

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**LPA No.585 of 2018 (O&M)
Date of Decision: 10.05.2018**

Pt. B.D.Sharma Post Graduate Institute of Medical Sciences, Rohtak

... Appellant

Versus

State of Haryana and others

... Respondent

**CORAM:-HON'BLE MR. JUSTICE AJAY KUMAR MITTAL, ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA**

Present:- Mr. Teevar Sharma, Advocate,
for the appellant.

TEJINDER SINGH DHINDSA, J.

CM No. 1578 of 2018

Instant application has been filed under Section 5 of the Limitation Act seeking condonation of delay of 40 days that has occurred in filing the accompanying appeal.

For the reasons stated in the application, we are satisfied that sufficient cause has been shown to explain the delay.

Prayer is accepted.

Delay condoned.

Application disposed of.

Main Appeal

Pt. B.D.Sharma, Post Graduate Institute of Medical Sciences, Rohtak has filed the instant appeal under Clause X of the Letters Patent against judgment dated 25.01.2018 passed

by the learned Single Judge whereby an order dated 22.02.2017 issued by the State Government cancelling the appointment of respondent No.3 herein on the post of Staff Nurse has been set aside and directions have been issued to appoint respondent on the post of Staff Nurse with a desk job by granting 15 days joining time.

Briefly it may be noticed that the appellant Institute had advertised 95 posts of Staff Nurse in the year 2010. 13 posts were reserved under the category of physically handicapped. Respondent No.3 herein applied for the post of Staff Nurse under the Physically Handicapped Category and subjected herself to a process of selection.

Having been selected appointment letter dated 24.12.2010 was issued subject to the condition that she has to appear before the Civil Surgeon, Karnal for medical examination prior to first entry into Government Service. Civil Surgeon, Karnal did not furnish any conclusive opinion and rather opined for respondent No.3 to be examined by a Medical Board of PGIMS, Rohtak. Thereafter respondent No.3 appeared before the Medical Board on 15.04.2011 and thereupon it was observed that she was unfit to perform the duties of a Staff Nurse but a recommendation was made that she may be considered for a desk job. The issue of joining on the post was kept in abeyance for a considerable length of time and finally the order dated 22.02.2017 was issued by the Additional Chief Secretary, Government of Haryana, Medical Sciences and Research Centre, Chandigarh cancelling the

appointment of respondent No.3 on the post of Staff Nurse which led to the filing of CWP No.14956 of 2017. Same has been allowed by the learned Single Judge vide impugned judgment dated 25.01.2018.

Learned counsel appearing for the appellant Institute has argued that the directions given by the learned Single Judge to appoint respondent No.3 as a Staff Nurse on a desk job will virtually upon floodgates of litigation by similarly situated persons who may have been denied appointment keeping in view their medical condition/physically handicap.

Further contended that an employer is not under a bounden obligation to change the working conditions of a particular post and the directions of learned Single Judge virtually have the effect of doing so.

Counsel would further argue that learned Single Judge has overlooked the aspect as regards duties and responsibilities of a Nurse which encompasses a wide range of tasks from Pediatric to Geriatric. Detailed charter of duties and responsibilities attached to the post of Staff Nurse have been furnished in the ground (iii) of the instant appeal. Against the backdrop of such duties and responsibilities, counsel submits that joining of respondent No.3 on the post of Staff Nurse and on a desk job would not be a workable solution.

We have heard counsel for the appellant at length and have perused the pleadings on record.

At the very outset we may take note that State of

Haryana who was the author of the impugned order cancelling the appointment of respondent No.3 is not in appeal before us against the judgment passed by the learned Single Judge.

The order dated 22.02.2017 (Annexure P-8) passed by the State Government cancelling the appointment of respondent No.3 on the post in question has been perused. The only reason cited in the order was to the following effect:

“Because you have been declared unfit to perform duty as a nurse by the Civil Surgeon, Karnal so the appointment letter dated 27.05.2011 issued by the Department is hereby cancelled.””

We have also perused the opinion of Civil Surgeon, Karnal that was furnished upon medical examination of respondent No.3 and which was 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 memoNo.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."

We have no hesitation in observing that Civil Surgeon, Karnal had not opined as regards respondent No.3 being not medically fit to perform the duties for the post of Staff Nurse. Rather Civil Surgeon, Karnal had addressed a communication to the Medical Superintendent, PGIMS, Rohtak for respondent No.3 to be medically examined by a Medical Board of the Institute and thereafter her fitness certificate to be issued.

We find no infirmity in the finding recorded by the learned Single Judge that the order dated 22.02.2017 passed by the State Government cancelling the appointment of respondent No.3 being contrary to record.

Insofar as the directions issued by the learned Single Judge to appoint respondent No.3 as a Staff Nurse but on a desk job, due weightage has been given to the recommendation made by a Medical Board on 15.04.2011 comprising of the Senior Professor of Orthopaedics, Professor of Orthopaedics and Assistant Professor of Orthopaedics of the appellant Institute and

which upon medical examination of respondent No.3 had recommended that she may be considered for a desk job.

We are unable to appreciate the stand taken on behalf of the appellant Institute which is virtually in contradiction to a recommendation made by a Medical Board consisting of Senior Doctors of Orthopaedics Department of the Institute itself. After all such senior doctors were certainly alive to the duties and responsibilities attached to the post of a Staff Nurse. No exception can be taken to the reasoning adopted by the learned Single Judge in giving due regard to the recommendation made by the Medical Board.

Counsel for the appellant laid much stress upon the multifarious duties and responsibilities attached to the post of a Nurse and detailed in the grounds of appeal and which as per counsel cannot be discharged by respondent No.3.

In our considered view the situation can be addressed if appellant Institute is given liberty to adjust respondent No.3 if not on the post of Staff Nurse with a desk job but on any other post carrying identical grade and pay and which the appellant Institute deems fit keeping in view the physical handicap of respondent No.3.

Ordered accordingly. The impugned judgment dated 25.01.2018 passed by the learned Single Judge in CWP No. 14956 of 2017 shall stand modified to such extent.

It is clarified that the aforesaid modification while upholding the impugned judgment is being directed in view of the

peculiar facts and circumstances of the present case and shall not be treated as a precedent. Admittedly, the letter of appointment had been issued in favour of respondent No.3 on 24.12.2010. She had appeared for medical examination before the Civil Surgeon, Karnal and thereafter before a duly constituted Medical Board of the appellant Institute in the year 2011. For inexplicable reasons the matter regarding joining on the post was kept pending for 06 long years. Respondent No.3 who is a lady and unfortunately suffers from a physical handicap was virtually preempted from exploring other avenues of employment.

Appeal is accordingly disposed of in the aforesaid terms.

(AJAY KUMAR MITTAL)
ACTING CHIEF JUSTICE

(TEJINDER SINGH DHINDSA)
JUDGE

10.05.2018

vandana

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No