

HIGH COURT OF MADHYA PRADESH, JABALPUR
(SB: HON. SHRI JUSTICE PRAKASH SHRIVASTAVA)

W.P.No.10466/16

Akshay Kumar & Others Vs. M.P.P.S.C

W.P.No.10787/2016

Abhilasha Mishra & Others Vs. M.P.P.S.C.

W.P.No.10942/2016

Saraswati Chikwa Vs. M.P.P.S.C.

W.P.No.11221/2016

Amit Kumar Patel & Others Vs. M.P.P.S.C.

W.P.No.11284/2016

Teerath Raj Kulaste & Another Vs. M.P.S.C.

W.P.No.11525/2016

Dr. Saurabh Utgarker & Others Vs. M.P.P.S.C.

W.P.No.11842/2016

Dinesh Dindor & Others Vs. M.P.P.S.C.

Shri Jai Shukla, learned counsel for the petitioners in W.P.No.10466/16, Shri Brijendra Kumar Mishra, learned counsel for the petitioners in W.P.Nos.10787/16, 10942/16, 11221/16, 11284/16, 11525/16 and Shri Amit Kumar Garg, learned counsel for the petitioners in W.P.No.11842/16.

Shri Prashant Singh, learned counsel for the respondent.

Shri Pushendra Verma for the intervenor in I.A.No.10612/16, Shri T.C. Bansal, for the intervenors in I.A.No.14219/16 & I.A.No.14220/16 and Shri Swapnil Sohgaura, learned counsel for the intervenors in I.A. 15259/16

Whether approved for reporting :

ORDER**(Passed on 01/12/2016)**

This order will govern the disposal of W.P.Nos.10466/16, 10787/16, 10942/16, 11221/16, 11284/16, 11525/16 & 11842/16, since it is jointly submitted by the learned counsel for the parties that all these writ petitions involve same issue on the identical facts situation.

2. For convenience facts have been noted from W.P.No.10466/16.

3. This writ petition has been filed by the petitioners aggrieved with the eligibility conditions prescribed in the advertisement dated 18/05/16 (Annexure P/1) inviting applications for recruitment to the post of Veterinary Assistant Surgeon.

4. The petitioners are aspiring to participate in the selection process for appointment to the post of Assistant Veterinary Surgeon in pursuance to the above advertisement. The case of the petitioners is that they have passed the Bachelor of Veterinary Science and Animal Husbandry (B.V. Sc. A.H.) and have also completed internship in the month of June, 2016. They are provisionally registered with the Madhya Pradesh State Veterinary Council and have applied for the permanent registration and pending these writ petitions they have obtained the permanent registrations. Since, the respondent P.S.C. had refused to accept the application forms of the petitioners on the ground that they did not fulfill the requisite eligibility condition, therefore, the petitioners have approached this Court challenging the condition mentioned in the advertisement about having the permanent registration with the M.P. State Veterinary Council as also cut-off date for having registration.

5. Learned counsel appearing for the petitioners submits that the condition imposed in the advertisement (Annexure P/1) about

having the permanent registration certificate, is arbitrary and the cut-off date for having the registration prior to issuance of advertisement as given in Annexure P/1 is illegal and arbitrary and that it should be the last date of submission of application. They have also submitted that the dispute involved in the present matter has already been decided by the Indore Bench.

6. As against this, learned counsel for the respondent and intervenors have supported the impugned advertisement.

7. Having heard the learned counsel for the parties and on perusal of the record it is noticed that the petitioners have two fold grievances. First grievance is about the requirement of having registration certificate prior to the date of issuance of advertisement and the second grievance is about not treating the temporary registration at par with the permanent registration, though no distinction in this regard has been drawn in the advertisement and rules.

8. So far as the issue of cut-off date for possessing the requisite eligibility qualification for recruitment to public employment is concerned, law is well settled that the cut-off date with reference to which the eligibility requirement is to be satisfied is the date appointed by the relevant service rules and if in the relevant service rules no such cut-off date is appointed, then the date so appointed in the advertisement calling application and if there is no such date appointed in the advertisement, then the last date of submission of application is the cut-off date.

