

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.2440 of 2012 (O&M)

Date of Decision:23.8.2018

Anju Bala

... Petitioner

Versus

The State of Haryana and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Jagbir Malik, Advocate for the petitioner

Ms.Shruti Jain Goyal, DAG, Haryana

Ms.Nurpur Choudhary, Advocate for respondent no.5

Mr.Ajay Kumar Gupta, Advocate for respondent no.6

RAJIV NARAIN RAINA, J.

1. The Haryana Staff Selection Commission, Panchkula advertised 63 posts of Family Welfare Extension Educator vide advertisement dated 22nd July, 2007. The essential qualification for the post was Graduate with two years experience relating to Community Education in Health and Family Welfare and knowledge of Hindi/Sanskrit upto Matric standard. The closing date for receipt of applications was 21st August, 2007. Out of the 63 vacant posts advertised, 7 were earmarked for eligible candidates in the reserved category of Backward Class-A (BCA). The petitioner applied in the category of BCA. Interviews were held on 5th December, 2007. The result was declared on 10th April, 2008. The petitioner's name figured at Sr. No.1 in the waiting list. It is not disputed that one candidate from this category did not accept the offer and did not join the post and therefore, the post remained vacant. The petitioner staked her claim being at Sr. No.1 in the Waiting List.

2. Meanwhile, some non-selected candidates filed CWP No.10221 of 2008 in this court alleging that experience certificates attached by the selected candidates are bogus. As a result of this, the experience certificate of the selected candidates including the petitioner was got verified. In her application, the petitioner had relied on her experience certificate issued by a hospital, namely, Kharab Hospital, 52 Scheme No.6, Near Bus Stand, Gohana Road, Jind, Haryana (Annex. P-2). It was certified by the Hospital that experience of the petitioner related to Community Education in Health and Family Welfare Programme in Kharab Hospital certifying that the petitioner worked w.e.f. 18.2.2002 to 25.5.2007 and her work was very satisfactory. She received her monthly salary of ₹ 1200/-. This experience certificate (Annex. P-2) was part of the verification exercise. The Enquiry Officer i.e. the District Family Welfare Officer, Jind prepared a report (Annex. P-4) after visiting the Kharab Hospital and the report was submitted before the Civil Surgeon, Jind vide Annex. P-4. The operative part of the report of the District Family Welfare Officer, Jind submitted to the Civil Surgeon, Jind dated 17th June, 2008 (Annex. P-4) is reproduced as under:-

“3.Smt.Anju Bala daughter of Shri Om Parkash:- It has been found during verification that on 20.8.2007 Dr.Dharampal Kharab Hospital Jind has issued the experience certificates on one day. In the first certificate, the experience has been shown from 20.02.02 to 28.05.07 and in the second certificate from 16.02.02 to 25.05.07. There is no record available in Kharab Hospital. Dr. Kharab on 30.05.08 has given in writing that Anju Bala son of (sic.. daughter of) Om Parkash has

not been paid any salary and she is not regular employee of their organization.”

3. However, the signatures on the certificate were not denied nor was it denied by the doctor that the petitioner had worked in their hospital. The petitioner asserts that if the record of the relevant period was not produced, as reported, the petitioner should not be made to suffer for that reason. But she was not offered appointment from the waiting list.

4. In these circumstances, the petitioner approached the Office of the Director General, Health Services, Haryana, Panchkula requesting for her appointment. She was informed that the experience certificate will again be got verified. Her experience certificate was again verified through the Dental Surgeon, Community Health Centre, Kalwa District Jind who submitted his report dated 11th September, 2008 to the Director General, Health Services, Haryana Panchkula vide Annex. P-5 stating that the experience certificate submitted by the petitioner and issued by Kharab Hospital is in order. Kharab Hospital is working at present also. The relevant part of the report dated 11th September, 2008 (Annex. P-5) prepared by the Dental Surgeon, Community Health Centre, Kalwa, Jind which was submitted to the Director General, Health Services, Haryana, Panchkula is reproduced as under:-

“The experience certificate submitted by Anju Bala d/o Sh. Om Parkash, H.No.2905, Urban Estate Jind issued by Kharab Hospital is in order. This Kharab Hospital is working at present also.”

