
(2013) 09 MP CK 0162
In the Madhya Pradesh High Court
Case No : W.P. No. 22144/2012

Nazia Khan and Others

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 11-09-2013

Acts Referred:

Citation : (2014) 2 JLJ 354 : (2014) 2 MPHT 209 : (2013) 4 MPJR 109 : (2014) 1 MPLJ 478

Hon'ble Judges : K.K. Trivedi, J

Bench : Single Bench

Judgement

K.K. Trivedi, J.—These two writ petitions are directed against the action of the respondent No. 3-Madhya Pradesh Public Service Commission (hereinafter referred to as the P.S.C. for brevity) refusing to accept the applications submitted by the petitioners for taking part in selection for appointment on the post of Medical Officer, on the grounds that though the petitioners are fulfilling the requisite qualifications prescribed in the advertisement, but only because the petitioners are not having the permanent registration with the M.P. Medical Council, their candidature has not been considered. It is contended that in view of the fact that such condition of permanent registration with the aforesaid Council is not essential condition prescribed in the statutory Rules, the P.S.C. has exceeded in exercise of its jurisdiction in prescribing said condition in the advertisement, and that an arbitrary act on the part of the P.S.C., the petitioners have been denied the opportunity to participate in selection, therefore, they are required to file the writ petition. It is contended by the petitioners that they were students in the course of Bachelor of Medicine and Bachelor of Surgery (hereinafter referred to as M.B.B.S. for brevity) and have completed their studies. Since the petitioners have qualified in the final examination, they applied before the M.P. Medical Council for their registration as Medical Practitioner. The petitioners were granted a provisional registration certificate by the said Council u/s 11(3) of the M.P. Ayurvedigyan Parishad Adhiniyam, 1987 (hereinafter referred to as the 1987 Act for brevity). Thus, they became eligible to take part in the

aforesaid selection. The petitioners were undergoing one year compulsory rotating internship training. In the statutory Service Rules made by the State Government in exercise of power under proviso to Article 309 of the Constitution of India, known as M.P. Public Health and Family Welfare (Gazetted) Service Rules, 1988 (hereinafter referred to as Rules for brevity), the requisite qualification for appointment on the post of Assistant Surgeon which is now designated as Medical Officer is only M.B.B.S. and not even a training prescribed. Since the petitioners have passed the M.B.B.S. course, they became eligible to take part in selection. An advertisement was issued by the P.S.C. inviting applications for the post of Medical Officer. In the said advertisement, the last date initially prescribed for filling the on line form was 9.11.2012 and the last date by which the written application was to be submitted was 24.11.2012. In this advertisement, it was categorically said that all those who have the requisite qualification on the last date to fill in the form on-line would be eligible to take part in the selection. This was categorically said that the M.B.B.S. or any other recognized equivalent qualification prescribed by Indian Medical Council is the minimum qualification prescribed for the said post which a candidate must possess along with a certificate of permanent registration as Medical Practitioner in the M.P. Medical Council. By an corrigendum published by the P.S.C., certain modification was done in the earlier advertisement with respect to grant of relaxation in age and, therefore, the last date for filling the form on-line was extended to 23.12.2012 and the last date for filing the application in writing by hand was extended to 3.1.2013. The petitioners made the application, but since their applications were not being considered, they approached the Court by way of filing the writ petition. It is contended that de hors the Rules, no such conditions could have been prescribed by the P.S.C. in the advertisement for eligibilities of candidate to take part in selection and, as such, rejection of candidature of the petitioners was unjustified and illegal.

2. While entertaining this writ petition, by an interim order, it was directed that the petitioners be permitted to take part provisionally in the selection, but their selection would be subject to final outcome of the writ petition. Upon service of the notices on the respondents, a return has been filed by the P.S.C. and it is contended that all the allegations made by the petitioners are misconceived. The degree of M.B.B.S. was not conferred on the petitioner and, therefore, they were not eligible on the last date of filling the on-line form to take part in the selection initiated by the P.S.C. for appointment on the post of Medical Officer. It is contended that only when a degree of M.B.B.S. is conferred on a candidate by the University established for the said purposes, such a candidate become eligible to be registered as a Medical Practitioner, by the M.P. Medical Council. The petitioners were undergoing the internship training which was the part of the studies of course for conferral of the degree of M.B.B.S. and were having no degree of M.B.B.S. on the last date of filling on-line form. Thus, their candidature was not to be considered at all. This being so, action has rightly been taken by the respondent P.S.C. in refusing the petitioners to take part in the selection to

be held by the P.S.C.. That being so, it is contended that the petitions are misconceived and deserve to be dismissed.

