

(2022) 09 SHI CK 0045

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 7724 Of 2021

Dev Raj And Others

APPELLANT

Vs

State Of Himachal Pradesh And Others

RESPONDENT

Date of Decision : 15-09-2022

Acts Referred:

Constitution Of India, 1950 — Article 226

Bihar Development Of Ayurvedic And Unani System Of Medicine Act, 1961 — Section 17

Bihar Development Of Ayurvedic And Unani System Of Medicine Act, 1951 — Section 2(c), 3, 3(1)(a), 3(1)(b), 3(1)(c), 3(1)(d), 3(1)(e), 3(1)(f), 3(1)(g), 3(1)(h), 3(1)(i), 3(1)(j), 3(1)(k), 3(1)(l), 3(1)(m), 3(1)(n), 17, 17(1), 17(2)

Medicine Central Council Act, 1970 — Section 13A, 13B, 13C, 13C(1), 13C(2), 37, 54

Evidence Act, 1872 — Section 35

Citation : (2022) 09 SHI CK 0045

Hon'ble Judges : Tarlok Singh Chauhan, J;Virender Singh, J

Bench : Division Bench

Advocate : Sanjeev Bhushan, Rajesh Kumar, Ashok Sharma, Vinod Thakur, Shiv Pal Manhans, Yudhbir Singh Thakur

Final Decision : Allowed

Judgement

Virender Singh, J

1. The above named petitioners have invoked the extra ordinary writ jurisdiction of this Court, under Article 226 of the Constitution of India, seeking the following substantive relief:

"i. That appropriate writ, order or direction may very kindly be issued directing the respondents to consider and offer appointment to the petitioners on batch-wise basis for the post of Ayurvedic Pharmacist from the same date, when the persons junior on batch-wise basis will be offered appointments, in the interest of law and justice with all consequential benefits of pay, arrear, seniority etc."

2. Factual position, as per the pleadings, is as under:

The petitioners have obtained two years Diploma of Ayurvedic Pharmacy from different Colleges of Bihar, during the years 1995 to 2000, which are stated to have been affiliated with Bihar State Faculty of Ayurvedic and Unani System of Medicine, Patna, under Section 17 of the Bihar Development of Ayurvedic and Unani System of Medicine Act, 1961.

3. After obtaining two years Diploma from Bihar State Faculty of Ayurvedic and Unani System of Medicine, the petitioners got themselves registered with the Board of Ayurvedic and Unani System of Medicine, Himachal Pradesh. The copy of the certificate of one of the petitioners issued by the Registrar, Board of Ayurvedic and Unani Systems of Medicines, Himachal Pradesh has been placed on record as Annexure P-2.

4. Respondent No. 2, who is stated to be the Appointing Authority of the Ayurvedic Pharmacists, has issued an advertisement to fill-up the posts of Ayurvedic Pharmacists, on batch-wise basis. Consequently, call letters were issued to all the petitioners on 7th August, 2021, requiring them to appear before the Interview Board on 23rd August, 2021.

5. Thereafter, the documents submitted by the petitioners were sent for verification.

6. The petitioners have claimed that they all are in the top of the list, being the senior most, for the batch-wise recruitment. It has been contended on behalf of the petitioners that the verification of their documents had earlier been done, at the time of their registration, by the Board of Ayurvedic and Unani System of Medicine, Himachal Pradesh. Now, the respondents have again wrongly submitted their documents for verification and on the basis of some verification, have deleted their names from the list of eligible candidates and as such, not offering them the letters of appointment, despite being the senior most persons in their relevant batch(es) and having the requisite qualification for the post.

7. Petitioners have also filed representation, dated 30th October, 2021 (Annexure P-5), before the respondents for redressal of their grievances, but, no decision is stated to have been taken so far, over the said representation.

8. In order to substantiate their case, the petitioners have relied upon the judgment rendered by their Lordships of Hon'ble Supreme Court in Bihar State Council of Ayurvedic and Unani Medicine versus State of Bihar and others, 2007 (12) Supreme Court Cases 728.

