

(2025) 01 J&K CK 0003

High Court Of Jammu And Kashmir And Ladakh At Jammu

Case No: WP (C) No. 1086 of 2021

Dr. Tarun Gupta

APPELLANT

Vs

UT of J & K through Financial
Commissioner, Health & Medical
Education Deptt. And Ors.

RESPONDENT

Date of Decision: Jan. 3, 2025

Acts Referred:

- Constitution of India 1950 - Article 226
- J&K PSC (Business & Procedure) Rules, 1980 - Rule 51

Hon'ble Judges: Sanjeev Kumar, J, Puneet Gupta, J

Bench: Division Bench

Advocate: Sunil Sethi, Ankesh Chandel, F A Natnoo, Sumant Sudan,

Final Decision: Dismissed

Judgement

JUDGMENTTAG-JUDGMENT

Sanjeev Kumar, J

1. The order and judgment dated 27.01.2021 passed by the Central Administrative Tribunal, Jammu [â€œthe Tribunalâ€] passed in OA No.

479/2020 titled Dr. Tarun Gupta, Vs. UT of J & K & Ors .is subject matter of challenge by the petitioner in this petition filed under Article 226 of

the Constitution of India.

2. The impugned judgment of the Tribunal is assailed by the petitioner on multiple grounds. However, before we advert to the grounds of challenge

urged by Mr. Sunil Sethi, learned Senior counsel appearing for the petitioner, we deem it appropriate to set out few facts relevant to the

disposal of this petition.

2.1. The Jammu & Kashmir Public Service Commission (PSC) issued advertisement notification No. 11-PSC (DR-P) of 2017 dated 15.11.2017

notifying inter alia 50 posts of Medical Officer (Ayurvedic) which included 02 posts under ALC category. The prescribed/essential qualification

notified was Bachelors Degree in Ayurvedic recognized by Central Council of Indian Medicine (CCIM).

2.2. The petitioner being a candidate belonging to ALC category and possessing qualification of Bachelors Degree in Ayurvedic duly recognized by

CCIM submitted his application form for the post of Medical Officer (Ayurvedic) under ALC category. In the selection process conducted by PSC

which culminated into issuance of select list, the petitioner was awarded 45.25 points in aggregate and the last candidate selected under ALC category

was shown to have secured 45.75 points. The petitioner took an exception to the manner in which he was denied 02 points for his additional

qualification of Diploma in Nutrition awarded by Indira Gandhi National Open University[â€œIGNOUâ€] and in his place, Respondent No. 6 was

selected and appointed as Medical Officer (Ayurvedic). He filed original application being OA No. 479/2020 before the Tribunal throwing challenge to

the selection of Respondent No. 6 made by PSC vide notification No. 12-PSC (DR-S) of 2019 dated 16.01.2019 and her appointment made by the

Government vide Govt. Order No. 948-HME of 2019 dated 23.10.2019. The petitioner prayed for a direction to the respondents to select and appoint

him as Medical Officer (Ayurvedic) under ALC category in place of Respondent No. 6.

2.3. The long and short of the grievance of the petitioner as was projected before the Tribunal is that in terms of Rule 51 of the J&K PSC (Business

& Procedure) Rules, 1980, a candidate with one year post-graduate diploma in the subject relevant to the job/post is entitled to award of 02 additional

points where the Bachelors degree is prescribed as the minimum qualification.

2.4. It was submitted by the petitioner before the Tribunal that since the petitioner was possessed of one year Diploma in Nutrition and Health

Education from IGNOU, as such, he was entitled to the additional 02 points and this would have taken the marks/points of the petitioner to 47.25 and

therefore, would have been in the select list of Medical Officer (Ayurvedic) under ALC category.

2.5. The writ petition was opposed by the respondents including the PSC. The claim of the petitioner for 02 additional points was contested by the

PSC by contending that the diploma in Nutrition and Health Education acquired by the petitioner from IGNOU was different and not relevant to the

job/post of Medical Officer (Ayurvedic). It was further contended that the job of Medical Officer (Ayurvedic) is different from Nutritionist.

Additionally, it was pleaded by the PSC that the diploma qualification relied upon by the petitioner was not recognized by the statutory authority i.e.

CCIM and, therefore, no weightage could have been awarded to such qualification.

