

A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) Nos. 16290, 16215, 16308 and 16876 of 2022

(In the matter of applications under Articles 226 and 227 of the Constitution of India, 1950).

In W.P.(C) No.16290 of 2022

Dr. Satya Narayan Bhujabala & Anr. *Petitioners*
-versus-
Veer Surendra Sai Institute of Medical *Opp. Parties*
Science and Research, Burla and Ors.

Advocates appeared in the case through Hybrid Mode:

For Petitioner : *Ms. Pami Rath, Adv.*

-versus-

For Opp. Parties : *Mr. D. Mund, AGA*

In W.P.(C) No.16215 of 2022

Dr. Swaraj Sambit Samal *Petitioner*
-versus-
State of Odisha and Ors. *Opp. Parties*

Advocates appeared in the case through Hybrid Mode:

For Petitioner : *Mr. Deba Ranjan Mohapatra,*
Adv.

-versus-

For Opp. Parties : *Mr. D. Mund, AGA*

In W.P.(C) No.16308 of 2022

Sarmistha Subhadarsini *Petitioner*
-versus-
State of Odisha and Ors. *Opp. Parties*

Advocates appeared in the case through Hybrid Mode:

For Petitioner : Mr. Jagabandhu Sahu, Adv.
-versus-

For Opp. Parties : Mr. D. Mund, AGA

In W.P.(C) No.16876 of 2022

Dr. Jyoti Pradhan & Anr. Petitioners

-versus-

Veer Surendra Sai Institute of Medical Opp. Parties
Science and Research, Burla and Ors.

Advocates appeared in the case through Hybrid Mode:

For Petitioners : Ms. Pami Rath, Adv.
-versus-

For Opp. Parties : Mr. D. Mund, AGA

CORAM:
DR. JUSTICE S.K. PANIGRAHI

DATE OF HEARING:-20.07.2022

DATE OF JUDGMENT:-02.08.2022

Dr. S.K. Panigrahi, J.

1. Since similar questions of law or facts are involved in all the above writ petitions, all the matters were heard together. However, this Court felt it appropriate to decide W.P.(C) No.16290 of 2022 first and the outcome of the said Writ Petition, the same will be covered to other similar writ petitions mentioned above.

2. Shorn of unnecessary details, the factual matrix of the case in brief is that the OP on 19.4.2022 issued an advertisement for the post of Asst. Professor on contractual/ Deputation basis for different discipline. In the Department of Anesthesiology 2 nos. of vacancies has been advertised. In the said notice the qualification is MD or equivalent Degree but for the purpose of merit assessment weightage was only given to mark secured in the Matriculation, Intermediate and MBBS examinations. One of the documents required to be submitted was a Chance Certificate of MBBS /MD /MDS /DNB /MSc (Medical) Examination.
3. The Petitioners had applied against the said advertisement and were called for document verification. During the document verification the OP did not point out any deficiency. Many of the applicants in various Departments including the petitioners did not have a particular certificate called Chance certificate of MBBS /MD /MDS/DNB /MSc (Medical) at the time of verification. A Chance Certificate indicates that the number of attempts a person had made to clear the concerned exam. On 22.6.2022, a provisional selection list was published in which the Petitioners were shown as holding the 3rd (Anesthesiology) and 8th (pathology) rank in terms of merit, but had been rejected on the ground of non-submission of MD

Chance Certificate. Being aggrieved by the same, the petitioners have filed this Writ Petition.

4. Learned Counsel for the petitioners has submitted that a Chance Certificate only indicates that the number of attempts a person had made to clear the concerned exam. A chance certificate is required for the purpose of negative marking i.e. deduction of 1 mark for each chance taken for clearing the said exam. Since the Petitioners had cleared the exam in their first attempt, they did not require any chance certificate. Moreover, the pass certificate of the Petitioners also stated that they had completed the exam in 2018 as regular candidate. Thus, the information which the Chance Certificate would have given was inherently on record in the form of the pass certificate. Additionally, the Petitioners' non-submission of Chance Certificate pertaining to MD examination does not affect their merit assessment, hence they should not have been non-suited from the selection.

