



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 16189 of 2024

Date of Decision: 17.09.2025

Smt. Asha Rani

.....Petitioner

Versus

State of Himachal Pradesh & others

... Respondents

Coram:

Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting? ¹ Yes.

For the Petitioner: Mr. Uday Singh Banyal, Advocate.

For the Respondents: Mr. Rajan Kahol, Mr. Vishal Panwar and Mr. B.C.Verma, Additional Advocate Generals, with Mr. Ravi Chauhan, Deputy Advocate General, for the respondents-State.

Mr. Vivek Chandel, Advocate, for respondent No.4.

Sandeep Sharma, Judge(oral):

Precisely, the question, which needs to be determined in the case at hand, is that “whether, while making batch wise selection, the name and year of examination would be relevant or the date of issuance of the certificate?”.

2. Precisely, the grouse of the petitioner, as has been highlighted in the petition and further canvassed by Mr. Uday Singh Banyal, learned counsel representing the petitioner, is that though petitioner herein had passed her Diploma in Ayurvedic

¹Whether the reporters of the local papers may be allowed to see the judgment?

Pharmacy in the academic session 2003-2005 in the month of June, 2005, but since certificate with regard thereto was issued on 07.04.2006, respondents, while doing batch-wise selection for the post of Ayurvedic Pharmacy Officer under the ward of ex-servicemen quota, wrongly denied her appointment against the batch of 2005 on the premises that she does not belong to the batch of 2005, rather on account of issuance of certificate on 07.04.2006, she is to be treated as belonging to the batch of 2006.

3. Precisely, the facts of the case as emerge from the pleadings adduced on record by the respective parties are that the petitioner successfully completed her diploma in Ayurvedic Pharmacy from the institute of Advanced Studies in Education, Gandhi Vidya Mandir Sardarshahr, Rajasthan, which is a deemed University, in the academic session 2003-2005. Petitioner appeared in final examinations for the aforesaid diploma in June, 2005, but the certificate thereby declaring her pass in said course came to be issued on 07.04.2006 (Annexure P-3 colly). After obtaining the diploma in Ayurvedic Pharmacy, the petitioner got herself enrolled with the Employment Exchange for the purpose of batch wise selection against the

post of Ayurvedic Pharmacy Officer. Since few posts of Ayurvedic Pharmacy Officer came to be advertised for selection on batch wise basis, Employment Exchange recommended the name of the petitioner for the post of Ayurvedic Pharmacy Officer on contract basis under ward of ex-servicemen quota, as is evident from communication dated 06.07.2024 (Annexure P-9) issued under the signatures of Director Ayush, Himachal Pradesh. Pursuant to afore communication, petitioner submitted all the requisite documents, but, while preparing check list, Screening Committee reflected the year and month of passing of course as 07.04.2006, i.e. date of issuance of the certificate (Annexure P-3), as a result thereof, petitioner was not considered for appointment on batch-wise basis for the batch of 2005 against the post of Ayurvedic Pharmacy Officer, as is evident from Annexure P-12. In the aforesaid background, petitioner has approached this Court in the instant proceedings, praying therein for the following reliefs:-

- “i. That the appointment of respondent No.4, as Ayurvedic Pharmacy Officer, vide office order dated 26.09.2024(fig. at serial No.1) Annexure P-12 may very kindly be ordered to be quashed and set aside qua respondent No.4 and the same should be offered to the petitioner, being higher in merit, the ends of justice;

- ii. That the respondent No.3 may very kindly be directed to correct the date of issuance on the petitioner's statement of Marks Annexure P-3(Colly) from 07.04.2006 to the correct date in the year 2005.
- iii. That respondent No.1 and 2 may very kindly be directed to ensure that the petitioner's is offered the appointment for batch wise recruitment under the 2005 batch for the post of Ayurvedic Pharmacy Officer."

4. Pursuant to the notices issued in the instant proceedings, respondent Nos.1, 2 and respondent No.4 have filed separate replies, to which the petitioner has filed rejoinder.