2.6. The Tribunal considered the rival contentions and the material on record and came to the conclusion that the diploma course studied by the

petitioner was referable to allopathic type of medicine and had no relevance to the job of Medical Officer (Ayurvedic). It was held by the Tribunal

that in the list of PG Diploma courses, referable to Ayurvedic Medicine issued by Govt. Of India, there is no reference to the diploma course studied

by the petitioner. The Tribunal also did not agree with the clarification issued by the Under Secretary to the Government, Ministry of AYUSH on the

ground that it did not satisfy the requirement. Upon holding so, the Tribunal vide the impugned order and judgment dated 27.01.2021 dismissed the OA

filed by the petitioner. This is how the petitioner is before us invoking extraordinary jurisdiction vested in this Court under Article 226 of the

Constitution of India.

3. The impugned judgment of the Tribunal is challenged by the petitioner on the following grounds:

3.1. That the Tribunal has failed to appreciate that one year diploma in Nutrition and Health Education awarded to the petitioner by IGNOU is

relevant to the job of Medical Officer (Ayurvedic) as is clarified by the Under Secretary to the Government, Ministry of AYUSH.

3.2. That the Tribunal erred in holding that the qualification possessed by the petitioner is not covered by notification No. 28-22/2009-Ay (PGD) dated

13.07.2010 and submitted that entry 5 of Schedule-I of the aforesaid notification clearly makes a reference to Diploma in Ayurvedic Dietetics which is

nothing but Diploma in Nutrition-Ay.

3.3. That the findings of the Tribunal that the diploma qualification possessed by the petitioner is referable to allopathic type of medicines is not supported by any material nor such was the stand taken by PSC in its counter affidavit.

4. Per-contra, Mr. F A Natnoo, learned counsel appearing for the PSC would argue that the Tribunal has arrived at correct conclusion and has rightly

held the petitioner not entitled to the award of 02 additional points for his qualification of diploma in Nutrition and Health Education acquired from

IGNOU. He would submit that the diploma in Nutrition and Health Education is neither recognized by CCIM, nor the same is even a post graduate

diploma entitling the petitioner to the additional weightage of 02 points.

5. Having heard learned counsel for the parties and perused the material available on record, we are of the considered opinion that the

judgment passed by the Tribunal deserves to be upheld, though, for different reasons.

6. Indisputably, the advertisement notification prescribes essential qualification for the post of Medical Officer (Ayurvedic) as Bachelors degree in

Ayurvedic recognized by CCIM. There is no dispute with regard to the fact that both the petitioner as well as Respondent No. 6 possess the

qualification prescribed under the notification. The selection to the post of Medical Officer (Ayurvedic) falls within the domain of PSC and in the

matter of making selection, the PSC follows Rule 51 of the J&K PSC (Business and Procedure) Rules, 1980. Rule 51 reads thus:

...51. "The assessment for examination based selections, interviews shall be based on the following principles;

Written Examination = 60 points. A.

B. Performance of the candidate in the viva voce test=25 points.

C. Higher qualification in the relevant subject=up to 08 points.

a. Where Bachelors Degree is prescribed as the minimum qualification.

i) One year postgraduate diploma in the subject relevant to the job/post=02 points

ii) Two years postgraduate diploma in the subject relevant to the job/post=03 points

iii) Postgraduate degree in the subject relevant to the job/post =04 points

iv) M Phil = 05 points

v) Ph.D/DM and its equivalent = 08 points

b. Where the Masters Degree is prescribed as the minimum qualification.

i) M Phil in the concerned subject = 05 Points

ii) Ph.D (concerned subject)/DM and its equivalent =08 points

D. Distinction in Sports [Certified by Secretary, J&K State Sports Council to be an outstanding Sports Person in terms of J&K

(Appointment of Outstanding Sports Persons) Rules, 1998]. = 01 point

E. Distinction in NCC activities (Holder of Grade 'C' Certificate) = 01 point
Special Attributes = up to 05 points

i) Gold Medal/1st position in the prescribed qualification=01 point

ii) Publications (ISSN/ISBN)= 0.25 per publication subject to maximum of 04 points

Total (A to F)= 100 points

7. Evidently, where the minimum qualification prescribed for the post is Bachelors degree, the candidate possesses one year post graduate diploma in

the subject relevant to the job/post is entitled to the award of 02 additional points. Admittedly, the minimum qualification prescribed for the post is a

Bachelors Degree in Ayurvedic and, therefore, any candidate possessing the qualification of one year post graduate diploma in the subject relevant to

the job/post is entitled to 02 additional points.

