

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

CWP No.13380 of 2017

Date of Decision: July 03, 2017

Kamaljit Kaur

....Petitioner

vs.

State of Punjab and another

....Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present: Mr. Gaurav Sharma, Advocate
for the petitioner.

TEJINDER SINGH DHINDSA, J. (Oral)

The instant petition has been preferred under Article 226 of the Constitution of India seeking the issuance of writ of mandamus for directing the respondents-Health and Family Welfare Department, State of Punjab to appoint the petitioner on the post of Staff Nurse against the reserved category of dependent of Ex-servicemen (General).

Brief facts which emanate from the pleadings on record, are that the Director Health Services, Punjab, vide memo dated 16.08.2016, advertised 986 posts of Staff Nurse in the Health Department. 73 posts were reserved for the category of Ex-servicemen (General).

Present petitioner claims herself to be the dependent of an Ex-serviceman and asserts her right to be considered against the post reserved for Ex-servicemen (General).

Counsel would argue that in the process of selection that commenced after issuance of the advertisement dated

16.08.2016, only one post out of 73 posts, reserved for Ex-servicemen (General) category, has been filled up and as such 72 posts are still lying vacant. It is contended that under such circumstances, denial of appointment to the petitioner would be arbitrary and would be against the very object for grant of reservation in favour of a particular category.

Having heard counsel for the petitioner at length and having perused the pleadings on record, I am of the considered view that the present petition lacks merit and deserves to be dismissed.

During the course of arguments, it stands conceded that the petitioner having applied for the post, had appeared for a written test and in which, she had secured 308 marks out of a total of 800 marks. As per process of counselling/interview, a bench mark was stipulated at 320 marks for the open category (including all reserved categories). The petitioner clearly has not been called for the counselling/interview for the reason that she has failed to meet such bench mark of 320 marks. She has concededly fallen to short by 12 marks.

At this stage, counsel for the petitioner would argue that in relation to another recruitment, process candidates who had secured even lower marks than the petitioner, had been called for the counselling/interview. Such position even though accepted to be factually correct would be of no relevance. The arguments and contention raised by the petitioner as regards candidates possessing lower marks having been called for the counselling/interview, were in relation to a separate advertisement and a distinct recruitment process. It was always open for the employee/selection agency to have raised the bar and to affix the bench mark at 320 marks insofar as the present recruitment process is concerned. In any case, the fixation of such bench mark is not a subject matter of challenge in the instant petition.

As a matter of last resort, counsel would even refer to a memo dated 11.05.2017, appended and placed on record at Annexure P-12 and in terms of which, 76 candidates have been called for another round of counselling in relation to the same very advertisement process initiated vide advertisement dated 16.08.2016. Even in such regard and on a pointed query having put to the counsel as to whether any of the 76 candidates called for the second process of counselling have secured lesser or equal marks to the petitioner, the response has been in the negative.

It is a settled proposition of law that no mandamus can be issued to direct the employer to fill up all the advertised vacancies. It is not the case of the petitioner that any candidate lower in merit has been selected and appointed.

For the reasons recorded above, the writ petition is dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

03.07.2017
anju rani

Whether speaking/reasoned : ***Yes/No***
Whether reportable : ***Yes/No***