

(2012) 03 CHH CK 0022
In the Chhattisgarh High Court
Case No : Writ Petition S No. 8012 of 2011

Dr. Sapna Jaiswal

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 26-03-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 03 CHH CK 0022

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Hon"ble Shri Satish K. Agnihotri, J.

(Writ Petition under Article 226 of the Constitution of India)

1. Heard learned counsel for the parties. Challenge in this petition is to the legality and the validity of the revised select list dated 17.11.2011 (Annexure P/1) whereunder the revised merit list has been prepared for appointment on the post of District Ayurved Officer in which the name of the petitioner finds place at S. No. 1 in the revised waiting list. Pursuant to the advertisement dated 23.10.2009 (Annexure P/3), the petitioner working as Ayurved Medical Officer applied for the recruitment to the post of District Ayurved Officer. The requisite qualification and experience prescribed in the advertisement was graduation in Ayurved with internship by the recognized institute registered with Bhartiya Chikitsa Kendriya Parishad and working as Ayurved Officer in a Government Hospital or in a Dispensary for minimum 5 years. Clause 8.2 of the advertisement prescribed that on scrutiny of the applications received from the applicants there may be a written examination for short listing of the candidates. If there is a written examination, the candidates will be informed and if written examination was not thought necessary, the applicants will be considered through interview after short listing and for that the applicants would be notified.

2. According to the petitioner, the P.S.C. has selected the candidates only on the basis of 100% marks allotted in interview. In fact, the selected candidates are less meritorious to other candidates including the petitioner. The P.S.C. ignoring the rules prescribed and the terms of advertisement, selected the candidates only on the basis of 100% marks obtained in the advertisement. Thus, the action of the P.S.C. is arbitrary and illegal. Thus, this petition.

3. The petitioner has raised the identical grounds, as raised by the similarly situated persons before this Court in *Dr. Bhoj Singh & Another v. State of Chhattisgarh & Others*¹. However, subsequently, an application (I.A. No. 3) for taking documents on record was filed by the petitioner without amending the petition by incorporating the additional grounds.

4. During the course of arguments, Shri Dubey, learned counsel for the petitioner, would submit that the petitioner has obtained an information under the provisions of the Right to Information Act, 2005 wherein it is provided that the maximum number of candidates as per the Rules of Procedure of the Chhattisgarh Public Service Commission could not have been more than 40, as the vacancies advertised was for four posts and the PSC has invited 45 candidates for interview.

5. Secondly, the respondent No. 3 was posted in Government Hospital, Dhanora since 21-8-2003; however, he has produced the experience certificate of his posting at Government Hospital, Pujari, Kanker. Even in the certificate of BAMS Examination of Sambalpur University the roll number shown was 92-PN-09 and on the same roll number two mark sheets have been issued. Thus, it appears to be a forged mark sheet. Further the certificate submitted by the respondent No. 3 was issued on 15-1-1993 when the respondent No. 3 has completed internship on 31-7-1997.

6. The above facts have been brought by way of application for taking documents on record without an affidavit in support of the truthfulness of the statement made in the application.

7. Though, the application (I.A. No. 3) has not been taken on record, as the same is not supported by an affidavit, however, the grounds raised in the said application as well as the documents annexed thereto have been argued, as aforestated.

8. The grounds raised by way of application for taking documents on record cannot be adjudicated upon for want of proper opportunity to other side to rebut the same, as the same was not a part of the pleadings.

9. Even otherwise, since the new facts were placed along with the application for taking documents on record and the same was also not supported by an affidavit. The averments made in the application for taking documents on record were not also incorporated in the writ petition by amending the writ petition, thus the respondents had no occasion to advert to the same allegations, which

were brought in the notice of the Court by way of taking additional documents on record, not supported by duly sworn affidavit. Thus, the same cannot be taken as new grounds and cannot be considered for adjudication of the dispute. The grounds raised initially in the petition are the identical grounds by the similarly situated persons in Dr. Bhoj Singh (supra). This Court considered the case of Dr. Bhoj Singh (supra) and after having examined all the facts and grounds raised therein, dismissed the same. Thus, this case cannot be held as different or distinguishable from other petition i.e. Dr. Bhoj Singh (supra).

10. The reliance of the petitioner upon the decisions of the Supreme Court in Gujarat State Dy. Executive Engineers' Association v. State of Gujarat and Others² & K.H. Siraj v. High Court of Kerala and Others³ and upon the decision of this Court in Omprakash v. State of C.G. & Others⁴ are not relevant to the lis involved in the instant case. As the cases in respect of rights of candidates who finds place in the waiting list, needless to mention here that this is well settled proposition of law that a candidate in the select list does not acquire any indefeasible right of appointment. Empanelment by itself does not amount to selection and it also does not create a vested right for appointment. (See: Rakhi Ray and Others v. High Court of Delhi and Others⁵ and the decision of this Court in Dularwa Khuntay & 9 Others v. State of Chhattisgarh & 5 Others⁶). As an upshot, the writ petition sans merit is liable to be and is hereby dismissed.