

**Court No. - 3**

**Case :-** WRIT - A No. - 969 of 2019

**Petitioner :-** Dr. Ram Chandra Singh Yadav

**Respondent :-** State Of U.P. Addl. Chief Secy. Ayush Anubhag-2 And Ors.

**Counsel for Petitioner :-** Laltaprasad Misra, Badrish Kumar Tripathi

**Counsel for Respondent :-** C.S.C., Ashok Shukla, Keshav Ram Chaurasia, Raj Kumar Upadhyaya (R.K. Upadhyaya), Ravi Shankar Tewari, Vijay Dixit

**Hon'ble Vivek Chaudhary, J.**

1. Petitioner has approached this Court challenging the administrative experience certificate dated 31.08.2018 issued by State Government and communication dated 18.12.2018 issued by Secretary, U.P. Public Service Commission, Allahabad, recommending name of respondent no.5 to the State Government for the post of Principal, State Homeopathy Medical College.

2. The facts in brief are, that, on 24.08.2013 an advertisement was issued for two posts of principal of State Homeopathy Medical College (one unreserved and one reserved for woman candidate from State of U.P.). As per the advertisement, the necessary qualifications are:-

(a) diploma or degree in Homeopathy or qualification as provided in 3rd Schedule to the Homeopathy, Central Council Act, 1973;

(b) 5 years administrative experience along with 10 years teaching experience in any recognized Homeopathic Medical College or Hospital;

A note at the bottom of the advertisement further required that the experience certificate should be issued by appointing authority and counter signed by Director, State Homeopathic Service or competent authority of the State Government.

3. Last date for submission of forms was 24.09.2013. Petitioner, respondent no.5 and other persons applied for the said post. The qualification certificate was required to be issued by the State authorities. It appears that all the candidates

were working on different posts in the State Government/hospitals etc. and, therefore, were in position to obstruct/cause hindrance in issuance of experience certificates etc. of other candidates. On 15.07.2015, Commission issued a communication that the teaching/administrative experience certificate can be submitted within a period of one month, otherwise the application shall not be considered, i.e., after nearly a period of 20 months of the cut-off date for submission of form, the time for submission of experience certificate was extended. The said note dated 15.07.2015 was issued as none of the candidates who had applied had submitted complete/correct experience certificate. Petitioner on 13.08.2015 submitted a certificate dated 04.10.2013, counter-signed by Director, Homeopathy on 12.08.2015. The said certificate with regard to petitioner states that he has administrative experience/no objection from 19.09.2005 to 04.10.2013. It was issued by Deputy Secretary of Ayush Department of State of U.P. and counter signed by Director, Homeopathy. The said certificate does not give any detail of nature of administrative experience including posts certified. The said certificate also does not state as to why the administrative experience details of all other candidates, including respondent no.5, was not provided by the State Government. Director Homeopathy on the basis of the said selection process on 06.08.2018 also wrote a letter to the Secretary, Ayush, State of U.P. giving details of administrative experience of respondent no.5 and requesting for issuance of his administrative experience certificate also.

**4.** The Commission on the basis of aforesaid communication of the State Government conducted interview of Dr. Mukesh Srivastava, specifically noting that the interview is held without submission of no objection certificate from the State Government, difference of name in the affidavit and in absence of education/administrative experience certificate issued by the State Government and duly counter signed. Dr. Mukesh Srivastava was held selected subject to submission of required documents within 21 days. Dr. Mukesh Srivastava failed to submit the required certificate within the aforesaid period of 21 days. The

State Government by communication dated 04.05.2017 found that Dr. Mukesh Srivastava does not have the required administrative experience and, thus, refused to grant him appointment. It appears that surprisingly thereafter by communication dated 10.09.2017 State Government again granted permission to Dr. Mukesh Srivastava to participate in interview. The said communication dated 10.09.2017 was challenged by petitioner by way of Writ-A No.5414 of 2018, and he further prayed for a mandamus commanding the opposite parties to forthwith forward the name of petitioner for appointment on the post of principal and further to issue an order appointing petitioner on the post of principal against the aforesaid advertisement. The said writ petition was dismissed on 09.09.2022 with the following order:-

*"List of cases shown in the Additional Cause List has been revised. No one is present for the petitioner to press the writ petition. There is no request of pass over or adjournment of the case.*

*Accordingly, the writ petition is dismissed for want of prosecution.*

*This order has been passed in presence of learned Standing Counsel"*

5. Dr. L.P. Mishra, learned counsel for petitioner assisted by Sri Badrish Kumar Tripathi, Advocate, vehemently submits that respondent no.5 is not having required administrative experience. He submits that administrative experience certificate of respondent no.5 is submitted much after the cut-off date and, hence, the same cannot be accepted. Dr. L.P. Mishra, further submits that petitioner alone having both the educational qualification and administrative experience duly submitted and is entitled for selection and appointment.

6. Opposing the same, learned Standing Counsel and Sri Vijay Dixit, learned counsel for respondent no.5 and learned counsel for respondent Commission submit that name of respondent no.5 is rightly recommended as he stood above the petitioner in the merit list after interview. The certificate is duly issued by the concerned persons both with regard to his education and administrative qualifications and, therefore, there is no illegality in the said selection process.

