

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

CWP No.21611 of 2014 (O&M)

Date of Decision: May 26, 2017

Jyotika Sharma

...Petitioner

Versus

State of Punjab and others

...Respondents

**CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR**

Present:- Mr. H.K. Brinda, Advocate  
for the petitioner.

Mr. L.S. Virk, Addl. AG Punjab.

Mr. Anil K. Sharma, Advocate  
for respondent No.3.

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**JAISHREE THAKUR, J.**

The petitioner herein seeks appointment on the post of Ayurvedic Medical Officer under the Sports Category, as per her merit prepared by the Selection Committee.

2. In brief, the facts are that online applications for the post of Ayurvedic Medical Officer were invited, pursuant to which, the petitioner applied under the Sports Category. A written test was held and the petitioner's name figured at Serial No.5 in the merit list under the Sports Category. Counselling was held from 20<sup>th</sup> December, 2013 to 30<sup>th</sup> December, 2013 and candidate at Serial No.1 in the Sports Category, having

higher marks, was shifted to General Category. The candidate at Serial No.3 could not produce any Sports Gradation Certificate, as such, was not declared eligible for consideration. The candidates at Serial Nos.4 and 6 did not participate in the counselling, thus only the candidates at Serial Nos.2, 5 and 7 were available for selection under the Sports Category. The petitioner and the candidate at Serial No.2 were having 'C' Sport Gradation Certificates, while the candidate at Serial No.7 was having 'B' Sport Gradation Certificate. Since the appointment was not offered to the petitioner despite a vacancy, a legal notice was served upon the respondent-Department, but to no avail. She was orally informed that on account of having a 'C' Grade Sport Certificate, she was not selected. Aggrieved against denial of appointment, the instant writ petition has been filed.

3. Mr. H.K. Brinda, learned counsel appearing on behalf of the petitioner contends that appointment to the post of Ayurvedic Medical Officer was on contractual basis for one year, which would be liable to be extended on the basis of work and from the eligible candidates. As per the qualification prescribed, an applicant should have a degree of BAMS or equivalent thereto or ought to have been registered with Ayurvedic or Unani System of Medicine, Punjab, with having passed Punjabi upto Matric standard. Three posts were reserved for Sports Category, with a note mentioned in the advertisement that an applicant should possess Grade 'A' certificate and in case an applicant with Grade 'A' certificate is not available, then the applicant with 'B' Grade certificate will be considered against the category of players and in case, applicant with 'B' Grade certificate is also not available, then the applicant with 'C' Grade certificate

would be considered. It is argued that this not being a regular appointment, the terms as mentioned in the advertisement would have to be relied upon, which allow a candidate possessing a 'C' Grade Certificate, in the absence of candidates possessing 'A' and 'B' Grade certificate, to be considered for appointment. It is alleged that vacancies are available and the appointment should have been offered.

4. Per contra, Mr. L.S. Virk, learned Addl. AG appearing on behalf of the respondents-State urged that the certificate of the petitioner, which is a Grade 'C' certificate, would not entitle her to be appointed against Group 'A' post. It is argued that the appointments have to be made in consonance with the Punjab Recruitment of Sportsmen Rules, 1988 (hereinafter referred to as 'the Rules of 1988').

5. I have heard learned counsel for the parties and have also perused the record of the case.

6. The short point for adjudication before this court would be, whether the terms and conditions in the advertisement would be binding upon the respondents, if the same are against the Rules of 1988.

7. The Punjab Recruitment of Sportsmen Rules, 1988, came into effect on 01.02.1988. They are applicable to all services and posts connected with the affairs of State of Punjab except the Punjab Vidhan Sabha Secretariat, Punjab Public Service Commission and Punjab and Haryana High Court. For appointment under the Sports Category, a sportsman of either sex would be eligible for recruitment to a reserved vacancy in Class I or Class II posts, in case, he belongs to the State of Punjab and that he has won national championship in team or individual

events, while representing the State of Punjab in such sports events as have been conducted by such respective national federations as are affiliated to the Indian Olympic Association or he has won national championship in team or individual events which are organized by the Indian Olympic Association or he has won first, second or third position in team or individual events and/or he has won Gold or Silver or Bronze Medals at International Sports meets, conducted by International Federation affiliated to the International Olympic Committee or by the International Olympic Committee itself.

8. The petitioner herein applied for the post of Ayurvedic Medical Officer, which is Group 'A' post and as per the Rules of 1988, any person competing for Group 'A' and 'B' posts, must have an 'A' Grade certificate. The advertisement that was issued provided that due to the non-availability of any candidate having 'A' Grade Certificate, the posts were to be filled up by candidates having 'B' Grade Certificate and in the absence of candidates having 'B' Grade certificate, the posts were to be filled up by candidates having 'C' Grade Certificate. This condition in the advertisement is clearly dehors the Rules of 1988. The petitioner herein has been given Grade 'C' certificate and as per the Rules of 1988, she would not be eligible for consideration to the post of Ayurvedic Medical Officer, which is Group 'A' post.

9. The question whether the advertisement, which invites applications on contractual basis would override the Rules of 1988, is answered in the negative. Even though the applications were invited purely on contractual basis, the advertisement would have to be in consonance with

the Statutory Rules. Even otherwise, in the advertisement, there was a specific note put up for instructions of candidates. Note 7 of the instructions reads as under:-

*“The reservation and other conditions will be as per Punjab Govt. instructions.”*

This note would mean that any candidate wanting to avail of any reservation, would be guided as per the Punjab Govt. instructions and in the instant case, the Rules called 'The Punjab Recruitment of Sportsmen Rules, 1988'. In the case of ***Dharamvir vs. State of Haryana and another, 96(1) RSJ 296***, it has been held in no uncertain terms, that a public notice cannot be issued contrary to the Statutory Rules and no additional qualification can be inserted in the advertisement, if such qualification is not prescribed in the Rules. Therefore, the argument raised by learned counsel for the petitioner that the terms and conditions of the advertisement would override the statutory rules, would have no bearing. Even the argument raised that the appointment is on contractual basis and not a regular appointment, would not be sustainable, in view of the fact that no appointment would be countenanced by this court, which is de hors the statutory rules. If the petitioner is availing of reservation in the Sports Category, the Rules of 1988 would be applicable and the petitioner is not eligible under the said Rules.

10. In a recent judgment rendered in ***State of Punjab and others vs. Priya Mahajan and others, 2013(2) SCT 88***, it has been held that no new condition can be imposed in the advertisement in the presence of statutory rules framed under proviso to Article 309 of the Constitution of

India. The ratio, as laid down in the aforesaid judgments, is fully applicable to the facts of the present case, where a condition was imposed that in the absence of a candidate having 'A' Grade Certificate being not available, the person with 'B' Grade or 'C' Grade certificate would be considered. The Rules of 1988 clearly permits only a Grade 'A' certificate holder, to be considered for Group 'A' post, which qualification is lacking with the petitioner.

11. In view of the above, the writ petition being devoid of any merits, is hereby dismissed.

**May 26, 2017**  
*vijay saini*

**(JAISHREE THAKUR)**  
**JUDGE**

Whether speaking/reasoned  
Whether reportable

Yes/No  
Yes/No