

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

CWP No.17675 of 2013 (O&M)

Reserved on: 12.07.2017

Date of Decision: August 11, 2017

Rajandeep Saini

....Petitioner

vs.

State of Punjab and others

....Respondents

2. CWP No.24861 of 2013

Mandeep Kaur

....Petitioner

vs.

State of Punjab and another

....Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present: Mr. Vinod Kumar, Advocate for the petitioner(s).

Mr. Avinit Avasthi, AAG, Punjab.

TEJINDER SINGH DHINDSA, J.

This order shall dispose of **CWP No.17675 of 2013 (Rajandeep Saini vs. State of Punjab and others)** and **CWP No.24861 of 2013 (Mandeep Kaur vs. State of Punjab and others)**, as the issue involved in both these petitions, is identical.

2. Petitioner(s) in these connected petitions seek a writ of mandamus directing the official respondents to appoint them to the post of Staff Nurse.

3. Brief facts are that the Directorate of Health and Family

Welfare, State of Punjab, issued advertisement dated 26.07.2011, inviting applications for recruitment to various posts in the Health Department, including 602 posts of Staff Nurses. 301 posts were to be filled up from the General Category. The basic and professional qualifications stipulated for the post of Staff Nurse were as follows:-

- “1. Should have passed Senior Secondary Part-II Examination or its equivalent from a recognized university or institution.*
- 2. Should possess a diploma in General Nursing and Midwifery from a recognized university or institution; and*
- 3. Should be registered with the Punjab Nursing Registration Council established under the Punjab Nurses Registration Act, 1932 (Punjab Act No.1 of 1932).”*

4. The recruitment criteria for the post of Staff Nurse was also disclosed in the advertisement itself and to the following effect:-

For the post of Staff Nurse the recruitment criteria is as under:-

<i>Written Test</i>	<i>80 marks</i>
<i>Rural Background</i>	<i>5 marks</i>
<i>Higher Qualification (Bsc./Msc.)</i>	<i>5 marks</i>
<i>Experience: Government/NRHM (2 marks per year), Maximum 10 marks</i>	<i>10 marks</i>

5. The last date for submission of online applications was 20.08.2011. The last date was extended to 19.09.2011 vide public notice dated 08.09.2011.

6. Both the petitioner(s) herein being eligible, applied for the post and participated in the written test. Rajandeep Saini (petitioner in CWP No.17675 of 2013) is stated to have secured 55.20 marks out of 80 and whereas, Mandeep Kaur (petitioner in CWP No.

24861 of 2013) secured 52.80 marks. The petitioner(s) were called upon to appear for the counselling process. At the stage of counselling, both the petitioner(s) produced requisite documents in support of possessing the higher qualifications i.e. Degree of Bachelor of Science in Nursing (post basic).

7. It is the case of the petitioner(s) that as per criteria laid down in the advertisement, they were awarded five extra marks for possessing higher qualification and as such, Rajandeep Saini secured a total marks of 60.20, whereas, Mandeep Kaur by virtue of adding five extra marks, secured a total marks of 57.80. It is contended that a revised list was published on 13.09.2012, inviting objections, if any and wherein names of selected candidates were mentioned and in which, names of both the petitioner(s) figured. However, subsequently a final select list for the post of Staff Nurses in General Category was issued and in which, the names of the petitioner(s) were omitted.

8. It is argued on behalf of the petitioner(s) that without issuance of a notice and without providing any opportunity of hearing, the names of the petitioner(s) have been left out of the select list and whereas private respondent No.4, namely, Rajender Kaur D/o Jagdish Singh has been selected and appointed, even though, she had secured a lower merit position. Such course of action adopted by the respondent-authorities is stated to be illegal and violative of Articles 14 & 16 of the Constitution of India.

9. In the counter filed to the writ petitions, marks obtained

by the petitioner(s) in the written examination is admitted. However, it is submitted that the higher qualification possessed by the petitioners and for which, five extra marks had been granted, was acquired subsequent to the last date for submission of application forms and upon scrutiny the five extra marks given in lieu of higher qualifications were reduced from the total marks and which has resulted in the petitioner(s) not finding a place in the final select list.

10. Counsel for the parties have been heard.

11. The last date for submission of application forms to be 19.09.2011 is not in dispute. As per criteria for recruitment for the post in question, five marks were admissible upon possession of higher qualifications (B.Sc./M.Sc.).

12. It is by now well settled that the cut off date by reference to which, the eligibility requirement must be satisfied by the candidate including higher qualifications to claim weightage while seeking public employment is the date appointed by the rules and if not, then such date as may be appointed in the advertisement calling for applications and even if, there be no such date fixed in the advertisement, then the eligibility would be with reference to the last date by which, the applications have to be received by the recruitment authority/agency. A reference in this regard may be made to the judgment of the Hon'ble Supreme Court rendered in the case of ***Bhupinderpal Singh and others vs. State of Punjab 2000(2) SCT 826.***

13. It is the pleaded case of both the petitioner(s) herein that

they had obtained Degree of Bachelor of Science in Nursing (post basic) from Baba Farid University of Health and Science on 29.09.2011. Admittedly, the acquisition of such higher qualification was after the last date of submission of application forms i.e. 19.09.2011. That would leave no manner of doubt that the petitioners were not entitled to the five extra marks towards possessing higher qualifications.

14. Mr. Avinit Avasthi, AAG, Punjab, on the basis of record, has apprised the Court that the last General Category candidate at Sr. No.301, namely, Rajinder Kaur had secured total of 57.60 marks. However, since 65 candidates did not join, therefore, the waiting list was operated on 26.08.2013 and candidates lower in merit i.e. upto Merit No.39, candidate, namely, Hardeep Kaur D/o Raghuveer Singh (General Category) with a total score of 56.60 marks, was given appointment. Subsequently, on account of non-joining of further 13 candidates, the waiting list was again operated on 14.10.2013 and candidates in merit upto Sr. No.406, namely, Gurjant Singh with a total score of 56.20 marks was given appointment. As opposed to this, Rajandeep Saini and Mandeep Kaur (petitioners herein) have secured 55.20 marks and 52.80 marks respectively.

15. In the light of the lower merit position obtained by the petitioners, they have rightfully been declined appointment to the post in question.

16. The submission advanced by counsel that the names of the petitioner(s) had initially figured in the select list but

subsequently, in the final/revised select list, their names having been omitted without notice/opportunity of hearing is of no consequence. The admitted position of fact is that both the petitioner(s) had, at the initial stage, during the course of counselling, been granted five extra marks for possessing higher qualification. Concededly, both the petitioner(s) had acquired higher qualification after the last date for submission of application forms stipulated in the advertisement. Under such circumstances, the respondent-authorities were not precluded from scrutinizing the select list and correcting the error that had crept in. Even otherwise, it is not the case of the petitioner(s) that any other candidate who had acquired the higher qualification after the last date for submission of application forms, has been granted weightage of five extra marks.

17. For the reasons recorded above, both the petitions are found to be devoid of merit and are dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

August 11th, 2017
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***Whether speaking/reasoned* : Yes**
***Whether reportable* : No**