9. The Supreme Court in the matter of *Shankar K. Mandal & Others Vs. State of Bihar & Others, (2003) 9 SCC 519* following earlier judgment has clearly culled out the following principles in this regard :-

.....The principles culled out from the decisions of this Court (see *Ashok Kumar Sharma Vs. Chander Shekhar*, *Bhupinderpal Singh Vs. State of Punjab* and *Jasbir Rani Vs. State of Punjab*) are as follows:

1. The cut-off date by reference to which the eligibility requirement must be satisfied by the candidate seeking a public employment is the date appointed by the relevant service rules.
2. If there is no cut-off date appointed by the rules then such date shall be as appointed for the purpose in the advertisement calling for applications.
3. If there is no such date appointed then the eligibility criteria shall be applied by reference to the last date appointed by which the applications were to be received by the competent authority.

10. This aspect of the matter has again been considered by the Supreme Court in the matter of *Alka Ojha Vs. Rajasthan Public Service Commission & Another*, (2011) 9 SCC 438 and while taking note of the earlier judgment on the point it has been held that :-

“15. The question whether the candidate must have the prescribed educational and other qualifications as on the particular date specified in the Rule or the advertisement is no longer res integra. In *Bhupinderpal Singh v. State of Punjab* this Court referred to the earlier judgments in *A.P. Public Service Commission v. B. Sarat Chandra*, *Vizianagaram Social Welfare Residential School Society v. M. Tripura Sundari Devi*, *M.V. Nair v. Union of India*, *Rekha Chaturvedi v. University of Rajasthan*, *U.P. Public Service Commission v. Alpana and Ashok Kumar Sharma v. Chander Shekhar* and approved the following proposition laid down by the Punjab and Haryana High Court: (*Bhupinderpal Singh case*, SCC p. 268, para 13)

“13.....(i) that the cut off date by reference to which the eligibility requirement must be satisfied by the candidate seeking a public employment is the date appointed by the relevant service rules and if there be no cut-off date appointed by the rules than such date as may be appointed for the purpose in the advertisement calling for applications; (ii) that if there be no such date appointed then the eligibility criteria shall be

applied by reference to the last date appointed by which the applications have to be received by the competent authority.”

11. The Supreme Court in the matter of ***Bhupinderpal Singh & Others Vs. State of Punjab & Others, (2000) 5 SCC 262*** has also summarized the above position in law by holding as :-

“Placing reliance on the decisions of this Court in *Ashok Kumar Sharma Vs. Chander Shekhar, A.P. Public Service Commission Vs. B. Sarat Chandra, District Collector and Chairman, Vizianagaram Social Welfare Residential School Society Vs. M. Tripura Sundari Devi, Rekha Chaturvedi Vs. University of Rajasthan, M.V. Nair (Dr.) Vs. Union of India and U.P. Public Service Commission U.P., Allahabad Vs. Alpana* the High Court has held (i) that the cut-off date by reference to which the eligibility requirement must be satisfied by the candidate seeking a public employment is the date appointed by the relevant service rules and if there be no cut-off date appointed by the rules then such date as may be appointed for the purpose in the advertisement calling for applications; (ii) that if there be no such date appointed then the eligibility criteria shall be applied by reference to the last date appointed by which the applications have to be received by the competent authority. The view taken by the High Court is supported by several decisions of this Court and is therefore well settled and hence cannot be found fault with. However, there are certain special features of this case which need to be taken care of and justice be done by invoking the jurisdiction under Article 142 of the Constitution vested in this Court so as to advance the cause of justice.”

12. Thus, it is no longer *res integra* that if the cut-off date for eligibility requirement for public employment is to be determined, then at the first instance the relevant rule needs to be examined and if no cut-off date is prescribed therein, then the advertisement and if no cut-off date is prescribed in the advertisement, then the last date of submission of the application is relevant.