5. Facts, as have been taken note hereinabove, have not been disputed, but an attempt has been made to refute the claim of the petitioner on the strength of provisions contained in the R& P Rules for the post of Ayurvedic Pharmacy Officer, Class-III (Non- Gazetted), in the Department of Ayurveda, Himachal Pradesh (Annexure P-13), wherein Clause 15, which deals with selection for appointment to the post by direct recruitment as well as batch-wise recruitment, provides that the date recorded on the original " Detail Marks Certificate" of final professional examination of the candidate by concerned University/Institution shall be deemed as the date for reckoning the batch of the candidate.

6. Mr. Rajan Kahol, learned Additional Advocate General representing the respondent-State and Mr. Vivek Chandel, learned counsel representing respondent No.4, while referring to aforesaid provision, vehemently argued that since in the certificate supplied by the petitioner it stood specifically mentioned that same was issued on 07.04.2006, no illegality can be said to have been committed by the respondents in not considering the petitioner for the batch of 2005.

7. To the contrary, Mr. Uday Singh Banyal, learned counsel representing the petitioner, while referring to aforesaid provision contained in the R&P Rules, argued that respondents have wrongly interpreted the said provision, inasmuch as they have considered the date of issuance of the certificate to be date of passing of professional examination of Diploma in Ayurvedic Pharmacy. He submitted that bare perusal of certificate placed on record (Annexure P-3) clearly reveals that petitioner was a student of academic session of 2003-2005 and had appeared in the examination in June, 2005, but since the certificate with regard to passing was issued on 07.04.2006, she cannot be said to be a student having passed the examination in 2006, rather for all intents and purposes, her examination year would be

2005. While referring to the rejoinder, wherein it has been specifically stated that petitioner had participated in the examination of Diploma in Ayurvedic Pharmacy in 2005, learned counsel for the petitioner submitted that since no rebuttal to the same has been filed by either of the respondents, the same is deemed to have been admitted at their behest.

8. I have heard learned counsel for the parties and gone through the record carefully.

9. Before ascertaining the correctness of the rival submissions made by learned counsel for the parties to the *lis*, this Court finds it necessary to take note of relevant provision contained in the R&P Rules for the post of Ayurvedic Pharmacist Officer herein below:-

Selection for appointment to post by Direct Recruitment	<u>Direct Recruitment:</u> Selection for appointment to the post in the case of direct recruitment shall be made on the basis of merit of written examination followed by evaluation as specified in Appendix-1 appended to these rules, or if the Himachal Pradesh Staff Selection Commission or other recruiting agency/ authority, as the case may be, so consider necessary or expedient on the basis of merit of written examination followed by evaluation as specified in Appendix-1 appended to these Rules, preceded by a screening test (objective type) or practical test or skill test, the standard/syllabus, etc. of which, will be determined by the Himachal Pradesh Staff Selection commission/ other
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	recruiting agency/ authority as the case may be. Batch-Wise Recruitment: Selection for appointment to the post in the case of appointment on batch-wise basis will be made by the concerned recruiting authority i.e. Director (Ayurveda), H.P, on the basis of batch-wise merit/inter-se seniority of the candidates of a particular batch which has passed out from recognized University/Institution duly recognized by the State/Central Government. The date recorded on the original "Detail Marks Certificate" of final professional examination of the candidate of by concerned University/ Institution shall be deemed as the date for reckoning the batch of the candidate. The batch wise merit of a particular batch shall be determined on the basis of marks obtained in the degree/diploma course in Pharmacy. While preparing batch-wise inter se-seniority, the candidates possessing professional degree, shall be placed en-bloc above the diploma holders. In case, the marks obtained in degree diploma by two or more candidates are same, the inter-se-merit would be decided on the basis of marks obtained in 10+2 level and if there is still a tie, the candidates senior in age would be placed above.
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10. Careful perusal of aforesaid provision contained in the R&P Rules reveals that selection for appointment to the post in the case of appointment on batch-wise basis will be made by the concerned recruiting authority i.e. Director (Ayurveda), H.P, on the basis of batch-wise merit/inter-se seniority of the candidates of a particular batch which has passed out from recognized University/ Institution duly recognized by the State/Central Government. Most

importantly, it has been provided in the aforesaid provision that the date recorded on the original "Detail Marks Certificate" of final professional examination of the candidate by concerned University/ Institution shall be deemed as the date for reckoning the batch of the candidate.

