

**AFR****HIGH COURT OF CHHATTISGARH, BILASPUR****WPS No. 3961 of 2020**

Ayush Medical Association Through Member Dr. Mahendra Kumar Sao,  
(Central Council) Office New Sarkanda, Bandhwapara, Front of Maharana  
Pratap Bhawan, Bilaspur, Chhattisgarh Pin 495006., District : Bilaspur,  
Chhattisgarh **--- Petitioner**

**Versus**

1. State of Chhattisgarh through Secretary, Health And Family Welfare and Medical Education , Mahanadi Bhavan, Naya Raipur, District Raipur, Chhattisgarh.
2. Nationaal Health Mission through Deputy Director, Third Floor, Chhattisgarh Housing Board Vyavasayik Parisar, Sector 27, Nava Raipur, Atal Nagar, Pin 492015, Chhattisgarh., District : Raipur, Chhattisgarh
3. Union of India Through Secretary, Department of Health and Family Welfare, Nirman Bhavan New Delhi, District : New Delhi, Delhi **--- Respondents**

**WPS No. 3962 of 2020**

Bilaspur Homeopathic Chikitsak Sangh Through Member Dr. Sanjay Kumar Sahu, S/o Shri Bhagwat Prasad Sahu, Aged About 28 Years, Joint Secretary Of The Bilaspur Homeopathic Chikitsak Sangh, Office House No. 14/451, Village Vidya Up Nagar L-3, Post Tarbahar, Tehsil And District Bilaspur (Chhattisgarh) Pin. 495006. **--- Petitioner**

**Versus**

1. State of Chhattisgarh through Secretary, Health And Family Welfare and Medical Education, Mahanadi Bhavan, Naya Raipur, District Raipur, Chhattisgarh.
2. National Health Mission Through Deputy Director, Third Floor, Chhattisgarh Housing Board Vyavasayik Parisar, Sector- 27, Nava Raipur, Atal Nagar, Pin 492015, District : Raipur, Chhattisgarh
3. Union of India, Through Secretary, Department of Health And Family Welfare, Nirman Bhavan, New Delhi., District : New Delhi, Delhi

**---- Respondents**

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For the Petitioners : Mr. Shashank Thakur and Mr. Vaibhav P. Shukla, Advocates

For the State/Respondent No.1 : Ms. Akanksha Jain, Govt. Advocate

For Respondent No.2 : Dr. N.K. Shukla, Sr. Advocate with



Mr. C.J.K. Rao & Mr. Ajit Tiwari, Advocates

For respondent no.3

: Mr. Ramakant Mishra, Asst. S.G.

**Hon'ble Shri Justice Goutam Bhaduri**

**Order on Board**

**28-10-2020**

1. Heard finally with the consent of both the parties as urgency was pressed upon the ground that the issue involved in both these petitions are relating to advertisement for appointments of Community Health Workers by training. Since the facts and issue involved in both these petitions are similar, they are decided by this common order.
2. Challenge in both these writ petitions is to the advertisement dated 21.09.2020 issued by the National Health Mission, Chhattisgarh inviting applications from the interested candidates to enroll for 6 months certificate course in Community Health for filling up 800 posts of Community Health Officers by training. Relevant part of the advertisement dated 21.09.2020 reads as under:

पत्र क्रमांक/एनएचएम/एचआर/2020/NS 27/1819 नवा रायपुर, अटल नगर, दिनांक 21/09/2020

राष्ट्रीय स्वास्थ्य मिशन छ.ग. अंतर्गत  
06 माह के सर्टिफिकेट कोर्स इन कम्युनिटी हेल्थ फॉर नर्सिस पाठ्यक्रम (सामुदायिक स्वास्थ्य अधिकारी) में प्रशिक्षण हेतु आवेदन आमंत्रित किये जा रहे हैं।