3. Heard learned counsel for the parties at length and perused the record.

4. It is, vehemently, contended by the learned counsel for the petitioners that if the Rules prescribe only one thing that is obtaining of M.B.B.S. or equivalent qualification recognized by Medical Council of India, it was not necessary to have a degree of M.B.B.S. as the word degree was not used in the relevant column of Schedule-III of the Rules referred to herein above. It is contended that the petitioners have already passed the M.B.B.S. course successfully much before the last date of filling the form, have applied to the M.P. Medical Council for their registration as Medical Practitioner and since under the 1987 Act, such a certificate has been issued to them which clearly demonstrate that the petitioners are eligible to take part in selection for appointment in service also, it cannot be said that the petitioners were not eligible on the last date of filling the on-line form to take part in the selection commenced by the respondent No. 3. It is further vehemently contended that this being not a requirement under the Rules, such a condition cannot be enforced against them. The syllabus of studies prescribed by the M.P. Medical Council, nowhere contemplates that rotating internship should have also been completed for the purposes of conferral of degree of M.B.B.S. as the internship is a phase of training wherein a graduate is expected to conduct actual practice of Medical and Health care and acquire skill in supervision so that he/she may become capable of functioning independently. It is contended that since in the Regulations made by the Council object of such a training is separately prescribed and defined and since it has been categorically said that every candidate will be required after passing the final M.B.B.S. examination to undergo compulsory rotating internship, only for the purposes of becoming eligible for the award of degree of Bachelor of Medicine and Bachelor of Surgery and registration in the M.P. Medical Council, if the specific word degree is not mentioned in the requisite qualification prescribed under the Rules, insistence of the respondent No. 3 to produce such a degree on the last date of filling the on-line form is illegal. It is, thus, contended that the petitioners are entitled to be declared as eligible candidate to take part in the selection.

5. Per contra, it is contended by Shri K.S. Wadhwa, learned standing counsel for respondent-P.S.C. that unless there is a degree conferred, the registration of a medical practitioner is not permissible in the Council. The persons like petitioners cannot be treated to be full fledged degree holder as the rotating internship is the part of the course of study for the purposes of conferral of such a degree of M.B.B.S. It is submitted that merely because word degree is not mentioned in the statutory Rules, where the qualification is prescribed by the State Government, it cannot be said that a candidate, who has passed only the theory examination of M.B.B.S. course would also be entitled to take part in the selection held by the P.S.C. This being so, specifically such a condition is mentioned indicating that under no bonafide mistake, forms may be filled in by

ineligible candidates. Thus, entire claim made by the petitioners is misconceived and their petitions are liable to be dismissed. Relying in the case of Shailesh Kumar Patel and others v. State of M.P. and others, (Writ Petition No. 5978/2013, decided on 2.7.2013), learned counsel for the respondent No. 3 has contended that such a contention has already been rejected by this Court and, therefore, these petitions are also liable to be dismissed.

6. To summarize the rival submissions, it is necessary to examine the entire scope of grant of degree of M.B.B.S. course. The Parliament has enacted the Indian Council Act, 1956 (hereinafter referred to as 1956 Act). It has certain objects and reasons. The basic objects and reasons were for recognition of the Indian Medical Council, certain qualifications obtained from Medical Institutions by the citizens of India, and so also to provide for temporary recognition of medical qualifications granted by Medical Institutions in countries outside India, With these objects the Act was made. In the definition given in Section 2(h) and 2(j) of the 1956 Act, the recognized medical qualification and State Medical Council means are defined as under:--

2(h) "recognised medical qualification" means any of the medical qualifications included in the Schedules;

2(j) "State Medical Council" means a medical council constituted under any law for the time being in force in any State regulating the registration of practitioners of medicine.

