
(2011) 06 P&H CK 0050
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 3884 of 2011

Dr. Sudhir Shyam and Another	Vs	APPELLANT
State of Punjab and Others		RESPONDENT

Date of Decision : 01-06-2011

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (2012) 2 ILR (P&H) 846

Hon'ble Judges : Permod Kohli, J

Bench : Single Bench

Advocate : Ashok Bhardwaj, for the Appellant;

Final Decision : Dismissed

Judgement

Permod Kohli, J.—Respondent no. 2 issued advertisement published in the Tribune in its issue dated 26.9.2010 inviting applications from the eligible candidates for filling up 133 regular posts of Ayurvedic Medical Officers by the Ayurvedic Department of Punjab. The qualifications and other details prescribed for the post are as under:-

Last date for receipt of application was fixed as 26.7.2010. Petitioner no. 1 applied in BC Category whereas petitioner no. 2 applied in Handicapped Category. Both the petitioners have been declared ineligible vide the public notice issued by respondents on their official website for the following reasons:-

2. It is admitted position that both the petitioners completed their internship on 9.9.2010, as is evident from the internship certificates issued by the Principal, Government Ayurvedic College, Patiala dated 9.9.2010 (Annexures P-6 and P-7, respectively). On completion of their internship, the petitioners also secured registration with the Board of Ayurvedic and Unani System of Medicines, Punjab under the provisions of Punjab Ayurvedic and Unani Practitioners Act, 1963. Both the petitioners were registered as Medical Practitioners in the Ayurvedacharya (BAMS) on 9.9.2010 (Annexures P-4 and P-5 respectively). It is thus admitted

position that on the last date of making applications, the petitioners had not completed their internship nor they were registered Medical Practitioners. It is stated that the Director, Health and Family Welfare, Punjab had earlier issued advertisement for 34 posts of Medical Officer (Dental) and some of the candidates were declared ineligible on the ground of not completing internship and non-registration. They approached this Court by filing CWP Nos. 17159 to 17162 of 2010. Notice of motion was issued in these cases where upon the respondents issued corrigendum dated 23.9.2010 treating them as eligible by declaring that such candidates who will fulfil the condition of eligibility upto the date of interview will be considered as eligible. The petitioners have also referred to another advertisement issued by the Army Dental Corps for grant of Short Service Commission (Annexure P-12) wherein the date for completion of the internship and registration for the purpose of eligibility has been specified. The contention of the petitioner is two fold:- (i) That in case of appointment of Medical Officer (Dental), the eligibility has been extended upto the date of interview; and (ii) That no date for acquiring eligibility has been mentioned in the advertisement notice rendering the petitioner ineligible.

3. I have heard learned counsel for the petitioners. The qualifications prescribed in the advertisement are statutory qualifications. The recruitment of the Ayurvedic Medical Officer is governed and regulated by statutory rules framed under Proviso to Article 309 of the Constitution of India. The State of Punjab has framed statutory rules, namely, Punjab Ayurvedic (Group "A") Service Rules, 2008 (hereinafter referred to as "the Rules"), as notified vide notification dated 25.3.2008. Rule 5 provides for the method of appointment, qualification and experience etc. The said Rule is reproduced here under:-

5. Method of appointment, qualifications and experience.- (1) Appointment to the service shall be made in the manner specified in Appendix "B". Provided that, if no suitable candidate is available for appointment by promotion and by direct appointment, then appointment to the Service shall be made by transfer of a person holding a similar or an identical post under a State Government or Government of India.

(2) No person shall be appointed to a post in the Service unless he possesses the qualifications and experience as specified against that post in Appendix "B".

(3) Appointment to the Service by promotion shall be made on the basis of seniority-cum-merit, but no person shall have any right to claim promotion on the basis of seniority alone.

4. Under Sub Rule (1) of Rule 5, appointment to the service is to be made in the manner specified in Appendix B. Sub rule (2) of Rule 5 further provides that no person shall be appointed to a post in service unless he possesses the qualifications and experience as specified against that post in Appendix B. Item No. 6 of Appendix B annexed to the Rules provides the qualifications for the post of Ayurvedic Medical Officer as under:-

