

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.14956 of 2017 (O&M)
Date of Decision: 25.01.2018

Manju

... Petitioner

Versus

State of Haryana and others

... Respondents

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

Present: Mr. Sandeep Kotla, Advocate,
for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

Mr. Teevar Sharma, Advocate,
for respondent No.3.

RAJIV NARAIN RAINA, J.

1. A physically challenged lady, the petitioner, applied for Staff Nurse in Pt. B.D. Sharma, Postgraduate Institute of Medical Sciences, Rohtak. She was offered appointment by letter dated 24.12.2010 but was denied joining on medical grounds.
2. When this matter came up for hearing on July 13, 2017 the Bench put the respondents to notice and passed the following order:-

“Inter alia submits that the petitioner had been duly selected as a Staff Nurse and the Board had opined regarding her disability to the extent that she was unfit to perform the duties of a Staff Nurse, but she may be considered for the desk job. It is, accordingly, submitted that cancellation of the appointment letter dated 27.05.2011 at this belated stage vide communication dated 22.02.2017

(Annexure P-8) is not justified.

Notice of motion for 06.09.2017.”

3. Again, when the matter was listed on January 12, 2018 learned counsel for the respondent Institute entered appearance and sought time to obtain instructions as to why the petitioner should not be appointed after selection as a Staff Nurse [Category-36] under advertisement No.1/2010 with closing date March 04, 2010. Counsel returned with instructions stating that the respondent Institute is not prepared to offer appointment to the petitioner because of her handicap as she may not be able to work as a Staff Nurse in the hospital attached to the Institute. Her letter of appointment as a Staff Nurse dated December 24, 2010 was kept in abeyance to await expert medical opinion which was received without any action proposed and the case sent to State Government for advice. Finally, the offer of appointment has been cancelled by the State Government by Memo dated February 22, 2017. Against the order the petitioner has approached this Court seeking writ quashing the order and for a mandamus to the respondents to revive the offer of appointment and allow her to join the post on her merit in the selection.

4. The Additional Chief Secretary Haryana Government, Department of Medical Science & Research, Chandigarh has passed a short order dated February 22, 2017, mentioned in the previous paragraph, holding that Government of Haryana has examined the matter carefully regarding appointment on the post of GNM, but since the Civil Surgeon, Karnal has declared her unfit to perform duties as a Staff Nurse the offer stands cancelled. This order is against facts.

5. The Civil Surgeon, Karnal had not declared the petitioner unfit

to perform duties as a Nurse. He did not go that far. The Civil Surgeon, Karnal did not form any conclusive opinion on the subject matter. He only explained the medical condition of the petitioner and palmed off the case to the PGIMS Rohtak by letter dated January 05, 2011 addressed to the Medical Superintendent, PGIMS Rohtak on the subject of medical examination of the petitioner. The letter of the Civil Surgeon reads as follows:-

“In the above said matter Manju Devi daughter of Jai Parkash resident of village and Post office Fafrana, Tehsil Assandh, (Karnal) who has been selected vide your office memo No.PGIMS/C-I/10/1/4586 dated 24.12.2010 as a staff nurse and candidate appeared in this office for medical examination at Civil Hospital, Karnal before Orthopaedic Surgeon vide which she is suffering from Pseudo arthritis (stiffness of right knee) and Rt Knee with B/L equines deformity and the department has issued the handicapped certificate of 70%, now her right lower limb is covered with the plaster and she is on wheel chair, you are hereby requested to conduct her medical examination by some medical board, thereafter her fitness certificate may kindly be issued. The signature of the candidate is placed below after verification.

*Signature Sd/= Deputy Civil Surgeon, Medical
Sd/- Manju Devi For Civil Surgeon, Medical, Karnal*

Memo No.Admn/IV/10/ dated

A copy of the same is forwarded to Manju Devi daughter of Sh. Jai Parkash resident of VPO Fafrana, Tehsil Assandh (Karnal) and hereby written to appear before MS PGI, Rohtak for her medical examination on any working day.”