5. The Civil Surgeon, Jind vide Memo No.382 dated 21.11.2011 (Annex. P-15) issued to the Director General Health

certificate issued by the Kharab Hospital to the petitioner is genuine. The said Annexure P-15 was brought on record by the petitioner by filing CM No.469 of 2014 which was allowed as prayed vide order dated 20.1.2014 passed by this Court. Therefore, Annex. P-15 is part of the record the presence of which is not disputed by the official respondents. The letter of the Civil Surgeon dated 21.11.2011 (Annex. P-15) is reproduced as under:-

“On the above subject in reference to your office letter no.2/3-1MM-08/213 dated 17.5.2008 you are hereby informed that from the certificate given by Dr.Kharab of Kharab Hospital, Jind it seems that the employee who was having the record was absent on the day of enquiry and record could not be made available. Anju Bala D/o Om Parkash R/O H.No.2905, Urban Estate, Jind had worked in Kharb Hospital from 16.2.2002 to 25.5.2007 in Community Health Education and Family Welfare Project. She had remained active employee of this Institution. She has done work as a social worker. During this period she was given no salary. This experience is genuine. In this Institution the social work is being done and this Institution is working in Jind now also.”

6. The petitioner made a representation on 5th February, 2009 (Annex. P-6) to the Chairman, Haryana Staff Selection Commission, Panchkula. She stated therein that her father had some bickering on some matter with Kharab Hospital and due to this reason the Kharab Hospital has not shown the record of her working experience in the Hospital. As a result

Officer. She has also stated that she had earlier worked with Mittal Clinic, Dadri before working in Kharab Hospital from 1.1.2000 to 31.1.2002. The experience certificate was issued by the Mittal Clinic on 31.1.2002. However, the petitioner did not attach the experience certificate issued by the Mittal Clinic earlier with her application form as only two years experience was required and the counting of which, the petitioner had attached experience certificate issued by the Kharab Hospital. She requested that the experience certificate issued by the Mittal Clinic, Dadri be also got verified.

7. When the claim of the petitioner was not considered, she approached this Court by filing CWP No.5801 of 2009. Vide order dated 18th April, 2009 passed by this court, the petitioner was allowed to withdraw the writ petition with liberty to approach the respondents before approaching this Court.

8. In these circumstances, the petitioner served a legal notice dated 18th April, 2009 (Annex. P-7) on the respondents. The petitioner also sought information under the Right to Information Act, 2005 which was supplied to her on 17th August, 2010 vide Annex. P-9 stating that out of 63 Posts of Block Extension Educators, 61 posts were filled up and two posts remained vacant and one in her category. When no action was taken on the earlier legal notice, the petitioner again served a reminder legal notice on 16th September, 2009 (Annex. P-8) with a request to appoint her on the said post being at No.1 in the waiting list. She reiterated that if the record was not produced by the Kharab Hospital, the signature on the certificate was not denied and the experience certificate was not denied and also the fact was not denied that the petitioner had worked there. Dr. Kharab did not say

nor she was a regular employee of the organization as per Annex. P-4 being Memo dated 17th June, 2008 referred to above.

9. When the request of the petitioner was not considered by the respondents, she filed a second writ petition i.e. CWP No.20495 of 2010 which was dismissed by order dated 29th November, 2010 (Annex. P-10) passed by the learned Single Judge of this Court. Aggrieved by the order of the learned Single Judge, the petitioner preferred an intra court appeal i.e. LPA No.1742 of 2010. The Appellate Bench was of the view that the learned Single Judge should have issued direction to the Director, Health Service-respondent no.2 to decide the representation made by the appellant in a time bound manner. Accordingly, the Appellate Bench disposed of the LPA by order dated 17th December, 2010 (Annex.P-11) with a direction to respondent no.2 to decide the representation of the appellant expeditiously preferably within a period of two months from the receipt of a certified copy of this order.