Section 11 of the 1956 Act is also relevant for the purposes of examining what are the recognized medical qualifications, to be granted by Universities or Medical Institutions in India, which read thus:--

11. Recognition of medical qualifications granted by Universities or medical institutions in India.--(1) The medical qualifications granted by any University or medical institution in India which are included in the First Schedule shall be recognized medical qualifications for the purposes of this Act.

(2) Any University or medical institution in India which grants a medical qualification not included in the First Schedule may apply to the Central Government to have such qualification recognized, and the Central Government after consulting the Council, may, by notification in the Official Gazette, amend the First Schedule so as to include such qualification therein, and any such notification may also direct that an entry shall be made in the last column of the First Schedule against such medical qualification declaring that it shall be a recognized medical qualification only when granted after a specified date.

7. Schedule-I appended with the 1956 Act describes the Universities which are required to confer the degree of M.B.B.S. In un-amended Schedule, the name of Barkatulla University, Bhopal and Jabalpur University, are mentioned. It is categorically said that the aforesaid Universities will confer the "degree" of Bachelor of Medicine and Bachelor of Surgery, which is duly recognized medical

qualifications by the Indian Medical Council. The provisions of Section 15 of the 1956 Act gives certain right to the persons possessing qualification in the Schedules to be enrolled which read as under:

15. Right of persons possessing qualifications in the Schedules to be enrolled.--

(1) Subject to the other provisions contained in this Act, the medical qualifications included in the Schedules shall be sufficient qualification for enrolment on any State Medical Register.

(2) Save as provided in section 25, no person other than a medical practitioner enrolled on a State Medical Register,-

(a) shall hold office as physician or surgeon or any other office (by) whatever designation called in Government or in any institution maintained by a local or other authority;

(b) shall practice medicine in any State;

(c) shall be entitled to sign or authenticate a medical or fitness certificate or any other certificate required by any law to be signed or authenticated by a duly qualified medical practitioner;

(d) shall be entitled to give evidence at any inquest or in any court of law as an expert u/s 45 of the Indian Evidence Act, 1872 (1 to 1872) on any matter relating to medicine.

(3) Any person who acts in contravention of any provision of Sub-section (2) shall be punished with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

8. In light of these, if the 1987 Act is looked into, the said Act was enacted for the purposes of making the laws relating to registration of practitioners of medicine in Madhya Pradesh and for the purposes of constitution of Medical Council for the State. In this Act also the definition of recognized medical qualifications and registered practitioner have been given in Section 2(d) and (e) respectively which read thus:--

2(d). "recognised medical qualification" means

(i) any of the medical qualifications for the time being, included in the Schedules to the Indian Medical Council Act, 1956 (No. 102 of 1956);

(ii) any of the medical qualifications specified in the Schedule;

2(e) "registered practitioner" means any person enrolled on the State Medical Register under the provisions of this Act.

A register is required to be prepared maintaining a State Medical Register of Medical Practitioner for the State as per the provisions of Section 11 of the 1987 Act. The provisions of this Section are materially important, therefore, the same are reproduced:--

11. Preparation of Register.--(1) The Registrar shall prepare and maintain a state medical register of medical practitioners for the State, in accordance with the provisions of this Act.

(2) The State medical register shall be in such form, and shall be divided into such parts as may be prescribed. The register shall include the full name, address and qualifications of the registered practitioner, the date on which each qualification was obtained and such other particulars as may be prescribed.

(3) Any person who possesses a recognized medical qualification shall at any time on an application made in the prescribed form to the Registrar and on payment of a fee as may be prescribed by regulation and on presentation of his degree or diploma, as the case may be, be entitled to have his name entered in the State medical register ordinarily within three months after completion of prescribed formalities:

Provided that if a person possesses more than recognized medical qualifications, he shall mention in the application all the recognized medical qualifications which he possesses on the date he makes the application.

Provided further that the applicant who is unable to present for sufficient cause, his degree or diploma may be granted a provisional registration for a period not exceeding one year if he satisfies the Council that he holds such a degree or diploma.

