

(2024) 04 CHH CK 0013
In the Chhattisgarh High Court
Case No : Writ Petition (S) No. 453 Of 2013

Dr. Bijaya Ketan Sahu

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 03-04-2024

Acts Referred:

Constitution of India, 1950 — Article 226
Indian Medicine Central Council Act, 1970 — Section 13A

Citation : (2024) 04 CHH CK 0013

Hon'ble Judges : Rajani Dubey, J

Bench : Single Bench

Advocate : J.N. Nande, Raghvendra Verma, Anupam Dubey

Final Decision : Allowed

Judgement

1. Heard on admission.

2. Admit.

3. The instant petition under Article 226 of the Constitution of India has been filed by the petitioners against the action on the part of the respondent authorities whereby the appointment orders were not issued in favour of the petitioners. It is also prayed that a direction may be issued to the respondent authorities to consider the representation made by the petitioners with regard to appointment on the post of Lecturer (Shalya Tantra).

4. Brief facts of the case as mentioned in the petition, are that petitioner No.1- Dr. Bijaya Ketan Sahu passed Bachelor of Ayurvedic Medicine and Surgery from Sambalpur University, Burla (Orissa) in the year 1996 and completed his post graduation M.S. (Ayurved) in Shalya Tantra from the Utkal University Bhubaneswar (Orissa) in the year 2001. After obtaining Master of Surgery (Ayurved) degree, petitioner applied for registration of additional qualification and on 23.09.2009, the Registrar of Orissa State Council of Ayurvedic Medicine issued a registration certificate of additional qualification of Master of Surgery

(Ayurved) degree.

5. Petitioner No.2- Dr. Prashant Lingaram Rasale passed Bachelor of Ayurvedic Medicine and Surgery from Maharashtra University of Health Sciences, Nasik (M.S.) in the year 2003 and completed his post graduation (Ayurved Vachaspati) M.S. in Shalya Tantra from the University of Mumbai in the year 2008. After obtaining Master of Surgery (Ayurved) degree, petitioner No.2 applied for registration of additional qualification and on 25.08.2008, the Registrar of Maharashtra Council of Indian Medicine issued a registration certificate of additional qualification of Master of Surgery (Shalya Tantra) degree. The Chhattisgarh Public Service Commission Raipur issued an advertisement (Annexure P/1) on 02.09.2009 bearing No. 04/2009/Chayan dated 27.08.2009 whereby applications were invited for the post of Lecturer and Reader in Government Aayurvedic College as well as Senior Scientific Officer Grade-2 in Health and Family Welfare Department. In the above said advertisement, the requisite qualification, age limit, mode of selection pay scale and other important information were also mentioned. The petitioners applied for the post of Lecturer, published in the said advertisement and after the interview, the petitioners were placed at serial No.3 & 4 in the waiting-cum-merit list issued by the Chhattisgarh Public Service Commission, Raipur and one Dr. Balendra Singh has been selected on the post of Lecturer (Shalya-Tantra). Being aggrieved by the selection of Dr. Balendra Singh, the petitioner No.1-Dr. Bijaya Ketan Sahu preferred a writ petition i.e. W.P.(S) No.3088/2011 alleging that the post graduation degree of Dr. Balendra Singh was not registered in the State Council of Indian Medicine Board and the post graduation registration certificate was not registered with the State Council/ Board of the Indian Medicine at the time of submission of the application form. Vide order dated 21.03.2012 (Annexure P/2), this Court allowed the said petition to some extent and a direction was issued to P.S.C. to prepare a fresh select list for the post of Lecturer (Shalya Tantra) of other candidates other than respondents No.4 & 5, after considering all the aspects of the matter including the qualification of the candidates. In compliance of the said order, the Chhattisgarh Public Service Commission, Raipur issued a fresh select list for the post of Lecturer in Shalya Tantra after considering the qualification of the candidates vide notification dated 27.04.2012 (Annexure P/3). The fresh Select-list dated 27.04.2012 was not challenged by any party before any Court of law. The CGPSC, Raipur informed the petitioners about their selection on the post of Lecturer (Shalya Tantra) on 08.05.2012 (Annexure P/4). The petitioners obtained their post graduation degrees from respective Universities which were recognized by the University Grants Commission, CCIM and Department of Ayurved Yoga Unani Siddha and Homeopathy (AYUSH), Government of India. After obtaining the post graduation certificates, the petitioners registered themselves with the State Council/ Board of the Indian Medicine and both the petitioners got appointment orders from different Ayurvedic Colleges of different State Government including department of Health and Family Welfare, on contract basis.