मिशन संचालक, राष्ट्रीय स्वास्थ्य मिशन छत्तीसगढ़ राज्य की ओर से ऐसे इच्छुक एवं उत्साही अभ्यर्थियों को आमंत्रित किया जाता है, जो समुदाय को अपने घर के नजदीक स्वास्थ्य सेवा उपलब्ध कराने के लिए "6 माह के "सर्टिफिकेट कोर्स इन कम्युनिटी हेल्थ फॉर नर्सिस" प्रशिक्षण जुलाई-2020 बैच में आवेदन करना चाहते हैं। यह पाठ्यक्रम राष्ट्रीय स्वास्थ्य मिशन के अंतर्गत उपस्वास्थ्य केन्द्रों को हेल्थ एण्ड वेलनेस सेंटर के रूप में विकसित करने का एक अंग है। हेल्थ एण्ड वेलनेस सेंटर के रूप में विकसित उपस्वास्थ्य केन्द्रों में समग्र प्राथमिक स्वास्थ्य सेवायें प्रदान की जायेगी जिनमें बीमारियों से बचाव एवं हेल्थ प्रमोशन के कदम भी शामिल हैं। वे अभ्यर्थी जो इस पाठ्यक्रम को सफलतापूर्वक पूर्ण कर लेंगे, वे उपस्वास्थ्य केन्द्रों में पदस्थ होकर समग्र प्राथमिक स्वास्थ्य सेवा प्रदाय हेतु "मिड लेवल हेल्थ प्रोवाइडर" के रूप में सेवाएं देंगे एवं अन्य मैदानी कार्यकर्ताओं जैसे- ए.



एन. एम., एम. पी. डब्ल्यू एवं मितानीन की टीम का भी नेतृत्व करेंगे। उपरोक्त नियुक्ति राज्य के किसी भी जिले के चिन्हांकित हेल्थ एण्ड वेलनेस सेंटर – उप स्वास्थ्य केन्द्रों में काउंसिलिंग के माध्यम से संविदा आधार पर राष्ट्रीय स्वास्थ्य मिशन, छत्तीसगढ़ के नियमानुसार की जायेगी।

1. चयनित उम्मीदवारों के लिए मानदेय एवं अन्य सुविधाएँ—

1.1 प्रशिक्षण अवधि के दौरान 10000 रु. प्रतिमाह के दर से कुल 06 माह हेतु मानदेय रहने एवं भोजन खर्च के लिए दिया जाएगा।

1.2 राष्ट्रीय स्वास्थ्य मिशन छत्तीसगढ़ द्वारा इंदिरा गांधी राष्ट्रीय मुक्त विश्वविद्यालय (IGNOU) की फीस, फिल्ड में प्रैक्टिस एवं प्रशिक्षण संबंधी अन्य खर्च दिया जाएगा।

1.3 06 माह के सर्टिफिकेट कोर्स इन कम्युनिटी हेल्थ फॉर नर्सस पाठ्यक्रम सफलतापूर्वक पूर्ण करने के उपरांत सामुदायिक स्वास्थ्य अधिकारी के रूप में संविदा कार्य करने के दौरान प्रतिमाह 16,500 रु. वेतन एकमुश्त एवं साथ में कार्य—प्रदर्शन आधारित प्रोत्साहन राशि (Performance Based Incentive) प्रतिमाह अधिकतम 15000 रु. तक दी जायेगी तथा इस संबंध में मिशन संचालक, राष्ट्रीय स्वास्थ्य मिशन द्वारा समय—समय पर जारी दिशा—निर्देश लागू होंगे।

2. अनिवार्य योग्यता :—

2.1 अभ्यर्थी छत्तीसगढ़ का मूल निवासी होना चाहिए। विज्ञापित जिलेवार पदों हेतु संबंधित जिले के अंतर्गत आने वाले जिलों के स्थानीय निवासी ही पात्र होंगे। जिले के स्थानीय निवासी नहीं मिलने की स्थिति में संबंधित संभाग के अन्य जिलों के अभ्यर्थियों को आरक्षण के आधार पर चयनित किया जावेगा।

2.2 अभ्यर्थी को क्षेत्रीय एवं स्थानीय भाषा में दक्षता एवं ज्ञान हो।

2.3 किसी भी मान्यता प्राप्त विश्वविद्यालय से नर्सिंग कोर्स— बी. एस. सी. (नर्सिंग), पोस्टबेसिक बी. एस. सी. (नर्सिंग), एवं जी. एन. एम. में उत्तीर्ण हो।

2.4 अभ्यर्थी का छत्तीसगढ़ नर्सस रजिस्ट्रेशन काउंसिल में जीवित पंजीयन होना अनिवार्य है।

