

A

STATE OF HARYANA AND ANR.

v.

ABDUL GAFFAR KHAN AND ANR.

OCTOBER 11, 2006

B

[DR. AR. LAKSHMANAN AND ALTAMAS KABIR, JJ.]

Service Law:

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Haryana Ayurvedic/Homeopathic and Unani Technical Group (C) Service Rules, 1997:

Unani Dispenser—Appointment—Educational qualification—Candidates having degree of Bachelor of Unani Medicine and Surgery denied appointment on the ground that they did not possess Diploma in Unani Dispenser—Held, the Rules do not expressly exclude the degree in Unani Medicine and Surgery—The advertisement also did not stipulate Diploma as the required qualification—Respondents possessing required qualification from a recognized University, were eligible for appointment.

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The appellant-State issued an advertisement for the post of Unani Dispenser. Respondent no. 1 in both the appeals, having degree of Bachelor of Unani Medicine and Surgery, applied for the post. The State Staff Selection Commission declared the result recommending the selected candidates. Both the respondents were amongst the selected candidates, but they were denied appointment on the ground that they did not possess Diploma in Unani Dispenser or Up-Vaidya. However, their writ petitions were allowed by the High Court. Aggrieved, the State Government filed the present appeals.

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Dismissing the appeals, the Court

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HELD: The High Court has rightly pointed out that Haryana Ayurvedic/Homeopathic and Unani Technical Group (C) Service Rules, 1997 do not expressly exclude the degree in Unani Medicine and Surgery for the post of Unani Dispenser. Admittedly, the contesting respondents possess required qualifications from a recognized University/Institution or Board and are, thus, eligible for appointment to the posts of Unani Dispenser. A close scrutiny of

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the advertisement issued shows that it does not anywhere stipulate the Diploma

as the required qualification. Therefore, the order passed by the High Court is affirmed and the appellant-State is directed to appoint the respondents to the post of Unani Dispenser. [201-B-D] A

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4447 of 2006.

From the Judgment and final Order dated 11.4.2005 of the High Court of Punjab and Haryana at Chandigarh in C.W.P. No. 15043/2004. B

WITH

C.A. No. 4456 of 2006.

Manjit Singh, A.A.G. Balwant S Malik, Harikesh Singh and T.V. George for the Appellants. C

M.Z. Chaudhary, Ranjeet Kumar, Shoaib Ahmad Khan, Rameshwar Prasad Goyal and B.K. Satija for the Respondents. D

The Judgment of the Court was delivered by

DR. AR. LAKSHMANAN, J. Leave granted.

Civil Appeal No.4447/2006 arising out of SLP (C) No.13987/2005 was filed by the State of Haryana against the judgment and final order dt.11.04.2005 passed by the High Court of Punjab and Haryana in CWP No.15043/2004. Likewise, the State of Haryana has also filed Civil Appeal No.4456/2006 arising out of SLP(C) No.14004/2005 against the judgment and order dt.11.04.2005 passed by the said High Court in CWP No.20279/2004. E

We have heard learned senior counsel for the State of Haryana and the learned counsel appearing for the respective respondents in both the Civil Appeals. We have also perused the order impugned in these appeals and the advertisement issued by the Haryana Staff Selection Commission. The advertisement reads as under :- F

“Haryana Staff Selection Commission S.C.O.No. 114-115, Sector-8/C, Chandigarh Advertisement No.7/2003 G

Last Date of Submission of the Applications 7.11.2003

Category No.14-20 Posts of Unani Dispenser (General-9,SC-A 2,SC-B 1,BC-A 2,BC-B 2,ESM (General) 2, ESM SC-B 1, ESM BC-B 1. H

A Educational Qualification

(i) Unani Dispenser from any recognized University/Institution or Board or Faculty of Indian System of Medicine established by law in India or Up-Vaidya of any recognized University/Institution or Board or Faculty of Indian System of Medicine established by law in India having the knowledge of Urdu;

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(ii) Matric or its equivalent.

(iii) Knowledge of Hindi and English upto Matric standard.

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The Respondent No.1 who is possessing the qualification of Bachelor of Unani Medicine and Surgery from Kanpur University apart from Matric with Hindi and 10+2 with Science, applied in response to the abovementioned advertisement against one of the posts reserved for backward class category.”

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Haryana Staff Selection Commission declared the result on 27.07.2004 recommending names of selected candidates including two candidates in the reserved category of Backward Class-B. The respondents in both these appeals were amongst the selected candidates. The respondents in both these appeals were denied appointment for the reason that they were not possessing Diploma in Unani Dispenser or Up-Vaidya from a recognized University/Institution of Board which was the prescribed qualification for the post of Unani Dispenser under the Haryana Ayurvedic/Homeopathic and Unani Technical Group (C) Service Rules, 1997. According to the learned senior counsel for the appellants, the qualifications prescribed for the post of Unani Dispenser in these service Rules i.e. Haryana Ayurvedic/Homeopathic and Unani Technical Group (C) Service Rules, 1997 read as under :-

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“(i) Unani Dispenser from any recognized University/Institution or Board or Faculty of Indian System of Medicine established by law in India or Up-Vaidya of any recognized University/Institution or Board or Faculty of Indian System of Medicine established by law in India having the knowledge of Urdu.

G

(ii) Matric or its equivalent.

(iii) Knowledge of Hindi and English upto Matric standard.”

H

Aggrieved against the order passed by the State, the respective

respondents filed Writ Petitions in the High Court to quash the action of the State to deny the appointment to them as Unani Dispenser. The High Court by its order dt.11.04.2005 allowed the Writ Petitions filed by the respective respondents and directed the State to offer appointment to both the contesting respondents in these Civil Appeals on the posts of Unani Dispenser within a period of one month from the date of receipt of certified copy of the order. Aggrieved by the said order, the State of Haryana has preferred the above appeals in this Court.

We have perused the order passed by the High Court. As rightly pointed by the High Court and as per Haryana Ayurvedic/Homeopathic and Unani Technical Group (C) Service Rules, 1997, they do not expressly exclude the degree in Unani Medicine and Surgery for the post of Unani Dispenser. Admittedly, the respective contesting respondents in these appeals possess required qualifications from a recognized University/Institution or Board and are thus, in our opinion, eligible for appointment to the posts of Unani Dispenser. A close scrutiny of the advertisement issued does not anywhere stipulate the diploma as the required qualification. We, therefore, affirm the order passed by the High Court and direct the appellant-State of Haryana to appoint the respective respondents to the posts of Unani Dispenser within a period of one month from the date of receipt of the order from this Court or on production of the same by the respective respondents herein whichever is earlier. The appeals are accordingly dismissed. There shall be no order as to costs.

R.P.

Appeal dismissed.