

THE HIGH COURT OF MEGHALAYA

WP(C). No. 91 of 2018

Dr. Vijay Noel Nongpiur,
C/o Dr. (Mrs) E. Shullai,
House No. 535, New Kench's Trace,
Shillong – 793004.

... Petitioner

-Versus-

1. NEIGRIHMS
(North Eastern Indira Gandhi Regional
Institute of Health & Medical Sciences), Shillong
Represented by its Director.
2. Deputy Director (Admin), NEIGRIHMS,
Shillong.
3. Screening Committee for Faculty Posts,
NEIGRIHMS, Shillong
Through its Chairman.

...Respondents

BEFORE THE HON'BLE MR. JUSTICE S.R.SEN CHIEF JUSTICE (ACTING)

For the petitioners : Mr. H.S.Thangkhiew, Sr. Adv.
Mr. Philemon Nongbri, Adv.

For the respondents : Mr. K.Paul, Adv.

Date of hearing : 26-04-2018

Date of Judgment : 26-04-2018

JUDGMENT AND ORDER (ORAL)

1. Heard Mr. H.S.Thangkhiew, learned Sr. counsel
assisted by Mr. Philemon Nongbri, learned counsel on behalf

of the petitioner as well as Mr. K.Paul, learned standing counsel for the respondents.

2. The petitioner's case in a nutshell is that:

"This writ petition is being filed by the petitioner praying for issuance of an appropriate writ or direction directing the respondents to adhere to the requirements as specified in the Advertisement No. NEIGR - E.II / 19/ 2004/ Pt.XVI released in May 2017 and to set aside and quash the list of eligible and not eligible candidates issued by the screening committee dated 25.10.2017, as against the post of Assistant Professor, TB & Respiratory Disease, NEIGRIHMS and allow the Petitioner to take part in the entire recruitment process as per the advertisement.

The factual matrix of the case in brief is that the Petitioner is a 2006 MBBS graduate and was awarded the Degree of Bachelor of Medicine and Bachelor of Surgery from Pondicherry University on 21.01.2006. Thereafter, in 2010 the Petitioner completed his Post Graduation and was awarded the Degree of Doctor of Medicine (M.D.) Medicine from PGIMER, Chandigarh (Postgraduate Institute of Medical Education and Research. That recently, the Petitioner has also completed his Superspeciality i.e. Doctorate of Medicine (DM) (Pulmonary, Critical Care & Sleep Medicine) from the AIIMS, New Delhi (All India Institute of Medical Sciences). That the Petitioner is registered with the Tamil Nadu Medical Council and also with the Medical Council of India vide registration certificate dated 17.08.2013.

That during May 2017, the Respondent No. 1 published an Advertisement No. NEIGR-EII/ 19/ 2004/ Pt.XVI, for direct recruitment for various faculty posts in NEIGRIHMS and the last date for submission of application forms was set as 30.06.2017. That in response of the advertisement, the Petitioner had submitted his application on 12.06.2017, for the post of Assistant Professor in the Department of TB & Respiratory Disease, which is indicated at serial number 21 of the advertisement, since the Petitioner possesses all the requisite qualifications as set out in the advertisement.

That the minimum requisite qualifications for the post of Assistant Professor in the Department of TB & Respiratory Disease was set out in the advertisement as follows:

“iii. A postgraduate qualification e.g. M.D or a recognized qualification equivalent thereto in the respective discipline/subject.”

That on 27.12.2017, when the Petitioner approached the office of the Respondent No.2, in order to enquire as to the likelihood of the date for interview. However, to the shock and surprise of the Petitioner, he was verbally informed that he is not eligible for the post. That immediately the Petitioner made a representation dated 31.12.2017 to the Respondent No. 1, seeking for clarification. The Respondent No.2 communicated to the Petitioner vide letter dated 30.01.2018, stating thereby that the Screening Committee had scrutinized the details of the application and found that the Petitioner does not possess the requisite qualification for the post. The Respondent No.2 cited reasons of minimum qualification as prescribed under the MCI (Medical Council of India) regulations which otherwise is not specified in the advertisement.

Thereafter, the Respondent No.2 published a note dated 09.04.2018 in the NEIGRIHMS website, whereby the list of eligible and not eligible candidate was released for public view. That in the said list published, it was indicated that as way back as on 25.10.2017, the Screening Committee had remarked the Petitioner as “Not Eligible – No requisite qualification as on last date of receipt of application i.e. 30.06.2017.”

