

(2022) 04 PAT CK 0003

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 8628 Of 2020

Dr. Sunita Kumari

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 04-04-2022

Acts Referred:

Citation : (2022) 04 PAT CK 0003

Hon'ble Judges : P. B. Bajanthri, J

Bench : Single Bench

Advocate : Krishna Kant Singh, Nikesh Kumar, S.D. Yadav, Anil Kr. Verma

Final Decision : Dismissed

Judgement

Heard learned counsel for the parties.

In the instant petition, petitioner has prayed for the following relief/reliefs:

“(i) For issuance of a writ in the nature of mandamus directing the concerned respondent authorities to issue corrigendum in advertisement No.04/2020 and 05/2020 (Annexure-3) published for the post of Ayush Medical Officer issued under the signature of respondent No.5 whereby and whereunder and in clause-2 educational qualification the degree equivalent to degree of Bachelor of Ayurvedic Medicine & Surgery (BAMS) has been left out although in earlier advertisement equivalent degrees of BAMS were included and the petitioners are already working on contract basis at different Government Hospitals on the basis of degree of Graduate of Ayurvedic Medicine & Surgery (GAMS) since the year 2010, 2011 onwards continuously and omission of the degree equivalent to BAMS is depriving the petitioners from applying for regular post although both the degree are equivalent as has been held by the Hon'ble Apex Court in Civil Appeal No.4643/2003 (Bihar State Council of Ayurvedic and Unani Medicine) disposed of on 01.11.2007 (Annexure-4).

(ii) For directing the concerned respondent authorities to accept the application

of the petitioners for the post of Ayurvedic Medical officer and Ayush Physician (Ayurvedic) taking into account that the State of Bihar recognizes the degree of GAMS and have engaged the petitioner who are working since the last 10 years on different government post on contractual basis.

(iii) For restraining the concerned respondents from proceeding with the advertisement in question till the disposal of the writ application if the necessary corrigendum is not issued by including the degree of GAMS.

(iv) To further direct the concerned authorities to grant weightage to the petitioners for the work they have discharged for the last about 10 years.

(v) For other necessary relief/reliefs to which the petitioners may be found entitled in the facts of the case."

Undisputedly, the petitioners were initially appointed on contract basis to the post of Ayush Medical Officers. Pursuant to the rules called The Bihar District Ayush Medical/State Ayush Medical Service (Appointment on Regular/Contract Basis and Service Conditions) (Amendment) Rules, 2017 notified on 20.11.2017 is being operated for the purpose of filling up Ayush Medical Officers on permanent basis. Petitioners are candidates for the recruitment to the post of Ayush Medical Officer with a qualification of GAMS. Prior to 20.11.2017, one of the qualification prescribed for the post of Ayush Medical Officer is GAMS. Thus, petitioners were appointed on contract basis. For the purpose of regular recruitment as in Advertisement No.4/2020 to 9/2020, the existing rules of recruitment to the post of Ayush Medical Officer is notification dated 20.11.2017 in which GAMS is not one of the prescribed qualification as the earlier Rule, 2010 has been substituted vide Rule 2 which reads as under:

"2. Substitution of clause (e) of Rule (4) Chapter-2 of the said Rules 2010 shall be substituted by the following :-

(i) Recruitment – In this service, appointment will be made to the post of the Ayush Medical officer (Ayurvedic, Unani and Homeopathy) on the basis of the commission by direct recruitment. In case delay in regular appointment, the contractual appointment may be made by the government in the public interest as per necessity for the limited period. Contractual appointment will be made according to the criteria determined by the General Administration.

(ii) Qualifications – (1) The minimum education qualification for this service will be the degree of B.A.M.S./B.U.M.S./B.H.M.S. in Ayurved, Unani and Homeopathy method respectively recognized by the University established under the alw and included in the second schedule of C.C.I.M./C.C.H.:

Provided that preference may be given to those post graduate degree or higher degree holders in any stream of AYUSH (Ayurved, Unani and Homeopathy) and on the basis of work experience to the doctors appointed in the Government Hospitals of Bihar on regular/contractual basis.

(2) It will be compulsory for the candidates to obtain permanent registration from the Board/Council of their concerned faculty established under the law by the State Government.

(3) Age limit for appointment will be same which may be determined by the government from time to time:

Provided that the power to give exemption in maximum age-limit to the Doctor candidates will be vested in the administrative department.

(iii) Selection Process – (1) Department, after calculating the vacancy on the basis of position as on 1st April of the year and after roster clearance, will send the category-wise requisition to the Bihar Public Service Commission till April 30.

(2) On receiving requisition from the Department, the Commission will advertise the number vacancies to be filled up by direct recruitment in such a manner as it deem fit and proper and will also invite applications from eligible candidates and prepare a merit list on the following basis:-

(i)

For Marks obtained in B.A.M.S./B.U.M.S./ B.H.M.S.

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50 Marks

(ii)

For Postgraduate Degree / Higher Degree (5 marks for M.D./M.Sc. (Ayurveda, Unani & Homeopathy) and 05 marks for higher degree total 10 marks)

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10 Marks

(iii)

For work experience received after appointment on the basis of contract appointed in Hospitals / Dispensaries accredited by the Government of Bihar (5 marks for maximum of full year experience, maximum 25 marks)

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25 Marks

(iv)

Interview

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15 Marks

Total

100 Marks

Explanation:-

(a) The determination of the marks to be given to the candidates for B.A.M.S./B.U.M.S./B.H.M.S. examination shall be in multiple of 0.5 of total percent of marks obtained in the examination of the said course. Thus, if a candidate has obtained 50% marks, he/she will get $50 \times 0.5 = 25$.

(b) Minimum qualifying marks will be 40 for consideration for the appointment.

(3) The interview process will be determined by the Commission.

(4) After preparing the category-wise merit-list, the Commission will send the final recommendation to the department. Verification of and antecedent of the candidates after Medical test certificates, will be made at the level of the department.

(5) The Commission will provide category-wise merit-list to the Department against the requested requisition."

The aforesaid amendment is not prospective or retrospective for the reasons that it is a substitution of original rules/notification, therefore, it relates back to original rule. In other words, from the inception of issuance of the aforesaid rules in the year 2010.

In the light of these facts and circumstances, GAMS qualification possessed by the petitioner cannot be equated with prescribed qualifications in the Rules, 2017, therefore, the petitioners have not made out a case.

Learned counsel for the petitioners vehemently submitted that the vacancies accrued between 2010-2017 is being filled up now in the year 2020-2021 with reference to amended Rules, 2017. Therefore, on the date of occurrence of the vacancy, the rules are required to be followed. In other words, Rules, 2010 is applicable to such of those vacancies which accrued prior to 2017. The aforesaid submission cannot be accepted for the reasons that Clause (e) of Rule (4) Chapter-2 of the Rules, 2010 has been substituted by prescribing certain qualification, as cited supra, in which GAMS is not one of the qualification. The word 'substitution' of a particular clause in the rules amounts to incorporating from the inception of the rules. Therefore, the aforesaid contention of the petitioners that vacancies accrued between the year 2010 to 2017 is required to be filled in accordance with the Rules, 2010, is hereby rejected, consequently, the other contentions which are not assisting the petitioners' grievance, since petitioners are not fulfilling the basic qualification for the post of Ayush Medical Officer (Ayurvedic, Unani and Homeopathy).

Hence, the petition stands dismissed.

Accordingly, I.A. No. 1 of 2021 stands rejected.

Petitioners are at liberty to file a fresh petition, if they intends to challenge the

validity of rule.