
(2014) 08 MP CK 0108
In the Madhya Pradesh High Court
Case No : Writ Petition No. 15168/2008

Govardhan Das Udasi

APPELLANT

Vs

The State of Madhya Pradesh

RESPONDENT

Date of Decision : 20-08-2014

Acts Referred:

Citation : (2014) 08 MP CK 0108

Hon'ble Judges : Sanjay Yadav, J

Bench : Single Bench

Advocate : Adarshmuni Trivedi, Learned Senior Counsel and A. Trivedi, Learned Counsel, Advocate for the Appellant; Sheetal Dubey, Learned Government Advocate, Advocate for the Respondent

Judgement

Sanjay Yadav, J.—By seeking modification in the absorption order dated 15.2.2006, petitioner seeks direction to the respondents to absorb/appoint him as Ayurved Chikitsa Adhikari (Ayurved Medical Officer) from the date of his absorption in Government Service i.e. 19.4.1988 with all consequential benefits.

2. Apparent it is from order dated 15.2.2006 brought on record as Annexure P/30 that on the basis of the recommendation of screening Committee, petitioner along with others has been absorbed on the post of Assistant Ayurved Medical Officer in Grade Rs.1150-30-1210-40-1450-50-1800 w.e.f, 19.4.1988.

3. The Screening as evident from the order was in pursuance to Govt. of M.P Department of Medical Education order No.F/12-149/99/2/55 dated 25/2/2000 and order no.F12-149/99/2/55 dated 17/12/2004 which in turn was due to order passed by Division Bench in Writ Petition No.5287/1997: State of M.P. and others V. Dr Purushottam Dwivedi and others decided on 1.7.1999. It was held therein:

"The Tribunal appears to have been impressed by the fact that the Government had created the post of Ayurved Chikitsa Adhikari only and by bifurcation it into two separate pay scales, it had created a post of Ayurved Chikitsa Adhikari in the lower pay scale which did not exist. We may hereby observe that creation of post

by itself cannot imply any automatic absorption since making available the posts to meet a contingency is one thing to absorb a person on the post is another. The absorption of a person has to be on the basis of the relevant criteria adopted in this behalf keeping in mind the qualifications necessary for the post. While it is true under the said service Recruitment Rules, a person having five years experience on the post of Assistant Chikitsa Adhikari is eligible for being considered for promotion, it is not correct to say that no academic qualifications have been prescribed. The Recruitment Rules for direct appointment on the post of Assistant Chikitsa Adhikari Also prescribed academic qualification for the said post. We are of the opinion that even if the Tribunal had found the criteria laid down for absorption to be harsh, the Tribunal could not have substituted the function of the Government by laying down its own criteria and directing reconsideration of cases on the criteria so laid down. If the Tribunal was of the view that the cases of absorption should also be considered in the light of the provision for promotion of persons on the post of Ayurved Chikitsa Adhikari in accordance with the Public Health (Indian System of Medicines & Homeopathy) (Gazetted Service) Recruitment Rules, 1987 keeping in view the qualification laid down for appointment on the post of Assistant Ayurved Chikitsa Adhikari under M.P. (Indian Systems of Medicines & Homeopathy) Class-III. Ministerial Service Recruitment Rules, 1987. It could have directed the Government to consider evolving of a fresh criteria for such absorption. It is not disputed before us that the Government has by communication dated 7-1-1984, laid down conditions of absorption. It is not disputed before us that the Govt. has by communication dated 7-1-1984, laid down conditions of absorption to inter alia, provide for protection of pay of the employees so absorbed. We are, therefore, of the opinion that the direction of the Tribunal deserves to be modified and we, accordingly direct that the Government shall also take into consideration the qualifications laid down vide enclosures to memo dated 1-6-1967 (Annexure R-2 to the return in W.P. No.5271/1997) and frame a scheme for absorption of the Vaidyas bearing in mind the qualifications laid down for the post of Ayurved Chikitsa Adhikari for direct recruitment and by promotion both, and to consider the cases afresh in accordance with the scheme so framed. These petitions are, thus, partly allowed with no order as to costs.

4. The direction in Dr. Purshottam Dwivedi (supra) precipitated the process of absorption.

5. The petitioner who was initially engaged in Janpad service on fixed pay and fixed period, in 1983 was taken on ad hoc for a period of six months in Grade Rs.90-170 by order dated 22.6.1984 in Panchayat service wherein he was regularised by order dated 4.9.1985.

6. That, by order dated 30.3.1988 the State Government through its Department of Public Health and Family Welfare took a decision to take 154 Ayurved dispensaries operated by Janpad Panchayats and till the employees in these dispensaries were absorbed accorded the sanction for 154 posts of Ayurved

Medical Officer : Grade Rs.1820-1650, Compounder Grade Rs.870-1420 and Dawaraj/Aushadhi Sewak Grade Rs.725-400.

7. The petitioner in pursuance to order dated 2.4.1988 was relieved to join Government service w.e.f 19.4.1988 and by order dated 15.2.2006 his services were absorbed as Ayurved Assistant Medical Officer and is made effective from 19.4.1988.

8. It appears that as the petitioner was not treated as Vaidya Pratham Shreni his services were not absorbed as Ayurved Medical Officer. It is observed from the order dated 5.2.1978 issued in the name of Governor brought on record as Annexure P/44 that the post of Vaidya Pratham Shreni was redesignated as Ayurved Medical Officer Vaidya Duitiya Shreni as Ayurved Assistant Medical Officer and Hakim as Unani Medical Officer.

9. The grievance is raised by the petitioner that he should have been absorbed on the post of Ayurved Medical Officer; however, the criteria as spelt out by the respondents which the screening committee has adhered to was (i) that the medical officer who were getting the pay scale of Assistant Ayurved Officer in erstwhile Janpad Panchayat and as per Government memo dated 1.6.1967 they are having required qualification they are eligible for absorption on the post of Ayurved Medical Officer. (ii) That the medical officers prior to absorption who were receiving equal pay scale to the pay scale of Assistant Ayurved Medical Officer, they will be entitled to be absorbed on the post of Assistant Ayurved Medical Officer though their educational qualification is equal to the post of Ayurved Medical Officer.

10. Though true it is that fixing of a criteria for appointment/absorption is a prerogative of the screening Committee; however, in the case at hand, learned counsel for respondent State is unable to reconcile the criteria fixed by the screening committee nor any record is produced to establish that the petitioner did not fit in criteria No. (i).

11. Therefore, the cause of justice demands that the case of the petitioner be reconsidered and if found eligible for absorption as Ayurved Medical Officer to extend the same w.e.f, 19.4.1988 with all consequential benefit. In case if the petitioner is not found eligible for absorption as Ayurved medical officer, the Competent Authority shall give reasons for the same and communicate it to the petitioner.

12. Let the consideration be done within three months from the date of communication of this order.

13. Petition is finally disposed of. No costs.