

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.6369 of 2012
Date of Decision:-09.02.2017.

Ms. Rozy

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Subhash Ahuja, Advocate for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

Mr. Rakesh Nagpal, Advocate for respondent No.5.

P.B. BAJANTHRI, J. (Oral)

1.) Petitioner has questioned the validity of the orders dated 6.12.2011, 25.8.2011 and 27.2.2012 vide Annexure P-7, P-9 and P-10, respectively and she has sought for directions to the respondents to reinstate her into service with continuity of service and full back wages etc.

2.) The respondents have advertised for the post of Lab Technician and other posts on 8.5.2011. The petitioner is one of the candidate for recruitment to the post of Lab Technician. The petitioner has the qualification of B.Sc. (MLT). She was selected and appointed to the post of Lab Technician on 20.5.2011. Thereafter, the respondents noticed that the petitioner does not fulfill the requisite qualification prescribed for the Lab Technician. Consequently, show cause notice was issued to the petitioner

on 5.10.2011. Petitioner submitted her reply to the show cause notice on 10.10.2011. Thereafter, petitioner's services have been dispensed on 6.12.2011. Thus, the petitioner is before this Court.

3.) Learned counsel for the petitioner submitted that the petitioner had the qualification of B.Sc. (MLT) which is higher than the prescribed qualification for the post of Lab Technician, namely, Diploma in Medical Laboratory Technology (for short 'DMLT') from the Institute recognized by Government of Haryana. Further it was submitted that the petitioner had the Diploma in Medical Laboratory Technology (for short 'MLT') from the Institute of Para Medical Laboratory Technology, Pahari Chatterpur, New Delhi. Thus, the reasons for cancellation of petitioner's appointment or dispensing her services is without application of mind. It was further submitted that the petitioner had the higher qualification of B.Sc. (MLT) than the prescribed qualification of DMLT for the post of Lab Technician, therefore, dispensing the petitioner's services on the ground that she does not fulfill the qualification prescribed for the Lab Technician is incorrect. In support of the petitioner's claim, learned counsel has relied on two decisions of this Court passed in ***CWP No.18597 of 2009 (Vinod Kumar and others Vs. State of Haryana and others)*** disposed of on 20.4.2012 and reported decision reported in ***2007(3) RSJ 502 (Sham Singh and others Vs. State of Haryana)*** decided on 01.03.2007. The said decisions were cited to contend that higher qualification could be taken into consideration for the purpose of selection and appointment to any post.

4.) On the other hand, learned counsel for the State submitted that the petitioner even though had the qualification of Diploma in MLT from

Delhi which is not one of the recognized Institution by the Government of Haryana. Further such University is not recognized by the State Technical Education Board as required under the rules of recruitment governing the post of Lab Technician. Hence, there is no infirmity in cancelling the petitioner's appointment and dispensing her services.

5.) Heard learned counsel for the parties.

6.) Crux of the matter is whether the petitioner had requisite qualification prescribed for the post of Lab Technician or not. Relevant rule for the post of Lab Technician reads as under:-

“Diploma in Medical Laboratory Technology (DMLT) from institute recognized by Govt. of Haryana.”

As per the State Government stand qualification prescribed for the post of Lab Technician is as under:-

“(i) 10+2 with physics and Chemistry and one year laboratory Technician Diploma from Institution recognized by Haryana State.

OR

Matric with Laboratory Technician Diploma from institution recognized by State Technical Education Board;

(ii) Hindi or Sanskrit upto Matric standard.”

Having regard to the prescribed requisite qualification for the post of Lab Technician is that a candidate must have Diploma in Medical Laboratory Technology (DMLT) from Institution recognized by the Government of Haryana. No equivalent qualification has been prescribed under the rules of recruitment governing the post of Lab Technician.

Therefore, contention of the petitioner that he had the higher qualification of

Diploma from the Institute of Para Medical Laboratory Technology, Pahari Chatterpur, New Delhi is not one of the recognized Diploma by the State of Haryana as required by the rules of recruitment. Insofar as reliance on the higher qualification of B.Sc. (MLT) is concerned, rules of recruitment is silent about the equivalent qualification or higher qualification. In the absence of such prescription of higher qualification in the rules of recruitment, question of considering the candidate who had the higher qualification other than the basic qualification like Diploma in DMLT from the institute recognized by the Government of Haryana cannot be considered. Therefore, the respondents have dispensed the services of the petitioner after issuing notice to the petitioner that she do not fulfill the requisite qualification prescribed for the post of Lab Technician. Decisions cited by the learned counsel for the petitioner in the case of Vinod Kumar, it is noticed that this Court has not examined the specific rule governing the post of Lab Technician which stipulates that DMLT from the Institute of recognized by Government of Haryana and no alternative qualification prescribed for the post as as to consider. Since the Rule governing the post of Lab Technician is not examined in the case of Vinod Kumar, therefore, decision is distinguishable. The other decision Sham Singh and others is concerned, it is also relating to examination of equivalent qualification. When the Rule is very specific in respect of governing the post of Lab Technician that a candidate must have requisite Diploma in DMLT from the Institute recognized by the State Technical Board. Other diploma which is not recognized or higher education taken into consideration in the said decision is distinguishable.

Beermasthan (2009) 5 SCC 545 held that before considering any decision of the Court relevant rule is required to be examined. Para 48 reads as under:-

“48. Several decisions have been cited before us by the respondents, but it is well established that judgments in service jurisprudence should be understood with reference to the particular service rules in the State governing that field. Reservation provisions are enabling provisions, and different State Governments can have different methods of reservation. There is no challenge to the Rules, and what is challenged is in the matter of application alone. In our opinion the communal rotation has to be applied taking 20 vacancies as a block.”

8.) In view of the above legal position read with the requisite qualification prescribed for the post of Lab Technician that one must have Diploma of DMLT recognized by Government of Haryana. Since the petitioner do not fulfill the basic qualification prescribed for the post, petitioner has not made out a case so as to interfere with the impugned orders.

9.) Petition stands dismissed.

(P.B. BAJANTHRI)
JUDGE

February 09, 2017.
sandeep sethi

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.