5. From the conjoint reading of Rule 5 alongwith Item No. 6 of Appendix B, it is evident that appointment to the post of Ayurvedic Medical Officer can only be made by direct recruitment as 100% appointment is provided through direct recruitment. The qualifications prescribed for the post are Degree of BAMS (Bachelor of Ayurvedic Medicine and Surgery) or its equivalent degree from a recognized University or other teaching institution recognized by CCIM. In the State of Punjab, BAMS degree is granted by Baba Farid University of Health Sciences. Baba Farid University has framed Ordinances for various courses etc. for which degrees are required to be awarded by the University. Relevant Ordinances dealing with degree in Ayurvedic Acharya (BAMS) read as under:-

5. Degree to be awarded Ayurvedacharya BAMS (Bachelor of Ayurvedic Medicine and Surgery) The candidate shall be awarded Ayurvedacharya BAMS (Bachelor of Ayurvedic Medicine and Surgery) degree after completion of prescribed courses of study extending over the prescribed period and passing the Final Examination and satisfactory completion of six months rotatory compulsory internship in the parent institution after passing in all the subjects in the final examination.

6. From above Ordinance, it appears that BAMS degree to be awarded to a candidate not only comprises of successful completion of the prescribed course, but also compulsory rotatory internship. Ordinance 12 of the same Chapter deals with the rotatory internship. Under the Ordinance framed before 2001, the rotatory internship was for a period of six months, however, subsequently, the period of rotatory internship has been extended to one year. The relevant Ordinance dealing with the compulsory rotatory internship reads as under:-

12. Compulsory Internship

12.1 The students who had joined the BAMS Course before 2001 shall go in for internship for six months after passing BAMS Course.

12.2 The students who joined BAMS Course in 2001 or thereafter shall go in for compulsory internship after passing Final Prof. BAMS Course. Duration of Internship shall be of one year as under:-

(i) Nine months in the concerned college hospital in the following departments:-

(ii) Two months in Primary Health Centres/Civil Hospitals, so that the students could get familiar with the National Programmes i.e. immunization, Family Welfare and Reproductive Child Health of the State/ Govt. of India, etc.

(ii) One month in Rural Ayurvedic Dispensaries

12.3 After completion of internship the concerned Principal will certify that the student has satisfactorily completed internship. Thereafter the student will be awarded the degree of Bachelor of Ayurvedic Medicine and Surgery (BAMS).

12.4 All the students of Baba Farid University of Health Sciences, Faridkot, will complete their internship in their parent colleges.

7. The prescribed qualification in the statutory rules is degree in Ayurvedacharya (BAMS) awarded by recognized University or a institution recognized by CCIM. From the conjoint reading of statutory rules and the University Ordinance relating to award of BAMS degree, it is abundantly clear that a BAMS degree includes course study and one year rotatory internship. Above noted statutory qualifications prescribed for the posts have been prescribed in the Appendix. These qualifications have been notified in the advertisement. The qualifications are essential for appointment to the post of Ayurvedic Medical Officer.

8. Rotatory internship is an integral part of BAMS degree. Without rotary internship, the qualification of BAMS is incomplete. Admittedly, the petitioners were: not possessed of the minimum prescribed qualifications on the last date of receipt of applications. They have been declared ineligible for not completing the compulsory rotatory internship which facts is even admitted by the petitioners and established on record from the certificates of completion of internship on 9.9.2010 produced by the petitioners and their registration on the same date while the last date: for making application was 26.7.2010. Indubitably the petitioners were ineligible. It is now a settled law that a candidate must possess the essential qualifications on the cut off date prescribed for any recruitment unless the rule otherwise permits. The cut off date in reference to qualifications can be as prescribed under the statutory rules, if any. In absence of any statutory stipulation, the cut off date will be, as may be notified in the advertisement and if no such date is notified even in the advertisement, the last date of making application in the advertisement is to be construed as the cut off date. In the present case, no cut off date is prescribed in the recruitment rules nor any such date has been stipulated in the advertisement. In such situation, the last date for making application is to be construed as the effective date for acquiring qualification. Thus, the petitioners were required to possess the requisite qualifications on or before last date for making application i.e. 26.7.2010. This controversy is no more res integra. The contention of the petitioners that no date for acquiring eligibility is mentioned in the advertisement is also without any substance and does not help the petitioners. In the case of Ashok Kumar Sharma and Another Vs. Chander Shekher and Another, , Hon"ble Supreme Court held that the essential qualifications could be acquired upto the date of interview. This view was, however, reversed by the Hon"ble Supreme Court by reviewing its own order in the case of Ashok Kumar Sharma and Others Vs. Chander Shekhar and Another, The relevant observations are contained in paragraph 6 of the judgment as under:-

