

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

**CWP No.3605 of 2013
Date of decision:09.01.2015**

Monica Ravash

...Petitioner

Versus

Union of India and another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

1. To be referred to the Reporters or not ?
2. Whether the judgment should be reported in the Digest ?

Present: Mr.Sandeep Verma, Advocate for
Mr.Sukhdeep Parmar, Advocate for the petitioner.

Mr.Vinod Sharma, Advocate for the respondents.

RAMESHWAR SINGH MALIK, J. (Oral)

The present writ petition is directed against the order dated 10.5.2011 (Annexure P-5), whereby the petitioner was denied appointment, despite having been found fully eligible and competent for the service in question.

Notice of motion was issued and pursuant thereto, written statement was filed on behalf of the respondents.

Learned counsel for the petitioner submits that initially the petitioner joined as a Short Service Commissioned Officer in Military Nursing Service ('MNS' for short) Batch of 2006. She joined the service on 29.12.2006. After joining the service, petitioner got married and since her old parents-in-law were not keeping good health because of age related ailments, coupled with other compelling domestic circumstances, petitioner had to submit her resignation which was duly accepted by the competent

authority. Consequently, petitioner was relieved from service on 31.12.2007, in compliance of the order passed by the competent authority vide Annexure P-2. He further submits that after a gap of about three years, the respondent authorities issued an advertisement vide Annexure P-3 for filling up of 400 vacancies. By this time, family circumstances of the petitioner improved and she being fully eligible, applied for the service in question again. He would next contend that the petitioner furnished all possible details at the time of submitting her fresh application form intending to join MNS. Neither there was any occasion nor petitioner actually concealed anything from the notice of the respondent authorities.

Petitioner was allowed to participate in the selection process. She appeared in the written test, interview as well as for medical examination during the month of May 2010. However, after completion of selection process, when petitioner did not get any response from the respondent authorities, she served them by way of a legal notice (Annexure P-4) and in response thereto, impugned communication dated 10.5.2011 (Annexure P-5) was issued, thereby denying the appointment to the petitioner, without disclosing any reason, whatsoever. He concluded by submitting that since the petitioner was fully eligible and competent for the service in question, the action of the respondent authorities was patently illegal. He also submits that the impugned order (Annexure P-5) was a non-speaking and cryptic order. He prays for setting aside the impugned order, by allowing the present writ petition.

Per contra, learned counsel for the respondents submits that since the petitioner was not able to adjust herself, while serving with the respondent authorities at an earlier point of time, on account of her

compelling domestic circumstances, it was thought appropriate by the respondent authorities not to issue appointment order in favour of the petitioner. He further submits that although the impugned order dated 10.5.2011 (Annexure P-5) was not a self-contained order yet it was a just order as detailed reasons were not required to be recorded therein. He next contended that since the petitioner has not alleged any malafide against anybody, there was hardly any scope left for interference at the hands of this Court. He prays for dismissal of the writ petition.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that in the given fact situation of the present case, the instant writ petition deserves to be allowed. To say so, reasons are more than one, which are being recorded hereinafter.

It is a matter of record and not in dispute that petitioner was fully eligible and competent for joining MNS. In fact, the eligibility and competence of the petitioner had already been adjudged earlier also when she rendered the service for about one year in MNS itself as Short Service Commissioned Officer. It is also not in dispute that petitioner had to submit her resignation because of the compelling necessity due to adverse family circumstances at that point of time and that too for a good and sufficient cause, because petitioner wanted to serve her ailing aged parents-in-law. There was nothing wrong in it, on the part of the petitioner.

Further, the competent authority duly accepted the resignation of the petitioner and in compliance thereof, petitioner was relieved from the service vide order dated 31.12.2007 (Annexure P-2). A bare perusal of

order (Annexure P-2) would show that nothing adverse was pointed out against the petitioner. Having said that, this Court feels no hesitation to conclude that petitioner did not incur any kind of disqualification or ineligibility, simply by submitting her resignation owing to the above-said compelling circumstances and particularly when the said resignation of the petitioner was duly accepted by the competent authority, without making any kind of adverse observation against the petitioner.

Once the eligibility and competence of the petitioner had never been in dispute at any relevant point of time, the impugned order dated 10.5.2011 (Annexure P-5) is patently illegal on the face of it. It is so said, because the impugned order is a non-speaking and cryptic one. No reason, much less cogent reasons, has been assigned by the respondent authorities, while issuing the impugned order, because of which the same cannot be sustained.

During the course of arguments, when a pointed question was put to the learned counsel for the respondents as to what was the ineligibility in the petitioner or anything adverse against her because of which she was denied the appointment, he had no answer and rightly so, because it was a matter of record. It is neither pleaded nor argued case on behalf of the respondents that petitioner was guilty of any concealment or misrepresentation at any point of time.

It also does not appeal to reason as to why the respondent authorities denied the appointment to the petitioner, particularly when she was allowed to appear in the written test, interview as well as for medical examination. Her eligibility as well as suitability had already been adjudged at the time of her selection and appointment in the year 2006 and it was

adjudged again this time as well when the petitioner was allowed to participate in the entire selection process. The complete relevant record was with the respondent authorities right from day one.

It is not even the pleaded or argued case on behalf of the respondent authorities that petitioner had incurred any kind of disqualification or ineligibility at the time of submission of her resignation or thereafter. Under these circumstances, it can be safely concluded that the respondent authorities proceeded on a wholly misconceived approach, while passing the impugned order and the same cannot be sustained, for this reason also.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the impugned order has been found to be patently illegal, being violative of Articles 14 and 16 of the Constitution of India, the same is hereby set aside.

Consequently, respondent No.2, who is the competent authority, is directed to consider the petitioner for granting Short Service Commission in the MNS at an early date but in any case within a period of two months from the date of receipt of a certified copy of this order. It is further directed that petitioner shall be entitled for her due seniority as per her merit in the merit list prepared by the selection making authority in the year 2010.

Resultantly, with the above-said observations made and directions issued, the present writ petition stands allowed, however with no order as to costs.