

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP No.13327 of 2012
Decided on : 18.01.2016**

Akshay Dhawan

... Petitioner

Versus

State of Punjab & another

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present : Mr.Ramneek Vasudeva, Advocate, for the petitioner.

Mr.L.S.Virk, Addl.A.G., Punjab.

G.S. Sandhawalia , J. (Oral)

The petitioner seeks consideration for appointment as a Medical Officer (MBBS) in pursuance of the advertisement dated 26.07.2011 (Annexure P2) against the General Category seats, which were 259.

There is no denying the fact that the petitioner, as per the provisional merit list, was at Sr.No.103 when counselled on 03.01.2012 and had obtained 61.75 marks in the written test. As per the remarks column (Annexure P4), he was held ineligible due to having not passed in the Punjabi examination upto the matriculation level, which was the necessary qualification, as per the terms of the advertisement, which reads as under:

"Knowledge of Punjabi Language: No person shall be appointed to any post in any service by Direct appointment unless he has passed matriculation

examination with Punjabi as one of the compulsory or elective subject or any other equivalent examination in Punjabi language at time of submission of application, which may be specified by the Govt. from time to time. Provided further that where a ward of Defence Service Personnel, which is a bona fide resident of Punjab State, is appointed by direct appointment, he shall have to pass an examination of Punjabi language equivalent to Matriculation Standard or he shall have to qualify a test conducted by the Language Wing of the Department of Education of Punjab Govt. within a period of two years from the date of his application."

The petitioner's case is that the service of the Medical Officers was governed by the Punjab Civil Medical (State Service Class II) Rules, 1982, wherein there was a proviso that the candidate who did not possess the qualification of Punjabi, would have to acquire the said qualification within 6 months from the date of joining. It is further his case that the service of Medical Officer was then brought under the purview of Punjab Civil Medical (State Service Class-I) Rules 1972 (for short, the '1972 Rules') (Annexure P12).

A perusal of the 1972 Rules would go on to show that as per Clause 7(5), which pertains to essential and other qualifications, a person who is to be appointed by way of direct recruitment, had to have knowledge of Punjabi language upto the matriculation level and those who did not, would have to acquire the same within 6 months from the date of joining of service, failing

which, their services would be terminated. Relevant portion of the 1972 Rules read as under:

“7. Educational and other qualifications – No person shall be appointed to the service by direct recruitment, unless he possesses the following educational qualifications and experience:-

(1) M.B.B.S.

(2)

(3) registered with the Punjab Medical Council or with any other duly constituted Medical Council in India;

(4)

(5) knowledge of Punjabi language upto Matriculation standard candidates who do not possess this qualification shall have to acquire this qualification within six months of their joining service failing which their service shall be terminated.”

It is further the case of the petitioner that the abovesaid provisions have been amended to the extent that Clauses (2) & (4) stand omitted vide amendment dated 20.11.2003 and Clause 7(5) has been renumbered as Clause 7(3). It is, thus, apparent from the above that the statutory rules provide that the matriculation standard qualification is to be acquired within 6 months from the date of joining service.

It is the case of the petitioner himself that the said qualification has been acquired by him on 17.05.2012 (Annexure P5) and he also made a request on 29.05.2012 (Annexure P6) to respondent No.2 for recruitment to the post on which no action has been taken.

In the considered opinion of this Court, once the rules itself provide that the said qualification can be obtained within a period of 6 months from the date of joining service, the action of the respondents in making the petitioner ineligible in not considering his case due to him not having the matriculation certificate having Punjabi language, was not justified. It is settled principle that the advertisement cannot be against the statutory rules and therefore, the respondents have acted on the advertisement whereby they should have actually relied upon the rules and therefore, prejudiced the case of the petitioner.

No counter has been filed by the respondents to submit that some other rules are applicable, to displace the case of the petitioner and in the absence of the same, the present writ petition is liable to allowed. The sole defence of the respondents is that the Punjab Civil Services (General & Common Conditions of Services) Rules, 1994 (for short, the '1994 Rules') would be applicable wherein Rule 17 specifically provides that the matriculation examination is a necessary qualification, is without any basis. Section 22-A of the 1972 Rules, as amended, reads as under:

“22-A. Application of the Punjab Civil Services (General and Common Conditions of Service) Rules, 1994. - (1) In respect of the matters, which are not specifically provided in these rules, the members of the Service shall be governed by the Punjab Civil

Services (General and Common Conditions of Service) Rules, 1994, at present in force, are contained in Appendix 'c'"

Thus, it is apparent that what is not provided under the specific service rules by which the petitioner's service is to be governed and in pursuance of which the advertisement has been issued, then only the 1994 Rules would be applicable in that case.

Counsel for the petitioner has also placed reliance upon the observations of this Court in CWP-3651-2012 titled *Minni Grover Vs. State of Punjab & another*, decided on 11.08.2015, to submit that Rule 17 of the 1994 Rules was, even otherwise, held arbitrary and unreasonable and appointment should not be denied and merit alone should govern appointments if a candidate comes forward that he has qualified the examination in Punjabi.

Resultantly, the present writ petition is allowed. A direction is issued to respondent No.2 to consider the case of the petitioner for appointment to the post of Medical Officer (MBBS), on account of him having acquired the matriculation certificate. In case of favourable consideration, the petitioner shall be entitled for all the notional benefits from the date similarly situated persons had been granted appointment, in order to avoid any unnecessary litigation. Needful be done within a period of 3 months, from today.

JANUARY 18, 2016
sailesh

(G.S. SANDHAWALIA)
JUDGE