8. It is also not in dispute that if the petitioner is awarded these 02 points, he will come in the merit list and would be selected as Medical Officer

(Ayurvedic) under ALC category. The controversy is, therefore, limited to determining the following issues:

I. Whether the qualification of diploma in Nutrition and Health Education acquired by the petitioner from IGNOU is a post graduate diploma?

II. Whether the said qualification possessed by the petitioner is required to be recognized by CCIM?

III. Whether the qualification of diploma possessed by the petitioner is relevant to the job/post?

9. Whether the qualification of diploma in Nutrition and Health Education acquired by the petitioner from IGNOU is a post graduate diploma?

9.1. Undoubtedly, a post graduate diploma is a specialized qualification offered at the post graduate level and is generally recognized as a step between a Bachelors degree and a masters degree. In some cases, credits earned during the PG diploma may be transferable to a masters programme. These PG diploma programmes are generally career focused, designed to enhance practical skills and knowledge for professional development. The basic eligibility for undergoing such courses is bachelor degree or equivalent. The diploma in Nutrition and Health Education which is a programme conducted by IGNOU prescribes minimum eligibility as 10+2 or its equivalent. It is, thus, evident that qualification in Nutrition and Health Education, as is possessed by the petitioner, can be acquired by a candidate who is 10+2 and may not be a graduate. The diploma possessed by the petitioner as described on the website of the IGNOU is awarded with a view to develop skills in playing the role of Nutritionist and Health Educators in the community. The description of diploma as is available on the official website of IGNOU deserves to be reproduced herein:

“Description:

The Diploma Programme is a holistic package that provides opportunities to the learner to gain knowledge about nutrition and public health. It also enables learners to develop skills in communicating nutrition and health-related information to the community. The aim of the programme is to develop a knowledge base in areas of nutrition and public health, promote awareness about concepts and principles in communication and their application in nutrition and health education and develop skills in playing the role of nutrition/health educators in the Community. Learners with basic 10+2 qualification and an interest in community work will find the Diploma very useful. It is a professional training programme. People working with both governmental and non-governmental sectors in the role of community workers

would also benefit from this programme. The Diploma will provide an additional qualification helping them to improve their professional competence and promotion chances. The Diploma in Nutrition and Health Education as a 32 credit programme consisting of four courses.â€

9.2. From the reading of the literature on the website of the IGNOU, it is evident that the diploma in Nutrition and Health Education awarded by

IGNOU is not a post graduate diploma relevant to the job of Medical Officer (Ayurvedic). The diploma may be helpful in developing skills in playing

the role of Nutritionist/Health Educators in the community and thus, relevant for performing the role of community workers and not the Medical

Officers. The Medical Officer (Ayurvedic) which is a higher professional qualification would necessarily encompass the aspect of Nutrition and

Health Education.

9.3. That apart, from the information available on the official website of IGNOU-the Peopleâ€™s University, the post graduate diplomas and

the diplomas other than the post graduate diplomas are separately described. Viewed from any angle, it is difficult to say that the diploma in

Nutrition and Health Education possessed by the petitioner is a post graduate diploma.

9.4. So far as, the post graduate diplomas, which are relevant in the field of Ayurveda, and may be said to be relevant to the job of Medical Officer

(Ayurvedic) are enumerated in Regulation 4 of the Indian Medicine Central Council (Post-graduate diploma courses) Regulations, 2010

[â€œRegulations 2010â€]. Rule 6 of the Regulations 2010 is of vital importance and, therefore, set out below:

â€œ.....6. Mode of Admission.-

(a) Eligibility Criteria:-

(i) A person possessing the degree in Ayurvedacharya (Bachelor of Ayurvedic Medicine and Surgery) of a University or Board or medical

institution specified in the Second Schedule to the Act shall be eligible for admission in the Post Graduate Diploma Course.

(ii) The University or Board or medical institution as the case may be, shall constitute an admission Committee, which shall supervise the

admission procedure.

(b) Mode of selection:-

Selection of candidates shall be made strictly on the basis of final merit list prepared out of aggregate marks of Under-graduate Course of

all professional examinations of the candidates for all categories.â€

9.5. From reading of Regulation 6 reproduced above, it clearly transpires that a post graduate diploma in different fields of Ayurvedic can be acquired

by a person possessing minimum qualification of degree in Ayurvedacharya (Bachelor of Ayurvedic Medicine and Surgery). Clause B of Regulation 6

further provides that selection of candidates who possess the degree in Ayurvedic shall be made strictly on the basis of final merit list prepared out of

aggregate marks of undergraduate course of all professional examination of the candidates. The terms â€œUndergraduate Courseâ€ referred to in

Clause B of Regulation 6 is a degree in Ayurvedacharya (Bachelor of Ayurvedic Medicine and Surgery).