9. Apprehending that the appointment letters will be issued to some other persons, excluding the petitioners, they have filed the instant writ petition, seeking the afore-quoted relief.

10. When put on notice, respondent No. 2 has contested the writ petition, mainly, on the ground that the Diplomas of the petitioners were not recognized by H.P. Takniki Shiksha Board/University recognized by the H.P. Government, and the same were sent to the Bihar State Ayurvedic and Unani Medical Council for

verification, which, in return, vide letter, dated 21st October, 2021, has intimated that the recognition of the Institutes, from where the petitioners have obtained the Degree/Certificates, stands cancelled.

11. As such, it is the stand of respondent No. 2 that those institutes were not recognized, either by the Bihar Government or by the Government of India.

12. Heavily relying upon the said communication, received from the Bihar State Ayurvedic and Unani Medical Council, it has been pleaded that the registration of the petitioners, with the Board of Ayurvedic and Unani System of Medicine, has been cancelled.

13. With all these submissions, respondent No. 2 has prayed for dismissal of the writ petition with the plea that the petitioners are not eligible for appointment to the post of Ayurvedic Pharmacists.

14. We have heard learned counsel for the parties and perused the record.

15. Respondent No. 2 has issued an advertisement by writing a letter to the Director, Public Relation Department, Himachal Pradesh, on 3rd October, 2020 (Annexure R-IV), for filling up 97 posts of Ayurvedic Pharmacists. The last date for submission of applications has been fixed as 18th November, 2020 for the Tribal areas and 3rd November, 2020 for the candidates belonging to the other parts of Himachal Pradesh. The minimum qualification, which has been prescribed, in the advertisement, is reproduced as under:

"Essential Qualification(s):

i) Plus two from a recognized Board of School Education.

ii) Successful training of at least two years duration in Ayurvedic Pharmacist/Diploma in Pharmacy (Ayurveda)/Bachelor Degree in Pharmacy (Ayurveda) from an Institution duly recognized by the Himachal Pradesh Takniki Shiksha Board/University recognized by the Himachal Pradesh Government."

16. In response to the said advertisement, a communication was sent by the Director (Ayush), Himachal Pradesh, to the candidates, falling in the zone of consideration, directing them to submit one set of the photocopies of the relevant documents, as mentioned in the said letter. Apart from the other documents, the candidates were required to submit the Certificate of successful training of at least two years duration in Ayurvedic Pharmacist/Diploma in Pharmacy (Ayurveda)/Bachelor Degree in Pharmacy (Ayurveda) from an Institution duly recognized by the H.P. Takniki Shiksha Board/University recognized by the H.P. Government, as well as, Registration Certificate from Himachal Pradesh Ayurvedic and Unani Board/Council. Admittedly, the petitioners had submitted these documents.

17. It would be apt to record herein that it has been admitted in the reply that all the petitioners have been registered with the Board of Ayurvedic and Unani System of Medicine, Himachal Pradesh, after verification of their Degrees from

the concerned Institutes.

18. Vide letter, dated 1st October, 2021, a request has been made by the Director Ayush, Himachal Pradesh to the Additional Chief Secretary-cum-Chairman, Bihar Ayush Society, Patna with regard to the verification of the documents of the recognized Institutions. In response to the said letter, it has been informed by the Registrar, Bihar State Ayurvedic and Unani Medical Council, Patna, that in view of the decision taken by the Bihar State Ayurvedic and Unani Medical Council on 4th August, 2003, the Institutions were not recognized by the State Government of Bihar or Government of India, i.e. at any Government level, and recognition given by the Bihar State Ayurvedic and Unani Medicine Authority has also been abolished.

19. As per the List of Medical Qualifications included in the Schedules to the Indian Medicine Central Council Act, 1970 (Second Schedule), the State Faculty of Ayurvedic and Unani Medicine, Patna was holding validity from 1953 to 2003.

20. Section 2 (c) of the Bihar Development of Ayurvedic & Unani Systems of Medicine Act, 1951 defines the word 'Faculty', which reads as under:

"2. Definitions.

(a)

(b)

(c) "Faculty" means the State Faculty of Ayurvedic and Unani Medicines established under Section 17."

