

(2021) 08 SHI CK 0029
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 3677 Of 2021

Ankita	Vs	APPELLANT
Himachal Pradesh Staff Selection Commission And Another		RESPONDENT

Date of Decision : 04-08-2021

Acts Referred:

Constitution Of India, 1950 — Article 14, 16

Citation : (2021) 08 SHI CK 0029

Hon'ble Judges : Tarlok Singh Chauhan, J; Satyen Vaidya, J

Bench : Division Bench

Advocate : B.C. Negi, Nitin Thakur, Sanjeev Kumar, Dalip K. Sharma

Final Decision : Disposed Of

Judgement

Satyen Vaidya, J

1. Petitioner has filed instant petition seeking following substantive reliefs: -

â??(i) Issue a writ of mandamus directing Respondent Commission to consider the candidature of the petitioner to the post of Medical

Laboratory Technician Grade-II; and/or

(ii) Issue a writ of mandamus directing respondent No.2 to issue a provisional registration certificate of November 2017; and /or

(iii) Issue a writ of mandamus directing Respondent No.1 to issue fresh-revised result of Medical Laboratory Technician Grade-II.â??

CASE OF PETITIONER:

2. The facts as alleged in the petition are that respondent No.1 issued Advertisement No.36-1/2020 on 02.03.2020, for selection to different categories of posts. One of such being the post of Medical Laboratory Technician Grade-II in the Health and Family Welfare Department, Government of

Himachal Pradesh. Total 154 numbers of posts in this category were advertised out of which 31 posts were for Scheduled Castes (Unreserved

Category). Minimum qualification prescribed for the said post are as under: -

i) 10+2 in science from a recognized board of school education.

ii. B.Sc Medical Laboratory Technology/B.Sc Medical Technology Laboratory/ B.Sc Medical Technology (Laboratory)/B.Sc Medical

Laboratory Sciences/B.Sc in Medical Laboratory Technology (Lateral) from a recognized University or an institution affiliated to a

recognized University.

iii) Should be registered with the Himachal Pradesh Para Medical Council for the above qualification.

3. As per petitioner, she was having all the qualifications for the post of Medical Laboratory Technician Grade-II. Petitioner passed her matriculation

with 91% marks from CBSE in 2011 and 10+2 in medical stream with 79% marks in 2013. She also passed B.Sc in Medical Technology Laboratory

from Post Graduate Institute of Medical Education and Research (PGIMER), Chandigarh with 1st division in August, 2017. Petitioner further claimed

to have registered herself with H.P. Para Medical Council provisionally on 21.11.2017, after having obtained provisional degree from Post Graduate

Institute of Medical Education and Research Chandigarh (PGIMER) Chandigarh on 18.09.2017.

4. Petitioner in response to above noted advertisement, applied for the post of Medical Laboratory Technician Grade-II within stipulated time period.

Extended last date for submission of the application was dated 05.06.2020. Petitioner appeared in the written examination conducted on dated

29.11.2020 under Roll No.776000769. She scored 54 marks in the written examination and was amongst toppers. On 04.03.2021, petitioner received

communication from respondent No.1 informing her that she had found place in the list of short-listed candidates for undertaking the evaluation

process to be held on 15.03.2021. Petitioner was required to bring original documents with attested copies.

5. Before the date of evaluation, petitioner approached respondent No.2 for registration certificate. Though, petitioner had been provisionally

registered by respondent No.2 on dated 21.11.2017 but she could not submit her degree to respondent No.2 on account of delay in its receipt. On

10.03.2021, respondent No.2 again issued provisional registration certificate in favour of petitioner.

6. Petitioner appeared with all requisite certificates also with provisional registration certificate on dated 10.03.2021 issued by respondent No.2 on the date of evaluation and submitted all the documents.

7. On dated 20.05.2021, respondent No.1 declared a list of 86 successful candidates, however, the name of petitioner was not included therein.

Respondent No.1 had afforded an opportunity to candidates to submit requisite documents within seven days. Petitioner again submitted the

documents through e-mail on dated 27.05.2021.

8. On dated 18.06.2021, respondent No.1 issued final list of 91 successful candidates. 71 posts, including 24 posts of scheduled castes (unreserved)

category, remained vacant due to non-availability of candidates. Petitioner did not find her name in the list of successful candidates and from the

aforesaid communication she found that her candidature was rejected on the ground that she did not possess provisional registration certificate prior to

dated 10.03.2021.