13. In the present case the recruitment to the post of Veterinary Assistant Surgeon is governed by the Madhya Pradesh Veterinary Services (Gazetted) Recruitment Rules, 1966, (for short of 'Rules') which have been framed in exercise of powers contained in Article 309 of the Constitution of India. Vide Gazette notification dated 30/12/2011 Schedule-III of the Rules prescribing the educational qualification for recruitment to the post of Veterinary Assistant Surgeon was amended and the relevant extract of the amended Schedule-III as on 30/12/11 is as under :-

Schedule-III

S.N. (1)	Name of the department (2)	Name of Service (3)	Minimum Age (4)	Maximum Age (5)	Educational Qualification Prescribed (6)
1	Department of Veterinary Services	Veterinary Assistant Surgeon	21 Years	35 Years	A Graduate in Veterinary Science From Recognised University or Institution of India and registered under Indian Veterinary council Act, 1984 (No.52 of 1984)

14. The above schedule prescribing minimum additional qualification for Veterinary Assistant Surgeon was again amended vide Gazette notification dated 29/12/15 to the following effect :-

S.N. (1)	Name of the Department (2)	Name of Service (3)	Minimum Age (4)	Maximum Age (5)	Educational Qualification Prescribed (6)
				“40 years	(1) Graduation in Veterinary Science from any recognized University/Institution of India established under rule of law. (2) <u>Registered under Madhya Pradesh State Veterinary council, established under rule of law, before the date of advertisement of the post.”</u>

15. In the present case the aforesaid amendments are attracted since the impugned advertisement is of subsequent date.

16. As per the amended recruitment rules registration under the Madhya Pradesh Veterinary Council before the date of advertisement of the post is necessary. The schedule-III of the

recruitment Rules 1966 prescribing the aforesaid condition is not under challenge in these writ petitions. Hence, the prescription of minimum eligibility condition in the advertisement in accordance with the recruitment rules cannot be held to be bad in law.

17. It is worth noting that this Court in the matter of *Shailesh Kumar Patel & Others Vs. State of M.P. & Others, 2013(3) MPLJ 391* in a case where in the recruitment process initiated in 2012 for the same post of Assistant Veterinary Surgeon while considering the challenge to the cut-off date for possessing necessary qualification this Court has already held that in such cases hardship in individual cases or consideration of sympathetic ground is not permissible for extending the date as it would result in gross injustice to other and if a candidate does not possess the necessary qualifications on the cut-off date, he is disqualified and cannot be permitted to participate in the selection process or be considered therein.

18. Hence, I am of the opinion that cut-off date of possessing the registration under M.P. State Veterinary Council before the date of advertisement of post as prescribed in the advertisement cannot be held to be bad in law, therefore, the challenge to that extent is rejected.

19. Another issue has been raised by the petitioners that the recruitment rules provide for having the registration certificate without making any distinction between provisional and permanent registration, therefore, the petitioners should be permitted to participate in the selection process on the basis of provisional registration certificate.

20. This issue has already been examined in detail in earlier judgment in the matter of *Shailesh Kumar Patel & others (supra)*, wherein after considering in detail the scheme of the Indian

Veterinary Council Act, 1984 the regulation framed therein it has been held :-

“11. I have heard the learned counsel for the parties at length. From a perusal of Schedule III of the Recruitment Rules of 1966, it is clear that the requisite and necessary educational qualification prescribed for appointment on the post of Veterinary Assistant Surgeon is a Bachelors Degree in Veterinary Science from a recognized University or institution in India or abroad. It is also undisputed that the degree course being perused by the petitioners in the instant case is duly recognized.