11. Though, it has been vehemently argued at the behest of the respondents that since it stood mentioned in the certificate placed on record by the petitioner that same was issued on 07.04.2006, petitioner name was rightly not considered under the 2005 batch, however, having carefully perused the certificate (Annexure P-3) placed on record, this Court finds that though date of issuance of certificate has been shown as 07.04.2006, but such examination pertained to the diploma in Ayurvedic Pharmacy, 2nd year 2004-2005. Though, in afore certificate, it has been not mentioned anywhere that petitioner had appeared in said examination in the month of June, 2005, but careful perusal of certificate dated 03.09.2021, issued by Controller of Examination, IASE(Deemed to be University) G.V.M. Sardarshahr, Churu (Raj), from where petitioner passed the two years Diploma in Pharmacy, which has been otherwise not refuted petitioner herein being student of afore University has been certified to have done her two years Diploma in Ayurvedic Pharmacy in June, 2003 to May 2005 through distance mode. Though, petitioner had

passed Diploma in Ayurvedic Pharmacy in June, 2005 but since certificate came to be issued on 07.04.2006, as is evident from the certificate placed on record (Annexure P-3 colly), it cannot be said that petitioner passed two years' Diploma in Ayurvedic Pharmacy in the year 2006, especially when certificate(Annexure P-3) itself mentioned the period of diploma in Ayurvedic Pharmacy 2nd year 2004-2005.

12. It is also apt to take note of character/relieving certificate dated 7th July, 2005 (Annexure P-11) issued by the President, Bhuvneshwari Educational Society, Bahot, Sunder Nagar, District Mandi, Himachal Pradesh from where the petitioner after her having completed Diploma in Ayurvedic Pharmacy from Gandhi Vidya Mandir Sardarshahr(Rajasthan), completed training in the trade of Ayurvedic Pharmacist . As per aforesaid certificate, she appeared in final trade test held in June, 2005 under Roll No.1075. It is quite apparent from perusal of aforesaid document that petitioner had completed her two years Diploma in Ayurvedic Pharmacy w.e.f from June 2003 to May, 2005 under the IASE(Deemed University), Gandhi Vidya Mandir Sardarshahr(Rajasthan) and thereafter appeared in final trade test held in June, 2005 under Roll No.1075.

13. True it is that date relevant for reckoning the batch of a candidate is the date recorded on the original "Detail Marks

Certificate” of the final professional examination of the candidate issued by the concerned University/Institution, but it is nowhere mentioned in the R& P Rules that date of issuance of certificate given in the certificate would be relevant, rather, while considering candidature under batch-wise selection, relevant date would be the year and month of passing. Since in the case at hand petitioner appeared in examination of 2nd year Diploma in Ayurvedic Pharmacy under the batch of 2004-2005 in the month of May/June, 2005 and thereafter, she also passed trade test, as is evident from Annexure P-11 in 2005 itself, there appears to be merit in the contention of learned counsel for the petitioner that for all intents and purposes, the year of passing of the petitioner’s Diploma in question is 2005, if yes, she should have been considered for batch-wise selection for the year 2005.

14. It is not in dispute that post of Ayurvedic Pharmacy Officer at the relevant time was being filled from the batch of 2005. It is also none of the case of the respondents that petitioner had not passed her Diploma from a recognized University, rather the sole ground for rejection of her candidature was that since she passed the Diploma in 2006, she could not be considered for the batch of 2005. Moreover, Clause 15 of the

R&P Rules further provides that selection for appointment to the post in the case of appointment on batch-wise basis shall be made by the concerned recruiting authority i.e. Director (Ayurveda), H.P, on the basis of batch-wise merit/inter-se seniority of the candidates of a particular batch, who have passed out from a recognized University/Institution. Since the certificate adduced on record by the petitioner shows the batch of the petitioner as 2004-05, she, otherwise in no circumstance, could have been considered to be candidate of 2006 batch.

15. It is also not in dispute that Employment Exchange concerned, having taken note of the certificate submitted by the petitioner at the time of registration, recommended her for selection to the post in question for the 2005 batch, but since Screening Committee, while making check list, wrongly mentioned the year and month of passing of course as 07.04.2006, candidature of the petitioner for the post in question came to be rejected.

