



NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WA No. 27 of 2021

1. Lekhram Sahu S/o Shravan Kumar Sahu, Aged About 25 Years, R/o Village- Dhaneli, Tahsil- Panderiya, District- Kabirdham, Chhattisgarh.
2. Chitrarekha Talware W/o Devlal Talware, Aged About 23 Years R/o Village & Post Samnapur, Block- Bodla, District- Kabirdham Chhattisgarh.
3. Anjali Kaushik W/o Shri Dilip Kaushik, Aged About 23 Years R/o Village- Budhwara, Post Chakarbhatha, Block- Lohara, District- Kabirdham Chhattisgarh.
4. Dileshwari W/o Shri Khorbahara Das, Aged About 23 Years R/o House No. 6, Ward No. 16 Dhaurabhatha, Rajnandgaon, District- Rajnandgaon
5. Mamta Ekka W/o Shri Nohar Sai Ekka, Aged About 27 Years R/o Village- Rata, Police Station And Tahsil Lundra, District- Surguja Chhattisgarh.
6. Makardhwaj Nishad S/o Ramkumar Nishad, Aged About 25 Years R/o Village- Dabhra, Tahsil- Baramkela, District- Raigarh, Chhattisgarh.

**---- Appellants
(Intervenors)**

Versus

1. State of Chhattisgarh Through Secretary, Health & Family Welfare & Medical Education, Mahanadi Bhavan, Naya Raipur, District- Raipur, Chhattisgarh.
2. Ayush Medical Association Through Member Dr. Mahendra Kumar Sao (Central Council) Office New Sarkanda, Bandhwapara, Front of Maharana Pratap Bhawan, Bilaspur, District- Bilaspur, Chhattisgarh.
3. National Health Mission Through Deputy Director, Third Floor, Chhattisgarh Housing Board, Vyavasayik Parisar, Sector 27,



Nava Raipur, Atal Nagar, District- Raipur, Chhattisgarh.

4. Union of India Through Secretary, Department of Health & Family Welfare, Nirman Bhavan, New Delhi, (India), District : New Delhi, Delhi

---- Respondents

&

WA No. 28 of 2021

1. Rajesh Kumar Sahu S/o Mithai Lal Sahu Aged About 26 Years R/o Village And Post Patharipali Tahsil Sarangarh, District Raigarh Chhattisgarh.
2. Madhuri Singh D/o Budhadev Singh Aged About 27 Years R/o Village Baijnathpur, Post Salka, Tahsil Bhaiyathan, District Jashpur Chhattisgarh
3. Seeta Kanchi D/o Shriratri Kanchi Aged About 32 Years R/o Ward No.85, Mahima Nagar, Sirgitti, District Bilaspur Chhattisgarh
4. Kusum Singh D/o Sohan Ram Aged About 30 Years R/o Village Doi, Post Dondgaon, Block Udaypur, District Surguja Chhattisgarh
5. Heera Nishad S/o Kartikram Nishad Aged About 26 Years R/o Village Kalmi Post Blainapara, Block Kharsta, District Raigarh Chhattisgarh
6. Khileshwari Diwakar D/o Kanhailal Diwakar Aged About 25 Years R/o Village Hirmi, Post Simga, Block Simga, District Baloda Bazar Chhattisgarh
7. Jitendra Varma S/o Jhaduram Varma Aged About 28 Years R/o Village Rengatola, Post Nawaghata, Block Sahaspur Lohara, District Kabirdham Chhattisgarh
8. Kimi Chandra D/o Duleshwar Prasad Aged About 24 Years R/o Village Piharid, Post Piharid, Block Malkharod, District Janjgir Champa Chhattisgarh
9. Radhika Kanwar D/o Shyamlal Kanwar Aged About 22 Years R/o Village Pathiyapali, Post Pathiyapali Block Kartala, District Kartala Chhattisgarh





