

(2024) 08 MP CK 0007

In the Madhya Pradesh High Court

Case No : Writ Appeal No. 2324 of 2023

Jainarayan Kushwaha

APPELLANT

Vs

The State Of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 20-08-2024

Acts Referred:

Citation : (2024) 08 MP CK 0007

Hon'ble Judges : Sanjeev Sachdeva, J, Vinay Saraf, CJ

Bench : Division Bench

Advocate : Devendra Kumar Tripathi, S.S.Chouhan, Sudeep Chatterjee

Final Decision : Dismissed

Judgement

Sanjeev Sachdeva, J, Vinay Saraf, CJ

1. I.A.No.18988/2023 is taken up which is an application for condonation of delay occurred in filing the instant appeal.
2. As per the application, there is delay of 319 days in preferring the present appeal. The application is supported by affidavit of the appellant.
3. The application is opposed by counsel for the respondents.
4. Considering the reasons assigned in the application, the application is allowed. The delay is condoned.
5. With the consent of parties, the appeal is taken up for final disposal today itself.
6. Appellant impugns judgment dated 18.08.2022, whereby the Writ Petition filed by the respondent no.6 impugning merit list for appointment dated 30.05.2018 issued by Director Health Services, Bhopal and order of joining dated 06.06.2018 for appointment of the appellant to the post of Ophthalmic Assistant, was allowed and the selection and consequential appointment of appellant was quashed.

7. An advertisement was issued by the respondents for recruitment to the post of Ophthalmic Assistant. The last date of submission of application was 13.03.2017. Appellant as well as respondent no.6 submitted the applications.

8. The eligibility qualification for appointment to the post of Ophthalmic Assistant was Higher Secondary and Diploma of 2 years in Optometry from recognized State Medical Faculty and Live Registration Certification from Madhya Pradesh Para-Medical Council.

9. It is the admitted case of the appellant that in the application form, appellant had stated that appellant possessed the eligibility. It is not in dispute that as on the date of application, appellant did not possess the eligibility qualification of Live Registration Certification from M.P. Para-Medical Council and the same was issued to the appellant on 01.05.2018, whereas the last date for submitting the application was 13.03.2017. However, selection list was issued on 30.05.2018 by which time the appellant had already registered with Para-Medical Council.

10. Learned Single Judge in the impugned order has considered the question as to whether the candidate must have minimum qualification on the last date of submission of application form or they could acquire the same at a later stage.

11. Considering the facts of the case, learned Single Judge has noticed that the last date for submitting the application was 13.03.2017 and the appellant admittedly as on the said date did not possess Live Registration Certificate with M.P. Para-Medical Council. Appellant admittedly registered with Council on 01.05.2018 much after the cut off date. Learned Single Judge has held that the appellant did not have minimum requisite essential educational qualification and therefore was not eligible to be considered or selected or appointed as Ophthalmic Assistant. Learned Single Judge consequently allowed the petition preferred by respondent no.6 and quashed the selection and consequential appointment of appellant on the post of Ophthalmic Assistant and directed for consideration of candidature of respondent no.6 out of the select list prepared pursuant to the advertisement and further directed that if it is found that the petitioner therein i.e. respondent no.6 is eligible and there is no other legal impediment then he be appointed on the said post. It was also directed to complete the exercise within 90 days from the date of receipt of certified copy of this order.

12. Shri D.K. Tripathi, learned counsel appearing on behalf of the appellant submitted that the order passed by the learned Single Judge is contrary to the legal proposition that the requirement of Live Registration Certificate is a curable defect and the same may be cured before the date of final selection. He further submits that in the present matter, the appellant already applied for the registration but the registration was issued later on and therefore, the appellant could not be held responsible as he was having all the essential qualification before publication of selection list. He further submits that Live Registration Certificate cannot be treated as educational qualification and the educational

qualification which was required for the post Ophthalmic Assistant was of 10+2 High School and Diploma in Optometry from a recognized State Medical Faculty and the appellant was possessing the same qualification on the date of filing of the application.

13. Learned counsel for the appellant relied on the judgment delivered by the Apex Court in the matter of Ramkumar Gijroya Vs. Delhi Subordinate Services Selection Board & anr., Civil Appeal No.1691/2016 dated 24.02.2016, wherein the Supreme Court considered the issue that whether a candidate who appears in examination under the OBC category and submits his certificate after the last date mentioned in the advertisement, is eligible for selection to the post under the OBC category or not, and it was held that candidate belongs to particular category on the date of filing of the application, is eligible under the said category. However, the certificate may be issued later on and necessitating the certificate dated prior the last date of application, would be clearly arbitrary. It has no rational objective sought to be achieved. The judgment delivered in the matter of Ramkumar Gijroya (supra) is not applicable to the present case as in the present matter, the qualification was fixed that the candidate must have the Live Registration Certificate from MP Para-Medical Council and it is not the case of the appellant that his registration was alive on the date of submitting the application and the certificate was issued later on. On the contrary, the registration was done on 01.05.2018 and therefore, the proposition laid down by the Supreme Court is not applicable to the present case.