6. After publication of the notification dated 27.04.2012 of the Chhattisgarh Public Service Commission, Raipur, the petitioners' documents were not challenged by any authority or any person and after verification, all the documents were found true and correct. Petitioner No.1- Dr. Bijaya Ketan Sahu completed his post graduation course from Gopabandhu Ayurveda Mahavidyalaya, Puri (Odisha). During admission of the post graduation course in the year 1998-99, the above institution was permitted by the Government of India as well as CCIM as per the provision of Section 13A of Indian Medicine Central Council Act, 1970, this information received from Central Council of Indian Medicine, New Delhi, through the Right to Information Act, 2005, where it is clearly mentioned that the permission was granted for admission in the Session 1998-99 after verification of all the norms and conditions provided by the University. Similarly, the petitioner No.2- Dr. Prashant Lingaram Rasale completed his post graduation course from R.A. Poddar Medical (Ayurveda) College, Worli, Mumbai (Maharashtra). During admission of the post graduation course in the year 2005- 06, the above Institution was permitted by the CCIM, New Delhi as per provision of Section 13A of Indian Medicine Central Council Act, 1970, this information received from the office of DEAN, R.A. Poddar Medical (Ayurveda) College, Worli, Mumbai (Maharashtra) through the Right to Information Act, 2005, where it is clearly mentioned that permission was granted for admission in the Session 2005-06 after verification of all the norms and conditions provided by the University.

7. On 17.08.2012 (Annexure P/5), the office of the Director, AYUSH, Chhattisgarh submitted a report to the Under Secretary, Health & Family Welfare Department informing that the petitioners' documents were examined by the Scrutiny Committee and the scrutiny committee submitted a report on 01.08.2012 wherein it was mentioned that the petitioners' universities are not appended in Scheduled-II of IMCC, from where the post graduation degree of M.S. (Ayurved) Shalya-Tantra has been obtained by them, therefore, the appointment orders cannot be issued to the petitioners. The Under Secretary of the Health & Family Welfare Department, Raipur issued a letter on 17.10.2012 (Annexure P/6) to the Secretary, CGPSC, Raipur whereby the candidature of the petitioners was cancelled and a direction was given to prepare and issue a fresh select list from the main select list. After issuance of the fresh/ modified select-list, the petitioner No. 1-Dr. Bijaya Ketan Sahu made several representations/ reminders (Annexure P/7) before the respondent authorities for taking necessary steps for issuing the appointment orders in their favour in compliance with this Court's order dated 21.03.2012 passed in W.P.(S) No.3088/2011, but all the representations are pending till date. Hence, this petition has been filed by the petitioners for following reliefs:-

"10.1 The Hon'ble Court may kindly be pleased to issue a writ of mandamus directing to the respondents to issue the appointment orders for the post of Lecturer (Shalya Tantra) in favour of the present petitioners;

10.2 The Hon'ble Court may kindly be pleased to direct the respondents to consider the representations made by the petitioners regarding the appointment on the post of Lecturer (Shalya Tantra).

10.3 Any other relief/relief's which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case with cost of the petition may also please be granted to the petitioner, in the interest of justice."

8. Learned counsel for the petitioners submits that the action of the respondent authorities with regard to refusing to give appointment orders to the petitioners on the post of Lecturer, is unjust, arbitrary and unreasonable. This Court vide order dated 21.03.2012 allowed the petition of petitioner No.1- Dr. Bijaya Ketan Sahu to some extent and directed the CGPSC for preparing a fresh select-list of other candidates for the post of Lecturer (Shalya Tantra) after considering all the aspects of the matter including the qualification of the candidates. After examining all the aspects of the matter, on 27.04.2012, the CGPSC issued a modified/ fresh select-list, wherein all the disputes have already been examined by the CGPSC. Therefore, after issuance of the fresh select-list, the respondent authorities have no reason to decline the issuance of appointment orders in favour of the petitioners on vague grounds. Scrutiny Committee made by respondent No.2 did not give any opportunity to the petitioners for clarifying their status and their degrees as genuine and have been obtained by the recognized universities. Therefore, the act on the part of the respondent authorities in not issuing the appointment order to the petitioners on the said post, is unjust, unfair and is also in violation of the Service Recruitment Rules. The impugned select-list is recommended by the CGPSC after examining all the aspects and legal grounds. The educational qualification of the petitioners is at par with the eligibility criteria prescribed for the advertised posts published on 02.09.2009 for which the petitioners have already applied and in the selection process, they were called for interview and their entire documents have been examined and found eligible for the said post by the Scrutiny committee.

9. Respondent No.2 again made a scrutiny committee and after examining the documents/ certificates of the petitioners, the said committee gave its opinion that the concerned universities from where the petitioners obtained their degrees, have not appended in the Schedule-II of IMCC Act, 1970 but the fact is that the concerned universities are running their degree courses after due approval receiving from the CCIM under IMCC Act, which is the governing body of the medical courses. The respondent authorities without following the settled principles of Service Recruitment Rules, declined to issue the appointment orders to the petitioners after receiving select-list from the CGPSC, which is also the violation of the terms & conditions published in advertisement issued by CGPSC. The petitioners complied with all the requisite qualification of the advertisement published by the Chhattisgarh Public Service Commission and there is no reason as to why respondent authorities did not issue appointment orders after receiving select-list from the CGPSC.

