

CWJC No.7983 of 1999
With
CWJC No.2531 of 1998
with
CWJC No.9112 of 1999

In the matter of applications under Article 226 of the
Constitution of India.

DINANATH PANDIT----- Petitioner
Versus
THE STATE OF BIHAR & ORS----Respondents
(CWJC No.7983 of 1999)

BIHAR STATE UNEMP.H.DOCTORS ASSOCIATION
& ORS
.....Petitioners
Versus
THE STATE OF BIHAR & ORS-----Respondents
(CWJC No.2531 of 1998)

S.BERNADETH EZIL RANY @ S.B.E. RANY.----Petitioner
Versus
THE STATE OF BIHAR & ORS-----Respondents
(CWJC No.9112 of 1999)

For the petitioner:Mr.Ramchandra Sahni
For the State :Mr.Anant Kumar Bhaskar,
JC to SC 2 (CWJC No.7983 of 1999)
For the petitioner:Mr.K.M.Joseph &
: Mr.Hemant Kumar
For the State :Mr.Arup Kr. Chongdar
For the BPSC :Mr.K.K.Jha
(CWJC No.9112 of 1999)
For the petitioner :None
For the State :Mr.Ray Shivaji Nath AAG IV &
:Mr.Prashant Kashyap,JC to AAG IV
For the BPSC :Mr.K.K.Jha
(CWJC No.2531 of 1998)

P R E S E N T

THE HON'BLE MR. JUSTICE NAVIN SINHA

Navin Sinha,J.

The controversy in these applications relate to appointment on
83 posts of Homeopathic Chikitsak advertised by the Bihar Public

Service Commission on 18.7.1995 under advertisement no.9 of 1995. No one has appeared on behalf of the petitioners in CWJC No.2531 of 1998. The petitioners in the said writ application were persons who have not been selected and fall in the category of unsuccessful candidates. The writ petition could, therefore, have quite simply been dismissed for default. However, since certain interim orders were passed in CWJC No.2531 of 1998 on 12.1.1999 having effect on the petitioners in CWJC No.7983 of 1999 and CWJC No.9112 of 1999, it is necessary to dispose of the matters by a reasoned order.

The petitioner in CWJC No.9112 of 1999 is an intervener in CWJC No.2531 of 1998 which was directed to be considered at the appropriate time by order dated 16.8.1999.

The advertisement issued on 18.7.1995 required fulfillment of the following educational qualification. The candidate must hold diploma in four years course of Homeopathy medicine from any recognized university or Board. The Homeopathic doctor must possess internship certificate from the Central Council of Homoeopathy. The candidate must be registered with the Bihar State Board of Homeopathy Medicine. The last date for submission of the application was 31.8.1995. The advertisement stipulated that it was mandatory to enclose attested photo copies of the educational qualification and experience certificates. On 4.8.1995, a corrigendum to the advertisement was issued in pursuance of the request of the requisitioning department, i.e., the Department of Health, Medical Education and Family Welfare, Government of Bihar, by letter dated 1.8.1995. The corrigendum stipulated that the candidate must hold a

diploma or degree in Homeopathy Medicine of four years course from a recognized University or Board, and must be registered with the Bihar Homeopathic Medicine Board. The other conditions of the advertisement remained unaltered. The corrigendum deleted condition no.2 of the original advertisement which required that an applicant must possess internship qualification from the Central Homoeopathy Medicine Council.

The petitioner in CWJC No.7983 of 1999 was registered as a homeopathic practitioner on 21.6.1977 with the Board after having obtained his diploma in Homoeopathy Medicine and Surgery from the Bihar University at Muzaffarpur in the examination conducted in November,1976. Similarly, the petitioner in CWJC No.9112 of 1999 who is also the intervenor in CWJC No.2531 of 1998, passed the Diploma examination in Homeopathy Medicine, conducted in July,1980 by the Bihar University at Muzaffarpur for which a certificate was granted to her on 18.4.1981 and was so registered with the Bihar State Board of Homoeopathy Medicine on 12.8.1981.

