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**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

**BEFORE
HON'BLE SHRI JUSTICE VIVEK AGARWAL**

ON THE 22nd OF JANUARY, 2024

WRIT PETITION No. 20560 of 2017

BETWEEN:-

**RAM CHARAN SINGRAUL S/O SHRI RAMDEEN
SINGHRAUL, AGED ABOUT 41 YEARS, OCCUPATION:
TEMPORARY JOB VILLAGE KUNDFHARI POST
LAGARGAWAN, TEH. UCHHEHRA DISTT. SATNA
(MADHYA PRADESH)**

.....PETITIONER

***(BY SHRI ANIL KHARE - SENIOR COUNSEL ASSISTED BY SHRI
A.J.MATTHEW - ADVOCATE)***

AND

- 1. THE STATE OF MADHYA PRADESH THR.
PRINCIPAL SECRETARY DEPARTMENT OF
ANIMAL HUSBANDRY VALLABH BHAWAN
BHOPAL (MADHYA PRADESH)**
- 2. MADHYA PRADESH PUBLIC SERVICE
COMMISSION THR. ITS SECRETARY RESIDENCY
AREA, DALY COLLEGE ROAD (MADHYA
PRADESH)**
- 3. SHRI CHHATRAPAL SINGH NARBARIYA S/O SHRI
DULARE NARBARIYA RADHAKRISHNA COLONY
(MADHYA PRADESH)**
- 4. SRHI BALBIR SINGH DHAKAR S/O SHRI
BRIJNATH ITI MAIDAN BARRIER (MADHYA
PRADESH)**
- 5. PAVAN KUMAR RAJPUT S/O SHRI VANMALI
RAJPUT VILLAGE AND POST SELAN AND TAHSIL
BHANDER (MADHYA PRADESH)**
- 6. SHRI RATNESH SINGH S/O RAJBAHADUR SINGH
PRAKASH SINGH WARD HOUSE NO. LIG 22, A-2
INDIRA NAGAR, REWA (MADHYA PRADESH)**

7. SHRI VINOD YADAV S/O SHRI BARELAL YADAV
MALGODAM ROAD, GANESHPURA (MADHYA
PRADESH)
8. DURAG SINGH LODHI S/O NOT MENTION, AGED
ABOUT 34 YEARS, GRAM HARDA POST CHOVPRA
JABRA (MADHYA PRADESH)

.....RESPONDENTS

(STATE BY SHRI T.K.KHADKA - PANEL LAWYER)
(RESPONDENT NO.2/MPPSC BY SHRI NIKHIL BHATT - ADVOCATE)

WRIT PETITION No. 6756 of 2019

BETWEEN:-

RAJENDRA KUMAR KALMODIYA S/O SHIV NARAYAN
KALMODIYA, AGED ABOUT 36 YEARS, OCCUPATION:
UNEMPLOYED R/O KALAPIPAR SHAJAPUR (MADHYA
PRADESH)

.....PETITIONER

(BY SHRI HIMANSHU SONI - ADVOCATE)

AND

1. THE STATE OF MADHYA PRADESH THR. ITS
PRINCIPAL SECRETARY DEPARTMENT OF
ANIMAL HUSBANDRY VALLABH BHAWAN
BHOPAL (MADHYA PRADESH)
2. MADHYA PRADESH PUBLIC SERVICE
COMMISSION THR. ITS SECRETARY RESIDENCY
AREA, DELHI COLLEGE ROAD (MADHYA
PRADESH)

.....RESPONDENTS

(STATE BY SHRI T.K.KHADKA - PANEL LAWYER)
(RESPONDENT NO.2/MPPSC BY SHRI NIKHIL BHATT - ADVOCATE)

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

ORDER

1. These writ petitions have been filed by the petitioners being aggrieved
of the fact that the private respondents, who were also candidates for selection

to the post of Veterinary Assistant Surgeon alongwith the petitioners have been given appointment despite the fact that on the date of filling up of the form for the post, which was advertised by the Madhya Pradesh Public Service Commission, the private respondents were not having their live registration with the State Veterinary Council.