10. Sarita Sahu D/o Mohan Lal Sahu Aged About 24 Years R/o Village Khatti, Post Khatti, Block Mahasamund District Mahasamund Chhattisgarh
11. Sabita Eeka D/o Sukhlal Ekka Aged About 30 Years R/o Village Rata, Post Udari, Block Lundra, District Surguja Chhattisgarh
12. Anjani Sahu W/o Dhristduman Sahu Aged About 29 Years R/o Village Bareli Badi, Post Kurud, Block Kurud, District Dhamtari Chhattisgarh
13. Ghanshyam Sinha S/o Surit Ram Aged About 30 Years R/o Village Chhuiha, Post Belar, Block Fingeshwar Rajim, District Gariyaband Chhattisgarh
14. Humeshwar Sinha S/o Surit Ram Aged About 24 Years R/o Village Chhuiha, Post Belar, Block Fingeshwar Rajim, District Gariyaband Chhattisgarh
15. Vineeta Verma D/o Bodhram Verma Aged About 22 Years R/o Village Turipar, Post Nagaldah, Block Rajnandgaon, District Rajnandgaon Chhattisgarh
16. Yogita Das D/o Devendranath Das Aged About 25 Years R/o Village And Post Pusour, Tahsil Pusoure, District Raigarh Chhattisgarh.

**---- Appellants
(Intervenors)**

Versus

1. State of Chhattisgarh Through Secretary, Health & Family Welfare & Medical Education Department, Mahanadi Bhawan, Mantralaya, Atal Nagar Nawa Raipur District Raipur Chhattisgarh
2. 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 & District Bilaspur (Chhattisgarh) Pin. 495006.,



3. National Health Mission Through Deputy Director, Third Floor,
Chhattisgarh Housing Board Vyavasayik Parisar, Sector- 27,
Nava Raipur, Atal Nagar, Pin 492015 (Chhattisgarh)
4. Union of India, Through Secretary, Department of Health And
Family Welfare, Nirman Bhavan, New Delhi.

---- Respondents

For Appellants	:	Mr. N.K. Chatterjee, Mr.Nasimuddin Ansari & Mr. Jhanendra Kumar Mahilang, Advocates
For Respondent No.1	:	Mr. H.S. Ahluwalia, Dy. Advocate General
For Respondent No.2	:	None
For Respondent No.3	:	Mr. CJK Rao, Advocate
For Respondent No.4	:	Mr. Keshav P Gupta, Advocate

Judgment reserved on 15.6.2022

Judgment pronounced on 22.7.2022

**DB: Hon'ble Mr. Arup Kumar Goswami, Chief Justice
Hon'ble Mr. Parth Prateem Sahu, Judge**

C A V Order

Per Parth Prateem Sahu, J

1. As common issue is involved in above writ appeals,
therefore, they were heard together and are being disposed
of by this common judgment. For appreciating the
contentions raised in these writ appeals, we would refer to
the pleadings and documents in Writ Appeal No.27/2021,
arising out of WPS No.3961/2020.
2. Challenge in these writ appeals is to the common order dated
28.1.2020 passed in WPS Nos.3961/2020 & 3962/2020
whereby learned Single Judge allowed writ petitions and set
aside advertisement dated 21.9.2020 issued by respondent
No.3 for appointment on the post of Community Health
Officers.



3. Facts relevant for disposal of these writ appeals are that on 26.5.2020 respondent No.3 issued an advertisement for appointment of 'Community Health Officers' in different Districts of the State of Chhattisgarh, providing reservation of seats to the candidates belonging to Scheduled Castes, Scheduled Tribes and Other Backward Classes categories. Ayush Graduates have been excluded from applying in recruitment process, therefore, writ petitions were filed challenging said advertisement on the grounds that the same is contrary to Clause 11.4 of the National Health Policy and Guidelines issued by the Central Government; it is discriminatory in nature and violates right of Ayush Graduates to be considered in public employment. Advertisement dated 26.5.2020 was put to challenge by filing WPS Nos.2539/2020 & 3107/2020, which were allowed and advertisement dated 26.5.2020 came to be quashed holding that it causes deprivation to classes of people who are otherwise eligible. Respondent No.3-National Health Mission filed writ appeals assailing the common order passed in aforementioned writ petitions. Subsequently, writ appeals were withdrawn by respondent No.3 on the ground that appropriate steps are being pursued so as to meet the need of hour.