That from the list it is clear that only two candidates applied for the post of Assistant Professor, TB & Respiratory Diseases and that while the Petitioner was indicated as not eligible, the other candidate was shown as eligible. That it is pertinent to point out that this very note dated 09.04.2018, issued by the Respondent No. 2, read as follows:

“Note: In case of any genuine grievances, candidate may submit representations by Fax No. 0364-2538020, Email: neigri.eii @ gmail.com or appear in person during office hours till 17th April 2018. Representation after the 17th April 2018 will not be entertained and the list of non-eligible candidates will be treated as final.”

That in terms of with the above said note, the Petitioner made a Representation dated 12.04.2018, thereby raising his grievances and praying for an opportunity to appear in the interview.

That despite making the representation dated 12.04.2018 raising the grievance, in terms with the note dated 09.04.2018, the Respondents with utter disregard to the representation made by the Petitioner and while failing to consider the same and further without adhering to their own time line as set out in the Note dated 09.04.2018, issued a Notice No. NEIGR - E.II/ 19/ 2004/ Pt.XVIII dated 16.04.2018, whereby declaring the dates of interview as 1st and 2nd May, 2018 in the Director's Committee Room, AIIMS, Ansari Nagar, New Delhi – 110029. That as per the schedule the interview for the post of Assistant Professor TB & Respiratory Diseases is to be held on 1st May, 2018.

That the Petitioner possesses the minimum qualification of M.D (Medicine) which is the minimum requirement in the advertisement for the post of Assistant Professor, TB & Respiratory Disease. That with all bonafide the Petitioner applied for the said post in terms with the advertisement. That it is only now that the Respondents are seeking to change the minimum qualification of M.D beyond what was set out in the advertisement. That the rejection of the application on the ground of not holding the requisite qualification despite the Petitioner holding an MD Degree as required by the advertisement, amounts to changing the terms of the advertisement.

That it is well settled law by the Hon'ble Supreme Court that the selection criteria or rules of the game cannot be changed when the game is under process.

In the instant case, the selection process was under process by the issuance of the Advertisement No. NEIGR-EII/19/2004/Pt.XVI and that the minimum qualification for the post of Assistant Professor, TB & Respiratory Disease is M.D and that the Petitioner does possess the M.D Degree. The rejection of eligibility of the Petitioner by the Respondents for lack of qualification beyond what was specified in the advertisement amounts to changing the rules of the game.

That the inaction of the Respondents in failing to consider the Representation dated 12.04.2018, which was made by the Petitioner in terms with the note dated 09.04.2017, issued by the Respondent No. 2, is highly arbitrary and discriminatory and against all principles of natural justice.

That without the prejudice to the rights of contentions of the petitioner and to cut the entire controversy short, it is pertinent to place on record that NEIGRIHMS has formulated the NEIGRIHMS Recruitment Rules of 2012, wherein the Screening Committee has been conferred with the power to relax the academic qualification/experience for recruitment as provided under Rule 9 of the NEIGRIHMS Recruitment Rules of 2012. That the ends of justice will meet if this Hon'ble Court directs the Respondents to consider the representation dated 12.04.2018 by the Petitioner be considered under Rule 9 of these rules.

That the actions of the respondents are in contravention of the rights of the petitioner as guaranteed under Article 14, 16, 19, 21 and 300A of the Constitution of India and are also in gross violation of the principles of natural justice.

Hence, the instant Writ Petition."

3. Mr. H.S. Thangkhiew, learned Sr. counsel, assisted by Mr. Philemon Nongbri, learned counsel for the petitioner submits that initially an advertisement was floated for an interview to the post of Assistant Professor, but the petitioner was verbally informed that he was not eligible for the post. Ultimately, the interview is fixed on 01.05.2018. Hence, this petition.

4. On the other hand, Mr. K.Paul, learned counsel for the respondents submits that petitioner is not qualified for the post of Assistant Professor.

5. After hearing the submissions advanced by the learned counsel for the parties, I am of the considered view that the instant petition may be disposed of at this motion stage with a direction.

6. Let respondents allow the petitioner to appear for the interview and if he is found qualified, then his case may be considered and that is solely dependant upon the discretion of the respondent. I am also of the further view that at this stage if the interview is cancelled, the hospital may suffer indirectly and the public will suffer more. Further, this Court desires that the best of the best candidate should be considered keeping in mind the interest of the people of the country.

7. With this observation and direction, this instant petition is allowed to that extent and stands disposed of.

CHIEF JUSTICE (ACTING)

S.Rynjah