12. Section 22(1) of the Act of 1984, enables the council to prescribe the minimum standard of veterinary education and apparently does not deal with recognition of any educational qualification. In exercise of powers under section 22(1) read with Section 21 of the Act of 1984, the Veterinary Council of India with the approval of the Central Government has framed the Regulation of 1993. Part-II of the Regulations of 1993, deals with the course of study, Clause (1) of which provides that a degree course of B.V.Sc & A.H shall comprise of a course of study consisting of the curriculam and syllabus provided in these regulations spread over five complete academic years including a compulsory internship of six months duration undertaken after successful completion of all credit hours provided in the syllabus. Part-IV, which contains Regulation 7(2) of the Regulations of 1993, deals with internship. A conjoint reading of clauses (i), (ii), (iii), (iv) & (vii)(b) & (viii) of the aforesaid Regulation, makes it clear that every candidate, after passing the final B.V.Sc & A.H examination, has to undergo compulsory rotating internship for a minimum period of six months so as to be eligible for award of a B.V.Sc & A.H degree and full registration and that for the purpose of undertaking the internship the University is required to issue a provisional course completion certificate on passing of the final examination, on the strength of which a candidate is granted provisional registration by the State Veterinary Council for a limited period of six months to enable him to undertake training as a Veterinary Surgeon during internship. Clause (vii)(b) & (viii) of the Regulations of 1993, further provides that the Dean/Principal/Associate Dean, as the case may be, based on the record of the work of the student, shall thereafter issue a certificate of satisfactory completion of training “following which” the University shall award the B.V.Sc & A.H degree or the provisional certificate and that the candidate shall get himself registered with the State

Veterinary Council only after the award of B.V.Sc & A.H degree or a provisional certificate in that regard by the University.

13. From a perusal of the aforesaid provisions of law and the Regulations, it is clear that the B.V.Sc. & A.H degree can be awarded to a candidate only after he successfully completes his compulsory internship and the issuance of a successful completion certificate in that regard. When the documents, Annexure P-2 & P-3, are read alongwith the aforesaid Regulations of 1993, it is clear that the aforesaid documents only certify that the candidate has passed the final examination and is now eligible for undertaking internship. This fact is clearly mentioned in the last paragraph of the certificate issued to the petitioners, Annexure P-2. It is also clear that this certificate has been sent to the Registrar of State Veterinary Council, Bhopal to enable him to issue a provisional registration certificate as envisaged in Regulation 7(2)(iv) of the Regulations of 1993, so that the candidate can undertake internship training as a Veterinary Surgeon and this has been clarified by the Council in notes no.1 & 2 appended to the certificates which read as under:-

- “नोट:- 1. अनुमोदित संस्थान में केवल प्रशिक्षण के लिए ही धारक अभ्यास के लिए अधिकृत होगा ।
2. फाइनल पंजीकरण के समय मूल प्रमाण पत्र वापस जमा करवाना अपेक्षित है ।”

14. It is also clear from a perusal of the last column of this certificate, Annexure P-3, that they were valid only upto 23.6.2013 for undertaking internship and that final registration, after completion of internship, would be granted only after this provisional certificate is returned and deposited with the Council.”

21. The aforesaid judgment reveals that the provisional registration certificate is issued only for the limited purpose, hence each case is required to be scrutinized by the PSC to ascertain if the petitioners possess the requisite qualification in the light of the law laid down in the matter of *Shailesh Kumar Patel (supra)* on the cut-off date.

22. Learned counsel for the petitioners have placed reliance upon the Single Bench order of Indore Bench dated 21/11/16 passed

in W.P.No.4342/16 in the matter of *Nilam Morey & Others Vs. State of M.P. & Another* submitting that the case is fully covered by the said order, but in that case neither cut-off date prescribed in the recruitment rules and the amendment made therein subsequently in the year 2015, nor of earlier judgment of this Court on the point in the case of *Shailesh Kumar Patel (supra)* was pointed out, therefore, the petitioners are not entitled to the benefit of the order of the Indore Bench.

23. In the aforesaid circumstances, the writ petitions are disposed of by directing the respondent PSC to scrutinize the case of each of the petitioner in the light of the judgment of this Court in the matter of *Shailesh Kumar Patel (supra)* and the cut-off date provided in the recruitment rules and ascertain if they were having the requisite qualification on the cut-off date and then proceed further in accordance with law.

24. Accordingly, the writ petitions are partly allowed.

25. Signed order be kept in the file of W.P.No.10466/16 and copy whereof be kept in the file of connected W.P.Nos.10787/16, 10942/16, 11221/16, 11284/16, 11525/16 & 11842/16.

C.c. as per rules.

(PRAKASH SHRIVASTAVA)
JUDGE

as/-