CASE OF RESPONDENTS:

9. Respondent No.1 in its reply has submitted that the candidature of petitioner was rightly rejected as condition of the advertisement were not fulfilled

by her. As per advertisement, eligibility of the candidates was to be seen on the closing date fixed for receipt of online application i.e., 05.06.2020. It

was categorically prescribed that the candidates must ensure their eligibility in respect of category, experience, age, essential qualification etc. as

mentioned against each post in the advertisement to avoid rejection at the later stage. Respondent No.1 further mentioned that since the petitioner did

not possess registration certificate of date prior to 05.06.2020, therefore, her candidature was liable to be rejected.

10. Though respondent No.2 did not file reply, but during the course of hearing learned counsel representing said respondent placed certain documents

on record which included one office note sheet, copy of affidavit dated 21.11.2017 of petitioner and copy of application dated 10.3.2021 scribed by

father of the petitioner.

11. We have heard learned counsel for the parties and have also gone through the records of the case carefully.

ANALYSIS

12. Before advertizing to the discussion on the contentious issue involved in the case, we deem it proper to notice relevant terms of the advertisement

dated 02.03.2020 as under: -

5. IMPORTANT INSTRUCTIONS FOR FILLING UP ONLINE APPLICATIONS:

1. to 3. Xxx xxx

xxx

4. The candidates must ensure their eligibility in respect of category, experience, age and essential qualification(s), etc., as mentioned

against each post in the advertisement to avoid rejection at later stage.

5. & 6. Xxx xxx

xxx

7. The candidate should possess requisite essential qualification(s) prescribed for the post(s) for which he/she wants to apply as on closing

date fixed for submission of Online Recruitment Applications (ORA).

11. SUBMISSION OF CERTIFICATES/DOCUMENTS.

The download/printed copy of the online application form alongwith necessary original certificates and self attested photocopies will have

to be produced at the time of evaluation. No offline application form will be accepted by the office.

13. ELIGIBILITY CONDITIONS: -

i. The date of determining the eligibility of all candidates in terms of Essential Qualifications, experience etc., shall be reckoned as on the

closing date for submitting the Online Recruitment Applications (ORA). xxx xxx

ii. xxx

(iii) Onus of proving that a candidate has acquired requisite degree/essential qualifications by the stipulated date is on the candidate and in

the absence of proof the date as mentioned on the face of certificate/degree or the date of issue of certificate/degree shall be taken as date

of acquiring essential qualification.

13. Respondent No.1 in its reply has categorically admitted that at the time of 15 marks evaluation/counseling, petitioner had submitted fee receipt of

dated 21.11.2017 (Annexure P-1) along with provisional registration certificate

with H.P. Para Medical Council dated 10.03.2021. This being so, question that arises for determination is whether the submission of aforesaid document on the date of evaluation was sufficient compliance with the terms of advertisement?

14. Perusal of the receipt dated 21.11.2017 Annexure P-1, reveals that this document was issued by respondent No.2 on 21.11.2017 as a receipt of Rs.1,000/- issued in the name of petitioner in lieu of registration fees. An endorsement was appended on the top of the documents to this effect as under: -

â??Provisional subject to the condition to deposit degreeâ??.

15. Respondent No.2, who is author of the document Annexure P-1, has not come forward to controvert its contents. It appears that instead of issuing registration certificate on any specified format, respondent No.2 made an endorsement to this effect in Annexure P-1 as noted above. The authenticity of Annexure P-1 cannot be doubted also for the reason that the petitioner has placed on record a copy of provisional degree issued in her favour by PGIMER Chandigarh certifying therein that on 06.09.2019 petitioner had passed B.Sc. in Medical Laboratory Technology Laboratory Examination.

The provisional degree was issued on 18.09.2017 with endorsement that the degree would be awarded to the petitioner at the next convocation to be held by the institute. Petitioner finally received her degree after 09.02.2019, which is on record as Annexure P-2.