4. Respondent No.3 thereafter again issued fresh advertisement on 21.9.2020. This was again put to challenge by filing writ petitions bearing WPS Nos.3961/2020 & 3962/2020 *inter alia* on the grounds that fresh advertisement



has been issued by changing nomenclature only to by-pass the order of High Court. Respondent No.3, with intent to select / appoint candidates of their choice, provided only three days time to eligible candidates for submitting application. In other States like Madhya Pradesh, Maharashtra, Bihar, the Ayush Graduates are treated as eligible for appointment as Community Health Officer (CHO) along with candidates having other qualifications.

5. After issuance of notice, respondent No.3 submitted reply to writ petition denying pleadings made therein. It was pleaded that posts of 'Nurse' were advertised with an object to develop sub-health center into Health & Wellness Centre and to provide comprehensive primary health services. Therefore, respondent No.3 in its Meeting took decision that trained Nurses will only be eligible for the post of CHO.

6. In writ petitions, appellants herein have filed an application for intervention, praying for a direction to the petitioner therein to implead them as party respondents. It was also pleaded that pursuant to advertisement dated 21.9.2020, the intervenor/appellants herein participated in recruitment process and their names find place in merit list prepared by respondent No.3. Once the process of recruitment has begun, the eligibility criteria is not permitted to be changed. In support of this submission, reliance is placed on the decision of Hon'ble Supreme Court in case of **Mohd. Sohrab Khan vs. Aligarh Muslim University & ors**, reported in



(2009) 4 SCC 555.

7. Respondent-State also filed its reply stating that it is respondent No.3 who had issued advertisement and that petitioner has not sought any substantial and effective relief against the State. However, respondent State denied the averments made in writ petitions.
8. Learned Single Judge after hearing all the parties in the matter, allowed both the writ petitions observing that action on the part of respondent No.3 is violative of mandate under Articles 14 & 16 of the Constitution of India; it is also arbitrary as reasonable time for submission of application is not provided because advertisement was issued on 21.9.2020 and last date for submission of application was 24.9.2020 i.e. only three days' time was granted. Advertisement dated 26.5.2020 issued earlier by respondent No.3 excluding Ayush graduates and doctors, was put to challenge in WPS Nos.2539/2020 & 3107/2020, which were allowed after hearing all the parties therein and advertisement was quashed, but respondent No.3 only changing nomenclature of the post has issued fresh advertisement of similar nature. Learned Single Judge has also taken note of merits of the case and quashed advertisement dated 21.9.2020.
9. These writ appeals are filed by intervenors on the grounds mentioned therein along with an application for leave to appeal. Application for leave to appeal was allowed and



appeals are heard on merits.

10. Mr. N.K. Chatterjee, learned counsel for intervenor/ appellants would submit that appellants have filed an application for intervention in writ petition and prayed for their impleadment as party respondents. On the date of hearing of writ petitions through virtual mode, appellants were represented and also made submissions on their behalf, but neither their application for intervention nor submissions made during course of virtual hearing, were taken into consideration while passing the impugned order. He contended that impugned order passed is *per se* illegal, arbitrary, unjustified and opposed to the principles of law. Names of appellants find place in the merit list prepared by respondent No.3 pursuant to earlier advertisement dated 21.9.2020, but benefit of selection for the post of 'Community Health Officer' has not been extended to them and thereby they suffered loss of Rs.10,000/- per month, which was to be paid to them as honorarium during training period. As pleadings made in intervention application and submissions made on behalf of intervenors have not been taken into consideration, these appeals be allowed and impugned order passed by learned Single Judge be set aside, he contends.

11. Mr. CJK Rao, learned counsel representing respondent No.3, who issued advertisement dated 21.9.2020, would submit that pursuant to order impugned passed by learned Single Judge, advertisement dated 21.9.2020 was cancelled vide



notice dated 5.12.2020 and as appearing from documents placed on record by appellants along with application for grant of ad-interim relief, fresh advertisement has already been issued on 3.11.2021. No interim relief has been granted to appellants in these writ appeals. Appellants have not challenged notice dated 5.12.2020 of cancellation of advertisement dated 21.9.2020 as also issuance of fresh advertisement dated 3.11.2021, hence no relief, as claimed in these writ appeals, can be granted to appellants.