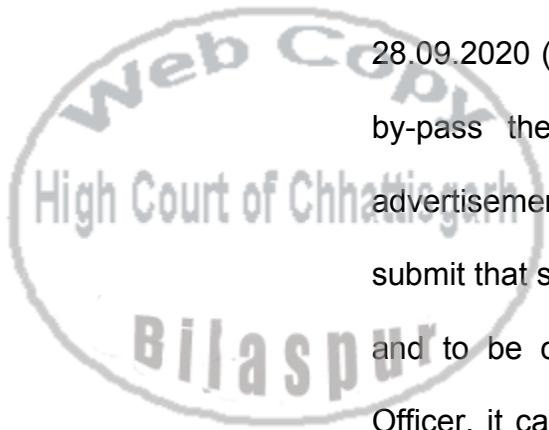
2.5 अभ्यर्थी की आयु दिनांक 01.01.2020 को न्यूनतम 18 वर्ष तथा अधिकतम 35 वर्ष होना चाहिए। (अनुसूचित जाति एवं जनजाति हेतु अधिकतम आयु 40 वर्ष)

3. Learned Counsel for the petitioner(s) submits similar like advertisement of same number of Community health officers of 800 posts was subject of challenge in WPS No.2539/2020 and W.P.No.3107 wherein the said advertisement was quashed. He would submit that the advertisement subsequently made on 21.09.2020 (Annexure P-1), which is under challenge in the instant petitions again excludes the opportunity to apply to



the Ayush Degree Holders of Ayurvedic and Homeopathic branches and the same is against the National Health Policy as similar issue has already been settled by this Court in earlier round of litigation on 13.08.2020.

4. Learned counsel further submits that earlier similar advertisement was set aside by order dated 13.08.2020 passed in WPS No.2539 of 2020 & WPS No.2907 of 2020 which was subject of appeal and before the Division Bench, the writ appeal was withdrawn on 20.09.2020 and on the same date, the instant advertisement was made vide Annexure P-1. He would further submit that as against the said advertisement the window to apply was in between 21.9.2020 and 24.09.2020, thereby only 3 days time was provided with an object to arrest any challenge and during such time the norms of complete lock-down was in force at Raipur and Bilaspur from 21.09.2020 to 28.09.2020 (Annexure P.10). Therefore, in the slipshod manner in order to by-pass the earlier judgment passed by this Court, a fresh similar advertisement has been issued only by change of caption. He would further submit that since the National Health Mission allows the petitioners to apply and to be considered for recruitment to the post of Community Health Officer, it cannot be confined to the nurses alone and there is no data on record to show the need of the nurses as on date. He further submits that therefore the entire effort made on behalf of respondent no.2 is tainted with mala-fide and to over reach the orders of this Court. He further submits that in other States like Jharkhand, Bihar, Punjab and Madhya Pradesh, the Ayush Degree Holders have been allowed to participate in similar process of appointments by respondent No.2, National Health Mission.
5. Learned counsel further submits that since the appointment deprives the opportunity to a particular class of persons to apply for the post, it would offend Articles 14 & 16 of the Constitution of India. Consequently the advertisement is bad in law and the process of appointments has to be

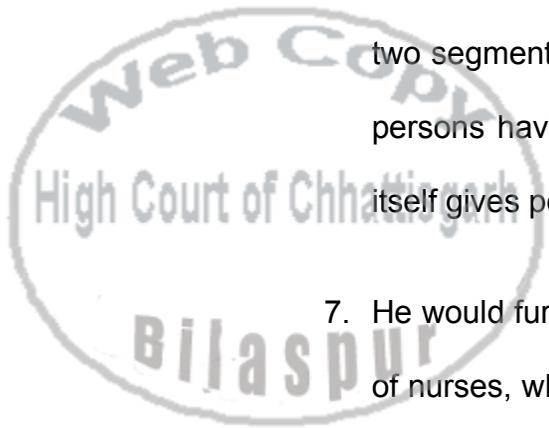




reasonable and in absence thereof, this needs to be struck down.

6. Per contra, Shri Dr. N.K. Shukla, learned Senior Counsel assisted by Mr. C.J.K. Rao and Mr. Ajit Tiwari, Advocates, appearing for respondent no.2 would submit that the National Health Policy gives power to the State to create a different cadre either from the Ayush Medical Education or Nurses which would be evident from National Health Policy (Annexure P-2). Referring to Clauses 11.4 & 11.5 he would submit that since reading of contents of these clauses would show that the State is vested with power to create separate cadre and according to the need of hour, the State has created a cadre for appointment of Nurses in the State of Chhattisgarh. He further referred to the Policy of Ayushman Bharat and would submit that the training and the mentor-ship of mid-level health providers are categorized in two segments that is of Community Health Certified by IGNOU and class of persons having B.Sc., degree in Community Health. Therefore, the policy itself gives power to the State to create a different cadre.

7. He would further submit that the State has justified its action about the need of nurses, which would be evident from the minutes filed as Annexure R-2/1 and the availability of the Ayush Medical Officer in the State. He further refers to the syllabus of B.Sc., nursing and would submit that different courses are available for nurses which cannot be made applicable for Ayush degree holders or homeopathic degree holders. Consequently the State as also respondent no.2 has completely complied the earlier observations made by this court in the earlier round of litigation and have proceeded with the process of appointments. He further submits that the petitioners have no juristic entity to file these petitions as they are not registered ones. Consequently both the petitions would not be tenable and would further submit that the other States like Bihar, Arunachal Pradesh have allowed the nurses in the likewise courses which would show that the State has itself





power to choose Community Health Officer from the particular cadre. Therefore, the petitions deserves to be dismissed.

8. Heard learned counsel for the parties and perused the documents.
9. On the earlier round of litigation, the advertisement dated 26.05.2020 issued on similar caption which was also meant for recruiting Community Health Officers was under challenge. In the said earlier advertisement, the Ayush Degree Holders were excluded and the same was subject of challenge. The Court by its order dated 13.08.2020 passed in WPS No.2539 & 2907/2020 has allowed the writ petitions. In the said advertisement, as many as 800 posts of Community Health Officers were advertised and in the instant advertisement, the same verbatim posts are mentioned and the earlier advertisement whereby only the nurses were allowed was subject of challenge. The relevant part of the said advertisement is reproduced for ready reference :

राष्ट्रीय स्वास्थ्य मिशन के अंतर्गत हेल्थ एण्ड वेलनेस सेंटर

हेतु

**06 माह के सामुदायिक स्वास्थ्य पाठ्यक्रम ( सामुदायिक स्वास्थ्य अधिकारी / Community Health Officer ) के लिए आवेदन आमंत्रित किये जा रहे हैं।**

मिशन संचालक, राष्ट्रीय स्वास्थ्य मिशन छत्तीसगढ़ राज्य की ओर से ऐसे इच्छुक एवं उत्साही अभ्यर्थियों को आमंत्रित किया जाता है, जो समुदाय को अपने घर के नजदीक स्वास्थ्य सेवा उपलब्ध कराने के लिए "6 माह के "सर्टिफिकेट कोर्स इन कम्युनिटी हेल्थ" प्रशिक्षण जुलाई-2020 में आवेदन करना चाहते हैं। यह पाठ्यक्रम राष्ट्रीय स्वास्थ्य मिशन के अंतर्गत उपस्वास्थ्य केन्द्रों को हेल्थ एण्ड वेलनेस सेंटर के रूप में विकसित करने का एक अंग है। हेल्थ एण्ड वेलनेस सेंटर के रूप में विकसित उपस्वास्थ्य केन्द्रों में समग्र प्राथमिक स्वास्थ्य सेवाएँ प्रदान की जायेगी जिनमें बीमारियों से बचाव एवं हेल्थ प्रमोशन के कदम भी शामिल हैं। वे अभ्यर्थी जो इस पाठ्यक्रम को सफलतापूर्वक पूर्ण कर लेंगे, वे उपस्वास्थ्य केन्द्रों में पदस्थ होकर समग्र प्राथमिक स्वास्थ्य सेवा प्रदाय हेतु "मिड लेवल हेल्थ प्रोवाइडर" के रूप में सेवाएँ देंगे एवं अन्य मैदानी कार्यकर्ताओं जैसे -ए. एन. एम., एम. पी. डब्ल्यू. एवं मितानिन की टीम का भी नेतृत्व करेंगे। उपरोक्त नियुक्ति राज्य के किसी भी जिले के चिन्हांकित उप स्वास्थ्य केन्द्रों में काउंसिलिंग के माध्यम से संविदा आधार पर राष्ट्रीय स्वास्थ्य मिशन, छत्तीसगढ़ के नियमानुसार की जायेगी।

चयनित उम्मीदवारों के लिए मानदेय एवं अन्य सुविधाएँ-



प्रशिक्षण अवधि के दौरान 10000 रु. प्रतिमाह मानदेय आपके रहने एवं भोजन खर्च के लिए दिया जाएगा।

राष्ट्रीय स्वास्थ्य मिशन छत्तीसगढ़ द्वारा इंदिरा गांधी राष्ट्रीय मुक्त विश्वविद्यालय (IGNOU) की फीस, फिल्ड में प्रैक्टिस एवं प्रशिक्षण संबंधी अन्य खर्च दिया जाएगा।

मिड लेवल हेल्थ प्रोवाइडर के रूप में संविदा कार्य करने के दौरान प्रतिमाह 16,500 रु. वेतन एकमुश्त एवं साथ में कार्य-प्रदर्शन आधारित प्रोत्साहन राशि (Performance Based Incentive) प्रतिमाह अधिकतम 15000 रु. तक दी जायेगी तथा इस संबंध में मिशन संचालक, राष्ट्रीय स्वास्थ्य मिशन द्वारा समय-समय पर जारी दिशा-निर्देश लागू होंगे।

अनिवार्य योग्यता:-

अभ्यर्थी छत्तीसगढ़ का मूल निवासी होना चाहिए। विज्ञापित जिलेवार पदों हेतु संबंधित जिले के अंतर्गत आने वाले जिलों के स्थानीय निवासी ही पात्र होंगे। जिले के स्थानीय निवासी नहीं मिलने की स्थिति में संबंधित संभाग के अन्य जिलों के अभ्यर्थियों को आरक्षण के आधार पर चयनित किया जावेगा।

अभ्यर्थी को क्षेत्रीय एवं स्थानीय भाषा में दक्षता एवं ज्ञान हो।

किसी भी मान्यता प्राप्त विश्वविद्यालय से नर्सिंग कोर्स – बी.एस.सी. (नर्सिंग), पोस्टबेसिक बी.एस.सी. (नर्सिंग), एवं जी.एन.एम. में उत्तीर्ण हो। अभ्यर्थी का छत्तीसगढ़ नर्सिंग काउंसिल में जीवित पंजीयन होना अनिवार्य है।

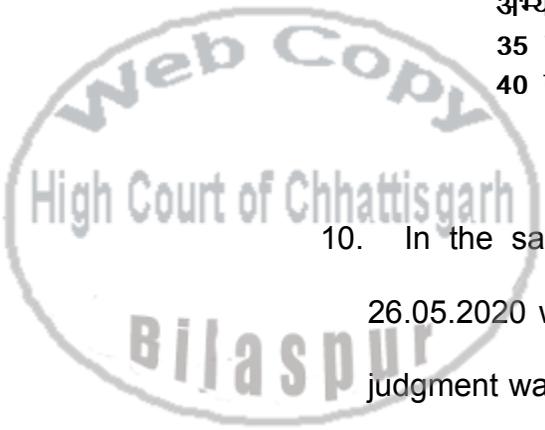
अभ्यर्थी की आयु दिनांक 01.01.2020 को न्यूनतम 18 वर्ष तथा अधिकतम 35 वर्ष होना चाहिए। (अनुसूचित जाति एवं जनजाति हेतु अधिकतम आयु 40 वर्ष)

10. In the said judgment, this Court set aside the advertisement dated 26.05.2020 with the following observations. The relevant extract of earlier judgment was reproduced herein to demonstrate under what circumstances the advertisement was set aside.

11. The earlier order passed by this Court reads as under:

*“(7) Perusal of the advertisement dated 26.05.2020 would show that for appointment to the post of CHO, the persons who are holding B.Sc. (Nursing), Post basic B.Sc. (Nursing) and G.N.M. have been allowed to apply. The advertisement necessarily excludes the AYUSH & other degree holders. This is not in dispute that the appointment to the post of CHO are made according to the scheme of National Health Policy. The National Health Policy, 2017 (Annexure P-2) is on record. In National Health Policy, 2017 for mid-level service providers, for which the dispute is to the fore, the requirement has been shown as under:-*

**11.4 Mid-Level Service Providers:** For expansion of primary care from selective care to comprehensive care, complementary human





resource strategy is the development of a cadre of mid-level care providers. This can be done through appropriate courses like a B.Sc. in community health and/or through competency-based bridge courses and short courses. These bridge courses could admit graduates from different clinical and paramedical backgrounds like “AYUSH doctors”, B.Sc. Nurses, Pharmacists, GNMs, etc and equip them with skills to provide services at the sub-centre and other peripheral levels. Locale based selection, a special curriculum of training close to the place where they live and work, conditional licensing, enabling legal framework and a positive practice environment will ensure that this new cadre is preferentially available where they are needed most, i.e. in the under-served areas.

(8) *Likewise, in Ayushman Bharat operational guidelines, which is placed on record by both the petitioners & respondents, clause 4.1 of it reads as under:-*

#### **“4.1 Mid Level Health Provider**

A key addition to the primary health team at the SHC-HWC, would be the Mid-level Health Provider (MLHP) who would be a Community Health Officer (CHO) – a Bsc.in Community Health or a Nurse (GNM or B.Sc.) or an Ayurveda Practitioner, trained and certified through IGNOU/other State Public Health/Medical Universities for a set of competencies in delivering public health and primary health care services.

