condition No.7(II)(F) of the advertisement, it is provided that the minimum age would be 21 years whereas, the maximum should not be more than 40 years. In the advertisement itself, relaxation in the upper limit has also been provided in condition No.(I)(1), in the condition of age relaxation, which provides that there would be relaxation of five years as per the circular dated 04.07.2019, in respect of Other Backward Class, Government/Corporation/Board/Self Autonomous Bodies' employees/Home Guard/Women (Reserved/Unreserved) which would be 45 years.

3] Counsel for the petitioner has also referred to the provisions of Madhya Pradesh Ayush Department (Gazetted) Services Recruitment Rules, 2013 (hereinafter referred to as 'the Rules of 2013'). Rule 8(1)(c) of which provides that the concession of 45 years shall also be admissible to work charged employees, contingency paid employees and persons employed in the project

implementing committees. The case of the petitioner is that the petitioner was appointed on 04.05.2020, under the delegated power of the provisions of Madhya Pradesh Public Health Act, 1949 by the Chief Medical and Health Officer, District- Dhar, which was for a period of three months, which was extended from time to time up to March, 2022.

4] Counsel has submitted that the aforesaid Rules of 2013 have not been taken into account while issuing the aforesaid advertisement. In support of his contention, counsel for the petitioner has relied upon the decisions rendered by this Court in the case of *Swaran Vibha Pandey Vs State of M.P. and others* reported as 2021(4) MPLJ 269, *Raghvendra Agrawal Vs State of M.P. and others* reported as 2009(2) MPLJ 447 and in the case of *Dr. Ranbahadur Singh Chauhan Vs State of M.P. and others* passed on 08.08.2017 in W.P. No.3176/2017.

5] The petition is opposed by all the parties concerned and replies have also been filed. Shri V.P. Khare, learned counsel appearing for the respondent No.2/Public Service Commission has submitted that no case for interference is made out as the petitioner is not entitled to any relief even according to Rule 8(1)(C) of Rules, 2013 which does not provide any extension of relaxation in upper age limit to the employees of National Health Mission.

6] Counsel appearing for the State, Shri Manish Nair has opposed the petition on the ground that the petitioner's employment itself was purely for a period of 3 months and also was purely temporary in nature. Counsel has drawn the attention of this Court

to condition No.2 of the appointment order of the petitioner which provides that the employment of the petitioner would be for 3 months and thereafter he cannot claim any right on account of the same for his regular or contractual employment. Thus, it is submitted that the condition of the contract of the petitioner itself is more than sufficient to hold that he cannot claim the benefit of the same as his employment which was purely of temporary in nature as the petitioner was appointed during and for Covid period only.

7] On the other hand, the counsel appearing for respondent No.4/National Health Mission has submitted that no case for interference is made out as the petitioner was appointed under the provisions of Madhya Pradesh Public Health Act, 1949, Section 10 of which provides for appointment of temporary health officer in emergency and the petitioner was appointed only taking into account of the emergency at the time of spread of Covid-19 and thus, when his appointment order also specifically provides that his appointment shall not be taken into consideration for regular or temporary service, the petitioner cannot claim any benefit arising out of the aforesaid appointment order.

8] In rebuttal, Shri Jitendra Verma, counsel for the petitioner has also drawn the attention of this Court to the certificate issued by the CMHO, Dhar wherein the petitioner's work has been appreciated and he is wished well for his future. Thus, it is submitted that looking to the certificate of the petitioner, he cannot be denied the benefit of Rule 8(C) of the Rules of 2013.

9] Heard learned counsel for the parties and perused the record.

10] A perusal of the record reveals that the petitioner was initially appointed on the post of Ayush Doctor vide order dated 04.05.2020. The relevant condition of the same mentioned as direction, reads as under:-

“निर्देश—

1— यह आदेश MP Public Health Act, 1947 धारा 10 ‘Appointment Health Officer in Emergency’ के तहत” होकर आदेश जारी होने के दिनांक से आगामी तीन माह अर्थात् 30 जून 2020 तक या संचालनालय स्वास्थ्य सेवायें/राष्ट्रीय स्वास्थ्य मिशन म. प्र. के अन्य आगामी आदेश तक के लिये प्रभावशील होगा। यह सेवायें पूर्णतः अस्थायी होगी एवं आकस्मिक सेवाओं के रूप में ली जा रही है। अतः इन सेवाओं को नियमित अथवा संविदा सेवाओं के लिये किसी भी दशा में मान्य नहीं किया जावेगा।

2— नियोजित किये गये उपरोक्तानुसार अधिकारी/कर्मचारी को नियोजन अवधि (तीन माह) उपरांत नियमित अथवा संविदा सेवा के लिये मान्य/समायोजित किये जाने संबंध में माननीय न्यायालय में कोई दावा/आपत्ति दायर करने का अधिकार नहीं होगा।”

11] So far as the impugned advertisement is concerned, the relevant conditions which is under challenge read as under:-

“तीन. आयु सीमा: 21 वर्ष की आयु पूर्ण कर ली हो किन्तु 40 वर्ष की आयु पूर्ण न की हो।”

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“(एक) उच्चतर आयु सीमा में वर्ग विशेष को देय छूटें

