

(2020) 10 SHI CK 0120
In the High Court Of Himachal Pradesh
Case No : CWPOA No. 5169 Of 2020

Dr. Shital Sharma

APPELLANT

Vs

State Of H.P And Anr

RESPONDENT

Date of Decision : 13-10-2020

Acts Referred:

Citation : (2020) 10 SHI CK 0120

Hon'ble Judges : Sureshwar Thakur, J;Chander Bhusan Barowalia, J

Bench : Division Bench

Advocate : Ajay Sharma, Aanandita Sharma, Ashwani Sharma, J.S. Guleria

Final Decision : Disposed Of

Judgement

Chander Bhusan Barowalia , J

1. The instant petition has been maintained by the petitioner for the following reliefs :

"That impugned acts of the respondents which amount to executive inaction may be quashed and set aside with directions to the respondents to immediately and forthwith declare the result of the applicant with respect to the post of Ayurvedic Medical Officer qua which interviews were held on 13.6.2018 and in sequel thereto, issue appointment letter forthwith without any delay in favour of the applicant. Further, respondents may be directed to treat the applicant in service for all intents and purposes from the date her other counterparts from the same interview joined service and further directions may be given to pay the arrears of salary alongwith interest @ 9% p.a."

2. As per the petitioner, the petitioner passed B.A.M.S in December, 2011 and she is a bonafide resident of Himachal Pradesh. Further, the petitioner is fully eligible to be considered for the post of Ayurvedic Medical Officer, on batch wise basis. The petitioner appeared in the interview, on the date fixed, i.e. 13.6.2018, for the category of physically handicapped. However, when the petitioner came to

know that the candidates, who appeared in the interview alongwith her, received letters for joining, whereas no information was received by the petitioner qua her appointment.

3. In reply to the instant writ petition, the respondents has averred that the petitioner appeared for the counseling/scrutiny of the documents, under low vision category on 13.6.2018. After scrutiny of the said documents by the screening committee, the petitioner was not found fulfilling the criteria of 40% disability. Rather, in the disability certificate furnished by the petitioner, she is shown only 30% visually disabled and 25% other disability, which in combination comes to 46.67%, as such, the instant writ petition is not maintainable and deserves dismissal.

4. Mr. Ajay Sharma, the learned Senior Counsel appearing on behalf of the petitioner has vehemently argued that in total the petitioner was suffering more than 55% disability and action of the respondents in not considering the petitioner is against the law and the same is required to be set aside. On the other hand, Mr. Ashwani Sharma, the learned Additional Advocate General has argued that since the petitioner is not fulfilling the criteria of 40% disability, as such, she cannot be considered to be appointed as Ayurvedic Medical Officer.

5. In order to appreciate the rival contentions of the parties, we have gone through the record carefully in detail.

6. From the perusal of records, it is clear that the petitioner is suffering disability to the extent of 30% and 25%, respectively and thus, the total disability is more than 40%, in any case.

7. Condition No.9, of the Office Memorandum, dated 22.06.2017 (Annexure R-1), which provides for degree of disability for reservation, reads as under :

"9. Degree of disability for reservation :

Only such persons would be eligible for reservation in services/posts who suffer from not less than 40 percent of the relevant disability. A person who wants to avail benefit of reservation would have to submit a Disability Certificate issued by a competent authority. At the time of initial appointment against a vacancy reserved for persons with benchmark disabilities, the appointing authority shall ensure that the candidate is eligible to get the benefit of reservation."

8. In the present case, the Medical Certificate issued by the Doctor, clearly shows that the petitioner is suffering disability to the extent of 30% and 25%, respectively. In these circumstances, the total disability of the petitioner is more than 40%, therefore, she is required to be considered for the post of Ayurvedic Medical Officer, in physically handicapped category, as per the criteria. Accordingly, the respondents are directed to consider the candidature of the petitioner in category of physically handicapped, for the post of Ayurvedic Medical Officer, for which interview was held, on 13.6.2018, and in case she thereupon, becomes entitled for appointment, after filling the other conditions

and comes in the merit of physically handicapped category offer her appointment to the post, for which interview was held, at the earliest possible. There is no order as to costs. Pending application(s), if any, also stand(s) disposed of.