2. Shri Anil Khare, learned Senior Counsel assisted by Shri A.J.Mathew, learned counsel for the petitioner has drawn attention of this Court to Part-IX of Rule 11 of the Veterinary Council Rules, 1993 issued by the Government of Madhya Pradesh, Pashu Palan Vibhag as contained in Annexure P/5 to submit that there is a deemed removal from the register of Veterinary Council on account of non-payment of the requisite fee and, therefore, the petitioners, who were in the waiting list, could have been given preference over the private respondents, whose registration was not renewed on account of non-payment of renewal fee.

3. Shri Nikhil Bhatt, learned counsel for respondent No.2/M.P.P.S.C in his turn submits that the issue herein is that what will be impact of non-payment of renewal fee and that can be deciphered from a conjoint reading of Section 48 and Section 49 of the Indian Veterinary Council Act, 1984.

4. I have heard learned counsel for the parties and gone through the record.

5. There is an agreement between the parties that the private respondents were registered with the Veterinary Council. The dispute is that on the last date for filling up of the form for appointment as Veterinary Assistant Surgeon, they were not having live renewal with the concerned Council and, therefore, the impact of the Veterinary Council Rules, 1993 and the Indian Veterinary Council Act, 1984 is to be examined.

6. Part-IX of Rule 11 of the Veterinary Council Rules, 1993 framed by the State of Madhya Pradesh as contained in Annexure P/5 is being reproduced as under:-

"11. Renewal Fee For Registration : (1) Any person desiring to retain his name in the State Veterinary Register shall pay to the State Council every five years a registration renewal fee of Rs.15/- (Rupees Fifteen Only) before the 1st day of April of the year in which his registration renewal falls due.

(2) Where the said renewal fee is not paid then the period mentioned in Sub-Rule (1) of the defaulter's name shall stand removed from the said register and shall be restored to it only after the payment of the said renewal fee with fine, which shall be Five Rupees for every one month or part thereof his default."

7. Section 48 of the Indian Veterinary Council Act, 1984, which deals with Renewal Fee, reads as under:-

"48. Renewal Fees (1) The State Government may, by notification in the Official Gazette, direct that for the retention of a name in the State veterinary register, there shall be paid in every five years to the State Veterinary Council, such renewal fee, not exceeding fifteen rupees, as may be prescribed and where such direction has been made, such renewal fee shall be due to be paid before the 1st day of April of the year to which it relates.

(2) Where a renewal fee is not paid within the said period, the Registrar of the State Veterinary Council shall remove the name of the defaulter from the State Veterinary Register:

Provided that a name so removed may be restored to the said register on payment of renewal fee in such manner as may be prescribed.

(3) On payment of the renewal fee, the Registrar of the State Veterinary Council shall issue a certificate of renewal and such certificate shall be proof of renewal of registration."

8. Section 49 of the Indian Veterinary Council Act, 1984, which deals with Removal From Register, reads as under:-

"49. Removal from Register (1) Subject to the provisions of this Section, the State Veterinary Council may order that the name of any person shall be removed from the State Veterinary Register where it is satisfied after giving that person a reasonable opportunity of being heard and after such further inquiry, if any, as it may think fit to make —

(a) that his name has been entered in the State Veterinary Register by error or त्ते on account of mis-representation or suppression of a material fact, or

(b) that he has been convicted of an offence involving moral turpitude and punishable with imprisonment or has been guilty of any infamous conduct in any professional respect or has violated the standards of professional conduct and etiquette or the code of ethics which in the opinion of the State Veterinary Council renders him unfit to be kept in the said register.

(2) An order under sub-section (1) may direct that any person whose name is ordered to be removed from the State Veterinary Register shall be ineligible for registration under this Act, either

permanently or for such period of years as may be specified.

(3) An order under sub-section (1) shall not take effect until the expiry of three months from the date thereof or until an appeal, if any, on such order is finally disposed of, whichever date is later.

(4) A person aggrieved by an order under sub-section (1) may, within sixty days from the communication to him of such order, appeal to the Council.

(5) A person aggrieved by the decision of the Council under sub-section (4) may, within sixty days from the communication to him of such decision, appeal to the Central Government.

(6) A person whose name has been removed from the register under this section or under sub-section (2) of section 48 shall forthwith surrender his certificate of registration and certificate of renewal, if any, to the Registrar of the State Veterinary Council and the name so removed shall be published in the Official Gazette.

(7) A person whose name has been removed from the State Veterinary Register under this section or sub-section (2) of section 48 shall not be entitled to have his name registered in the State Veterinary Register or in any other State Veterinary Register, except with the approval of the State Veterinary Council from whose register his name has been removed."