6. Quite apparently, the Civil Surgeon, Karnal only forwarded the case to the Medical Superintendent, PGIMS Rohtak for conducting a medical examination of the petitioner by the Medical Board and for no other purpose.

7. The petitioner appeared before the Medical Board on April 15, 2011 comprising the Senior Professor of Orthopaedics, Professor of Orthopaedics and Assistant Professor of Orthopaedics of the Medical Institute at Rohtak who on April 19, 2011 declared that the petitioner is an old case of residual paralysis affecting both lower limbs, with failed arthrodesis right knee with local infection. She is unable to stand without bilateral axillary crutches. In her present condition, she is unfit to perform the duties of a Staff Nurse. However, the Medical Board at the same time recommended that the petitioner may be considered for a desk job.

8. Of paramount importance to this case that the Medical team of PGIMS Rohtak comprising of experts have left a window wide open for the respondents to consider the case of the petitioner for an alternative desk job. A nurse would normally be responsible for the care of a patient. A patient is entitled to the best medical care available. We have to consider whether the nurse would be able to provide the level of care to which the patient is entitled. If the employer's assessment is that she would not be able to perform duties of the post, then it is their responsibility to ensure that she is given the job commensurate to her capabilities once they have selected her on merit. This may not necessarily include direct patient care. She should not be discriminated on the grounds of her disability but for the respondents to consider her ability rather than disability. The employer can ensure that she gets appropriate support and training to enable her to carry out her desk job efficiently. Everyone has the right to earn a living irrespective of the physical challenges they may have.

9. In an institution which advertised the post of Staff Nurse, to

which the petitioner responded applying in the Physically Handicapped (General) category, qualified the examination and heartlessly now the authorities have forsaken her. It may mentioned that the same team of doctors of the Department of Orthopaedics at Rohtak in responding to the request of the Medical Superintendent dated January 07, 2011 have medically examined the petitioner on January 10, 2011 and have thought it fit and appropriate to suggest/recommend to their own Institution the case of the petitioner stating that:

“Patient was examined by Medical board on 10.1.11. She is a case of infected Psudoarthrodiosis of Right knee with equines of Left ankle which had been operated with deformity correction of left ankle and right knee attempted arthrodesis. She is presently under treatment and is not fit right now to join duty as staff nurse and can be followed up after 2 months for re-examination.”

10. In the written statement filed by respondent No.3 PGIMS Rohtak, the petitioner has been accused of approaching Court with unclean hands and concealing material facts in the petition with incomplete documents. The petitioner is not protected by Section 47 of the Disability Act which provides protection to employee who acquires disability during service and also if promotion is denied merely on the ground of disability. Moreover, mere offer of appointment does not carry right with it except on fulfilment of terms and conditions of the offer letter which clearly in Clause 11 required medical clearance and declaration of fitness. I fail to understand how the petitioner has tried actively to mislead the Court by filing the present petition with incomplete facts and documents and therefore she is not entitled to any relief as prayed. This Court would have

none of the objections in the preliminary objections as a ground of rejection. The respondent Institute at the end of the objections in paragraph 3 states that the grievance of the petitioner, if any, is against the State of Haryana. State of Haryana has not put in its written statement to contest the case even while the impugned order is passed by it.