(4) Notwithstanding anything contained in sub-section (3) the name of every person which on the day immediately preceding the date of commencement of this Act stands entered in the register kept by the Mahakoshal Medical Council or the Medical Council, Bhopal shall be entered in the State medical register prepared under this Act, without such person being required to make an application, or to pay any fee for this purpose.

(5) Every registered practitioner shall be given a certificate of registration in the prescribed form. The registered practitioner shall display the certificate or certified true copy of the certificate of registration at a conspicuous part in the place of his practice.

9. Merely because a provisional certificate of registration for a period of one year is issued whether a candidate could be said to be a medical practitioner duly recognized under the aforesaid Act or whether it can be said that he/she was possessing the recognised qualification required for such purposes. The proviso made in this respect that the provisional registration can be done is only to save the unnecessary time of getting the registration done after obtaining a degree, but it nowhere prescribes that before the conferral of a degree, any candidate becomes eligible to take part in selection. Conferral of a recognized qualifications means a conferral of a degree by a University. If a course of study requires a practical training before conferral of such a degree, it cannot be said that merely because a candidate has passed the theory examination, he has acquired the

eligibility qualifications. The Regulations made by the State Council in this respect where the complete period of study is described, also includes the compulsory rotating internship as a part of degree as before completing the same, a degree is not to be conferred, by University. While prescribing the training period and time distribution, in the Regulations it is very categorically said that every student shall undergo a period of certified studies extending over four and half academic years divided into nine semester of six months each from the date of commencement of studies for the subject comprising the medical curriculum to the date of completion of examination and followed by one year compulsory rotating internship. It is clear that unless this rotating internship is completed a degree of M.B.B.S. will not be conferred on a candidate by the recognized University. It is further made clear in the Regulations contained in Chapter-V wherein it is prescribed that every candidate will be required, after passing the final M.B.B.S. examination, to undergo compulsory rotating internship to the satisfaction of the college authorities and University concerned for a period of 12 months, so as to become eligible for the award of the degree of Bachelor of Medicine and Bachelor of Surgery and full registration. This leaves no doubt that unless the rotating internship is completed, and a certificate of such satisfactory performance is not issued by the concerned college where the studies have been done by the candidate concerned, the University concerned will not confer the degree of M.B.B.S. This particular aspect was considered by this Court in the case of Shailesh Kumar Patel and others (supra) at length though the consideration was done with respect to the conferral of a degree of Bachelor of Veterinary Science and Animal Husbandry, but the analogous provision made in the Act and the Regulations of the Council, established in that field have been interpreted. It has been categorically held by this Court that if on the last date of filling the on-line form, such a degree was not available with a candidate, he/she was ineligible to take part in the selection.

10. Now the question is raised that since a provisional certificate was already granted by the State Council to the petitioners wherein it was said that they may take part in selection for appointment in certain services, in fact, the petitioners were to be treated as eligible to take part in the selection. for appointment on the post of Medical Officer. For the said purposes, this part mentioned in the certificate of provisional registration is required to be looked into which read thus:--

Subject to the provisions of the said Act, this certificate is valid only for one year till the date of completion of the Compulsory Rotating Internship Training whichever earlier and for the purpose of enabling him/her to be engaged in employment in a Resident Medical Capacity in any approved Institution, or in the Medical Service of the Armed Forces of the Union and for no other purpose (i.e. Internees are not authorised to carry on Private Practice and issue the Medical Certificate).

A plain and simple reading of this will make it clear that if a person is interested