16. For the discussion made hereinabove, this Court is fully convinced that candidature of the petitioner ought to have been considered for appointment against the post in question, treating her to be a candidate of 2005 batch, but now question,

which needs to be decided is “whether, in the event of petitioner’s being selected, private respondent No.4, would be ousted or not?”.

17. Undoubtedly, respondent No.4 pursuant to his selection has already joined services. Since it is quite apparent from the pleadings adduced on record by the respective parties including the petitioner that private respondent never came to be appointed against the post in question on account of misrepresentation, if any, on his part, rather mistake, if any, is of the Selection Committee. Since private respondent stands regularized and he has been working for the last one year, it may not be justifiable to oust him at this stage, rather in peculiar facts and circumstances, his services need to be protected.

18. At this juncture, it is apt to take note of judgment titled **Vikas Pratap Singh and others Versus State of Chhattisgarh and others, (2013) 14 SCC 494**, wherein taking note of the fact that the appellants (therein) had successfully undergone training and were serving the State for more than three years, were allowed to continue in service even though their selection was interfered with. Para 28 of the judgment, being relevant, is extracted hereinafter:-

“28. In our considered view, the appellants have successfully undergone training and are efficiently serving the respondent State for more than three years and

undoubtedly their termination would not only impinge upon the economic security of the appellants and their dependants but also adversely affect their careers. This would be highly unjust and grossly unfair to the appellants who are innocent appointees of an erroneous evaluation of the answer scripts. However, their continuation in service should neither give any unfair advantage to the appellants nor cause undue prejudice to the candidates selected qua the revised merit list.”

19. Similar situation arose in **Anmol Kumar Tiwari and others Versus State of Jharkhand and others, (2021) 5 SCC 424.**

The Apex Court confirmed the decision of the High Court that had directed reinstatement of the writ petitioners after taking into account the fact that they were though beneficiaries of the select list that was prepared in an irregular manner, but were not responsible for the irregularities committed by the authorities in preparation of the said select list. Relevant para from the judgment reads as under:-

“11. Two issues arise for our consideration. The first relates to the correctness of the direction given by the High Court to reinstate the Writ Petitioners. The High Court directed reinstatement of the Writ Petitioners after taking into account the fact that they were beneficiaries of the select list that was prepared in an irregular manner. However, the High Court found that the Writ Petitioners were not responsible for the irregularities committed by the authorities in preparation of the select list. Moreover, the Writ Petitioners were appointed after completion of training and worked for some time. The High Court was of the

opinion that the Writ Petitioners ought to be considered for reinstatement without affecting the rights of other candidates who were already selected. A similar situation arose in Vikas Pratap Singh case, where this Court considered that the Appellants-therein were appointed due to an error committed by the Respondents in the matter of valuation of answer scripts. As there was no allegation of fraud or misrepresentation committed by the Appellants therein, the termination of their services was set aside as it would adversely affect their careers. That the Appellants therein had successfully undergone training and were serving the State for more than 3 years was another reason that was given by this Court for setting aside the orders passed by the High Court. As the Writ Petitioners are similarly situated to the appellants in Vikas Pratap Singh case, we are in agreement with the High Court that the Writ Petitioners are entitled to the relief granted. Moreover, though on pain of Contempt, the Writ Petitioners have been reinstated and are working at present.”

20. In the case at hand, private respondent No.4 cannot be said to be at fault, rather it is the department, which has offered appointment to him and as such, it would be too harsh if he is ordered to be removed from service. At the same time, petitioner also cannot be denied the relief prayed by her in the instant petition, since she was fully eligible to be appointed against the post in question.

21. Consequently, in view of detailed discussion as well as law taken into consideration, this Court finds merit in the present

petition and accordingly, same is allowed. Respondents are directed to offer appointment to the petitioner against the post of Ayurvedic Pharmacy Officer considering her to be appointee of 2005 batch, but while doing so, appointment already given to private respondent No.4 shall not be disturbed, rather same shall remain protected. Petitioner shall not be entitled to any monetary benefits for the period between deemed date of appointment and actual joining but same shall count for the purpose of seniority and other service benefits. Pending applications, if any, also stand disposed of.

September 17, 2025
(shankar)

**(Sandeep Sharma),
Judge**