

Sr. No. 114

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

**CWP No.4428 of 2019 (O&M)
Date of Decision: 20.02.2019**

Dr. Balwinderjit Singh

... Petitioner

Versus

Union of India and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Subhash Kumar, Advocate,
for the petitioner.

Mr. Amit Kumar, Advocate,
for respondent No.1.

ARUN MONGA, J.(ORAL)

1. The present writ petition has been filed, *inter alia*, for issuance of a writ in the nature of certiorari to quash the letter/order dated 19.11.2018 (Annexure P-4) passed by respondent No.2/Employees' State Insurance Corporation vide which the claim of the petitioner for appointment on the post of Specialist Grade-II, (Junior Scale) Anesthesia has been rejected.

2. Petitioner has stated that, this Court, vide its order dated 30.08.2018 (Annexure P-3), while disposing of an earlier writ bearing CWP No.6599 of 2016, instituted by the petitioner, had directed the Employees' State Insurance Corporation (ESIC) to consider the claim of the petitioner sympathetically, for appointment against the vacant post, without disturbing the other

selected candidates.

3. Learned counsel for the petitioner contends that the impugned order has been passed in violation of the order dated 30.08.2018, *ibid*. For better appreciation, the said order of this Court is reproduced hereinbelow:-

“The petitioner laid challenge to the selection of respondent Nos.5 and 6 before the Central Administrative Tribunal (for brevity, 'the Tribunal') on the posts of 'Medical Specialists Grade-II' in Employees State Insurance Corporation. The Tribunal dismissed the OA vide impugned order dated 03.02.2016 on the ground of delay of 6 years and 150 days. It is undeniable that the selection was finalized on 31.08.2009 whereas the petitioner filed the OA in year 2016.

[2] Learned counsel for the petitioner strenuously urges that the Tribunal ought to have condoned the delay keeping in view the fact that some other judicial proceedings pertaining to the same selection were decided by this Court on 28.11.2015 and soon thereafter the petitioner filed the OA. We are, however, not impressed by the submission. The petitioner was not party to the OA or CWP No.11196 of 2011 decided on 28.11.2015, though it pertained to the same selection. He cannot take advantage of pendency of those proceedings for the condonation of delay in filing his own OA.

[3] Be that as it may, learned counsel for the petitioner submits that one post remained unfilled and the petitioner is entitled to be considered against the same. He seeks to withdraw the writ petition so as to make a comprehensive representation to the Competent Authority to consider his claim sympathetically for appointment against the vacant post without disturbing

the other selected candidates.

[4] The writ petition is disposed of as withdrawn with liberty to the petitioner to pursue the said representation.”

4. After a bare perusal of the above order, I am not inclined to accept the argument of the learned counsel for the petitioner that this Court gave any directions, to competent authority, as has been contended by him.

5. Having failed to succeed before the Central Administrative Tribunal which dismissed his claim vide order dated 03.02.2016, he had approached this Court to assail the order passed by the CAT vide CWP No.6599 of 2016. Earlier writ petition filed by the petitioner was also qua his non-appointment to the same very post for which a mandamus has now been sought once again in the present writ petition. This Court clearly upheld the order passed by the CAT whereby his non-selection as Medical Specialist Grade-II was held to be justified.

6. In the parting, this Court merely noted the submission of the learned counsel for the petitioner that the petitioner is entitled to be considered against vacant post which remained unfilled.

7. In view of the said submission, the writ petition was disposed of as withdrawn with liberty to the petitioner to make a representation to the competent authority and pursue the same.

8. The other argument of the learned counsel for the petitioner is that because one post is unfilled, therefore, the petitioner can stake his claim on the same, even if, he is not

otherwise competent for selection qua the same. This argument, on the face of it, is absurd, to say the least.

9. Irrefragably, the selection to the post of Medical Specialist Grade-II, (Junior Scale) in Anesthesia Specialty in the year 2008-09 was done on the basis of performance of the candidates in an interview. The Interview Selection Board fixed qualifying marks as 300 out of 600. As against that, the petitioner merely secured 200 marks and, therefore, was held to be not qualified for the selection of the said post.

10. As already noted above, the petitioner unsuccessfully challenged his non-selection in the earlier round of litigation and the same has since attained finality. He cannot now seek his claim through back door entry by resorting to the method, as contended by the learned counsel for the petitioner, that merely because one post has remained unfilled, an unqualified person be appointed against the same. Consequences would be disastrous.

11. I do not, therefore, find any ground to interfere in the impugned order dated 19.11.2018 (Annexure P-4). The prayer of the petitioner for appointment to the post of Medical Specialist Grade-II (Junior Scale), cannot be accepted on the ground of post being vacant.

12. Petition is, accordingly, dismissed with no order as to costs.

(ARUN MONGA)
JUDGE

20.02.2019

vandana

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No