

CWP No.7116 of 1999
CWP No.7282 of 1999
CWP No.9283 of 1999
CWP No.13124 of 1999

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CWP No.7116 of 1999

Inderjit Singh ... Petitioner

Versus

State of Punjab and others ... Respondents

2. CWP No.7282 of 1999

Deepak Singh ... Petitioner

Versus

State of Punjab and others ... Respondents

3. CWP No.9283 of 1999

Veena Rani and others ... Petitioners

Versus

The State of Punjab and others ... Respondents

4. CWP No.13124 of 1999

Kusum Lata ... Petitioner

Versus

State of Punjab and others ... Respondents

Date of Decision: 20.05.2016

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. P.K. Goklaney, Advocate,
for the petitioners in CWP No.9283 of 1999.

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Mr. R.S. Chahal, Advocate,
for the petitioner in CWP No.13124 of 1999.

Mr. Harkesh Manuja, Addl. AG, Punjab.

Mr. B.S. Patwalia, Advocate,
for respondents No.3 to 12 in CWP No.9283 of 1999.

Mr. Amit Chopra, Advocate,
for respondents No.5 to 12
in CWP No.13124 and 7282 of 1999.

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

RAJIV NARAIN RAINA, J.

1. This order will dispose of CWP No.7116 of 1999 titled Inderjit Singh v. State of Punjab and others, CWP No.7282 of 1999 titled Deepak Singh v. State of Punjab and others, CWP No.9283 of 1999 titled Veena Rani and others v. The State of Punjab and others & CWP No.13124 of 1999 titled Kusum Lata v. State of Punjab and others. The facts are taken from CWP No.7116 of 1999 for the sake of convenience.

2. The petitioners were appointed as Ophthalmic Assistants in the Department of Health & Family Welfare, Punjab under advertisement No.EVIII/88 following selection by the Departmental Selection Committee constituted for the purpose after the names of eligible candidates were invited to fill up 45 posts in different categories lying vacant in the respondent department. The necessary essential qualifications prescribed were Pre-Medical and 10+2 standard examination or one year Higher Secondary and after which passing Biology/Mathematics or Intermediate with Science, Biology or its equivalent. The selection was open also to diploma holders of two years duration in Ophthalmic Assistant course from

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recognized Medical College or its equivalent. The Director, Health & Family Welfare, Punjab was the Chairman of the Committee set up for the purpose to make recruitments. The posts were temporary in nature but could continue year by year. The appointments were made in the year 1994. The selection of the successful candidates who secured appointment through this process was challenged by the non-selected candidates. The unsuccessful candidates challenged the selection of the petitioners by filing three separate writ petitions bearing CWP Nos.16658 of 1994, 16298 of 1994 and 2843 of 1995. The writ petitions were allowed by this Court vide judgment and order pronounced on December 22, 1998.

3. The principal reason for quashing the selection was that the appointments were made by the Department and not by the Subordinate Services Selection Board, Punjab which alone had the authority to make recommendations. A direction was issued to the Government to route the selection afresh through the Board. The 102 candidates who were earlier interviewed by the Departmental Selection Committee, including the petitioners, were called for interview by the Board. In open competition the petitioners were placed lower in merit than the respondents. Since the petitioners were lower in merit they were not selected against the vacancies which had been advertised earlier. As per the criteria the required qualification for the post of Ophthalmic Assistant amongst others was: “i) Pre-medical, or 12th standard of one year after Higher Secondary in Science with Biology”. None of the petitioners had read the subject of Biology in earning their minimum qualification which was the basic essential

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qualification required for the post. It was at the stage of interview that the defect came to light of the authorities which rendered them ineligible for appointment. The private respondents have been in service since 1998 as no stay was granted by the Court either before or after admission of the matter on November 23, 2000. During the pendency of these petitions, vacant unfilled posts of Ophthalmic Officers were advertised by the respondents vide employment notice dated June 07, 2006. Some of the petitioners from these bunch of cases applied against the said advertisement but they met the same fate when their candidature was rejected since they did not possess the essential qualification of 10+2 in the Science stream with Biology as a subject.

4. Feeling aggrieved by the rejection of their candidature they filed CWP No.10244 of 2006 before this Court. Two persons, namely, Inderjit Singh and Deepak Singh filed CWP No.10244 of 2006 for the same cause. The writ petitions were dismissed by the Division Bench on July 13, 2006 on the ground that the petitioners do not possess the qualification prescribed for the post of Ophthalmic Officers. One of the arguments raised in those petitions was that the qualifications laid down for the post was unreasonable and unacceptable in law. To raise this contention, the petitioners relied on the Supreme Court decision in Sunita Sharma and others v. State of Rajasthan and others, 2002 (2) SLR 348. The Court held that the petitioners are ineligible for appointment to the post of Ophthalmic Officers in terms of the advertisement. Insofar as the qualifications prescribed for undergoing the two year diploma course in Ophthalmic

Assistant is concerned the Court was of the view that the same is irrelevant insofar as the present controversy is concerned. The qualification prescribed for admission to the diploma course in Ophthalmic Assistant was found irrelevant for the purposes of eligibility for appointment to the post of Ophthalmic Officers. The case of *Sunita Sharma* was distinguished for the reason that the qualifications prescribed by the authorities were possessed by the petitioners before it, and thus such orders were passed by the Court.