to get himself engaged as a resident medical intern in any approved institution or in the Government services of Armed Forces of Union, while undergoing the rotating internship, he/she may be allowed to do so. In fact, this residential medical capacity is also a part of the rotating internship and nothing else. It is made clear that interneers were not to be allowed to private practise and to issue any medical certificate. This makes it further clear that the provisional registration was not for the purposes of taking part in any selection for appointment on any post where the qualification of M.B.B.S. is required. The petitioners cannot be said to have a full fledged M.B.B.S. till they obtained the degree from the University concerned. Now to this extent if the submission made by learned counsel for the petitioners are examined that the petitioners have passed the course examination of M.B.B.S. much earlier, could it be said that after completing of rotating internship, conferral of the degree of M.B.B.S. would have to be treated from the date they have passed the examination and when their results were declared. It is not the result of the examination only which confers a right to obtain a degree of M.B.B.S. A satisfactory certificate of completion of rotating internship is also a part of the course for the purposes of conferral of a degree of M.B.B.S. by the University and, therefore, doctrine of relation back would not be applicable and it cannot be said that the petitioners have obtained the qualification on the date they have passed the M.B.B.S. course examination. In the case of Council of Homoeopathic System of Medicine, Punjab and others Vs. Suchintan and others, while dealing with almost same submission, the Apex Court refused to make the application of "doctrine of relation back" in para 33 of the report which read thus:--

33. Supposing he passes in that subject or subjects in the supplementary examination he is declared to have passed at the examination as a whole. This should obviously be so; because once he completes all the subjects, he has to necessarily be declared to have assessed. Merely on this language, "declared to have passed at the examination as a whole", we are unable to understand as to how the "doctrine of relation back" could ever be invoked. The invocation of such a doctrine leads to strange results. When a candidate completes the subjects only in the supplementary examination, then alone, he passes the examination. It is that pass which is declared. If the "doctrine of relation back" is applied, it would have the effect of deeming to have passed in the annual examination, held at the end of 12 months, which on the face of it is untrue.

11. Now it is to be seen whether the petitioner can be said to be a qualified person on the last date of filling the on-line form or not. This Court while looking into such a claim as made in the case of Shailesh Kumar Patel (supra), has considered the law laid down by the Apex Court in several cases and has held that it is the conferral of a degree which in fact granted only after the complete course of study including training, making an eligibility and therefore, even if the candidates have passed the theory papers only and are undergoing training they cannot be said to be illegible to take part in selection. This has to be seen that under 1956 Act, the Schedule-I contains the degree which are to be granted by

Universities. The word "degree" though not specifically mentioned in the qualifications of post mentioned in the Schedule appended to the Rules, but M.B.B.S. itself without a degree, is no qualification recognized under the 1956 Act, and therefore, mere passing of theory and practical examination of such a medical course would not mean that the candidates have acquired the essential qualification for appointment on any such medical post.

12. In full agreement with the findings recorded by this Court in case of Shailesh Kumar Patel (*supra*), it is to be held in the facts and circumstances of these cases that the petitioners were ineligible to take part in the selection so held by the P.S.C. as they were not having the degree of M.B.B.S. on the last date of filling the on-line form for appointment on the post of Medical Officer. The claim made in this respect therefore has to be rejected and the writ petitions are liable to be dismissed. Since the petitioners were permitted to take part provisionally in the selection subject to final outcome of the present writ petitions, it cannot be commanded to the P.S.C. to declare their result. In fact, the candidature of the petitioners are liable to be rejected as was rightly done by the P.S.C.. However, it is submitted by learned counsel for petitioners that as many as 1416 posts were advertised by the P.S.C.. Even after completing the selection hundreds of posts are lying vacant. Since the petitioners have already been permitted to take part in the selection by an interim order of this Court, after declaring their result, the respondent-State may be directed to consider the case of petitioners for grant of appointment in case they are found fit for appointment exercising the powers available under Rule 21 of the Rules. It is submitted that the specific power of relaxation is available with the State Government and looking to the fact that appointment on such posts are done after a long gap of years, such a direction could be issued to the State. This Court is unable to accept such a submission made by learned counsel for the petitioners for the simple reason that, if, the petitioners were ineligible to take part in selection, on the last date of filling the on-line form, even on the strength of interim direction issued by this Court, such ineligibility cannot be cured and no such relaxation can be granted. However, it will be open for the State to ask the P.S.C. to re-advertise the posts which have remained unfilled even after making selection, expeditiously, looking to the fact that the facilities of treatment to the large number of population in the State is not available only because of non-availability of the doctors. However, no-direction in this respect could be issued in view of the aforesaid findings. The writ petitions fails and are hereby dismissed. However, there shall be no order as to costs.