On 12.1.1999, this Court in CWJC No.2531 of 1998 and CWJC No.3611 of 1998 passed interim orders to the effect that though the appointment would be made on the post of Homoeopathic doctors on the basis of selection made by the Bihar Public Service Commission under Advertisement No.9/95 subject to the result of the writ petitions, however, this benefit shall be available only to the candidates who possessed requisite internship experience, vide condition no.2 of the educational qualification mentioned in the original advertisement, before the corrigendum.

At the stage of hearing it transpired that the issues involved in CWJC No. 3611 of 1998 were at slight variance and required notice to some of the private respondents and addition of parties when it was separated from the present matters.

In pursuance of the interim order of this Court, the respondent Commission issued the recommendation dated 21.4.1999 of the list of successful candidates. In column 2 of the order the petitioner in CWJC No.7983 of 1999 and petitioner of CWJC NO.9112 of 1999 find place as successful candidates from the extremely backward class and the general candidates whose recommendations were kept in abeyance in terms of the interim order of this Court dated 12.1.1999 for not having internship qualification.

It is, therefore, apparent that the fate of the two petitioners ultimately depends on the orders to be passed in these applications for implementation of their recommendation which has been kept in abeyance.

Shri K.M. Joseph appearing on behalf of the intervenor in CWJC No.2531 of 1998 (petitioner in CWJC No.9112 of 1999) submitted that in pursuance of the brief DHMS Syllabus approved by the Central Government, the Bihar State Board of Homeopathic Medicine framed necessary rules published in the Bihar Gazette (Extra) on 29.6.1970 prior to promulgation of the Homeopathy Central Council Act,1973 (hereinafter called the Homeopathy Act). Clause 49K of the notification deals with the admission and duration of the diploma course as four years. Clause 49 O Note deals with Hospital Assignments. It prescribes duration of the Hospital

Assignment to be completed by a candidate of the diploma course and in the manner it was to be done. It is, therefore, submitted that the petitioners, in any event, possessed the necessary qualification of practical training whether it be called Internship or it be called Hospital Assignment.

The Homoeopathy central Council Act was enacted in 1973.

Section 13 (1) reads as follows:

“13(1) The medical qualifications granted by any University, Board or other medical institution in India which are included in the Second Schedule shall be recognized medical qualifications for the purposes of this Act.”

It is not in controversy that the institution from which the petitioners had obtained their qualifications are included in the Second Schedule as recognised institutions from 1976 onwards. Sections 15(1) and (2) are also appropriately quoted hereunder as they also deal with the persons like the petitioners who acquired their qualifications prior to coming into force of new Act and is appropriately quoted.

“15. Rights of persons possessing qualifications included in Second or the Third Schedule to be enrolled- (1) Subject to the other provisions contained in this Act, any medical qualification included in the Second or the Third Schedule shall be sufficient qualification for enrolment on any State Register of Homoeopathy.

(2) No person, other than a practitioner of Homoeopathy who possesses a recognised medical qualification and is enrolled on a State Register or the Central Register of Homoeopathy,-

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

(b) shall practice Homoeopathy 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 any evidence at any inquest or any Court of law as an expert under section 45 of the Indian Evidence Act, 1872 on any matter relating to Homoeopathy.”

The Homoeopathy (Diploma Course) D.H.M.S.

Regulations, 1983 came to be framed under the Homeopathy Act. Rule

3 in part II of the Regulations reads as follows:

“3.(1) A Diploma Course in Homoeopathy shall comprise a course of study consisting of the curriculum and Syllabus provided in these regulations spread over a period of four years including a compulsory internship of six months’ duration after passing the final diploma examination.

(ii) The Internship shall be undertaken at the Hospital attached to the College and in cases where such Hospital cannot accommodate all of its students for Internship such students may undertake their Internship in a Hospital or dispensary run by the Central Government or the Government or local bodies.

(iii) At the completion of the Internship of the specified period and on the recommendation of the head of the Institution where Internship was undertaken, the concerned State Board or University, as the case may be, shall issue the Diploma to the successful candidate.”

It is, therefore, apparent that after coming into force of the Homeopathy Act those who possessed qualification in Homoeopathy from one of the institutions which finds place in the Second Schedule to the Homeopathy Act will be deemed to possess recognised medical qualification for the purpose of the new Act. They shall be entitled for enrolment in any State Register of Homoeopathy. A person enrolled on State Register of Homoeopathy in this manner shall not be

precluded from the practice only on the ground that he did not possess a recognised medical qualification under the new Act.