5. Learned Counsel for the Opposite Party 1 & 2 has submitted that as per Clause-6.2 of the advertisement- One mark will be deducted from the total career mark for each extra attempt taken to pass the examinations including MD/MS/DNB/MSc (medical) examination. Similarly, Clause 8 of the advertisement provided a list of documents required to be submitted and one of the required documents as per Clause 8(vii) is Chance

Certificate of MBBS/MD/MS/MDS/DNB/ MSc (Medical) Examination, Further, relevant portion of the Addendum dated 13.5.2022 suggests as follows:

"The applicants must come for original document verification in person and no authorization will be entertained. They have to produce all the required original certificates/marksheets/other documents [as mentioned under clause-8 of the advertisement] submitted along with their application for verification by the scrutiny officers".

6. Learned Counsel for the Opposite Party 1 & 2 further submits that the petitioners did not take care to get their original MD chance certificates in the long period of more than a month from the date of publication of the advertisement on 19.04.2022 till the date of original document verification on 25.05.2022 in spite of two reminders in the website one on 13.05.2022 and another on 20.05.2022. He has further submitted that MD/MS/MDS chance certificate was also an important document as there was provision of deduction of one mark for each extra chance taken by the candidate to pass such examination towards calculation of final career score which determines the merit rank. Hence, such requirement was let known very categorically in the advertisement issued vide notice no. 225/Director, VIMSAR, Burla dated 19.04.2022 as well as vide a reminder website notice released on 20.05.2022 i.e. five days before the date of original document verification.

The petitioners have deliberately suppressed the fact to the Hon'ble Court that they had been given a reminder notice vide Addendum-2 on 20.05.2022 to present all the required original documents on 25.05.2022 to hide their act of carelessness which has led to the current imbroglio.

7. Heard learned counsel for the parties. There has been consistent view of this Court that in the matter of appointment in academic institutions and Universities that are governed by statutes, the procedural requirements have invariably been considered to be mandatory. In the present case, Clause 8 of the advertisement provides a list of documents required to be submitted and one of the required documents as per Clause 8(vii) is Chance Certificate of MBBS/MD/MS/MDS/DNB/ MSc (medical) Examination. Hence, it is a necessary document to be submitted at the time of submission of form as well as at the time of verification of the documents. In fact, the said Medical college has also given the opportunity to show the said document at the time verification if any candidate has not submitted along with the Application form submitted in response to the Advertisement. Even after such relaxation, the petitioners did not bother to bring the chance certificate at the time of verification. Further, the relevant portion of the Addendum dated 13.5.2022 suggests:

"The applicants must come for original document verification in person and no authorization will be

entertained. They have to produce all the required original certificates/marksheets/other documents [as mentioned under clause-8 of the advertisement] submitted along with their application for verification by the scrutiny officers.”

8. Such issues have been succinctly dealt by the Apex Court in several cases. In the case of *The Karnataka State Seeds Development Corporation Limited & Anr v. Smt. H.L. Kaveri & Ors.*¹ held that:

“11. Under its advertisement dated 11th November 2013, it was specifically indicated that separate application should be submitted for each post accompanied with various requirements including qualification, experience, etc. and incomplete application, if any, is liable for rejection without assigning any reason. The 1st respondent applied for the post of Senior Assistant/Junior Assistant vide application dated 29th November, 2013. After scrutiny of the applications, the select list of backlog vacancies was published on 16th January, 2015 and it reveals from the record that impleaded 3rd respondent in the writ petition (Smt. Priyanka A. Chanchalkar) was provisionally selected as Senior Assistant securing 64.65% marks. At the same time, the 1st respondent secured 65.43% marks but since the 1st respondent failed to submit experience certificate along with the application form, her application at the stage of scrutiny itself was rejected.