11. The petitioner on competing successfully for the post of Staff Nurse was offered appointment; her case was sent to Civil Surgeon who did not form definitive opinion and sent the patient to the Medical Board at Rohtak; she was found unfit to do the duties of a Staff Nurse but the expert doctors of PGIMS Rohtak in the Orthopaedics department, belonging to the same premier institute had opined that the petitioner may be considered for a desk job. This meant a job in lieu of active bedside service. If the expert doctors who medically examined the petitioner on her disability and who routinely perform surgeries in the Orthopaedics department consciously recommend that a Staff Nurse could well perform a desk job then great weight must be attached to the opinion of the three medical doctors/surgeons. And it is this facet of the case that has completely escaped due consideration by the Additional Chief Secretary, DRME, Haryana in blindly passing the impugned order dated February 22, 2017, depending entirely on a non-existent opinion of the Civil Surgeon, Karnal never rendered and not taking into account the recommendations of the Medical Board in PGIMS Rohtak. The Additional Chief Secretary to Government of Haryana was not deciding a case relating to a Government hospital or dispensary in Haryana as he was dealing with a post offered by respondent 3- Pt. B.D. Sharma, Postgraduate Institute of Medical Sciences, Rohtak and

thus, he would not be the best judge of the circumstances in which the petitioner is placed, especially regarding alternative desk job. There is no independent assessment of the disability by the third respondent. It is well settled that if an administrative order does not contain relevant reasons germane to the decision; is completely wide off the mark; bears relationship with irrelevant considerations or falls foul of due application of mind then the order by the very nature of things is legally and factually bad and as a result of omission of relevant facts must fall to the ground and be quashed. With these latent failings in the impugned decision the Court would be within its jurisdiction to strike it down and direct a revisit.

12. Striking down of the order rejecting the case of the petitioner for appointment would result in two options equally exercisable. One is to remand the case to the Additional Chief Secretary, Haryana, Department of Medical Education and Research and the other, to issue a writ of certiorari quashing the order and simultaneously issuing a mandamus to the respondents to consider the case of the petitioner for alternative employment, in any of the capacities of work that a Staff Nurse can perform as described by the Medical Board on a “desk job”.

13. Given that the reason for cancellation of the offer of letter of appointment is inconsistent with the record the order cannot survive. And if any weight is attached to the opinion of the three medical experts who comprised the Medical Board and regard had to them, then also having regard to the delay caused by the Government in rejecting the case of the petitioner as late as in in 2017 keeping it pending in animated suspension from 2011, then in my considered view, justice would be served more

substantially and appropriately, if Court directions are issued to remove the impugned order dated February 22, 2017 from the Government record by declaring them illegal and arbitrary. And then to direct the respondent No.3, namely, Pt. B.D. Sharma, Postgraduate Institute of Medical Sciences, Rohtak to consider appointing the petitioner as a Staff Nurse and to assign her duties as are consistent with her medical condition. All said and done, respondent No.3 competed in the Physically Handicapped (General Category) and was successful in the written examination. She was offered appointment in writing. She was called for interview. She was selected on merit in open competition and asked to proceed for medical examination. However, her case was kept hanging fire from May 2011 to February 2017 which alone supports reason to cover delay and laches as no longer ground for dismissal of the petition. The petitioner cannot be punished for her disability or be discriminated against in the matter of employment. The respondents are in duty bound to consider posting her in a suitable place/seat which is consistent with her ability by disregarding her handicap and by making reasonable adjustments in the duty roster and to “make disability a footnote rather than a headline.” Conventional attitudes on nursing care need to change to accommodate persons with disability and bring them in the mainstream of society. Job opportunity to this special class cannot be excluded altogether on the basis of disability. The petitioner's disadvantages can be turned into her advantages if thought and care is given to her condition.

14. Accordingly and as a result of the foregoing discussion, this petition is allowed in the above terms. The impugned order dated February

22, 2017 is set aside. Respondents shall allow joining time to the petitioner by extending the date. The petitioner will be given 15 days' time to join as Staff Nurse with a desk job counted from the expiry of a period of six weeks from the receiving certified copy of the order. Time is granted to provide for right of appeal. On joining service, the consequential benefits will be granted notionally from the selection process and batch mates, but with salary actually paid from the date of joining service in the light of this order and judgment.

(RAJIV NARAIN RAINA)
JUDGE

25.01.2018
manju

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>