

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No.5073 of 2014
Decided on :27.11.2017

Mamta

....Petitioner

Versus

Pt.B.D.Sharma University of Health Sciences, Rohtak & another

...Respondents

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr.Vivek Suri, Advocate, for the petitioner.

Mr.Rajesh Hooda, Advocate, for respondent No.1.

Mr.Neeraj Kumar, Advocate, for respondent No.2.

G.S. SANDHAWALIA, J.

Prayer in the present writ petition is for quashing the letter dated 18.02.2014 (Annexure P-13), for issuance of a writ in the nature of certiorari, under Articles 226/227 of the Constitution of India and further a writ in the nature of mandamus, for issuance of directions that the petitioner be permitted to join on the post of ECG (Technician) in the General Category. The rejection by the official-respondent is on the ground that the experience certificate submitted by the applicant is not full-time experience and therefore, was not considered by the Selection Committee/Authority.

It is the pleaded case of the petitioner that she passed her Matriculation in the year 2006 and thereafter, +2 examination in the year 2008. She had cleared B.Sc from Maharishi Dayanand University, Rohtak (Annexure P-3). Advertisement No.1 of 2010 (Annexure P-4) was published and various posts were advertised by respondent-University and the petitioner was an applicant for the post of ECG (Technician) against the 5 posts, out of which, 2 were for General Category, in the pay-scale of Rs.5200-20,200 + 2400 Grade Pay. The essential qualifications prescribed

were as under:

“Qualification:

- i) Matric pass with Science (Physics and Chemistry) & Hindi/Sanskrit
- ii) Two years experience in any recognized hospital in E.C.G. or Laboratory work.

Preferable:

Diploma or Training Course in E.C.G. or three years practical experience in E.C.G.

Age: 17-40 years.”

The petitioner claimed her experience from 05.05.2007, as per the certificate issued on 28.02.2010 (Annexure P-5) issued by one Jain Hospital & Fertility Centre, Rohtak. It is her case that she appeared in the interview on 08.04.2011 in view of the call letter dated 25.03.2011 (Annexure P-6). She was placed at Sr.No.1 and was given 55.17 marks out of 100 whereas respondent No.2 was placed at Sr.No.2 and had got 54.58 marks. It is her case that she was not allowed to join again the said post and only when she asked for information and had served a legal notice dated 03.12.2013 (Annexure P-10), it was replied to, on 18.02.2014 (Annexure P-13) that due to the discrepancy in the experience certificate, her case had not been considered by the Selection Committee. Accordingly, the plea taken in the writ petition is that once proceedings of the Selection Committee showed that she was placed at Sr.No.1, the respondent could not, as such, deny her appointment and even respondent No.2 did not fulfill the criteria of full-time experience. Reliance was placed upon certificate dated 01.06.2014 (Annexure P-14) to submit that her experience was also part-time, during the evening

hours.

The stand taken by the official respondent, in their written statement, was as per the impugned communication, that she was not having full-time experience of 2 years and that her experience certificate from 05.05.2007 to 20.02.2010 was during the same very period she had completed her Senior Secondary, B.Sc 1st and 2nd Semester as regular candidate. It could be presumed that candidate who is pursuing her 10+2 and B.Sc as regular candidate, was also working as E.C.G. Operator in a hospital and her experience had to be considered part-time. Reliance was also placed upon the application dated 17.04.2011 given by the father of the petitioner (Annexure R-1). The petitioner not being a regular employee of the said hospital, her part-time experience was not to be considered for regular appointment.

The factum that respondent No.2 also having similar disqualification, as specifically pleaded in para 8(ii) of the writ petition, was not specifically denied. It is pertinent to notice that the said respondent has also got the certificate of Diploma in Information Technology, awarded on 26.02.2009 and the duration of the course was November, 2006 to December, 2009. The certificate of experience dated 30.12.2009 (Annexure P-9) would also show that she had worked during the period of her study and the experience certificate was from 09.11.2006 to 28.12.2009 and therefore, there was also overlapping of experience period with the study period.

The said respondent, in her reply, has taken the plea that she

had not undertaken any regular course of study during the period of her experience and the allegation against her was totally wrong. She had performed duty on regular basis in the hospital and that it was not part-time experience. Her husband had expired and she was being harassed. It was submitted that she had completed the Diploma in Computer in evening class after 6 pm and that was also full-time course and therefore, the petitioner was not on a similar footing and the answering-respondent had a experience of full-time. It is also pertinent to notice that respondent No.2 has also placed on record certificate dated 07.09.2016 (Annexure R-2/1) whereby Director of the said institute where she worked, has stood by the earlier certificate issued in favour of the respondent No.2 on 30.12.2009 (Annexure P-9) and had submitted that the certificate dated 01.06.2014 (Annexure P-14) was taken by the father by misguiding him.

In the replication filed, the plea taken by the petitioner is that in the advertisement, it was no-where mentioned that the employment was to be part-time or full-time and the fact that respondent No.2 also produced her experience certificate which showed that she had been pursuing the course of Teachers Training and therefore, the experience certificate was not valid. Reliance was placed upon certificate dated 01.06.2016 (Annexure P-14), as noticed above, that she had also worked on part-time basis in the evening hours. Resultantly, the petitioner has claimed parity with respondent No.2 and sought appointment.

Resultantly, counsel for the petitioner has argued that if the respondent No.2 also did not had the necessary certificate and had been

appointed, then the petitioner should also be given the same benefit.

Counsel for the University has vehemently submitted that the petitioner was not duly qualified and therefore, 2 years' experience meant complete experience.

The merit list which has been prepared by the respondent-University (Annexure P-8) would go on to show that neither the petitioner was given any benefit of the experience and had been given 'Zero' marks in the heading of 'experience' out of 30 marks, for the interview. She was granted 20 marks and by adding the same to her basic qualification, she had secured 55.17 marks and had been shown selected. Respondent No.2 also was not granted the benefit of experience and had also been given 20 marks for interview and was having merit of 54.58. The petitioner was shown as selected at Sr.No.1 whereas respondent No.2 had been shown as selected at Sr.No.2. Another candidate-Mukesh had been shown as wait-listed, having obtained 51.28 marks, having got 22 marks in the interview and he had also been given no marks for experience. The argument, thus, raised by the counsel for the University, that the said respondent had the necessary qualification of full 2 years, is without any basis. No benefit was given to her of experience as was in the case of the petitioner also. The 2 years' experience was required and it is apparent that both the petitioner and respondent No.2 had part-time experience and not full-time experience. Respondent No.2 having been selected inspite of the fact that she did not have the full-time experience, the petitioner could not have been denied appointment. Once the

University had selected respondent No.2 as per the proceedings of the meeting, it could not be permitted to blow hot and cold at the same time and in one case, issue appointment letter and cannot, as such, discriminate, which is apparent on the face of the record and therefore, on this account itself, the petitioner is also entitled for the same benefit of appointment.

Resultantly, in view of the above, the present writ petition is allowed, the communication dated 18.02.2014 (Annexure P-13) is quashed and directions are issued to respondent No.1 to issue necessary appointment letter to the petitioner for the said post of E.C.G. (Technician) in the General Category. The petitioner will also be entitled for all notional benefits, on the basis of her merit which was calculated, from the date the appointment letter was issued to respondent No.2. However, she will not be entitled for any monetary benefits as she had not worked on the said post on account of the principle of 'no work no pay'. Needful be done within a period of 4 weeks from the receipt of a certified copy of this order.

27.11.2017
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: Yes