10. It is pursuant to the directions in appeal that the impugned order dated 13th May, 2011 (Annex. P-12) was passed by the Director General Health Services, Haryana, Panchkula. The claim of the petitioner for appointment to the aforesaid post was rejected by the Director General Health Services, Haryana with the following observations:-

“Respondent no.2 in compliance of Hon’ble High Court directions dated 17.12.2010, examined the claim of Ms. Anju Bala made by her in her representation dated 18.4.2009. It is found that no candidate from BCA waiting list was offered an appointment till date. The validity of selection list had already lapsed. Moreover, experience certificate of Ms.Anju Bala was found false.

This fact has also been verified by Dr.Vimla, Dental Surgeon, CHC Kawla District Jind vide her letter dated Nil. Therefore, Ms.Anju Bala is not entitled for appointment against the post of Family Welfare Extension Educator.”

11. The Reasons for rejection are three fold: firstly; the experience certificate of the petitioner was found false; secondly; the validity of the waiting list had lapsed and thirdly; no candidate from BCA category was offered appointment from the waiting list. The Director General, Health Services, Haryana has relied on a verification done by one Dr. Vimla, Dental Surgeon, CHC, Kalwa vide letter dated Nil. Therefore, the petitioner- Anju Bala was found not entitled for appointment against the post of Family Welfare Extension Educator. It is this order which is under challenge in this writ petition.

12. I have heard learned counsel for the parties and perused the paper-book. This is the 5th round of litigation including the one by non-selected candidates.

13. Newly added respondent, Dr. D.P.Kharab has filed written submission dated 19th February, 2018. He has stated emphatically in paragraph 5 of his written submissions that there is no denial to the fact that the petitioner has worked as Educator in Community Education in Health and Family Welfare Programme. The petitioner was associated with his Hospital for promotional work in the area as indicated in the preceding paragraph. He further stated that his hospital is an old one in the area and the nature of functions as were assigned to the petitioner included spreading awareness in the prescribed field in the nearby rural areas. As a result, there

bound down to report her day to day work to the deponent (Dr. Kharab) keeping in view the nature of work primarily assigned to her. He explains that the petitioner was given ₹ 1200 per month as honorarium and the said amount was not *strict senso* a salary but rather in the nature of stipend. The use of the word “salary” in the experience certificate is not in literal sense of the meaning of the word and if so interpreted, this may be taken as inadvertent use of the word by him and hence it is a bona fide mistake. In view of the nature of the functions discharged by the petitioner, the attendance/salary record was not maintained in the hospital along with other regular staff discharging their clinical duties etc. However, it has been reiterated that the petitioner has worked with the Kharab hospital.

14. Short reply on behalf of Mittal Clinic, Charkhi Dadri-respondent no.6 dated 10th December, 2017 is also on record. It has been submitted by the Mittal Clinic that the impugned order dated 30th June, 2017 passed by the Director General Health Services, Haryana is without application of mind and without application of law as provided under Section 149 (1) (a) of the Income Tax Act, which provides for keeping of record for assessment only upto four years. The answering respondent admits that the petitioner worked as Educator and helped in routine OPD work. She was drawing ₹ 1500/- per month as stipend and not salary. The answering respondent explained that as per Income Tax Act, old record of 4 years cannot be called for since in the clinic only five years old record is kept and beyond that the record is weeded out as is being done by almost all the establishments in town. Nevertheless, I need not go any further into this controversy because the experience certificate issued by Mittal Clinic is not relied upon by the petitioner in the application form for the aforesaid post.

However, at least this much can be deduced that the answering respondent, at least, has not denied the fact that the petitioner worked for his clinic.

15. The Commission has filed a short reply. They state that while recommending names of the selected candidates to the Health Department, the Commission advised Government that the antecedents and documents (including experience certificates) of the selected candidates be verified by them before allowing selected candidates to join duty. In case experience certificates on verification are not found genuine, the Department will take necessary action in the matter. The Commission states that necessary action to appoint the candidate out of waiting list as per Chief Secretary, Haryana instructions dated 7.10.98 is required to be taken by the Health Department, Haryana. Therefore, no cause of action arises qua the respondent-Commission.