¹ Civil Appeal No(S). 344 Of 2020 (Supreme Court)

12. *The Corporation in IA No. 3457 of 2020 has indicated that total 31 applications for the post of Senior Assistant were rejected in view of not enclosing of self-attested documents and there are 7 women candidates listed as valid applicant for Senior Assistant against the single post of female (Scheduled Caste) which remain unfilled because of the orders of the Court. At the same time, the Corporation rejected 106 number of applications for the post of Junior Assistant for not enclosing the documents required including self-attested copies of experience certificate/ caste certificate/computer tally-certificate/graduation certificate/birth certificate, etc.*

13. *It remains undisputed as recorded by the learned Single Judge of the High Court in the order after perusal of the original records of which reference has been made that the 1st respondent had not enclosed her experience certificate along with the application and her statement on oath was found to be factually incorrect and the rejection of her application was indeed in terms of the advertisement dated 11th November, 2013 for which the Corporation was not required to assign any reasons which although was disclosed before the Court and noticed by the learned Single Judge in its judgment.*

14. *In the given circumstances, we do not find any error being committed by the Corporation in its decision-making process while rejecting the application of the 1st respondent for non-fulfilment of the necessary experience certificate which was to*

be enclosed along with the application as required in terms of the advertisement dated 11th November, 2013."

9. Similarly, Punjab and Haryana High Court in the case of **R.K. Harshvir Singhj vs State Of Punjab And Ors.**² held that Courts should not interfere in decision taken by Recruitment board when requisite qualification has been clearly prescribed in advertisement. In the present case, the requirement for chance certificate was let known very categorically in the advertisement issued vide notice no. 225/Director, VIMSAR, Burla dated 19.04.2022 as well as vide a reminder website notice released on 20.05.2022 i.e. five days before the date of original document verification. Hence, this shows the callous attitude of the petitioners. Moreover, chance certificate cannot be considered as an irrelevant document considering that the negative marking attached to it. Therefore, irrespective of its effect on one individual's marks, it has to be considered as a necessary document which must be verified for securing the candidature.
10. Likewise, the Supreme Court in the case of **Maharashtra State Board of Secondary and Higher Secondary Education and another v. Paritosh Bhupesh Kumar Sheth and others**³ observed that:

² CWP No.13 of 2017 (O&M) (Punjab and Haryana High Court)

³ AIR 1984 SC 1543.

"27. .. Further, it is in the public interest that the result of public examinations when published should have some finality attached to them. If inspection, verification in the presence of the candidates and reevaluation are to be allowed as of right, it may lead to gross and indefinite uncertainty, particularly in regard to the relative ranking etc. of the candidates, besides leading to utter confusion on account of the enormity of the labour and time involved in the process.

29. Far from advancing public interest and fair play to the other candidates in general, any such interpretation of the legal position would be wholly defeasive of the same. As has been repeatedly pointed out by this Court, the Court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them. It will be wholly wrong for the Court to make a pedantic and purely idealistic approach to the problems of this nature, isolated from the actual realities and grass-root problems involved in the working of the system and unmindful of the consequences which would emanate if a purely idealistic view as opposed to a pragmatic one were to be propounded. It is equally important that the court should also, as far as possible, avoid any decision or interpretation of a statutory provision, rule or bye-law which would bring about the result of rendering

the system unworkable in practice. It is unfortunate that this principle has not been adequately kept in mind by the High Court, while deciding the instant case."

11. Similar sentiment has been echoed in ***University Grants Commission v. Neha Anil Bobde***⁴, wherein it was held that in academic matters, unless there is a clear violation of statutory provisions, the regulations or the notification issued, the Courts shall keep their hands off.
12. In light of the above-mentioned facts and precedents cited hereinabove, this Court is not inclined to allow the petition of the petitioners. All the Writ Petitions tagged along with the present Writ Petition are hereby dismissed.
13. Interim orders passed earlier in W.P.(C) Nos.16290, 16215 and 16308 of 2022 stand vacated.

(Dr. S.K. Panigrahi)
Judge

*Orissa High Court, Cuttack,
Dated the 2nd August, 2022/B. Jhankar*

⁴ (2013) 10 SCC 519