16. At this stage we deem it necessary to gainfully notice the contents of office note-sheet placed on record by respondent No.2, which reads as under: -

â?? It is submitted that the Government of Himachal Pradesh recruits the various post of Paramedicals in the State of Himachal Pradesh

through HPSSC, Hamirpur, H.P. The large numbers of candidates are pressing hard for the registration under the HP Para Medical

Council, due to the condition that candidates must be enrolled with the Council for applying the posts. It is further stated that due to dire

need of the registration with the council, it is the condition that candidates shall be enrolled after submission of original degree of the

course. It is pertinent to mention here that original degrees of the course are provided by the University/Institution after a long period. As

per the past practice, Council was provisionally registered the candidates on the provisional degree & fees receipt issued accordingly.

It is proposed that if approved, we may provisionally enrolled the candidates on the analogy of HP State Medical Council & issue

Provisional Registration Certificate, so that most of the student apply for the various examination till the degree is not submitted to the

council. The condition is also laid down in the provisional certificate that it is valid only for one year from the date of issue or the original

degree not submitted by the candidate within one year which is earlier. After submission of degree, the provision certificate will be

cancelled automatically and candidate shall be issued permanent registration certificate. The following proposal is submitted for approval

please:-

1. Provisional certificate Fess of Rs.500/- (Rupees Five hundred only).
2. Printing Provisional Certificate (500 No.) after getting quotations and lowest rate shall be approved in due course of time.
3. After expiry of provisional certificate i.e. One year, permanent registration certificate shall issue by the Council as per the prescribed fees structure.

Submitted for approval please.

Sd/-

Accountant

30/7/2018

Sd/- HPPMC

HPPMC

Registrar

Sd/-

DME-cum-President

HPPMC.â??

17. In addition, perusal of documents affidavit dated 21.11.2017 sworn in by petitioner and application dated 10.3.2021 written by father of petitioner

(both documents placed on record by learned counsel for respondent No.2) clearly reveal that there was some discrepancy in the name of father of

petitioner in her certificates. The fact that above noted documents, affidavit dated 21.11.2017 and application dated 10.3.2021 have been produced by respondent No.2 from its custody, leave no matter of doubt to infer that non issuance of formatted provisional certificate in favour of petitioner was for the reason of discrepancy in the name of father of petitioner. At the bottom of application dated 10.3.2021, there is an endorsement "Provide provisional certificate" by the office of respondent No.2 and the record further reveals that provisional certificate of registration on a format was issued to petitioner on 10.3.2021 itself.

CONCLUSION

18. From the above discussion, we have no hesitation to conclude that respondent No.2 though had registered petitioner provisionally on 21.11.2017 and had issued Annexure P-1, but the provisional registration certificate on necessary format was not issued till 10.3.2021 for the reasons detailed above. In this entire process, the petitioner cannot be faulted. Thus, the issue with respect to registration of petitioner with respondent No.2 before the last date of submission of online applications, remained more of form than substance. It is not the case of respondents that provisional certificate issued by respondent No.2 did not meet the requirements of condition of advertisement.

19. While dealing with substantive rights of parties courts cannot remain oblivious towards its duties to impart substantial justice. What is material is that the person had qualified basic eligibility criteria and despite having taken requisite steps was prevented from obtaining the recognition in the form of requisite certificate etc. for one or the other bonafide reason. Merely because the form of particular transaction was not proper cannot be used to deny the person rights otherwise emanating from such deal.

20. In light of above discussion, it is held that petitioner had made substantial compliance with the requirements of advertisement. She was qualified as B.Sc. Medical Technology (Laboratory) and was also provisionally registered with respondent No.2 i.e. Himachal Pradesh Para Medical Council w.e.f. 21.11.2017. In view of this matter, the stand of respondent No.1 that petitioner did not hold requisite qualification before 06.05.2020 i.e., the last date for submission of online application is not justified.

21. The rejection of the candidature of petitioner by respondent No.1, thus, is

clearly illegal, arbitrary, irrational and violative of Articles 14 and 16 of Constitution of India. Respondent No.1 is directed to consider and recommend the name of petitioner for the post of Medical Technician Laboratory, Grade-II advertised vide advertisement No. 36-1/2020 dated 02.03.2020 within a period of two weeks from the date of this judgment. The petition is accordingly disposed of with no orders as to costs, so also the pending miscellaneous application(s), if any.