

Court No. - 8**Case :-** WRIT - A No. - 9273 of 2023**Petitioner :-** Swati Tyagi**Respondent :-** Union Of India Thru. Secy. Ministry Of Health And Family Welfare, New Delhi And 2 Others**Counsel for Petitioner :-** Anurag Tiwari, Ayush Kumar Nigam, Hari Govind Dubey**Counsel for Respondent :-** A.S.G.I., C.S.C., Puneet Chandra**Hon'ble Pankaj Bhatia, J.**

1. Heard Shri Hari Govind Dubey, learned counsel for the petitioner; Shri Anand Dwivedi, learned counsel for respondent no.1/Union of India; learned Standing Counsel appearing for respondent no.2/State and Shri Puneet Chandra, learned counsel for respondent no.3/National Health Mission.

2. Present petition has been filed by the petitioner alleging that essential qualification mentioned in the Advertisement dated 16.02.2023 in respect of the work experience required for applying for the post of Psychiatrist is arbitrary and the petitioner should be directed to be recruited ignoring the said condition of two years experience of working as a Specialist in the hospital.

3. The brief facts are that respondent no.3 with a view to make recruitment issued an advertisement inviting the suitable candidates for appointment through bidding process. The said advertisement is on record as Annexure - 1. The eligibility criteria in respect of the appointment as Psychiatrist was specified as under:

iv	Psychiatrist	MD in Psychiatry or equivalent degree from institution recognized by Medical Council of India.	2 Year experience of working as a specialist in a Hospital.
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4. Thus, in terms of the said advertisement, the qualification which was required to be possessed by any of the candidates desirous of applying was specified as well as the experience was

also specified. In the advertisement itself, in Clause 7, 8 & 16, it was specified that the candidates should apply only if they possess the minimum essential qualification stipulated for the post.

5. Contention of learned counsel for the petitioner is that although the petitioner possesses the qualification, she does not have the experience, however, the experience specified in the advertisement is not a mandatory requirement but a desired qualification, as such, the same should be waived in the case of the petitioner.

6. It is further argued that on earlier occasions for similar appointments, no such experience was prescribed, as such, the prescribing of two years experience is an arbitrary exercise of power. It is further argued that for the post in question, it is only the petitioner who has applied and thus, there is no other candidate available, which fact should have been considered by the respondents in favour of the petitioner. He also places reliance on the judgment of the Supreme Court in the case of ***Council of Scientific & Industrial Research, new Delhi and Anr. v. M.V. Sastry and Anr.***; (1997) 7 SCC 494, specifically Para - 7 & 8.

7. Lastly, he argues that the petitioner has the experience of one year and six months, which is slightly less than the experience mentioned in the advertisement, as such, the said benefit ought to have been awarded to the petitioner.

8. Shri Puneet Chandra, learned counsel appearing for respondent no.3, on the other hand, argues that the petitioner did not have the essential qualification which included the qualification plus the experience, and the petitioner never challenged the said prior to applying for consideration under the same advertisement and once the petitioner having applied and could not obtain the

necessary appointment, has proceeded to challenge the same which is not permissible.

9. It is further argued that once the petitioner does not possess the experience, which is a mandatory requirement for appointment, no question of waiver of the same arises as it is well settled that it is the employer which is empowered to prescribe for qualifications, including experience taking into account the needs.

10. It is further argued that the petitioner does not possess the qualification as prescribed, as such, the petition deserves to be dismissed.

11. Learned Standing Counsel supplements the arguments of Shri Puneet Chandra and further argues that the advertisement itself prescribes whether the experience is desirable or essential which is in the domain of the employer.

12. Considering the said submissions made at the Bar, there is no dispute that in terms of the advertisement, the essential qualification as well as the experience was prescribed; once there is a prescription by the employer with regard to the essential qualification and/or experience, there is no scope of judicial review unless the same is established to be *mala fide*. This view is also fortified by a Full Bench judgment of this Court in the case of ***Deepak Singh & Ors. versus State of U.P. & Ors.; 2019 SCC OnLine 4471***. Even otherwise, the petitioner never possessed the experience when the advertisement was issued and never challenged the said condition at the time of issuance of the advertisement; having once participated in the process, it is not open to the petitioner to turn back and challenge the conditions of advertisement under which the petitioner herself applied.

13. The judgment cited by the counsel for the petitioner would be of no avail as the said judgment was passed upon the interpretation

of the Service Rules, particularly Rule 30, which prescribed for qualifications to be possessed. In the present case, no such rules are applicable.

14. Thus, for all the reasons indicated and discussed hereinabove, the writ petition cannot be entertained. The writ petition lacks merit and is accordingly ***dismissed***.

Order Date :- 7.12.2023

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[Pankaj Bhatia, J.]