21. Similarly, Section 17 (2) of the Bihar Development of Ayurvedic & Unani Systems of Medicine Act, 1951, defines the duties of the faculty. The relevant portion of the said provision is

reproduced as under:

" 17. Establishment of Faculty.

(1).....

(2) Subject to the provisions of this Act and the Rules and Regulations made thereunder, it shall be the duty of the Faculty-

(a)

(b) to hold examinations and grant certificates to, and confer degrees or diplomas on, persons who shall have pursued a course of study in the institutions affiliated to the Faculty."

22. Thus, it can be clearly discerned that prior to the year 2003, the State Faculty of Ayurvedic and Unani Medicine, Patna was recognized by Central Council of Indian Medicine, New Delhi for medical qualifications in Indian medicine granted by Universities, Boards or other medical institutions in India

and was authorized to hold examinations and grant certificates to, and confer degrees or diplomas on, persons who shall have pursued a course of study in the Institutions affiliated to the Faculty.

23. In Bihar State Council of Ayurvedic and Unani Medicine's case (*supra*), their Lordships of Hon'ble Supreme Court have had an occasion to discuss the effect of the Amending Act, 2003. It would be profitable to reproduce the relevant portion of the judgment, as under:

"13. The Bihar Development of Ayurvedic and Unani Systems of Medicine Act, 1951 received the assent of the President on 12.9.1951 and the assent was first published in the Bihar Gazette, Extraordinary, dated 17.10.1951. This Act was enacted to provide for the development of the ayurvedic and Unani systems of medicine, to regulate their teaching and practice, and to control the sale of indigenous medicinal herbs and drugs in the State of Bihar. In exercise of powers under Section 3, the State Government shall, by notification, constitute a Council to be called the Bihar State Council of Ayurvedic and Unani Medicines, which shall consist of a President and the Members mentioned in clauses (a) to (n) of Section 3(1).

14. Under Section 17 of this Act, the Council shall establish a State Faculty of Ayurvedic and Unani Medicines for the purposes of the Act which shall consist of a Chairman and the Members enumerated in clauses (a) to (d) of Section 17(1). Under clause (d) of sub-section (2) of Section 17, it shall be the duty of the Faculty to recognize educational or instructional institutions of the Ayurvedic and Unani systems of medicine for purposes of affiliation. Under clause (b) of Section 17(2), the Faculty is authorized to hold examination and grant certificates to, and confer degrees or diplomas on, persons who shall have pursued a course of study in the institutions affiliated to the Faculty.

15. Section 37 of this Act authorizes the Council to establish educational institutions, prescribe courses of study, etc. subject to the rules as may be prescribed by the State Government in this behalf. Section 37 clothes the Council with power to establish its own educational or instructional institutions for the purpose of conducting courses of Ayurvedic and Unani systems of medicine. Under Section 54, the Council is authorized to make regulations subject to the provisions of the Act and the rules made by the State Government.

16. Looking into the aforesaid provisions, it is clear to us that the Council constituted by the State Government under the 1951 Act shall establish a State Faculty under Section 17 which shall have the authority to recognize educational or instructional institutions of Ayurvedic and Unani systems of medicine, to conduct examinations of the persons studying in such affiliated institutions, and to grant certificates and confer degrees or diplomas.

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56. The amendment brought about in the Indian Medicine Central Council Act,

1970, in 2003 by introduction of Sections 13-A, 13-B and 13-C are the provisions for continuance of the institution which has not obtained prior permission of the Central Government and, therefore, time limit of three years has been provided under Section 13-C to regularize the institutions affairs as required under the Act by seeking permission of the Central Government. Insertion of Section 13-A in the 1970 Central Act in the year 2003 has regulated the opening of an indigenous medical college. The non-obstante clause clearly indicates that a medical institution cannot be established except with the prior permission of the Central Government.

57. Under Section 13-B, any medical qualification granted by the colleges established without the prior permission of the Central Government is not a recognized medical qualification. The reasonable reading of Section 13-C(1) puts the existing colleges at par with the new colleges as both of them are required to seek permission within three years from the commencement of the Amending Act. The phrase on or before has made it clear that the existing colleges are also required to seek permission and there is no exemption.

