
(2010) 01 KL CK 0050
In the High Court Of Kerala
Case No : W.A. No. 10 of 2010

Dr. B. Venugopal and Dr. K.B. Unnikrishnan APPELLANT
Vs
State of Kerala, Director, State Programme Manager and RESPONDENT
Central Council of Homoeopathy

Date of Decision : 06-01-2010

Acts Referred:

Evidence Act, 1872 — Section 45
Homoeopathy Central Council Act, 1973 — Section 15(2)

Citation : (2010) 01 KL CK 0050

Hon'ble Judges : K. Balakrishnan Nair, J;C.T. Ravi Kumar, J

Bench : Division Bench

Advocate : P.B. Sahasranaman, for the Appellant; No Appearance, for the Respondent

Final Decision : Dismissed

Judgement

K. Balakrishnan Nair, J.—The appellants are the writ petitioners. The writ petition was filed by them, challenging Ext.P3 notification issued by the second respondent, inviting applications for appointment to the post of Medical Officers in Homoeopathy. The opening portion of Ext.P3 would show that the applications were invited for appointment on contract basis. The general conditions which form part of Ext.P3 stipulate that the recruitment is for a period of three months, which may be extended based on the performance of the candidate. The said notification says that for the post of Medical Officer (Homoeopathy), only bachelors degree holders in Homoeopathic Medicine and Surgery are entitled to apply. The appellants are Diploma holders in Homoeopathic Medicine and Surgery. Therefore, they are ineligible as per Ext.P3 notification to apply for the post. According to the appellants, Section 15(2) of the Homoeopathy Central Council Act provides that any person who is having a recognized medical qualification and registration with the State/Central Council of Homoeopathy, is entitled to hold the office of Homoeopathic physician under the Government and other local bodies, whatever be the designation of that post. Since the appellants

are having recognized qualification and registration with the Travancore-Cochin Council of Homoeopathic Medicine, they are entitled to work as Medical Officers (Homoeopathy), notified under Ext.P3. So, they should not have been excluded, it is submitted. But, the learned Single Judge declined to accept this contention and dismissed the writ petition. Hence this appeal.

2. We heard the learned Counsel Sri. P.B. Sahasranaman for the appellants. He brought to our notice Section 15(2) of the Homoeopathy Central Council Act, 1973. The said Section reads as follows:

15. Right of persons possessing qualifications included in Second or the Third Schedule to be enrolled--

xxxx xxxx xxxx (2) No person, other than a practitioner of Homoeopathy who possesses a recognized medical qualification and is enrolled on a State Register or the Central Register of Homoeopathy--

(a) shall hold office as Homoeopathic physician or any other office (by whatever designation called) in Government or in arty institution maintained by a local or other authority;

(b) shall practice Homoeopathy in any State;

(c) shall be entitled to sign or authenticate a medical or fitness certificate or any other certificate required by any law to be signed or authenticated by a duly qualified medical practitioner; (d) shall be entitled to give any evidence at any inquest or any Court of law as an expert u/s 45 of the Indian Evidence Act, 1872 on any matter relating to Homoeopathy.

Going by Section 15(2), it is clear that the minimum qualifications essential for holding the post of Homoeopathic physician in Government service are, recognized medical qualification in Homoeopathy and registration with the State/ Central Council of Homoeopathy. But, if the employer thinks that only the Post Graduates need be appointed and a notification is issued in that regard, this Court cannot interfere on the ground that the employer concerned is Government or a Board Constituted by the Government. It is a matter of policy, with which this Court cannot interfere. If the respondents 1 and 2 think that only Graduates need be considered for appointment, they are acting well within their powers. Their decision cannot be described as ultravires or unauthorised or contrary to Section 15(2) of the Act. In view of the above position, we find no merit in the challenge against Ext.P3. Accordingly, the writ appeal fails and it is dismissed.