The rationale for introducing this new cadre of health provider is to:

Augment the capacity of the Health and Wellness Centre to offer expanded range of services closer to community, thus improving access and coverage with a commensurate reduction in OOPE.

Improve clinical management, care coordination and ensure continuity of care through regular follow up, dispensing of medicines, early identification of complications, and undertaking basic diagnostic tests.

Improve public health activities related to preventive and promotive health and the measurement of health outcomes for the population served by the HWC.

This will improve utilization of health services at primary care level, reduce fragmentation of care, and work load at secondary and tertiary care facilities. Districts will be encouraged to find MLHPs from within their district. However, since not all districts may have adequate availability of eligible candidates, it may be appropriate to plan MLHPs as a State cadre that will adhere to state specific cadre management rules. The state should make cadre rules and communicate to districts. States could also explore the possibility of creating a district cadre.”

*Therefore, it would reveal that certain qualifications have been prescribed under the policy as to who would be eligible to apply for such post.*





(9) The documents which have been filed along with the petitions would show that in other states, for appointment to the post of CHO, the BAMS degree holders have not been eliminated. The document Ayushman Bharat Operational Guidelines, upon which the respondents have placed reliance, gives a power to the State that the State may choose to modify the staffing at HWC-PHC, based on local needs. In the instant advertisement, the advertisement has been made for 800 posts (Annexure P-1). In such advertisement, the BAMS degree holders have not been given the right to apply. Whereas the Ayushman Bharat Operational Guidelines and the National Health Policy do not deprive the BAMS degree holders to apply for the post of CHO. Ayushman Bharat Operational Guidelines, however, gives the power to the State to choose modifying the staffing pattern based on local needs. Meaning thereby, when the nurses are needed then they can stick to the fact that only nurses are required to be appointed likewise if the doctors are needed they can stick to the fact that only doctors are required to be appointed. In the instant advertisement only nurses are allowed to apply. The policy agenda of respondents to appoint the nurses alone as projected pulls out the opportunity of other eligible candidates to apply.

(10) In order to lament the need of nurses alone, the respondents have placed reliance on Annexure R-2/3. Reading of the minutes of meeting of the said agenda dated 24.09.2018 shows that agenda 4 deals with subject, especially the minutes and its resolution, the same is reproduced hereunder:-

#### 4. एजेंडा क. 4

प्रस्ताव: हेल्थ एन्ड वेलनेस सेंटर हेतु 06 माह के सर्टिफिकेट कोर्स फॉर नर्सस हेतु राष्ट्रीय स्वास्थ्य मिशन अंतर्गत विज्ञापन जारी किये जाने के संबंध में।

निर्णय: 1. स्टाफ नर्स के चयन के पश्चात् उनकी पदस्थापना आदेश जारी किया जावे, तदपश्चात् 6 माह के ब्रिज कोर्स (सर्टिफिकेट कोर्स फॉर नर्सस) प्रशिक्षण हेतु भेजा जावे।  
2. विज्ञापन जारी कर 300 मिड लेवल सर्विस

प्रोवाइडर हेतु B.Sc. Nursing प्रशिक्षण प्राप्त अभ्यर्थियों को चयनित किया जावे तथा अनुभवी अभ्यर्थियों को अतिरिक्त अंक दिया जावे।  
(कार्यवाही— मिशन संचालक, राष्ट्रीय स्वास्थ्य मिशन)

(11) After the aforesaid resolution, the respondents proceeded with the appointment & advertisement too in November, 2019. The