16. The respondent-Director General, Health Services, Haryana has contested the case by putting his written statement of behalf of the State Government. It is stated that the claim of the petitioner was examined as per directions of the High Court in the appeal and it has been found that the appointment could not be offered to the petitioner for the three reasons already stated above while discussing the impugned order. The report of the verification done by Dr.Vimla, Dental Surgeon, CHC Kawla District Jind had been adverted to both in the order and in the written statement, but the the report of Dr.Vimla dated Nil had not been placed on record before this Court for it to express any opinion on the same. The answering respondent insists that the petitioner did not possess valid service experience and is thus not eligible for the post.

17. Nothing new has been said in the written statement, other than

impugned order dated 13th May, 2011 (Annex. P-12) is to be considered by this Court. Third paragraph of the impugned order contains quotation from the legal notice dated 18th April, 2009 whereby the petitioner had staked her claim for appointment to the post as her experience certificate had been found to be correct by both the Dental Surgeon, Community Health Centre, Kalwa, Jind vide report dated 11.9.2008 (Annex. P-5) and the Civil Surgeon, Jind vide his report dated 21.11.2011 (Annex. P-15) both of them in favour of the petitioner. Nothing has been mentioned in the impugned order as to why the opinions of these two Officers have been ignored whereas it was the relevant consideration upon which valuable rights of the petitioner rest. Two Officers of the Government in the rank of Civil Surgeon and Dental Surgeon have found the experience certificate genuine. In this view of the matter, it would be difficult to hold that the experience certificate of the petitioner is not genuine only for the reason that at the time of visit to Kharab Hospital, the record was not shown. The official respondents have not rebutted the pleadings in the written submissions of Dr. Kharab of Kharab Hospital. Dr. Kharab has not denied his signature on the experience certificate. He has explained the work of the petitioner in the Hospital and in the field.

18. Now, the interim orders passed by this Court from time to time deserve to be noticed and the same have to be dealt with as per directions issued. This Court addressed itself for the first time on the experience certificate issued by Kharab Hospital in the order dated 6.3.2017. The Court noticed that the Kharab Hospital issued two certificates, one prior to selection to the post and the other one subsequent to the selection. The interim order dated 6.3.2017 passed by this Court is reproduced below:-

“Matter relates to selection and appointment to the post of Family Welfare Extension Educator. Petitioner is a candidate for the recruitment. His name is in the waiting list at serial No.1. The petitioner's candidature has been rejected on two grounds namely first is that the petitioner's experience certificate is fake one and the second ground is that select list has expired.

The respondents-selecting authority is directed to produce the experience certificate of the petitioner issued by Dr. Dharam Pal Kharab, Kharab Hospital Jind for the period from 20.2.2002 to 28.5.2007. It is learnt that Dr. Dharam Pal Kharab had issued two certificates one is prior to selection to the post and other one is subsequent to the selection.

List this matter on 29.3.2017.”

19. The State of Haryana took time to comply with the order of 6th March, 2017. On 19th April, 2017, this court passed the following order:-

“Dispute relating to experience certificate for the purpose of selection and appointment to the post of Family Welfare Inspection Educator. The petitioner is possessing experience certificate issued by Dr. Dharampal Kharab, Kharab Hospital, Jind (Annexure P-2). The same is disputed by the official respondents. Annexure P-4 is an extract of the inquiry in which it is held that Dr. Kharab has not engaged the services of the petitioner. Therefore, certificate is not a genuine one. On the other hand, Annexure P-5 and P-15 which are evident that the petitioner did have the experience certificate. Since there is a disputed facts, the same shall be examined by respondent No.2 and take a decision within a period of four weeks from today and place it on record on the next date of hearing.

List this matter on 30.5.2017.”