The new Homeopathy Act made it mandatory to complete the internship only whereafter the necessary diploma could be granted. The word “Internship” is defined in Webster’s Third New International Dictionary Vol.1 Unabridged Edition as “the phase of medical training covered during such service, a training period in actual service as an employee in a technical or business establishment.”

The aforesaid meaning assumes great significance in terms of the submission made by Shri Joseph from the requirements of the diploma course in Homoeopathy as it stood prior to coming into force of the Homoeopathy Act, 1973. This Court considers it proper to quote the relevant extract of Rule 49 O. Note:-

- (i) Hospital assignments:
 - 12 months in Outdoor and Indoor-Medical cases.
 - 3 months in Outdoor and Indoor-Surgical cases.
 - 3 months in Outdoor and Indoor-Gynecological and midwifery cases.

These assignments shall attend over both 3rd and 4th year courses.

- (ii) A student shall have to draw up with his own hand 10 medical, 6 surgical and 6 Gynecological and Obstetrical cases; his period of service as a clinical clerk is during the period of assignment in hospital.”

It is thus to be seen that what the Regulation of 1983 stipulates as Internship was nothing but the rephrasing of what was originally described as Hospital assignments under the Rules framed in 1970.

Therefore, looking at it from either point of view, the petitioners held the qualification of practical training and what is now termed as internship under the Regulations.

Their qualifications and registration acquired under the old rules have expressly been saved and given validity under the new Homeopathy Act.

Viewed in that background, the deletion of the condition with regard to possession of internship qualification by the corrigendum dated 4.8.1995 in the background of the present controversy and in terms of the order dated 12.1.1999 loses much of its significance.

The petitioners possess practical training qualification now described as Internship, as an integral part of their diploma acquired under the old Rules, the validity of which was expressly saved under the new Homeopathy Act.

This court is satisfied that it is not necessary to go into the effect of the deletion made by the corrigendum and the effect thereof in terms of the interim order dated 12.1.1999. This Court has no hesitation in holding that the petitioners in CWJC Nos. 7983 of 1999 and 9112 of 1999 had possessed the requisite training experience/qualification even as required under the Regulations of 1983 and their Diplomas acquired under the old Rules are expressly valid under the new Homeopathy Act.

From the interim order dated 12.1.1999, it is apparent that the entire controversy revolves around the requirement for possession of internship/practical training experience. For the reasons, as discussed above, this issue now loses much of its significance. The correctness

of the corrigendum which was sought to be questioned by the petitioners in CWJC No.2531 of 1998 loses its force. In light of the aforesaid discussion and the fact that no one appears on behalf of the petitioners in CWJC No.2531 of 1998, this Court is satisfied that CWJC No.2531 of 1998 is fit to be dismissed. It is quite apparent that the petitioners in that writ application have no interest in the matter any further as no one has appeared on their behalf on the three dates that this matter has been heard. In the given nature of the controversy to give a final quietus to the matter, this Court is satisfied that CWJC No.2531 of 1998 has to be dismissed on merits and not for default in appearance.

CWJC No.2531 of 1998 is dismissed. The interim order dated 12.1.1999 is vacated. The respondent Commission is directed to give effect to and recommend the names of the petitioners in CWJC Nos.7983 of 1999 and 9112 of 1999 which was kept in abeyance by the order of the Commission dated 21.4.1999 conditionally. Let it be so done within a maximum period of two months from the date of receipt/presentation of a copy of the present order and consequential action on the recommendation for appointment be taken in accordance with law within another period of two months thereafter. Since the petitioners were successful candidates, but their names could not be recommended by the commission for reasons of the challenge laid out and the interim order passed by this Court, this Court directs that the petitioners in CWJC No.7983 of 1999 and CWJC No.9112 of 1999 shall be entitled to their consequential notional seniority only with effect from 21.4.1999 when the names of the other candidates

were recommended but the names of the petitioner were kept in abeyance. The petitioners shall, however, not be entitled to any salary for the period in question.

Both the writ applications stand allowed.

(Navin Sinha)

Patna High Court
The 25th April, 2008
HR/NAFR