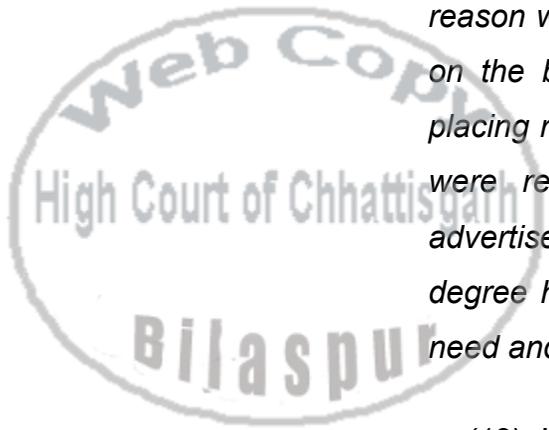


advertisement dated 20.11.2019 (Annexure P-3) at earlier point of time for appointment was subject of litigation in WPC No.304 of 2020. In the advertisement Annexure P-3 dated 20.11.2019 the BAMS doctors were eliminated to apply. Therefore, prima facie reading of the agenda dated 24.09.2018, would show it is for appointment of 300 nurses. The said need of nurses alone, therefore, if any, was exhausted with the advertisement dated 20.11.2019 was made and the said advertisement too is a subject of litigation. The fresh advertisement again is made on 26.05.2020, which is under challenge. By this advertisement dated 26.05.2020, 800 posts of CHO are to be fulfilled. The advertisement only gives power to apply to the candidates having nursing degree. The petitioners are the Ayush degree holders. There is nothing on record to appreciate the fact that at present the State is only in requirement of nurses alone. When the Ayushman Bharat Policy and the National Health Policy, allow the BAMS degree holders to apply for the post of CHO, depriving those persons other than nursing without any sufficient reason would be arbitrary and the State action can only be appreciated on the basis of actual need of particular class of appointment. By placing reliance on a resolution dated 24.09.2018, whereby 300 nurses were resolved to be appointed, which is superseded by earlier advertisement dated 20.11.2019, in fresh advertisement the AYUSH degree holder cannot be deprived to apply under the veneer of jaded need and rosy hued narrative of respondent, cannot be accepted.

(12) With respect to the appointment, the Supreme Court in the case of **Asha Sharma Versus Chandigarh Administration and others** {(2011) 10 SCC 86} at para 12 & 14 has held thus:-

“12. Arbitrariness in State action can be demonstrated by existence of different circumstances. Whenever both the decision making process and the decision taken are based on irrelevant facts, while ignoring relevant considerations, such an action can normally be termed as 'arbitrary'. Where the process of decision making is followed but proper reasoning is not recorded for arriving at a conclusion, the action may still fall in the category of arbitrariness. Of course, sufficiency or otherwise of the reasoning may not be a valid ground for consideration within the scope of judicial review. Rationality, reasonableness, objectivity and application of mind are some of the pre-requisites of proper decision making. The concept of transparency in the decision making process of the State has also become an essential part of our administrative law.

14. Action by the State, whether administrative or executive, has to be fair and in consonance with the statutory provisions and rules. Even if no rules are in force to govern executive





action still such action, especially if it could potentially affect the rights of the parties, should be just, fair and transparent. Arbitrariness in State action, even where the rules vest discretion in an authority, has to be impermissible. The exercise of discretion, in line with principles of fairness and good governance, is an implied obligation upon the authorities, when vested with the powers to pass orders of determinative nature. The standard of fairness is also dependent upon certainty in State action, that is, the class of persons, subject to regulation by the Allotment Rules, must be able to reasonably anticipate the order for the action that the State is likely to take in a given situation. Arbitrariness and discrimination have inbuilt elements of uncertainty as the decisions of the State would then differ from person to person and from situation to situation, even if the determinative factors of the situations in question were identical. This uncertainty must be avoided.”

*(13) Applying the aforesaid dictum/ratio in the facts of these cases, even if it is considered the policy had given the discretion to the authority for particular class of appointment, this has to be justified and justification can only be assumed from the necessary documents and available data. In absence of the same, inference cannot be drawn in favour of the respondents. Under the circumstances, since the advertisement dated 26.05.2020 (Annexure P-1) causes a deprivation to a class of people to apply for post though they are otherwise eligible candidates, for the reasons narrated in foregoing paragraphs, the advertisement cannot be sustained and accordingly it is quashed. The necessary consequences would follow.”*

12. The said order was subject of challenge in Writ Appeal No.348/2020 & 349/2020 and it appears that when the matters were taken up on 21.09.2020 at the request of learned counsel for the appellant writ appeals were dismissed as withdrawn. The order dated 21.09.2020 reads as under :

“1. When the matter is taken up for consideration Shri C. Jayant K. Rao, the learned counsel appearing for the Appellant submits that in view of the subsequent developments after passing the verdict by the learned Single Judge, appropriate steps are being pursued so as to meet the need of the hour. Hence, it stated that these matters are not intended to be pressed and therefore, permission is sought to withdraw these matters.

