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**Before the Court of Commissioner (Disability)-cum-Principal Secretary (SJ&E)
to the Government of H.P.**

No. SJE-B-E(5)-1/2016

Case No. 01/2017

Date of Decision: 05/05/17.

In the matter of:

Smt. Seema Sharma,
Ayurvedic Pharmacist, AHC Saribasa,
Teh. Chirgaon, Distt. Shimla, H.P.

Appellant.

Versus

The Director of Ayurveda,
Himachal Pradesh, Shimla-09.

Respondent.

**Subject:- Representation against the notice issued for removal from the
Govt. services by the Director of Ayurveda.**

Smt. Seema Sharma, Ayurvedic Pharmacist, respondent has filed present petition vide her letter dated: 29-04-2017 before the undersigned against the notice issued by Director of Ayurveda, H.P. for her removal from the Government services.

2. Whereas, the undersigned had called the representative of the Director Ayurveda well conversant with the case and the applicant for a personal hearing on 1st May, 2017 at 11:00 a.m along with the entire relevant record. And whereas, both the parties have duly attended the court of the undersigned and have been given a patient hearing.

Brief facts of the case are as follows:

- That the Directorate of Ayurveda had advertised a post of Ayurvedic Pharmacist for OH Category and the applicant duly applied for the same.
- That the name of the applicant was recommended by the Screening Committee upon interview on 27.2.2017 being found suitable from a panel of 8 short-listed candidates.
- That the selection of the applicant was challenged by another candidate who sought information regarding whether the selected candidate fulfils the requisite criteria of at least two arms and one leg.
- That the Director Ayurveda sought directions in the matter from Directorate for Empowerment of SCs, OBCs, Minorities and the Specially Abled (SOMSA).

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- That the Director (SOMSA) responded by saying that "if it appears that the candidate has wrongly been selected for the post because of wrongful scrutiny at the time of deciding eligibility, then it is advised that the appointment orders issued to him/her may be reconsidered".
- That the Director Ayurveda got the selection reviewed by the Selection Committee on 26.4.2017 which decided that the name of the applicant had inadvertently been recommended and that the earlier recommendation of the committee may be treated as null and void.
- That following the review, a notice was issued to the applicant on 27.4.2017 to submit a written reply in justification of her appointment within seven days failing which the next candidate from the panel would be offered appointment.
- That feeling aggrieved with the actions of the Department of Ayurveda, the applicant has filed a representation with the undersigned as Commissioner (Disability) under the Rights of Persons with Disabilities Act, 2016.

3. From the perusal of the case, two issues surface:

The first is of the eligibility of the applicant & the process followed therein:

- a. That 17 people applied for the job out of which 8 were duly found eligible by the Department of Ayurveda and were placed before the Screening Committee for interview/selection as per standard format. In this case, due diligence based on which 8 candidates were short-listed out of 17, was exercised by the Department of Ayurveda. Hence, the primary responsibility for this exercise rests with the Department of Ayurveda. Secondly, while adjudging the most suitable candidate from amongst those eligible, Screening Committee was also expected to see eligibility. On this account, both the Department of Ayurveda and the Screening Committee should have exercised greater care. During the hearing, the Deputy Director (Ayurveda) gave the version of the Department as them not being technically qualified for scrutiny of medical records. The undersigned has also perused the medical certificates issued by the various medical boards and found that some certificates mention details of limbs affected, while some don't. However, in this case too, the onus of seeking more information with respect to level and type of handicap to decide eligibility rests with the Department of Ayurveda given the fact that the advertisement issued by them was specific to OH (having atleast two arms and one leg).

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b. The second issue relates to the complaint of the complainant wherein she alleges that for no fault of her own, she has had to undergo tremendous mental agony. Whereas, the complaint received in this regard from another candidate and consequential actions of the Department, though right in technicality, are prejudicial to the interests of the applicant. She further stated that by being formally appointed as Pharmacist and discharged her duties for two months, she was already a Govt. employee governed by the same rules & regulations. She could not be removed by a simple letter of the department without following due process for removal. She emphasized that there had been no malafide and misconduct on her part. The applicant went on to highlight how the criteria of two arms was in itself a biased one. She had overcome her disability to gain an education and secure good marks. She was married and had a child and had amply demonstrated that she was capable of doing everything a person with two arms could do. Not only this, the sense of elation that the applicant must have felt on overcoming her physical handicap upon selection to the post is now replaced by a trauma of possible removal from the service due to a lapse on the part of Department and Scrutiny Committee which decided on eligibility.

4. Taking all these facts into view, I am of the opinion that the applicant cannot be penalized for the error of the department and of the Screening Committee. Besides, there has been indeed no effort on part of the applicant to mislead the department as she placed all documents on record. Due process was followed in keeping with the R&P Rules for her appointment as recommended & made by the Screening Committee. The applicant is a Govt. employee as on date and cannot be removed simply as has been done in this case. Also it is amply demonstrated that the applicant has displayed successful conduct at the job despite being 'ineligible' as per post identification criteria. Keeping in view all these facts, the selection & appointment of the employee is upheld.

5. Besides this, the court perused the identification criteria of the Ministry of Social Justice and Empowerment, Government of India and found that for the post of Pharmacist, the requirement of both arms is not the basis for deciding eligibility. In fact, the criteria only mentions one leg/ both legs as categories of disabled suitable for the job. And the fact that the applicant has been working successfully at the job for around two months without any complaints whatsoever only substantiates the need for a review of the criterion of 'at least one leg and two arms'.

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6. It appears that the Department of Ayurveda has unnecessarily made the requirement of the said job onerous and the identification is a fit case for review and re-notification; which may be done keeping in mind the criteria of GoI and the new perspective provided by the functioning and conduct of the applicant Mrs. Seema Sharma. The Deptt. of SOMSA may be involved in the process of review and re-identification for an impartial look into the matter.

7. The Department of Health is also directed to look into the need for a revision of the medical certificate format which may be changed if need be to better reflect the status and degree of handicap which may be helpful in avoiding such errors in future.

Now, the present appeal filed by the applicant/petitioner is being disposed of accordingly.

(Anuradha Thakur)

Commissioner (Disability)-cum-Pr. Secretary (SJ&E) to the
Government of Himachal Pradesh, Shimla-02.

- 1 The Director of Ayurveda,
Himachal Pradesh, Shimla-09.
 - 2 The Director,
Health & Family Welfare, Shimla-09.
 - 3 Smt. Seema Sharma,
Ayurvedic Pharmacist, AHC Saribasa,
Teh. Chirgaon, Distt. Shimla, H.P.
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