5. However, in the case in hand, the Court is of the view that the petitioners do not possess the qualification prescribed for the post of Ophthalmic Officers and, therefore, *Sunita Sharma* case is distinguishable. This is the stand in both the written statement filed by the State and by the private respondents. The State contends that the petitions deserve to be dismissed as admittedly the petitioners did not take up Biology subject which is the mandatory requirement and essential qualification which they did not fulfill. The Board interviewed the petitioners under Court orders dated December 22, 1998 despite being not qualified. Moreover, the marks secured by the petitioners were much less than the last selected general category candidate who secured 65.5 marks and, therefore, being lower in merit were not offered appointment. The stand of the private respondents in their written statement is the same counting two reasons why the petitions deserve to be dismissed. Firstly, the petitioners did not possess the minimum required qualification of 10+2 with Biology and secondly, they were lower in merit than the respondents.

6. The reference to the litigation in 2006 (supra) is cited by the

State for collateral purposes though it has no direct bearing on these cases and is only referred to for emphasis on the value to be attached in law to the essential qualifications for the two different posts of Ophthalmic Assistant and Ophthalmic Officers in the same department. But what is of some relevance in the other case is that some of the petitioners from these bunch of petitions had applied under the advertisement for selection of Ophthalmic Officers but their candidature was rejected for the governing and similar reason that they do not possess the qualification of 10+2 in Science stream with Biology as a subject of study to make them eligible for consideration. The relevant fact is that for the post of Ophthalmic Assistant and Ophthalmic Officers 10+2 in Science stream with Biology is common eligibility factor for recruitment to both the posts. What is true for one, is true for the other.

7. The petitioners, therefore, can take no advantage of the appointments made which have been quashed by this Court while remitting the selection process de novo to the Board. It is also of hardly any legal consequence that they had cleared the period of probation successfully after appointment and were confirmed on the post in August 1998 when the entire selection had been set aside with the following directions issued by the Court:-

- “(i) the respondent No.2 shall send the list of candidates, who had appeared in the interviews held on 11.7.1994 to the Punjab Subordinate Services Selection Board :*
- (ii) The Board shall get a notice published in the newspapers in January, 1999 inviting for interviews 102 candidates, who had appeared for viva voce on 11.7.1994 :*

- (iii) individual notices shall also be sent to 102 candidates as per the particulars made available by the respondent No.2 :*
- (iv) the Board shall interview the candidates and finalise the selection within a maximum period of three months :*
- (v) The list of selected candidates be published immediately on the conclusion of interviews :*
- (vi) the respondent No.2 shall appoint the selected candidates within 15 days of the receipt of the select list from the Board; and*
- (vii) The non-official respondents, whose selection and appointments have been quashed shall continue to held their respective posts till the issuance of fresh orders of appointments on the recommendations of the Board. If they are found suitable by the Board, then their services shall be treated as continued without interruption, else they shall be replaced by the candidates appointed on the recommendations of the Board.”*

8. All that is argued in these cases is that the petitioners were interviewed by the Departmental Selection Committee in 1994; they were selected for the post and had been continuing in service since September 1994 and were confirmed in August 1998, therefore, the question regarding non-passing of Biology subject in 10+2 has receded in the background and thus cannot be raised at this stage. It is not disputed by the petitioners that they have not read the subject of Biology in their 10+2 examination. Moreover, another submission advanced is that when the petitioners applied for admission in the Diploma in Para Medical Ophthalmic Assistant course their candidature should have been rejected at the initial stage before the start of the course and this is another reason why they should be re-appointed because non-passing of the Biology subject at this stage cannot

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used against them while armed with experience to man the post. This argument may seem attractive but it flies in the face of the doctrine of estoppel inasmuch as there can be no estoppel against the statute and the prescriptions contained therein which are mandatory pre-conditions which alone could add legal colour to the appointments. The rules of service which prescribe qualifications for the post are statutory in nature and the terms and conditions of the advertisement relating to essential qualifications are sacrosanct and have to be adhered to and hence cannot be departed from without doing violence to the rules. The essential qualification prescribed for the post is group neutral and cannot be relaxed as that would dilute merit and violate the law unless permitted by specific rule, which is not the case stated.

9. Usurpation of posts by ineligible candidates is impermissible and without authority of law in the rules of service. Termination of service has been caused in the present case not by the executive administration but by judicial orders which do not guarantee continuation of the petitioners in service when CWP No.16658 of 1994 (*Davinder Kaur v. State of Punjab & others*) was disposed of on December 22, 1998 with the seven directions noticed above. They were given a chance to compete in the fresh selection but failed to make the grade of selection. Their continuance in office was made subject to replacement by suitable candidates selected by the Board by way of proper direct recruitment to the posts. Essential qualifications laid down by subordinate legislation and restrictions placed therein for filling vacancies/posts have to be construed in the interest of the general public to

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whom services are rendered by Ophthalmic Assistants. The petitioners have not made out a case for issuance of directions, orders or writs inter alia for the bar in Court direction (vii) reproduced in paragraph 6 above.

10. For the foregoing reasons, the writ petitions are found devoid of merit and are hereby ordered to stand dismissed.

(RAJIV NARAIN RAINA)
JUDGE

20.05.2016
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