12. Mr. H.S. Ahluwalia, learned Deputy Advocate General for the State submits that as advertisement dated 21.9.2020 was issued by respondent No.3, therefore, he is refraining himself to make any submission on merits of the case. However, he submits that as it is respondent No.3 who had cancelled advertisement dated 21.9.2020 and issued fresh advertisement dated 3.11.2021, which has not been challenged by appellants, therefore, they are not entitled for any relief and writ appeals are liable to be dismissed.

13. We have heard learned counsel for the parties and perused records of writ petitions as well as writ appeals.

14. To appreciate submissions of learned counsel for appellants that appellants have not only filed application for intervention but were also represented during course of hearing on 28.10.2020 and submissions were made on their behalf, but their presence as also submissions and grounds raised in



intervention application have not been taken into consideration while passing order impugned, we have inquired from learned counsel for respondent No.3, who fairly submits that writ petitions were heard through virtual mode; on the date of hearing, appellants herein were also represented and learned counsel representing them made submissions on their behalf. This being the position, in the opinion of this Court, the grounds raised and submissions made on behalf of intervenors/appellants should have formed part of impugned order.

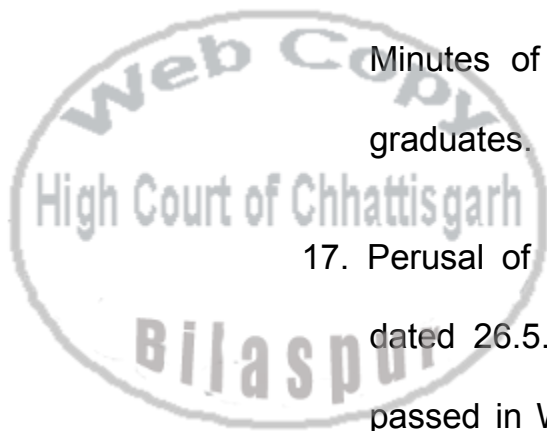
15. Taking note of the fact that learned Single Judge in the impugned order has recorded that similar advertisement issued by respondent No.3 on 26.5.2020, which was subject matter of challenge in WPS Nos.2539/2020 & 3107/2020, was quashed, we thought it appropriate to consider writ appeals filed by intervenors/appellants herein on merits of their claim to consider whether there is any error in the order impugned.

16. These writ appeals are filed on the ground that impugned order passed by learned Single Judge is *per se* illegal, arbitrary, unjustified and opposed to principle of law because arguments and pleadings of appellants made in intervention application were not taken note of by learned Single Judge. Further, after commencement of recruitment process, selection criteria cannot be changed. It was also pleaded that names of appellants find place in merit list prepared by



respondent No.3 pursuant to advertisement dated 21.9.2020. No other ground has been pleaded in memo of writ appeal to challenge the order impugned passed by learned Single Judge quashing advertisement dated 21.9.2020. Advertisement dated 21.9.2020 was quashed on the ground that it is violative of the mandate of Article 14 & 16 of the Constitution of India and grant of three days' time for submission of application caused deprivation to the candidates and aspirants. It was fast track in lock-down period and that apart, no justification is provided in the Minutes of Meeting (Annexure R2-1) for excluding Ayush graduates.

17. Perusal of impugned order would show that advertisement dated 26.5.2020 was quashed vide order dated 13.8.2020 passed in WPS Nos.2539/2020 & 2907/2020. In earlier writ petitions also challenge was exclusion of Ayush doctors from participating in the recruitment proceedings of CHO. Learned Single Judge while deciding those writ petitions had taken note of the scheme of National Health Policy, 2017 for mid-level service providers, Ayushman Bharat Guidelines, and held that advertisement dated 26.5.2020 caused deprivation to class of people to apply for the post though they are otherwise eligible candidates. Respondent No.3 preferred writ appeals challenging order dated 13.8.2020, which came to be registered as WA Nos.348/2020 & 349/2020. Respondent No.3 withdrew those writ appeals on 21.9.2020





in view of subsequent developments stating that after passing of verdict by the learned Single Judge, appropriate steps were being pursued so as to meet the need of hour. Meaning thereby, findings recorded by learned Single Judge in aforementioned writ petitions for quashing advertisement had attained finality.

