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Court : Madhya Pradesh

Decided On : Feb-11-2009

Reported in : 2009(2)MPHT288

Judge : A.K. Patnaik, C.J. and ;Ajit Singh, J.

Appellant : Sunil Kumar Mishra (Dr.)

Respondent : State of M.P. and ors.

Advocate for Pet/Ap. : Mr. P.K. Kaurav

Disposition : Petition dismissed

Judgement :

ORDER

A.K. Patnaik, C.J.

1. The Indian System of Medicine and Homoeopathy, Madhya Pradesh, Bhopal issued an advertisement in May, 2007 inviting applications for filling up 200 posts of Medical Officers in Ayurved, Homoeopathy and Unani on contract basis at the Primary and Community Health Centres at district level under the scheme of National Rural Health Mission. The selection and appointment was to be governed by the Madhya Pradesh Ayurveda/Homoeopathy/Unani Medical Cadre Contract Service (Appointment and Conditions of Service) Rules, 2006 (for short 'the Rules of 2006'). In response to the advertisement, the petitioner amongst others applied,

but the petitioner was not called for interview. Aggrieved, the petitioner has filed this writ petition for appropriate reliefs.

2. Mr. P.K. Kaurav, learned Counsel for the petitioner submitted that before calling the candidates for interview, only the marks obtained by the candidates at the Graduate Degree level have been taken into consideration and no marks have been allotted to the petitioner and other candidates who have obtained Post Graduate Degree/Diploma and as a result, the petitioner as well as other candidates who had got Post Graduate Degree/Diploma, have not been called for interview. He submitted that the respondents have thus contravened the provisions of sub- rule (7) of Rule 5 of the Rules of 2006 which clearly provided that marks have to be allotted to a candidate who has obtained Post Graduate Degree/Diploma out of total of twenty marks and therefore, the entire selection should be set aside by the Court and the respondents should be directed to conduct the selection afresh.

3. Mr. Samdarshi Tiwari, learned Government Advocate, on the other hand, relying on the return filed on behalf of the respondents submitted that the Note below Sub-rule (7) of Rule 5 of the Rules of 2006 clearly provides that in case the applications received for the posts are in large number, the Selection Committee will have the right to reduce the number of candidates three times to the available posts by adopting the procedure as prescribed in the advertisement and in the advertisement it was specified that in case applications received are in large number, the candidates may be called for interview three times to the available posts, on the basis of their merit. He submitted that Sub-rule (4) of Rule 5 of the Rules of 2006 prescribed the 'minimum educational qualification' as per Schedule and applications of candidates were scrutinized by fixing a bench mark on the basis of marks obtained at the graduate level (minimum educational qualification) and accordingly, the merit of the candidates was determined and candidates as many as three times the number of available posts were called for interview and in such a selection process, the petitioner and other candidates who may have obtained Post Graduate Degree/Diploma could not be called for interview.

4. Sub-rules (4) and (7) of Rule 5 of the Rules of 2006 which are relevant for deciding this case are extracted herein below:

5. Selection and method of appointment.:

*** ***(4) Minimum Educational Qualification.- Minimum Educational qualification for the appointment of the candidates, shall be as specified in the Schedule.

(5) *** ***(6) *** ***(7) Recommendation of the Selection Committee.- The Selection Committee shall make its recommendation after making its assessment of the candidates on the basis of marks awarded to the candidates in the following manner, namely:

(a) In the ratio of marks obtained at 60 marks
Graduate Degree level
(b) Post Graduate Degree/Diploma 20 marks
(c) Interview 20 marks-----Total 100 marks.-----
Note : In case of the applications received in large numbers, the Selection Committee will reserve the right to reduce the number of candidates 3 times to the available posts by adopting the procedure as may be specified in the advertisement.

5. It will be clear from Sub-rule (4) of Rule 5 of the Rules of 2006 that the minimum educational qualification for appointment of candidates has been specified in the Schedule to the Rules of 2006. Column 3 of the Schedule to Rule 5 as amended by the notification dated 17th April, 2007 provides that the minimum qualification would be a Bachelor Degree in Ayurved/Homoeopathy/Unani system of medicine from any University established by law and recognised by CCIM (Central Council of Indian Medicine), CCH (Central Council of Homoeopathy) or four year Diploma (DHMS) awarded by any Board/Council recognized by CCH and registered under the law. Thus, candidates must have this minimum educational qualification as prescribed in Column 3 of the Schedule to the Rules of 2006 and need not possess a Post-graduate degree/diploma. Accordingly, for the purpose of determining the merit of all the eligible candidates who had applied pursuant to the advertisement, the marks secured by the candidates in the degree or diploma course, as mentioned in Column 3 of the Schedule to the Rules of 2006 had to be

considered and the marks secured by the candidates in the Post-graduate degree/diploma could not be considered. To put it differently, if the marks secured by some of the candidates who had obtained Post-graduate degree/diploma were considered, there could be no comparison of merit of such candidates having Post-graduate degree/diploma with candidate who do not have Post-graduate degree/diploma. The procedure for determining the merit of all eligible candidates for the purpose of finding who amongst them would be called for interview adopted by the Selection Committee thus was a fair procedure and cannot be held to be arbitrary or violative of Arts. 14 and 16 of the Constitution of India.

6. A reading of Sub-rule (7) of Rule 5 of the Rules of 2006 further makes it clear that the Selection Committee will have to make its recommendations after making assessment of the candidates on the basis of marks awarded to the candidates in a manner indicated in Sub-rule (7) of Rule 5 of the Rules of 2006. There is nothing in Sub-rule (7) to Rule 5 to show that before the interview, the marks of those candidates who have obtained Post-graduate degree/diploma have to be considered. Rather, the Note below Sub-rule (7) of Rule 5 of the Rules of 2006 states that in case large number of applications are received, the Selection Committee will reserve the right to reduce the number of candidates three times to the available posts, by adopting the procedure as may be specified in the advertisement. The procedure prescribed in the present case was to confine the interview to candidates three times the number of available posts on the basis of merit of the eligible candidates. As we have seen, comparative assessment of merit of all the eligible candidates would only be possible by considering the marks secured in the graduate degree or diploma and not by considering the marks of some of the candidates who had obtained Post-graduate degree or diploma. Thus, the procedure adopted by the Selection Committee was also not in contravention of Sub-rule (7) of Rule 5 of the Rules of 2006 as contended by Mr. Kaurav.

7. Moreover, in *M.P. Public Service Commission v. Navnit Kumar Potdar* : (1995)ILLJ180SC , cited by Mr. Samdarshi Tiwari, the Supreme Court has taken a view that if large number of applicants were called for interview in respect of four posts, interview is bound to be casual and superfluous and the members of the interview board shall not be in a position to assess properly the candidates, in

which case the search and selection of best amongst the applicants, which is the sole purpose of interview, would be frustrated. In our considered opinion, as long as the Selection Committee, while short-listing the candidates for the interview for a few posts, adopts a fair procedure and the procedure is not in violation of the statutory rules, the Court in exercise of its power under Article 226 of the Constitution of India, should not interfere with the selection process.

8. For the aforesaid reasons, we do not find any merit in the writ petition and accordingly we dismiss the same. There shall be no order as to costs.

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