9.6. The argument of Mr. Sethi that undergraduate course would mean 10+2 is without any substance and needs consideration only for rejection.

Undergraduate courses are programmes of study offered at the University or College level that lead to the grant of degrees or acquisition of

equivalent qualification. The undergraduate courses are pursued after completing secondary or high school. The Bachelor of Arts, Bachelor of

Science, Bachelor of Commerce, B.E/B.Tech, MBBS, LLB etc etc are of undergraduate courses. Though, the degree granted after completion of

such undergraduate courses is of a graduate level and may be called as â€œgraduate degreeâ€. Reference to aggregate marks in â€œClause B of

Regulation 6â€ speaks about the sum total of the marks obtained by the candidates in all professional examinations of the undergraduate course. To

put it succinctly, if an undergraduate course like BAMS has five professional examination, the merit shall be prepared out of the aggregate marks

obtained in all the five professional examinations of the undergraduate course i.e. BAMS. This is how the Regulation 6 needs to be understood.

9.7. Undoubtedly, the petitioner was possessing a degree of BAMS when he sought admission in the course of diploma in Nutrition and Health

Education awarded by IGNOU, yet, the fact remains, the minimum qualification prescribed for the course was 10+2 or equivalent and diploma to be

awarded by IGNOU was clearly stated to be a diploma and not a postgraduate diploma, as is evident from the information available on the official website of IGNOU.

9.8. There is no dispute with regard to the fact that there is a mention of postgraduate Diploma in Ayurvedic Dietetics at S. No. 5 of Schedule-I of

Regulations 2010. This postgraduate diploma may be called in English as Diploma in Nutrition-Ay., however, the postgraduate diploma in Nutrition-Ay.

recognized by CCIM is a qualification different from the diploma in Nutrition and Health Education acquired by the petitioner from IGNOU. The

essential qualification for undergoing Diploma in Ayurvedic Dietetics is graduation in Ayurvedacharya (BAMS). A candidate with 10+2 qualification is

entitled to acquire diploma in Nutrition and Health Education, the qualification possessed by the petitioner but the diploma in Ayurvedic Dietetics

recognized by CCIM in terms of Regulations 2010 can only be acquired by a candidate having a qualification of BAMS. That distinguishes the diploma

qualification possessed by the petitioner and the qualification referred to at S. No. 5 of Schedule-I of the Regulations 2010.

9.9. Needless to say that Public Service Commission (PSC) may not be an expert body to determine the relevance of a particular qualification for the

job/post in the field of Ayurvedic Education, however, CCIM is a statutory body enjoined with the task of regulating the standards of Ayurvedic

Education. Looking from any angle, it would be safe to hold that postgraduate diplomas in Ayurvedic referred to in Regulation 4 and 5 of 2010 shall be

deemed to be the postgraduate diplomas relevant to the job/post of Medical Officer (Ayurvedic).

Issue No. II

10. Whether the said qualification possessed by the petitioner is required to be recognized by CCIM?

10.1. In view of the discussion made above and the conclusions which we have arrived at, it is evident that the 02 points earmarked under Rule 51 of

the Business Rules of PSC 1980 are awardable only to the postgraduate diplomas reference to which is made in the Regulations 2010 and which are

acquired in the manner prescribed therein. These diplomas acquired under the Regulations 2010, are the recognized postgraduate diploma courses in Ayurveda.

10.2. To sum up, we hold postgraduate courses in Ayurveda acquired strictly as per the Regulations of 2010 are required to be treated as postgraduate diplomas relevant to the job/post of Medical Officer (Ayurvedic).

Issue No. III

11. Whether the qualification of diploma possessed by the petitioner is relevant to the job/post?

11.1. This question has already been elaborately dealt with and replied hereinabove and therefore needs no reiteration. The diploma qualification

possessed by the petitioner may be relevant to the job of a community worker/health educator but surely is, not relevant to the post/job of Medical

Officer (Ayurvedic). The detailed discussion has already been made hereinabove.

12. In the premises, the judgment passed by the Tribunal is upheld, though, for the reasons given above and consequently, the writ petition is

dismissed along with connected application(s), if any.

13. Interim directions, if any, shall stand vacated.