14. Learned counsel for the appellant further relied on the judgment of coordinate Bench delivered in the matter of Chief Municipal Officer Vs. Ravishankar Sharma & Ors. in W.A.No.223/2008 delivered on 02.08.2019, wherein the issue was involved regarding non availability of the No Objection Certificate of the earlier employer and due to non availability of the No Objection Certificate, the candidature of the aspirant was challenged for the post of Contract Teacher, Class I and under these circumstances, the coordinate Bench has held that before the date of interview, the incumbent forwarded No Objection Certificate and therefore, the defect was cured and the candidature of the incumbent was ordered to be considered. The said judgment is also not helpful to the petitioner as in the said case also, the non availability of the NOC was not related to the eligibility criteria of the incumbent.

15. In our view, learned Single Judge has correctly appreciated the factual matrix and held that appellant was not eligible for selection and appointment on the post of Ophthalmic Assistant.

16. Supreme Court in Rakesh Kumar Sharma vs. State (NCT of Delhi) and Others, (2013) 11 SCC 58 has laid down that any person eligible on the last date of submission of application has a right to be considered against the said vacancy provided he fulfils the requisite qualification. Suitability and eligibility have to be considered with reference to the last date or receiving the applications, unless, the notification calling for applications itself specifies a different date.

17. Supreme Court in Ashok Kumar Sharma & Others v. Chander Shekher & Other (1997) 4 SCC 18 has held that 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 have to be judged with reference to that date and that date alone, is a well-established proposition. A person who acquires the prescribed qualification subsequent to such prescribed date cannot be considered at all.

18. The Supreme Court in the matter of Bhupinder Singh Vs. State of Punjab (2000) 5 SCC 262 has held as under:

"14. In view of several decisions of this Court relied on by the High Court and referred to hereinabove, it was expected of the State Government notifying the vacancies to have clearly laid down and stated the cut off date by reference to which the applicants were required to satisfy their eligibility. This was not done. It was pointed out on behalf of the several appellants/petitioners before this Court that the practice prevalent in Punjab has been to determine the eligibility by reference to the date of interview and there are innumerable cases wherein such candidates have been seeking employment as were not eligible on the date of making the applications or the last date appointed for receipt of the applications but were in the process of acquiring eligibility qualifications and did acquire the same by the time they were called for and appeared at the interview. Several such persons have been appointed but no one has challenged their appointments and they have continued to be in public employment. Such a loose practice, though prevalent, cannot be allowed to be continued and must be treated to have been put to an end. The reason is apparent. The applications made by such candidates as were not qualified but were in the process of acquiring eligibility qualifications would be difficult to be scrutinised and subjected to the process of approval or elimination and would only result in creating confusion and uncertainty. Many would be such applicants who would be called to face interview but shall have to be returned blank if they failed to acquire requisite eligibility qualifications by the time of interview. In our opinion the authorities of the State should be tied down to the principles governing the cut off date for testing the eligibility qualifications on the principles deducible from decided cases of this Court and stated hereinabove which have now to be treated as the settled service jurisprudence."

(underlying supplied)

19. The similar issue came up before this Court for consideration in W.A.No.1539/2023 (Nikhil Yadav Vs. State of M.P. & Ors.) and this Court on 12.08.2024 after considering the law laid down by Apex Court has held that if any qualification is required by advertisement and the aspirant does not possess the qualification on the last date of submission of application, his candidature cannot be considered and he cannot be treated as eligible for appointment.

20. The Supreme Court in Ashok Kumar Sharma & Ors. Vs. Chander Shekher &

Ors (1997) 4 SCC 18 has held that where applications are called for prescribing a particular date as the last date for filing the applications, the eligibility of the candidates have to be judged with reference to that date and that date alone. The person who acquires the prescribed qualification subsequent to such prescribed date cannot be considered at all. An advertisement or notification issued or published calling for applications constitutes representation to the public and the authority issuing it is bound by such representation and it acts contrary to it.

21. Similarly in the matter of Rakesh Kumar Sharma Vs. State (NCT) & Ors (2013) 11 SCC 58, the Supreme Court has held that eligibility criteria or conditions should be examined as on the last date of receipt of applications and candidate fulfilling the required qualification has right to be considered for appointment. The candidates who does not possess requisite qualification on the last date of submission of application cannot be considered.

22. In view of the above, we find no infirmity in the view taken by the learned Single Judge in holding that the eligibility of the appellant had to be considered as of the last date of submitting the application and since appellant was not eligible as of the said date, his appointment was correctly quashed by the writ Court. We find no merit in the appeal. The appeal is consequently dismissed.