(1) मध्य प्रदेश शासन, सामान्य प्रशासन विभाग के परिपत्र क्रमांक सी.3-8/2016/13, दिनांक 04 जुलाई 2019 अनुसार अन्य पिछड़ा वर्ग/शासकीय/निगम/मण्डल/स्वशासी संस्था के कर्मचारीयों/नगर सैनिक/महिलाओं (अनारक्षित/आरक्षित) आदि के लिए अधिकतम आयु सीमा में 5 वर्ष की छूट प्रदान की जाएगी तथा उक्त श्रेणी के अभ्यर्थियों हेतु अधिकतम आयु सीमा 45 वर्ष रहेगी।”

12] So far as the Madhya Pradesh Ayush Department (Gazetted) Services Recruitment Rules, 2013 are concerned, para 8(1)(c) of the same reads as under:-

Para 8(1)(c):-

“The upper age limit will also be relaxable in respect of candidates who are or have been employees of the Madhya Pradesh Government to the extent and subject to the conditions specified below:-

(I) The upper age limit will be relaxable up to a maximum of five years in respect of a candidate, who is holding a post permanently *or temporarily* and applying for another post. i.e. the maximum age should not be above 45 years. This concession shall also be admissible to work charged employees, contingency paid employees and persons employed in the project implementing committees.”

(emphasis supplied)

13] Counsel for the State has also relied upon the notification dated 10.12.2021, in which, it is mentioned that those employees whose contractual services were on the post of Ayush Doctor for minimum five years, they shall be entitled to get the benefit of extended age not more than 55 years.

14] From the aforesaid legal and factual scenario, it is apparent that the employment of the petitioner in the Ayush Department was temporary in nature, for a period of three months mentioned in the order of appointment dated 04.05.2020 as (तीन माह के अस्थायी नियोजन) and although the counsel for the respondents have tried to portray the same as a service which is neither temporary nor contractual but emergency services, a close scrutiny of the instruction (निर्देश) No.1 as aforesaid, reveals that it provides that the services to be rendered by the petitioner would be purely temporary in nature as they are being taken as emergency services and such service shall not be considered for further employment of the petitioner for regular and contractual services in continuation of his

services. This Court is of the considered opinion that the aforesaid condition was included in the aforesaid contract only with a view to ensure that the petitioner shall not claim any regular employment or further extension of contract of the same service. Thus, it can be safely held that the said condition would not be applicable to any other service where the petitioner is seeking employment as this court is of the considered opinion that the services rendered by the petitioner during the Covid times cannot be wiped out from the record and the experience he has gained while rendering the service can certainly be used by him for his further employment elsewhere. It is also found that so far as Section 10 of the Madhya Pradesh Public Health Act, 1949 is concerned, the same shall have no application in the issue involved in the present case and on the contrary, it also provides that the appointment shall be temporary in nature, which reads as under:-

“10. Appointment of temporary Health Officers in emergencies. - (1) In the event of the prevalence or threatened outbreak of any infectious disease in any local area or of any unusual mortality therein the Government may, by order, appoint temporarily for such period as may be specified therein, one or more Additional Health Officer, for the treatment of such infectious disease and preventing it from spreading, or for investigating the cause of, and preventing, such mortality, as the case may be.

(2) For the purpose of sub-section (1), the Government may appoint any medical practitioner registered under the Central Provinces and Berar Medical Registration Act, 1916 (1 of 1916) either on an honorary basis or on such salary or allowances or both as the Government may fix. The salary and allowances shall be payable from the funds of the local authority.”

(emphasis supplied)

15] Counsel for the State has also relied upon Rule 8 (c) of the Rules of 2013 which clearly provides that the concession up to 45 years shall be admissible to work charged employees, contingency paid employees and persons employed in project implementing committees, as also to the employees who are holding the post permanently or temporarily and applying for another post.

16] In the present case, the petitioner is applying for another post and thus, it cannot be said that he is claiming his right for continuation in service pursuant to his original order of appointment dated 04.05.2020. This Court in the case of **Raghvendra Agrawal (Supra)** has held that the employees who are working on temporary post or short term, contractual or adhoc employees are at par with the regular employees in the matter of grant of age relaxation. In the case of **Dr. Ranbahadur Singh Chauhan (Supra)**, the petitioner was an employee as a contractual Doctor in National Health Mission, as in the case of the present petitioner, this Court has held as under:-

“A plain reading of this provision makes it clear that respondents have decided to relax the age for “all category of employees”. No distinction/discrimination was made qua contractual doctors. After commencement of selection process, the respondents have taken a contrary decision by communication dated 20.2.2017. Thus, I find substance in the arguments of Shri Verma that once recruitment process has begun, respondents cannot alter the eligibility condition. Resultantly, the impugned order dated 20.2.2017 is set aside to the extent petitioner was held to be ineligible. Pursuant to interim order dated 28.2.2017, the petitioner has already participated in the interview. Respondents are directed to declare the result of interview and communicate the outcome to the petitioner.”

17] On the aforementioned discussion, this Court has no doubt whatsoever, to come to a conclusion that the petitioner has been wrongly denied the benefit of age relaxation despite being eligible on all other counts and thus, he is entitled to participate in the aforesaid advertisement.

18] Since this Court had already passed an interim order on 09.02.2022 directing the respondents to accept the Form from the petitioner and the respondents have been directed to process his application/Form but the result was directed to be declared only with the permission of the Court, it is directed that if the result of the other candidates has still not been declared, the petitioner's result be declared along with the other candidates, otherwise, his result be declared forthwith and if he is found to be selected as per the advertisement, the appointment order be also issued to him in accordance with the advertisement and his seniority should be counted from the date of appointment of other selectees.

Accordingly, the petition stands ***allowed.***

Sd/-

(SUBODH ABHYANKAR)

JUDGE

krjoshi