20. In order to settle the disputed fact in issue, the same was directed to be examined by the Director General Health Services, Haryana. The matter was adjourned to 30.5.2017. On 30.5.2017, this Court observed that if the order dated 19.4.2017 is not complied on the fixed date, adverse order would be passed. The matter was adjourned to 19.7.2017. When the matter came up for hearing on 19.7.2017, speaking order dated 30.6.2017 was brought on record by the respondents with CM No.9204 of 2017 and the same was directed to be placed on record as Annex. R1/1 and the following order was passed on 19.7.2017:-

“CM No.9204 of 2017

By this application, the speaking order passed by the Director General Health Services, Haryana, on 30.6.2017, pursuant to an order of this Court dated 19.4.2017, is sought to be placed on record.

The application is allowed and the speaking order is taken on record as Annexure R-1/1, to be annexed with the written statement dated 27.7.2012, already filed.

CWP No.2440 of 2012

A perusal of the said speaking order shows that neither Dr. Kharab of the Kharab Hospital, Jind, nor Dr.B.L. Bassia of the Mittal Clinic, Charkhi Dadri, who had issued the experience certificates, Annexures P-4 and P-6 (part), respectively, were able to produce any record in the enquiry conducted by the Director General Health Services, to prove that the petitioner, Anju Bala, was actually working with them during the period stated in such experience certificates.

In fact, as per the speaking order taken on record today, the enquiry revealed that these doctors stated that no salary had been paid to the petitioner and therefore, they

could not produce any record showing her to have worked in their respective hospitals during the period concerned.

On the other hand, the experience certificate issued by the doctor of the Kharab Hospital, Jind, shows that the petitioner was earning a monthly salary of Rs.1200/-, whereas in the experience certificate issued on behalf of the Mittal Clinic, Charkhi Dadri, on 31.1.2002, it is stated that she was drawing Rs.1500/- per month as stipend during the period that she was working in that hospital.

Let notice be issued to Dr.D.P.Kharab of the Kharab Hospital, Jind, and Dr.B.L.Bassia of the Mittal Clinic, Charkhi Dadri, as to why they should not be proceeded against under appropriate proceedings, for, prima facie, issuing false experience certificates to the petitioner. The notice would be returnable on 26.10.2017.

21. This is how the two representatives of the two Hospitals have been impleaded as respondents. Their submissions have been discussed above and need no repetition.

22. In logical order, this Court would now deal with the adverse order dated 30.6.2017 passed by the official respondents passed pursuant to the interim order of this Court dated 19.4.2017. The order dated 30.6.2017 is placed on record as Annex. R1/1 at page 76 of the paper-book.

23. The existence of enquiry reports of the Dental Surgeon, Community Health Centre, Kalwa, Jind vide its report dated 11.9.2008 (Annex. P-5) and the Civil Surgeon, Jind vide its report dated 21.11.2011 (Annex. P-15) are not disputed by the Department. These are vital documents in favour of the petitioner. The first and foremost fact that strikes the mind in the speaking order dated 30.6.2017 (Annex. R-1) passed pursuant to the directions of this Court is that the Director General Health Services, Haryana records in the second paragraph of the order (at page 77

Annexure P-15 has been annexed by the petitioner with the petition” whereas the said Annexure P-15 was brought on record by the petitioner by filing CM No.469 of 2014 which application was allowed as prayed vide order dated 20.1.2014 passed by this Court. Therefore, Annex. P-15 is part of the record and which is not disputed by the official respondents.

24. In the impugned order (Annex. R1/1), the respondent takes stock of two certificates of the petitioner that the same are available in the file i.e. one issued by Kharab Hospital and another issued by Mittal Clinic. It is alleged that the certificates issued by Mittal Clinic was procured by the petitioner, the details of which have been apprised vide affidavit dated 7.11.2016. It has been said that Dr.D.P.S.Kharab has issued two experience certificates on the same date. In the first experience certificate period has been shown from 20.2.2002 to 28.5.2007 while in the second experience certificate the period has been shown from 16.2.2002 to 25.5.2007. The statement of Dr.Kharab has been reproduced to the effect that the petitioner was not a regular employee of Kharab Hospital from 16.2.2002 to 25.5.2007 and no salary was given to her for the above period and therefore, attendance was not mandatory to be recorded in the register. Even the statement of Dr.B.L.Basia of Mittal Clinic, Charkhi Dadri has been reproduced wherein he has stated that the certificate has been issued by him and signed and stamped in relation to the petitioner on 31.3.2002. He has stated that he does not remember anything about her and no such record is available with him. He stated that they keep the record only for 5 years and beyond this, the record is destroyed. The conclusion about this is summed up in the last paragraph of the order (Annex. R-1/1) passed by the Director General Health Services, Haryana deducing from the statements of both the

certificates were not issued with good conscious” (sic. “conscience”). While holding so, the Director General has in short summed up the case observing that the experience certificates have admittedly been issued by both the doctors, but they failed to produce the record, attendance register, salary register etc. in support of the certificates for the period i.e. from 1.1.2000 to 31.1.2002 for one certificate issued by Mittal Clinic, Charkhi Dadri, 16.2.2002 to 25.5.2007 and 20.2.2007 to 28.5.2007 for two certificates issued by Kharab Hospital, Jind. On these premises, the Director General concluded that the said certificates cannot be considered as valid certificates.

25. The entire thrust of the reasoning in the second impugned is on absence of attendance register, salary register etc. Both these aspects have been explained by the doctors in their written submissions before this Court and before the authorities during the enquiries. It is not denied by them that the certificates were never issued to the petitioner.

26. Whether the petitioner was paid salary or stipend or the work was done free in Kharab Hospital, payment of money appears to be not controlling or relevant to the prescribed criteria of selection, which apart from essential educational qualifications, was only two years experience relating to Community Education in Health and Family Welfare. From where this experience has to be gained, whether from private hospital or from government hospital or elsewhere; is not specified in the recruitment rule and in the advertisement. There is no condition of pay, salary, stipend, honorarium etc. engrafted in the essential qualification or eligibility for the post of Family Welfare Extension Education. It is also not specified from which Institution it had to be gained. Medical institutions are not mentioned,

part of a Scheme of Government which may be attached to Hospitals in both public and private sector and candidates should have two years experience in work relating to Community Education in Health and Family Welfare, wherever obtained. Community Education in Health and Family Welfare is an omnibus of many related activities and I see no reason why the statement of Dr. Kharab providing certification of experience for about five years that the petitioner served in the hospital on stipend, should be discarded. The major premise is two years experience in the special field and not that it had to be gained from salary, pay etc. Therefore, it seems to me to be a travesty of justice to look for evidence in hard copies of the record and that too after long lapse of time. Besides, memory fades. The signatures on the experience certificate are admitted, which is crucial to the determination of the case. The inconsistencies of payment of salary or stipend or none and any marginal differences in the dates of 3-4 days in the two certificates of Kharab Hospital are not enough to turn the tables on the petitioner. Besides, the order produced by the official respondent pursuant to the interim order of this Court is only to the effect that the experience certificates were not issued by good conscience. For good or bad conscience, a certificate cannot be held to be fake or bogus without a finding that the statements of Dr Kharab are not to be believed. I find that there is a dearth of relevant reasoning in both the original impugned order dated 13th May, 2011 (Annex. P-12) and the order dated 30th June, 2017. A man's conscience can never be crystal clear as the Director General Health Services, Haryana thinks. The Director General Health Services, Haryana could not find ways to clearly express his ideas and to my mind the order remains mostly cryptic and non-speaking. There is no supporting discussion

on the three crucial issues arising in this case. Two favourable reports have been ignored while they were relevant to the issue.