58. Section 13-C(2) further provides that the medical qualification granted by existing colleges whose establishment has not been recognized by the Central Government, the medical qualification would not be a recognized qualification. Similar requirement is to be fulfilled by the new medical colleges opened, i.e., to seek permission of the Central Government for the medical qualification to be recognized qualification. Thus, new colleges or existing colleges cannot any more grant a recognized qualification without the sanction of the Central Government. Section 13-C(2) does not say that the effect of non-permission by the Central Government to the existing colleges after the Amending Act came into force would render the medical qualifications already granted by the existing colleges before the insertion of Sections 13-A, 13-B and 13-C in 2003, un-recognised.

59. The whole spectrum of the amendment brought about by introducing Sections 13A, 13B and 13C indicates that it has an application from the date they have been introduced by an amendment in the 1970 Central Act. The effect of the amendment brought about is clear to us that all the medical colleges which are in existence or the medical colleges which have to be established should compulsorily seek permission of the Central Government within the period provided and on failure to get the permission of the Central Government the medical qualification granted to any student of such medical college shall not be a recognized medical qualification for the purposes of the 1970 Act. The established colleges are also required to seek permission of the Central Government for the medical qualification to be recognized medical qualification but it would not mean that the already conferred medical qualification of the students studied in such previously established medical colleges would not be a recognised medical qualification under the 1970 Act.

60. On a reasonable construction of these Sections, we hold that the provisions of Section 13B whereby the qualification granted to any student of a medical

college would not be deemed to be a recognized medical qualification would not apply. When a degree has been legally conferred on the students prior to the commencement of the Amending Act of 2003, it shall be treated as a recognized degree although the medical college has not sought permission of the Central Government within a period of three years from the commencement of the Amending Act of 2003.

61. For the reasons aforesaid, the appeals are allowed. The judgment of the High Court is set aside and we hold that the GAMS degree conferred on the appellant-students shall be treated as a recognized degree for the purposes of taking admission to the higher courses of study and also for the purpose of employment.”

24. The document, on which respondent No. 2 is heavily relying upon, is letter, dated 1st October, 2021. This letter does not demonstrate that the Diplomas, which were issued by the Bihar State Faculty of Ayurvedic and Unani System of Medicine prior to 2003, were not recognized by Central Council of Indian Medicines, which is the apex body for recognizing the medical qualifications in Indian medicine.

25. Moreover, it has rightly been pointed out by the learned counsel appearing for the petitioners that the fact, that before registration of the petitioners with the Board of Ayurvedic and Unani System of Medicines, Himachal Pradesh, their Diplomas were duly verified, has been admitted by respondent No. 2 in the reply. Thus, respondent No. 2 cannot now raise question/doubt over the Diplomas obtained by the petitioners from Bihar State Faculty of Ayurvedic and Unani System prior to 2003, as, it was respondent No. 2, who had registered the petitioners with the Board of Ayurvedic and Unani System of Medicine, Himachal Pradesh, after verifying the documents submitted by the petitioners. As per Section 35 of the Evidence Act, there is a presumption that the official acts are done with accuracy and fidelity.

26. At the cost of repetition, it would be apt to record herein that the response of the Registrar, Bihar State Ayurvedic and Unani Medical Council, Patna to letter, dated 1st October, 2021, is too short to raise any question over the Diplomas obtained by the petitioners from Bihar State Faculty of Ayurvedic and Unani System prior to 2003.

27. Considering all these facts, the writ petition is allowed and the Diplomas obtained by the petitioners from Bihar State Faculty of Ayurvedic and Unani System prior to 2003 are held to be valid, as, the said Institutes were duly recognized by the Central Council of Indian Medicines, which is the apex body for recognizing the medical qualifications in Indian medicine. Respondent No. 2 is, accordingly, directed to consider the candidature of the petitioners for the post of Ayurvedic Pharmacists, if otherwise found eligible.

28. Pending miscellaneous applications, if any, also stand disposed of accordingly.