18. In the impugned order, learned Single Judge after comparing contents of both the advertisements i.e. advertisements dated 26.5.2020 & 21.9.2020, recorded that except change of nomenclature of post i.e. from CHO to Nurse, all the contents of both the advertisements are one and the same. Learned Single Judge taking note of Clause 11.4 of the National Health Scheme, 2001 wherein for bridge courses and short courses, Ayush graduates have been held to be eligible for their admission, held the action of respondent No.3 to be arbitrary as no specific reason has been assigned requiring recruitment of 'Nurses' only by placing cogent documents on record.

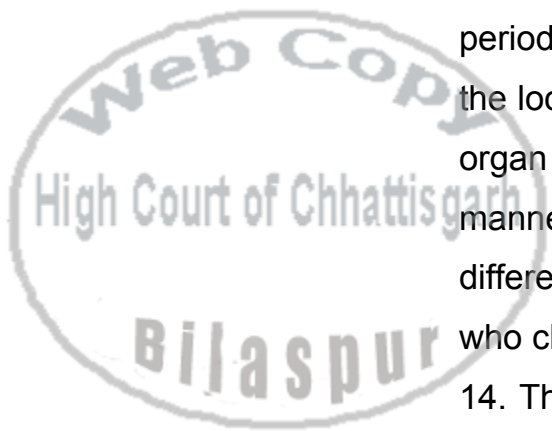
19. The findings given by learned Single Judge to quash the advertisement dated 21.9.2020, read as under:-

“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 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.

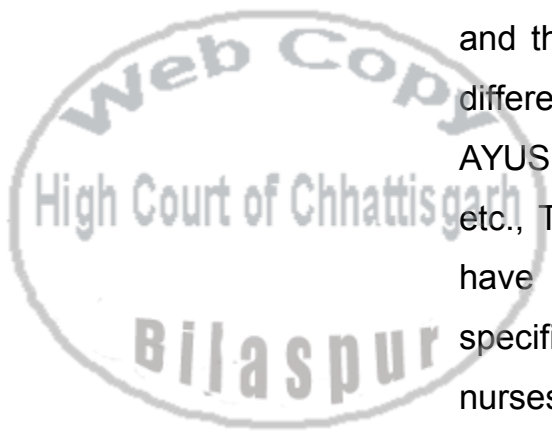
14. The reading of the earlier judgment passed by this Court reveals that when the action of the State causes deprivation to the candidates of particular class to apply for or participate in process of appointments, it was held that that has to be justified and the justification cannot only be assumed 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 sub-serves 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.”

20. In view of aforementioned facts of the case where first advertisement was quashed considering similar ground for quashing i.e. deprivation of class of people; the appeals preferred by the recruiting agency were withdrawn and the reasons assigned in the impugned order, we do not find any good ground to interfere with the order impugned.

21. One important aspect of the case is that respondent No.3 has not challenged the order impugned, rather after passing of



impugned order cancelled the advertisement dated 21.9.2020 vide notice dated 5.12.2020. Respondent No.3 also issued fresh advertisement on 3.11.2021. Neither the notice cancelling advertisement dated 5.12.2020 nor fresh advertisement dated 3.11.2021 is put to challenge by appellants. Copy of advertisement dated 3.11.2021 is filed by the appellants along with an application for grant of interim relief dated 11.11.2021. No order is passed in application dated 11.11.2021. For this reason also, no relief can be granted to appellants as the advertisement under challenge in writ petitions itself has been withdrawn/cancelled by respondent No.3.

22. Ruling of Hon'ble Supreme Court in case of **Mohd. Sohrab (supra)**, which was relied upon by learned counsel for appellants, does not help the appellants as the facts of that case are distinguishable from the instant case. In case of **Mohd. Sohrab (supra)** the facts were that University issued an advertisement for appointment of Lecturer in Chemistry prescribing First Class Master's Degree in Chemistry as essential qualification. Appellant therein and one other candidate applied for the said post. Appellant therein was holding Master's Degree in Chemistry (Pure) whereas other candidate was possessing Master's Degree in Industrial Chemistry. Employer appointed other candidate recording that he would be more suitable for the said post. In these circumstances, Hon'ble Supreme Court held that selection



Committee during stage of selection in the midway could not have changed essential qualification laid down in advertisement.

23. For the foregoing, we do not find any merit in these writ appeals, the same are liable to be dismissed and they are hereby dismissed. No order as to costs.

Sd/-
(Arup Kumar Goswami)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

roshan/