9. A conjoint read of Section 48 and Section 49 of the Indian Veterinary Council Act, 1984 reveals that Sub-Section (2) of Section 48 of the Indian Veterinary Council Act, 1984 provides that where a renewal fee is not paid

within the said period, the Registrar of the State Veterinary Council shall remove the name of the defaulter from the State Veterinary Register provided that a name so removed, may be restored to the said register on payment of renewal fee in such manner as may be prescribed.

10. Thus, it is evident that the Registrar has been bestowed with the authority to remove the name of the defaulter from the State Veterinary Register, which means that there has to be application of mind by the Registrar and the rule so framed providing for automatic removal is contrary to the provisions as contained in Sub-Section (2) of Section 48 of the Indian Veterinary Council Act, 1984.

11. Section 49 of the Indian Veterinary Council Act, 1984 provides for removal from register though Shri Anil Khare learned Senior Counsel assisted by Shri A.J. Matthew, learned counsel for the petitioner submits that the aforesaid renewal is only on account of two eventualities mentioned in Clause (a) and Clause (b) of Sub-Section (1) of Section 49 of the Indian Veterinary Council Act, 1984 but it provides that it will be done after giving reasonable opportunity of being heard and after such further enquiry, if any, as it may think fit to make.

12. Leaving the aforesaid question open that whether removal will fall in term of the provisions as contained in Section 48 or Section 49 of the Indian Veterinary Council Act, 1984, it is evident that Sub-Section (2) of Section 48 of the Indian Veterinary Council Act, 1984 provides for application of mind by the Registrar of the State Veterinary Council before removing the name of the defaulter. When application of mind is called for then the principles of natural justice are ingrained in it and there cannot be any automatic cancellation of registration.

13. Since it is not the case of the petitioners that registration of the private respondents stood lapsed by virtue of non-payment of renewal fee while infact in terms of Sub-Section (3) of Section 48 of the Indian Veterinary Council Act, 1984, on payment of renewal fee, the licence to practice stood restored from a retrospective date and, therefore, it cannot be said that there was no registration on the date of making an application rendering them ineligible for consideration of payment. It is also not the case of the petitioners that they were more meritorious than the private respondents, who have been given appointment.

14. Admittedly, when all these facts are taken into consideration then it is apparent that there being no deemed removal under the provisions as contained in Section 48 of the Indian Veterinary Council Act, 1984 and there is a specific requirement for application of mind calling for registration to pass an order of removal as is mentioned in Sub-Section (2) of Section 48 of the Indian Veterinary Council Act, 1984. Any rule, which fails to follow the spirit of the Principal Act i.e. the Indian Veterinary Council Act, 1984, will not have precedence over the Principal Act and, therefore, this Court has no hesitation to hold that consideration of candidature of the private respondents for want of specific order of removal from the State Veterinary Register does not call for any interference.

15. At this stage, Shril Anil Khare, learned Senior Counsel assisted by Shri A.J. Matthew, learned counsel for the petitioner submits that the petitioner has mentioned in his rejoinder that one of the terms and conditions of the appointment were that the appointment order should be issued only after verification of registration from the State Veterinary Council.

16. To this, Shri Nikhil Bhatt, learned counsel for respondent No.2/M.P.P.S.C submits that firstly, the State Veterinary Council is not a party to these writ petitions and secondly, no orders were passed for cancellation of registration certificate by the State Veterinary Council.

17. When the provisions as contained in Sub-Section (6) of Section 49 of the Indian Veterinary Council Act, 1984 are taken into consideration then it is evident that if a name is to be removed from the register of the State Veterinary Council due to non-payment of renewal fee as is provided in Sub-Section (2) of Section 48 of the Indian Veterinary Council Act, 1984 then such name so removed is to be published in the Official Gazette.

18. In absence of there being any publication of the names of the private respondents in the Official Gazette, there will be no deemed removal for violation of the statutory provisions and the rules framed by the State Government being not in a nature to supersede the statutory provisions, it cannot be said that the private respondents were ineligible on account of non-payment of renewal fee treating them to be deemingly removed from the register of the State Veterinary Council.

19. Accordingly, these writ petitions fail and are dismissed.

(VIVEK AGARWAL)
JUDGE