Sri Vijay Dixit, learned counsel for respondent no.5 submits that the present writ petition is barred on ground of Order 2 Rule 2 of C.P.C. inasmuch as petitioner had earlier filed a writ petition praying that he should be given appointment on the post of principal of Homeopathy Medical College under the aforesaid advertisement and, thus, a second writ petition with regard to the same relief cannot be filed by him. Petitioner was required to pursue his first writ petition for the said relief. He further submits that there is no challenge to the selection of respondent no.5 in the entire petition and challenge is made only to the administrative experience of the petitioner. Since, petitioner has not challenged the result as declared by the Commission, hence, complete relief is not sought in the present writ petition. Merely by challenging the qualification part of respondent no.5, his selection cannot be set aside and, hence, petition is liable to fail as no final relief can be granted.

7. I have heard counsel for parties and considered their submissions.

8. The manner in which the Commission and the State Government has proceeded with the present selection process is shocking. The advertisement was made on 24.08.2013 with the cut-off date as 24.09.2013. Required certificates were to be submitted before the said date. The qualification certificate including the administrative experience certificate was required to be issued by the State authorities. It is sad to note that the State authorities failed in their responsibility throughout the selection process. They ought to have issued the qualification/experience certificate of all candidates who had applied to the Commission before the said cut-off date, as they all were employees of State. It is surprising that selection process was proceeded without even verifying the qualifications of the candidates participating in the selection process. Rules 31 and 32 of U.P. Public Service Commission Selection (Procedure and conduct of Business) Rules, 2011 provide:-

*"31. (i) No candidate shall be admitted to the examination unless he has duly applied on the prescribed form in the prescribed manner and has deposited the prescribed application/examination fee within the prescribed time,*

(ii) No application received or submitted after last date fixed for receipt/submission of applications shall be accepted;

*Provided that in case more than one mode have been provided the application sent by registered post/speed post shall be at the risk of candidate and shall not be accepted after the last date of receipt mentioned in the advertisement ;*

*Provided that except in case of on-line form submission if the aforesaid last date is a non-working day, applications received on the next working day shall be deemed to be within time;*

*Provided further that if a doubt arises as to whether the application was received within time, the decision of the Committee constituted for the purpose shall be conclusive and final.*

*Provided further that Application form partially wrongly filled shall not be allowed to be corrected after it has been received by the Commission. It shall also be applicable to online applications.*

(iii) *An application not accompanied by proof of having deposited the application/examination fees or not giving full details regarding the optional papers offered shall be liable to rejection.*

(iv) *A rejection memo shall be sent to the candidates stating the reasons for rejection either through mail or through Commission"s website;*

*Provided that an information regarding rejection of an application, as shown on the web-site of the Commission with regard to any examinations including preliminary examination or Screening test of such examination, shall be deemed to be a rejection – memo for the purposes of this rule and publication thereof on the website shall be deemed as if the rejection-memo has been properly served upon the applicant concerned.*

(v) *The candidate may file appeal against the memo of rejection imperatively before the date of examination or interview, as the case may be, and the same would be decided expeditiously by the committee of members constituted for the purpose. Subject to the final decision in the appeal, the Commission may allow the candidate to appear at the examination or the interview, as the case may be, provisionally during the pendency of the appeal.*

**32. (1) All eligible candidates shall, subject to the provisions of the above rules, be admitted to the examination.**

(2) ....."

9. Rule 32 specifically provides that all eligible candidate shall, subject to provisions of above rule, be admitted for examination. Thus, as per Rule 32 examination including interview shall be conducted only of candidates who are qualified. In the present selection process, admittedly, interviews were conducted without even verifying the qualification and experience certificate of

the candidates. Without verification of qualification no merit list could have been prepared, still names were forwarded to the State Government for making appointment. The same shows that a mockery of entire selection process is made by the Commission as well as by the State Government. State Government while at times refused to grant administrative experience certificate to a candidate later changed its stand and issued it. It is not at the discretion of the State authorities to issue or not to issue the qualification/experience certificate. They were duty bound to issue the same. The aforesaid situation has vitiated the entire selection process. Nearly 10 years have passed and the selection process is not yet completed. The qualification of candidates, which was required to be scrutinized by the State, apparently was never done. At whims certificates were issued without any application of mind. Even certificate dated 13.08.2015 issued in favour of petitioner does not contain the basis on which the same is issued. It is also not clear as to why the certificate is issued only with regard to some of the candidates and not with regard to all the candidates. Even if a person was not qualified, it was incumbent upon the State authorities to issue a certificate to the said effect. The State authorities sat over the matter in a highly arbitrary and illegal manner. The Commission has also in a highly arbitrary and illegal manner proceeded with the selection without even verifying the qualifications of the participants. This has vitiated the entire selection process. Even today this Court is not clear as to the persons who are qualified as per the advertisement. It is also not the job of this Court to summon the record and verify the qualifications and experience of each candidate and decide upon the same. Before the court only two persons namely, Dr. Ram Chandra Singh, petitioner and Dr. Govind Swaroop, respondent no.5 are present. Other candidates who appear to have participated are not before this Court. The earlier merit list prepared without verifying the qualifications/experience certificate of the candidates on the face of it is illegal and cannot stand. The illegalities are such that the same have vitiated the entire selection process. Now at this stage, it is not proper to further delay the selection process by requiring the State to verify and certify

qualifications/experience of all the participating candidates and, thereafter further requiring the Commission to again hold the selection process on the basis of fresh qualified candidate list. Thus, this Court finds it appropriate to cancel the entire selection process initiated by Advertisement No.1/2013-14, dated 24.08.2013.

**10.** Hence, the selection process initiated by Advertisement No.1/2013-14, dated 24.08.2013 is hereby canceled.

**11.** The writ petition is **disposed of.**

**12.** Interim order, if any, stands vacated.

**Order Date :-27.04.2023**

Arti/-

**[Vivek Chaudhary,J.]**