6 The review petitions came up for final hearing on 3.3.1997. We heard the learned counsel for the review petitioners, for the State of Jammu & Kashmir and for the 33 respondents. So far as the first issue referred to in our Order dated 1.9.1995 is concerned, we are of the respectful opinion that majority judgment (rendered by Dr. T.K. Thommen and V. Ramaswami, JJ) is unsustainable in law. The proposition that where applications are called for prescribing a particular date as the last date for filing the applications, the eligibility of the candidates

shall have to be judged with reference to that and that date alone, is a well-established one. A person who acquires the prescribed qualification subsequent to such prescribed date cannot be considered at all. An advertisement or notification issued/ published calling for applications constitutes a representation to the public and the authority issuing it is bound by such representation. It cannot act contrary to it. One reason behind this proposition is that if it were known that persons who obtained the qualifications after the prescribed date but before the date of interview would be allowed to appear for the interview, other similarly placed persons could also have applied. Just because some of the persons had applied notwithstanding that they had not acquired the prescribed qualifications by the prescribed date, they could not have been treated on a preferential basis. Their applications ought to have been rejected at the inception itself. This proposition is indisputable and in fact was not doubted or disputed in the majority judgment. This is also the proposition affirmed in *Rekha Chaturvedi v. University of Rajasthan*. The reasoning in the majority opinion that by allowing the 33 respondents to appear for the interview, the recruiting authority was able to get the best talent available and that such course was in furtherance of public interest is, with respect, an impermissible justification. It is, in our considered opinion, a clear error of law and an error apparent on the face of the record. In our opinion, *R.M. Sahai, J.* (and the Division Bench of the High Court) was right in holding that the 33 respondents could not have been allowed to appear for the interview.

9. This view has been reiterated in almost all subsequent judgments. Hon''ble Supreme Court in the case of *Bhupinderpal Singh and others versus State of Punjab and others* 2000 (2) RSJ, considered similar questions of acquiring eligibility. It has been held that where the cut off date for acquiring eligibility is prescribed under the statutory rules, the same shall prevail and where no cut off date is mentioned in the rules, the cut off date notified in the advertisement is to be treated as the date for acquiring eligibility and in absence of any such stipulation in the statutory rules or advertisement, the last date for receipt of applications is to be considered as the date for acquiring eligibility. Relying upon a number of judgments of Hon''ble Supreme Court, the Hon''ble Supreme Court observed as under:-

13. Placing reliance on the decisions of this Court in *Ashok Kumar Sharma and Others Vs. Chander Shekhar and Another, A.P. Public Service Commission, Hyderabad and Another Vs. B. Sarat Chandra and Others, The District Collector and Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram and Another Vs. M. Tripura Sundari Devi, Mrs. Rekha Chaturvedi (Smt) Vs. University of Rajasthan and Others, ; Dr. M.V. Nair Vs. Union of India (UOI) and Others, and U.P. Public Service Commission U.P., Allahabad and Another Vs. Alpana, , the High Court has held (i) that the cut off date by reference to which the eligibility requirement must be satisfied by the candidate seeking a public employment is the date appointed by the relevant service rules and if there be no cut off date appointed by the rules then such date as may be*

appointed for the purpose in the advertisement calling for applications; ii) that if there be no such date appointed then the eligibility criteria shall be applied by reference to the last date appointed by which the applications have to be received by the competent authority. The view taken by the High Court is supported by several decisions of this Court and is therefore well settled and hence cannot be found fault with.

10. The issue has also been considered by a Division Bench of this Court in the case of Sachin Sharma versus Punjab University 2002 (1) S.C.T. 1124, wherein following observations have been made:-

4. We have heard learned counsel for the parties at some length. The facts are hardly in dispute in the present case. The petitioner alongwith number of other candidate could not submit their final year result or even detailed mark-sheet before the competent authority within the prescribed period i.e. 4.7.2001. They were unable to produce the said documents even by extended date i.e. 20.7.2001. The result was declared on 20.8.2001. Thereafter the petitioner could have produced the said result before the authorities. It is clear that no fault is attributable to any of the respondents. As per the Full Bench judgment of this Court in the case o Amardeep Singh Sahota Vs. The State of Punjab etc., and Rahul Prabhakar Vs. Punjab Technical University and Others, terms and conditions of the brochure are binding....

In view of the above factual premises and settled legal position, the petitioners were ineligible for the post of Ayurvedic Medical Officer for non-completion of compulsory rotatory internship and rightly declared as such. I find no merit. The writ petition dismissed.