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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgement delivered on: 09.05.2016

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W.P.(C) 2064/2016

SUNITA

..... Petitioner

Through: Mr Jasbir Singh Malik, Adv.

versus

GOVERNMENT OF NCT OF DELHI & ORS

..... Respondents

Through: Mr Gautam Narayan, ASC with Ms
Shruti Parada, Adv.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAJMI WAZIRI

SANJIV KHANNA,J (ORAL)

W.P.(C) 2064/2016 & CM No. 8880/2016

1. Ms Sunita, by this writ petition, filed on 04.03.2016, impugns the order dated 25.03.2015 passed by the Principal Bench of Central Administrative Tribunal, whereby TA No. 117/2013 filed by her, was disposed of giving the following directions:

“....8. In the facts of the case, to meet the ends of justice, we dispose of the OA with a direction to the respondents to refer the certificate possessed by the application i.e. Registration Certificate of Multipurpose Health Workers (F) issued by Haryana Nurses Registration Council on 22.02.2011 as well as the contents of the advertisement i.e. the requisite qualification mentioned for the post of JSP to the Indian Nursing Council and obtain its view that whether being in possession of Matriculation Certificate as well as the aforementioned certificate issued by the HNRC, the applicant can be held eligible for the post in question. After obtaining the view of the Indian Nursing Council,

the respondents would take a final decision in the matter. Needful should be done as expeditiously as possible and preferably within three months from the date of receipt of a copy of this order. No costs....”

2. The present writ petition has been filed nearly a year after the impugned order was passed. On the last date of hearing i.e. 11.03.2016, counsel for the respondents had pointed out that pursuant to the order of the Tribunal dated 25.03.2015, another order dated 15.07.2015 was passed and communicated to the petitioner on 24.07.2015. By this letter/communication, the petitioner was informed as under:

“....1. Whereas, as per Hon’ble Central Administrative Tribunal, New Delhi in the matter of Smt. Suita vs GNCTD in TA No. 117/2013, dated 25.03.2015 has directed to respondents to obtain the view of Indian Nursing Council for a final decision in the matter.

2. Whereas, the reply of Indian Nursing Council vide no.F. No. 22-10/ Misc./2014-15 letter dt. 16.06.2015 is also enclosed herewith.

3. Whereas, as per INC has opined, as per the qualification for the said post goes the person with B.Sc. (N) or Diploma Certificate in General Nursing & Midwifery from recognized institutes of INC and registered as RN/ RM with state Nursing Council are eligible for the post of Public Health Nurse (PHN).

4. Whereas, Smt. Sunita has undergone ANM and is registered as Multipurpose Health Workers (Female) in the year 2001.

5. To conclude Smt. Sunita is not eligible for the post of PHN.

6. Hence the order no. F.2(3)/04/DHS/Estt./ PHN/NW/14335-40 dated 12.07.2007 stands enforce.....”

3. The aforesaid communication also refers to communication

received from Indian Nursing Council, which opines:

“.... In this context e-mail request was sent for the copy of recruitment rules of public health nurse and the copy of registration certificate of the Smt. Sunita D/o Shri Chander Bhan. The examination of recruitment rules shows that the educational qualification for direct recruitment is B.Sc. (N) or Matriculation A Grade nurses.

As per the qualification for the said post goes the person with B.Sc.(N) or diploma certificate in General Nursing & Midwifery from recognized institutes of INC and registered as RN/ RM with State Nursing Council are eligible for the post of Public Health Nurse.

Smt. Sunita has undergone ANM and is registered as Multipurpose Health Workers (Female) in the year 2001.

It is informed that the recruitment rules are notified in the year 1967 in Delhi Administration since then the three revision in the nursing educational programme of ANM, GNM, B.Sc.(N) have taken place but unfortunately the changes in the recruitment rules has not been done by the Delhi Administration and now Government of NCT of Delhi...”

4. We had adjourned the matter to enable the counsel for the petitioner to obtain instructions whether the petitioner has received the said communications, as this fact was not stated and adverted to in the writ petition. Counsel for the petitioner accepts that the petitioner had received the said communication and submits that the petitioner had not informed him about the said facts.

5. We have reservations on the conduct of the petitioner as she has failed to mention, the communication dated 15.07.2015, and the communication of the Indian Nursing Council dated 16.06.2015. These facts and communications should have been brought on record.

Belated challenge to the impugned order dated 25.03.2015 by this writ petition filed on 04.03.2016, appears to be an after-thought. This impugned order was apparent at first accepted and has been challenged after communication dated 15.07.2015 was received.

6. During the course of arguments, learned counsel for the petitioner has accepted that the petitioner did not satisfy the minimum eligibility qualifications for appointment to the post of Public Health Nurse. He submits that the petitioner had not concealed her qualification and worked at the said post for about four years from 15.09.2003 till 17.07.2007. It is submitted that the petitioner may be appointed as a lower post, as per her qualification as the petitioner was earlier working as a HIV Aids Counsellor in the State of Haryana and had resigned to take the post of Public Health Nurse. She is now over-aged.

7. We have considered the said contention, but regret our inability to accept the prayer made. The eligibility qualifications were duly notified and specified. They were mandatory. It was for the petitioner also to ascertain and satisfy herself whether she meets the minimum eligibility qualification. In the present case, the respondents had doubts whether the petitioner satisfies and meets the minimum prescribed qualification. The first letter in this regard was written on 01.02.2004, a few months after the petitioner had joined on 15.09.2003. The respondents had, thereafter, entered into correspondence with the concerned authorities, including Addl. Secretary (Health) to ascertain the correct position as the petitioner has a diploma certificate as Multipurpose Health Worker (Female). The respondents did not want to act in haste and hurry and deprive and deny, the petitioner the job.

8. Once it is accepted and admitted that the petitioner was not eligible, then her appointment as Public Health Nurse was illegal and not merely irregular. Illegal appointment cannot be regularized and no rights would flow from the fact that the petitioner had worked.

9. The petitioner's prayer for appointment to a lower post also is unacceptable for any appointment to a post must be in accordance with the recruitment rules either by way of direct recruitment or promotion. Of course, it is also open to the petitioner to apply to the post to which she is eligible in case any advertisement or notification to the said effect is issued by the respondent. In case the petitioner is over-aged, it will be open to her to make a request as per law.

10. With the aforesaid observations, the petition is dismissed.

SANJIV KHANNA, J.

NAJMI WAZIRI, J.

MAY 09, 2016

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