

IN THE HIGH COURT OF MADHYA PRADESH

AT INDORE

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 24th OF MAY, 2024

WRIT PETITION No. 5903 of 2024

BETWEEN:-

1. **DR. JEEVAN SINGH CHOUDHARY S/O SHRI MANGILAL CHOUDHARY, AGED ABOUT 32 YEARS, OCCUPATION: DOCTOR RANTIBHANWAR, POST RANTHBHANWAR, DIST. SHAJAPUR (MADHYA PRADESH)**
2. **DR. MAHENDRA PATIDAR S/O SHRI VENIRAM PATIDAR, AGED ABOUT 32 YEARS, OCCUPATION: DOCTOR VILLAGE SONIPURA, POST BALWADI, DIST. KHARGONE (MADHYA PRADESH)**
3. **DR. SACHIN S/O SHRI SUBHASH, AGED ABOUT 32 YEARS, OCCUPATION: DOCTOR VILLAGE NAGPUR, TEH. SANWER, INDORE (MADHYA PRADESH)**
4. **DR. RAVINDRA PHAGORE S/O SHRI BHILURAM PHAGORE, AGED ABOUT 32 YEARS, OCCUPATION: DOCTOR B-36 VINDHYA WASINI TOWNSHIP, DHAR ROAD MANAWAR DHAR (MADHYA PRADESH)**
5. **DR. VIKKY ASWAR S/O SHRI BHAGWAN ASWAR, AGED ABOUT 32 YEARS, OCCUPATION: DOCTOR H. NO. 23, NEAR WATER TANK, JALGAO JAMOD ROAD, JASONDI BURHANPUR (MADHYA PRADESH)**
6. **DR. MANISH KUMAR BHANDAR S/O SHRI GANGADHAR BHANDARI, AGED ABOUT 32 YEARS, OCCUPATION: DOCTOR V/P DHAMANDA, TEH. SARANGPUR, RAJGARH (MADHYA PRADESH)**
7. **DR. DHARMENDRA VARSHI S/O SHRI RAGHVENDRA VARSHI, AGED ABOUT 32 YEARS, OCCUPATION: DOCTOR 916 INDOKH ROAD JHARDA, UJJAIN (MADHYA PRADESH)**

DR. SADGI JATAV D/O SHRI BALRAM JATAV 260
8. JAGJIVAN RAM NAGAR, INDORE (MADHYA
PRADESH)

.....PETITIONERS

(BY SHRI ROHIT SHARMA, ADVOCATE)

AND

- MADHYA PRADESH PUBLIC SERVICE
1. COMMISSION SECRETARY RESIDENCY AREA INDORE (MADHYA PRADESH)
PRINCIPAL SECRETARY PUBLIC HEALTH AND FAMILY WELFARE DEPARTMENT
 2. VALLABH BHAWAN, BHOPAL (MADHYA PRADESH)
DIRECTOR OF AYUSH AYUSH
 3. DEPARTMENT SATPUDA BHAWAN, BHOPAL (MADHYA PRADESH)

.....RESPONDENTS

(SHRI RAJWARDHAN GAWDE, P.L. FOR THE STATE AND SHRI VIJAY GULANI ADVOCATE FOR RESPONDENT NO.2)

WRIT PETITION No. 7001 of 2024

BETWEEN:-

DR. VIPIN MALVIYA S/O SHRI CHHAGAN LAL MALVIYA, AGED ABOUT 43 YEARS, OCCUPATION: DOCTOR R/O 74/4 NAGDA ROAD BALGARH DEWAS (MADHYA PRADESH)

.....PETITIONER

(BY SHRI ROHIT SHARMA, ADVOCATE)

AND

- MADHYA PRADESH PUBLIC SERVICE
1. COMMISSION SECRETARY RESIDENCY AREA INDORE (MADHYA PRADESH)
PRINCIPAL SECRETARY PUBLIC HEALTH AND
 2. FAMILY WELFARE DEPARTMENT VALLABH BHAWAN, BHOPAL (MADHYA PRADESH)
DIRECTOR OF AYUSH AYUSH DEPARTMENT
 3. SATPURA BHAWAN, BHOPAL (MADHYA PRADESH)

.....RESPONDENTS

(SHRI RAJWARDHAN GAWDE, P.L. FOR THE STATE AND SHRI VIJAY GULANI ADVOCATE FOR RESPONDENT NO.2)

These petitions coming on for admission this day, the court passed the following:

ORDER

1] This order shall govern the disposal of WP No.5903/2024 and 7001/2024 as the common issue is involved in these petitions and for the sake of convenience, the facts have been taken from WP No.5903/2024.

2] This petition has been filed by the petitioners under Article 226 of the Constitution of India against the advertisement dated 14/02/2022 seeking the following reliefs:-

7.1) The petitioners may kindly be provided with the 03 % Bonus Marks in the examination as provided under the clause 6 (2) of the advertisement dated 14/02/2022 by the respondents.

7.2) The merit list dated 22/02/2024 may kindly be set aside and respondents be directed to issue a fresh merit list with granting the just benefits as prescribed under law.

7.3) Any other relief which this Hon'ble Court may deem fit in the facts and circumstances of the case, may also be kindly granted in favour of the petitioner.”

3] The petitioners' grievance is that despite being eligible to obtain the Bonus Marks as provided under Clause 6(2) of the advertisement dated 14/02/2022 for the post of Ayurved Medical Officer, they have not been given the said marks for their selection for the said post. The petitioners are also aggrieved by the merit list dated 22/02/2024, which is the result of Ayurved Medical Officer Examination 2021.

4] The facts of the case are that the petitioners are qualified Doctors having completed their B.A.M.S., i.e., Bachelor of

Ayurvedic Medicine and Surgery, and are working as Community Health Officer (C.H.O.) under the respondent No.2 Ministry of Public Health and Family Welfare Department, and had applied for the post of Ayurved Medical Officer as advertised vide the advertisement dated 14/02/2022 in which, they have stated that they are the Community Health Officer. In the aforesaid examination, the petitioners also got good marks in the written examination as also in the interview, their interview call letters have also been placed on record, however, when the result was declared on 14/02/2022, no Bonus Marks as per Clause 6(2) of the advertisement dated 14/02/2022 were awarded to them and thus, when they came to know that they have not been awarded 3% Bonus Marks, and also that the other candidates who have been selected, have already been called for verification of their documents, this petition has been filed by them without any delay.

5] Counsel for the petitioners has drawn the attention of this Court to Clause 6(2) of the advertisement dated 14/02/2022 to submit that the Bonus Marks are to be given to the persons who are posted as Ayush Medical Officer or have worked as Contractual Ayush Medical Officer. It is submitted that the petitioners though were posted as Community Health Officers were entitled to claim the aforesaid benefit of Bonus Marks as the qualification and the work experience of Community Health Officers and Ayush Medical Officers is identical as the petitioners are assigned the same duties and responsibility as are assigned to Ayush Medical Officers working in C.H.C./P.H.C./R.B.S.K./N.R.H.M. Counsel has also submitted that

the case of the petitioners is squarely covered by the order passed by the coordinate Bench of this Court at Jabalpur in the case of ***Dr. Virendra Agrawal vs. M.P. Public Service Commission*** in WP No.5051/2024 dated 07/03/2024 wherein also an identical condition was involved.

6] Counsel for the respondent/State has opposed the prayer and it is submitted that no case for interference is made out as the decision relied upon by the counsel for the petitioner in the case of ***Dr. Virendra Agrawal*** (supra) is distinguishable for the reason that in the aforesaid case, the petitioner was already working as Contractual Ayurvedic Medical Officer whereas in the present case, the petitioners are Community Health Officers. Counsel has also submitted that the order passed by the coordinate Bench of this Court in the case of ***Dr. Virendra Agrawal*** (supra) is already challenged by the State before the Division Bench, however, the same is still pending. However, the State has neither obtained the instructions as directed by this Court on 15/03/2024 nor filed any reply to rebut the contentions of the petitioners, this is despite the fact that even on 25/04/2024, the matter was adjourned as a last indulgence.

7] Counsel for the respondent/MPPSC, who has also filed a detailed reply has also opposed the prayer, however, it is submitted that they are governed by the policy made by the State Government only, and since the State Government had prescribed the qualification to be Ayush Medical Officer, the petitioners' claim that they should also be treated at par with Ayush Medical Officer cannot be allowed.

8] Heard.

9] On perusal of the record, it is found that by way of interim measure, this Court on 04/03/2024 had passed the following interim order:-

“Learned counsel for the petitioners has submitted that he has already furnished a copy of the petition to Shri V.P. Khare, learned counsel for the PSC.

In such circumstances, let the matter be listed in the next week.

Considering the fact that the verification of the documents would commence from tomorrow only, it is directed that any appointment shall be made subject to final outcome of this petition.”

10] Thus, the petitioners have already been granted an interim relief that any appointment made shall be subject to the final outcome of this petition.