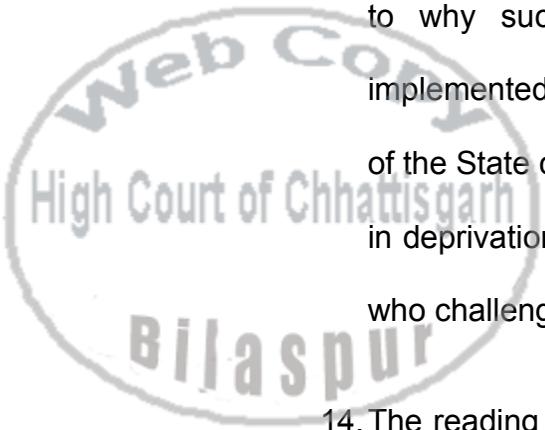
2. Permission is granted. The appeals are dismissed as withdrawn.”

13. Thereafter on 21.09.2020, the present advertisement was made wherein only 3 days window was given from 21.09.2020 to 24.09.2020 to apply on



on-line. In such advertisement too, only nurses were allowed to apply. The documents filed along-with the petition would show that from 21.09.2020 to 28.09.2020 total lock-down was enforced at Raipur and at Bilaspur, therefore, the entire service centers, the shops and other establishments were closed. Consequently, the window given in the new advertisement to apply on online from 21.09.2020 to 24.09.2020 was enveloped within the lock-down period. Consequently, it can be presumed that respondent no.2 was under the hot haste to conclude the period within the period of lock-down which naturally otherwise would result into deprivation of the candidates who are aspirants. The act of the State cannot be allowed to harm an individual citizen as the new advertisement was fast-tracked in the lock-down period, which the respondents have failed to satisfy the Court as to why such short term period was allowed. When the State has implemented the lock-down on one hand, at the same time, the other organ of the State cannot be allowed to operate in such manner which would result in deprivation of the different aspirants including the rights of the petitioners who challenged the same.

14. The reading of the earlier judgment passed by this Court reveals that when the action of the State causes deprivation to the candidates of particular class to apply for or participate in process of appointments, it was held that that has to be justified and the justification cannot only be assumed from the necessary documents and available data for want of nurses alone for appointment. The earlier advertisement dt. 26.05.2020 which was quashed in WPS No.2539 of 2020 and WPS No.3107/2020 as also the new advertisement dated 21.09.2020 would show that it is for similar number of Community Health Officers, only nomenclature of the advertisement was changed but the qualification was kept unchanged which it is more evident from the minutes filed as R-2/1. The documents filed along-with reply shows that nothing is on record to justify the fact that why the nurses are required





alone. It is not sufficiently established by the respondents that why the petitioners who were entitled to be considered for appointment to the post of Community Health Officers were deprived and only nurses are required. The minutes filed along-with reply is completely on the different subject issue . A perusal of Clause 11.4 of The National Health Policy 2001 Annexure P-2 which has been reproduced shows that it do not apparently create separate cadre, instead, the reading of Clause 11.4 would show that for mid-level service provider, competency based bridge courses and short courses would serve the purpose and these bridge courses could admit graduates from different clinical and paramedical backgrounds like AYUSH Doctors, B.Sc. Nurses, Pharmacists, GNMs etc., Therefore the qualification of the candidates who have a specified degree is about the admitting to a specified bridge course. As it was earlier held that if the nurses were required, the State has to justify their action that only nurses would be required instead of doctors. For Community Health Worker the same has to be justified by the documents and available data of work strength and no inference can be drawn. The documents filed along with reply Annexure R-2/7 only demonstrate the number of vacancies existing of Ayush medical officers in a State that too the said document is dated 03.10.2020 i.e., after the advertisement and the minutes were drawn.

15. In view of the aforesaid discussion, since already the Court has observed in earlier round of litigation, the State has to justify the requirement of nurses by the cogent documents, nothing is on record as on today again to hold that deprivation of the petitioners was justified. The Supreme Court in **Food Corporation of India V. Jagdish Balaram Bahira (2017) 8 SCC 670** held that the service under the Union and the State, or for that matter under the instrumentalities of the State subserves a public purpose. These services are instruments of governance. Where the State embarks upon public employment, it is under the mandate of Articles 14 & 16 to follow the





principles of equal opportunity. Affirmative action in our Constitution is part of the quest for substantive equality. Available resources and the opportunities provided in the form of public employment are in contemporary times short of demands and needs. Hence, the procedure for selection, and the prescription of eligibility criteria has a significant public element in enabling the State to make a choice amongst competing claims.

16. In view of the foregoing discussion, the advertisement dated 21.09.2020 again do not satisfy the requirement of valid deprivation to the petitioners on the basis of documents placed before this Court and the same would offend Articles 14 & 16 of the Constitution. Accordingly, the advertisement dated 21.09.2020 is set aside and the writ petitions are allowed.

**Sd/-  
GOUTAM BHADURI  
JUDGE**