27. Three issues were made basis of rejecting the claim of the petitioner. Firstly, the experience certificate of the petitioner was found false; secondly, the validity of the waiting list had lapsed and thirdly, no candidate from BCA category in the waiting list was offered appointment. Dealing with the first issue, I am of the view that when a document is to be construed as fake and bogus, it must be beyond doubt, which is not the case explained even by the respondent-Department. In these circumstances, I hold on the question of validity of the experience certificate of Kharab Hospital that it could not have been discarded out of hand. The stand of the respondents-Department with regard to the experience certificate being fake and bogus is belied by the admission of the signatories of the Kharab Hospital signing and issuing the experience certificate to the petitioner. Furthermore, not only did the Dental Surgeon, Community Health Centre, Kalwa, Jind vide its report dated 11.9.2008 (Annex. P-5), but also the Civil Surgeon, Jind vide its report dated 21.11.2011 (Annex. P-15) expressed their opinion in favour of the petitioner that the experience certificate is genuine and true. In these circumstances, I hold that the petitioner has experience of two years in the special field which is one of the requirements of eligibility.

28. So far as the second and third issues are concerned, these two are inter-connected and therefore, are being dealt with together. The petitioner has categorically stated in paragraph 10 of the writ petition that the respondents had issued appointment letters to the other candidates, namely, Mr.Sanjay, Ms.Priyanka and Mr.Satya Parkash who were appointed in December, 2008. This categorical averment made by the petitioner has

Haryana in the reply. The result was declared on 10th April, 2008 and the aforesaid candidates were appointed in December, 2008. It is also an admitted fact that one candidate out of the 7 vacancies advertised in the BCA Category did not join and one vacancy was available for filling up from the waiting list. It is also not disputed by the respondents-Department that in this case waiting list was not meant to be operated. Waiting list was prepared by the Commission and forwarded to the department. The petitioner was at No. 1 position. Waiting list is activated the moment a selected candidate does not join. Waiting list starts to operate not from the date of declaration of result, but from the date when the select list is received by the department. And runs from the day candidate is offered appointment and refuses to accept the offer within the time allowed. There is nothing on record to show as to when the last candidate refused to accept the offer. However, it is not disputed that some candidates joined in December, 2008. On coming to know that a selected candidate did not join the post, the petitioner feeling aggrieved took up her cause and served a legal notice (Annex.P-7) on the respondents on 18.4.2009 and therefore, the best possible time to operate the waiting list would be from December, 2008 which brings the request of the petitioner for appointment within 4/5 months after the appointments and thus is within one year of the life of a waiting list. In this regard, the petitioner relies on the decision of the Supreme Court, and rightly so, in case R.S.Mittal vs. Union of India, (1995) 3 SCT 284, the decision of a Division Bench of this Court in Ritu d/o Sh.Nafe Singh vs. State of Haryana and others, 2013 (3) SCT 281 and the decision of Single Bench of this Court in Suman Rani vs. State of Haryana and others (CWP No.16988 of 2014 decided on 22.9.2016).

29. In view of the above, the contention of the respondent-Department that the validity of the waiting list has lapsed and that no candidate from BCA category in the waiting list was offered appointment are an erroneous view and deserve to be set aside. Still further the selection process was stalled in litigation by non-selected candidates in 2008 which led to verification of experience certificates. Thereafter, the petitioner had to spend time in three rounds of litigation before presenting this petition in 2012 which means that this is the 5th round of litigation, four by her. As observed above, the official respondents had completely overlooked the reports of the two medical officers of standing regarding the validity of the experience certificate finding it/them true and genuine. These two reports were not taken into consideration while passing the original impugned order and then again in the order passed pursuant to the directions of this Court. Besides, the petitioner has protection of interim order in LPA passed by the appellate court directing the official respondent vide order 17th December, 2010 (Annex.P-11) to decide the representation of the petitioner. In these circumstances, I find that the action of the appointing authority in rejecting the claim of the petitioner suffers from vice of arbitrariness and as such cannot be sustained in law or fact.

30. In view of the above, the writ petition is allowed and the respondent-Director General Health Services, Haryana is directed to issue appointment letter to the petitioner for the post of Family Welfare Extension Educator within a period of 6 weeks from the date of receipt of certified copy of this order after completing other formal requirements. Such appointment shall relate back notionally to the date when the last candidate was appointed in the category of BCA. Petitioner's seniority shall be fixed

appointed to the post meanwhile. However, to balance out the equities, the monetary benefits will be notional and will be actual from the date of appointment.

23.8.2018
MFK

(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

No