10. Learned counsel for respondents No. 1 & 2/State strongly opposes the prayer of the petitioners and submits that the Public Service Commission which is a Nodal Agency created under the Statute for conducting the examination on various posts which exists in different department of the respondent authorities. Therefore, respondent No.2 on 27.08.2009 issued an advertisement which was published on 02.09.2009 for appointment on the post of Lecturer and Reader in Government Ayurved College and for the post of Senior Scientific Officer Grade-II. The requisite qualifications and the procedure to apply for the aforesaid post were clearly mentioned in the advertisement issued by the respondent No.2. Clause 1.2 of the aforesaid advertisement specifically lays down that the post graduate qualification in the subject/Specialty concerned included in the Schedule 2 of the Indian Medicine Central Council Act, 1970 is necessary qualification. Although, the petitioners have obtained a Post Graduate Degree in the concerned subjects. However, on verification of their credentials, it was found that the post graduate degree/qualification as obtained by the petitioners from the respective Universities, was not included in the Schedule 2 of the Indian Medicine Central Council Act, 1970. Therefore, the candidature of the petitioners has been rightly rejected by the Committee constituted by the respondent authorities to verify the credentials of the candidates.

11. The candidature of the petitioners has been rejected on 17.08.2012 which is evident from the internal communication between the respondent No.2 and the Deputy Secretary, Government of Chhattisgarh, Health and Family Welfare Department. However, the petitioners has not challenged the same before this Court, hence the same has attained finality and, therefore, the instant petition is liable to be dismissed.

12. Heard learned counsel for the parties and perused the material placed on record.

13. It is an admitted position in this case that the Chhattisgarh Public Service Commission Raipur prepared fresh selection list vide notification dated 27.04.2012 (Annexure P/3) for the post of Lecturer in Shalya Tantra in Government Ayurved college of the state under the Health and Family Welfare Department. As per the direction of this Court dated 21.03.2012 (Annexure P/2), the petitioners stood in merit position but the respondent authorities did not issue any appointment letter to them on the ground that the petitioners' post graduation degrees which was awarded by their respective universities i.e. Utkal University Bhubneshwar (Orissa) and University of Mumbai (Maharashtra) are not included in the Schedule 2 appended in Indian Medicine Central Council Act 1970.

14. In previous round of litigation, this Court vide order dated 21.03.2012 in W.P. (S) No. 3088 of 2011 observed and held in paras 8 and 9 as under:-

"8. In *Dipitimayee Parida Vs. State of Orissa and others* (2008) 10 SCC 687 the Supreme Court held that "ordinarily the qualification or extra qualification laid down for the recruitment should be considered as on the last date for filing of the

application".

9. In the case on hand, possession of requisite qualification is mandatory and, as such, the same has to be completed before the cut off date fixed in the advertisement. Admittedly, the respondents No.4 & 5 have not obtained the requisition qualification on the date of making the application form and, as such, their selection is not sustainable in the eyes of laws. Thus, the impugned select list dated 2-5-2011 (Annexure - P/1), in respect of the respondents No.4 & 5, is hereby quashed and the P.S.C. is directed to prepare a fresh select list for the post of Lecturer (Shalya Tantra) of other candidates other than respondent No. 4 and 5, after considering all the aspects including the qualifications of the candidates."

15. As per Annexure P/3 dated 27.04.2012, both the petitioners were selected in the merit list but till filing of this petition, respondent authorities did not issue appointment order in their favour and as per Annexure P/5 dated 17.08.2012, respondent No.2- the Director, Ayurved, Yoga and Naturopathy, Unani Siddha & Homeopathy (Ayush), Chhattisgarh informed that the degree of both the petitioners was obtained by those colleges which are not included in Schedule 2. Petitioners also filed Annexure P/12 dated 05.01.2018 which is the notification of Ministry of Ayurved, Yoga and Naturopathy, Unani Siddha & Homeopathy and as per this notification, respondent No.4 has been notified by the Ministry.

16. Respondent No.1 admitted in his return that the PSC selected the petitioners and list was sent to respondent No.4/Utkal University. It is clear from the documents filed by the petitioners and respondent No.4 that the petitioners complied with all the requirements published in the advertisement and both the universities are running their degree course after due approval from the CCIM as per provision under Section 13A of Indian Medicine Central Council Act, 1970. Respondent No.1 on false grounds denied the appointment of the petitioners and objection of respondent No. 2 is also not sustainable.

17. Looking to the facts and circumstances of the case, this petition is allowed. Respondent authorities are directed to issue appointment letters in favour of the petitioners as per advertisement dated 02.09.2009. This exercise be completed within 2 months from the date of receipt of copy of this order. The petitioners shall be entitled for all consequential benefits except the monetary benefit from the due date.