11] Having considered the rival submissions and on perusal of Clause 6(2) of the advertisement, it is found that the dispute revolves around Clause 6(2) of the advertisement which reads as under:-

“छ: संविदा पर कार्यरत चिकित्सकों हेतु विशेष उपबंध:-

01

02 संविदा कर्मियों को बोनस अंक का प्रावधान:-

मध्य प्रदेश के किसी शासकीय चिकित्सालय/पी.एच.सी./सी.एच.सी./औषधालय/किसी शासकीय उपक्रम में संविदा के आधार पर आयुष चिकित्सक के पद पर कार्यरत या पूर्व में कार्यरत रह चुके, संविदा आयुष चिकित्सक को अनुभव के आधार पर आयोग द्वारा उक्त पद हेतु आयोजित की जाने वाली लिखित परीक्षा के अंतिम निर्धारित पूर्णांक के 03 प्रतिशत अंक प्रतिवर्ष के श्रेणीवार न्यूनतम उत्तीर्णांक हेतु उक्त बोनस अंक संगणित नहीं छद् किए जाएंगे।

- बोनस अंक लिखित परीक्षा में उत्तीर्ण अभ्यर्थियों के प्राप्त अंकों में जोड़े जाएंगे। लिखित परीक्षा में प्राप्त अंकों एवं बोनस अंकों के योग के गुणानुक्रम के आधार पर अभ्यर्थियों को साक्षात्कार हेतु आमंत्रित किया जाएगा।
- अंतिम चयन-सूची लिखित परीक्षा में प्राप्त अंकों, बोनस अंकों एवं साक्षात्कार में प्राप्त अंकों के योग के गुणानुक्रम के आधार पर घोषित की जाएगी।”

12] A perusal of the aforesaid condition clearly reveals that it provides for Bonus Marks to be provided to a candidate who is posted as Ayush Chikitsak or who have worked as Contractual Ayush

Chikitsak, however, so far as the educational qualification is concerned, it provides as under:-

अर्हता :

अनिवार्य शैक्षणिक अर्हता : (क) विधि द्वारा स्थापित विश्वविद्यालय से आयुर्वेद में सी.सी.आई.एम. द्वारा मान्य स्नातक उपाधि,

अन्य अर्हता

(ख) म.प्र. राज्य में विधि द्वारा स्थापित आयुर्वेदिक/यूनानी बोर्ड में स्थायी पंजीयन टीप:- स्नातक अंतिम वर्ष की परीक्षा में शामिल होने वाला आवेदक भी आवेदन करने का पात्र होगा, बशर्ते उसे आयोग को साक्षात्कार में सम्मिलित होने से पूर्व अपेक्षित अर्हता (इंटर्नशिप प्रमाण-पत्र सहित) अर्जित करने का सबूत देना होगा।

टीप:- अभ्यर्थियों को आयोग द्वारा लिखित परीक्षा परिणाम में निर्धारित अभिलेख प्रस्तुतीकरण की अंतिम तिथि तक अपनी अर्हता (इंटर्नशिप प्रमाण-पत्र सहित) तथा आयुर्वेदिक/यूनानी बोर्ड में स्थायी पंजीयन के प्रमाण-पत्र अभिलेखों के साथ प्रस्तुत करना अनिवार्य होगा अन्यथा उनकी अभ्यर्थिता समाप्त मानी जाएगी।

रोजगार पंजीयन – अभ्यर्थियों का मध्य प्रदेश राज्य के रोजगार कार्यालय में जीवित पंजीयन होना अनिवार्य है।

13] It is not disputed that the petitioners hold the requisite eligibility criteria which is also the eligibility criteria for the candidate holding the post of Ayush Medical Officer or who have worked as Contractual Ayush Medical Officer. Thus, the only question is whether the petitioners who are working as Community Health Officers can also be treated at par with Ayush Medical Officer.

14] This Court finds that in the absence of any reply by the State, distinguishing the aforesaid two points, it must be presumed that the post of Community Health Officer under the department of Public Health and Family Welfare is akin to that of Ayush Chikitsak as provided under Clause 6(2).

15] It is also found that so far as the appointment of the petitioners as Community Health Officer is concerned, its terms and conditions

also include providing the medical services to Sub Health Centre and Development Block, one such order is filed on record as Annexure P/2 dated 19/08/2020 of Dr. Jeewan Singh Choudhary petitioner No.1 and its first condition reads as under:-

“1. कम्युनिटी हेल्थ आफिसर की पदस्थापना उप स्वास्थ्य केन्द्र पर सम्पूर्ण प्राथमिक स्वास्थ्य सेवायें प्रदाय करने हेतु की गई है। आवंटित उप स्वास्थ्य केन्द्र में जिला/विकासखंड पर कोई परिवर्तन नहीं किया जा सकेगा।”

16] In view of the same, it cannot be said that the work of the petitioners who were posted to provide primary health services would be different from the Ayush Doctors who are also appointed at the primary health centres.

17] In view of the same, the petitions *stand allowed*, the respondents are directed to grant 3% Bonus Marks to the petitioners and issue fresh merit list within a period of six weeks from the date of receipt of certified copy of this order.

18] Original order be kept in WP No.5903/2024 and a copy of the same be placed in W.P. No.7001/2024.

Sd/-

(SUBODH ABHYANKAR)
JUDGE

krjoshi