

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Civil Writ Petition No. 6348/2021

1. Lokesh Jalwania Son Of Shri Ravindra Jalwania, Aged About 26 Years, Resident Of T-16, Ganesh Garh, Shastri Nagar, Ajmer (Raj.)
2. Pankaj Son Of Shri Mahipal Singh, Aged About 26 Years, Resident Of Khajpur Bas, Khajpur Naya, Tehsil And District Jhunjhunu (Raj.)
3. Harendra Beniwal S/o Shri Shrwan Kumar, Aged About 28 Years, Resident Of Madhanlyo Ki Dhani, Pippliya, Panchla Sidha, Tehsil Khimsar, District Nagaur (Raj.)
4. Satpal Godara Son Of Shri Moti Ram Godara, Aged About 27 Years, Resident Of Behind Rajaram Hospital, Balotra Gramin, Barmer (Raj.)

----Petitioners

Versus

1. The State Of Rajasthan, Through Its Principal Secretary (Admn.), Medical And Health Department (Group-2), Govt. Of Rajasthan, Secretariat, Jaipur (Raj.)
2. The Deputy Director, Medical And Health Department (Group-2), Govt. Of Rajasthan, Secretariat, Jaipur (Raj.)
3. The Chief Medical And Health Officer, Jaipur-I, Mini Secretariat, Sethi Colony, Jaipur (Raj.)

----Respondents

connected with

S.B. Civil Writ Petition No. 6388/2021

Golu Son Of Shri Prithviraj, Aged About 26 Years, Resident Of Village And Post Tisaya, Mathana, District Baran (Raj.)

----Petitioner

Versus

1. The State Of Rajasthan, Through Its Principal Secretary (Admn.), Medical And Health Department (Group-2), Govt. Of Rajasthan, Secretariat, Jaipur (Raj.)
2. The Deputy Director, Medical And Health Department (Group-2), Govt. Of Rajasthan, Secretariat, Jaipur (Raj.)

3. The Chief Medical And Health Officer, Jaipur-I, Mini Secretariat, Sethi Colony, Jaipur (Raj.)

----Respondents

For Petitioner(s) : Ms. Komal Kumari Giri

For Respondent(s) :

HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Order

30/06/2021

1. The petitioners by way of these writ petitions have prayed for appointment on the post of COVID Health Consultant and COVID Health Assistant under the advertisement issued by the Department on 27.05.2021.

2. Learned counsel for the petitioners submits that the petitioners have passed Bachelor in Ayurveda (BAMS) and they ought to be considered for the post of COVID Health Consultant and COVID Health Assistant.

3. Learned counsel relies on an order passed by the Principal Seat at Jodhpur in ***SBCWP No.8028/2021 : Rekha Vaishnav & Ors. versus State of Rajasthan & Ors.*** wherein directions were issued to provisionally allow the petitioners therein to participate in the selection process on the post of COVID Health Assistant and COVID Health Consultant.

4. This Court finds that the advertisement mentions the qualifications for the post of COVID Health Consultant and COVID Health Assistant as MBBS with RNC registration and GNM/B.Sc. Nursing with RNC Registration respectively. Thus, a person who possesses qualifications of BAMS, that is person who studied in

Ayurveda field, is not qualified for appointment either as COVID Health Consultant or as COVID Health Assistant. The interim order passed by the Co-ordinate Bench at Principal Seat, Jodhpur does not show whether petitioners' counsel informed the Court about the qualifications mentioned in the advertisement. It also does not show as to what qualification the concerned petitioners possessed and therefore, reliance by the learned counsel for the petitioners on the interim order dated 25.06.2021 in *Rekha Vaishnav & Ors.* (supra) is misconceived.

5. In ***SBCWP No.10342/2020: Raghvendra Agarwal & Ors. Versus State of Rajasthan & Ors.*** and connected petitions decided on 01.10.2020 in the case of Community Health Officers, a similar submission was made by the Homeopathic Doctors praying that they should be included for appointment and considered for the post of Community Health Officers, however, after examining all the aspects this Court reached to the conclusion that the court cannot add or subtract educational qualification in an advertisement.

6. In the case of ***Mukul Kumar Tyagi Vs. State of UP & Ors.*** reported in **(2020) 4 SCC 86** and in ***Zahoor Ahmad Rather & Ors. Vs. Sheikh Imtiyaz Ahmad & Ors.*** reported in **(2019) 2 SCC 404** wherein the Supreme Court has held as under:-

"26. The prescription of qualification for a post is a matter of recruitment policy. The State as the employer is entitled to prescribe the qualifications as a condition of eligibility. It is no part of the role or function of judicial review to expand upon the ambit of the prescribed qualifications. Similarly, equivalence of a qualification is not a matter which can be

determined in exercise of the power of judicial review. Whether a particular qualification should or should not be regarded as equivalent is a matter for the State, as the recruiting authority, to determine."

7. Thus, it is exclusively within the domain of the State Authority to lay down the educational qualification for a particular post. If the State Government has thought it proper to only include those persons who possess Allopathy qualifications namely MBBS and registration with RNC for the post of COVID Health Consultant and GNM/B.Sc Nursing and registration with RNC for COVID Health Assistant, this Court cannot introduce an additional qualification of Ayurveda namely BAMS for the said purpose. The writ petition is accordingly held to be without basis and is misconceived. The interim order passed at Principal Seat, Jodhpur in SBCWP No.8028/2021 being an *ex parte* order would have no application.

8. These writ petitions are accordingly dismissed.

9. All pending applications shall stand disposed of.

(SANJEEV PRAKASH SHARMA),J

SAURABH YADAV /670/18-19

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