

C.W.P No. 9253 of 2013

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P No. 9253 of 2013

DATE OF DECISION:18.11.2016

Amandeep Singh

.....Petitioner

Versus

State of Punjab and others

.....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Namit Gautam, Advocate
for the petitioner.

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

Mr. Vivek Sharma, Advocate
for respondents No. 3 to 5, 8 and 9.

DAYA CHAUDHARY, J.

The prayer in the present petition is for issuance of a writ in the nature of mandamus directing respondent No.2 to reinstate/reappoint the petitioner as Multi Purpose Health Worker (Male) on the basis of his own merit by setting aside the selection/appointment of respondents No.3 to 11, who are less meritorious viz-a-viz the petitioner. An alternative prayer has also been made to appoint the petitioner against post, which is lying vacant.

Briefly stated, the facts of the case as made out in the writ petition are that the petitioner applied for the post of Multi Purpose Health Worker (Male) in General Category. He obtained 719 marks out of total 1000 marks i.e. 71.9% . Respondents No. 3 to 11 also obtained the same

marks i.e. 719 out of 1000 marks. The petitioner was appointed as Multi Purpose Health Worker (Male) on contract basis vide appointment letter dated 28.5.2007. Thereafter he was appointed on regular basis on 30.6.2011. Subsequently without issuing any notice/show cause notice, the appointment of the petitioner was cancelled in compliance of order passed by this Court in C.W.P. No. 11775 of 2010 filed by one Harjit Singh. The petitioner filed review application No. 95 of 2013 in the aforesaid writ petition filed by Harjit Singh by taking a specific stand that he was never served in that petition as wrong address was given and thus was not having any occasion to represent himself in the said petition. A plea was also raised by him that a false report was procured just to gain undue benefit. Said review application was withdrawn with liberty to challenge the selection and appointment of other candidates who secured 719 marks in the General Category.

Learned counsel for the petitioner has not only challenged the order of cancellation of his appointment but made a prayer also to set aside the selection/appointment of private respondents No.3 to 11 on the ground that the petitioner was more meritorious and his name was mentioned at two places. Learned counsel further contends that one post is also lying vacant, against which, the petitioner can be adjusted. Learned counsel also submits that the petitioner is having the first right of appointment than the other candidates because of his higher qualification.

The facts regarding publication of advertisement, submission of application by the petitioner and other candidates are not disputed. It is also not disputed that the petitioner applied in General Category and total ten candidates secured 719 marks. It is also not disputed that one Harjit Singh,

who also secured 719 marks filed CWP No. 11775 of 2010 but all the selected candidates were not made party. The petitioner was impleaded as respondent but wrong address was given, which shows that the petitioner was never served because of wrong address and wrong report was obtained.

The case came up for hearing on 25.4.2016 and following order was passed:-

“The grouse of the petitioner is that vide order dated 12.03.2013 (Annexure P12) his appointment dated 28.05.2007 as Multi-Purpose Health Worker (Male) in the General Category, has been set aside, on account of the directions issued by this Court in CWP-11775-2010 on 09.05.2011 (Annexure P11).

It is not disputed that the petitioner was also respondent in the said case and had chosen not to appear. This Court had directed that Harjit Singh, the petitioner in that case, who was a reserved candidate and had secured more marks than the last General Category candidate, i.e., the petitioner, who had secured 71.90 marks, was entitled for appointment on the strength of his own merit, since the said Harjit Singh had got 72.10 marks. Resultantly, the petitioner, who was working for over a period of 4 years and regularized on 30.06.2011, was pushed out of his job.

The only argument, now, raised by counsel for the petitioner is that against 325 General Category seats, there is a vacancy and reference has been made to para 16 of the writ petition, which has not been specifically denied by the State. It

is, accordingly, submitted that the petitioner is willing to forego his wages for the period for which he had remained out of service and he could be adjusted against the said vacancy. It is further submitted that respondent No.11-Lakhwinder Singh, who was also having the same marks as the petitioner but older in age, has expired, which would be clear from the report of the service dated 29.07.2013. It is, thus, submitted that the petitioner can be suitably adjusted against the above-said 2 vacancies.

Faced with this situation, counsel for the State prays for time to file an additional affidavit regarding this aspect.

List on 27.05.2016.”

In response to direction issued by this Court, the respondent-State filed an additional affidavit, wherein, it has been stated that respondent No.11-Lakhwinder Singh had expired and one vacancy has occurred. Admittedly the appointment of the petitioner was cancelled on the basis of order passed by this Court in the case of Harjit Singh and that too without issuing show cause notice and without considering his stand as he was never served in that petition because of giving wrong address.

Learned State counsel has brought to the notice of this Court a copy of letter dated 17.11.2016 issued by Director, Health Services (Family Welfare), Punjab, wherein, it has been stated that no post is lying vacant. An affidavit has also been filed by the Director, Health Services (Family Welfare), Punjab (respondent No.2) stating therein that the appointment of the petitioner was cancelled on the basis of decision in C.W.P. No. 11775 of

2010 filed by one Harjit Singh. It is also mentioned that one Lakhwinder Singh was appointed as Multi Purpose Health Worker (male) and his services were regularized vide order dated 30.6.2011. Said Lakhwinder Singh is reported to have died on 14.7.2011 and no candidate has been appointed against the vacancy which fell vacant due to his death. The petitioner has also submitted an affidavit that he will not claim any wages and other benefits for the period he remained out of service. The affidavits filed by the Director, Health Services (Family Welfare), Punjab as well as petitioner are taken on record and are marked as Annexures A-1 and A-2.

Keeping in view the submissions made by learned counsel for the parties, the present petition deserves to be allowed. Accordingly, the respondents are directed to appoint the petitioner against the post, which had fallen vacant due to death of one Lakhwinder Singh within a period of two months from the date of receipt of copy of the order. However, it is also held that petitioner shall not be entitled for past benefits as undertaken in the affidavit.

November 21, 2016
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes