

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

**CWP No.13069 of 2018
Date of decision:24.07.2019**

Ramesh Kumar

... Petitioner

Vs.

Union of India and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Ms. Veena Kumari, Advocate
for the petitioner.

Mr. P.K.Longia, Advocate
for respondent No.1.

Mr. Kiran Pal Singh, AAG, Haryana.

AMIT RAWAL J.

Challenge has been laid to the impugned order dated 01.04.2018 (Annexure P-10), inquiry report dated 24.04.2018 (Annexure P-12).

The petitioner is stated to have contracted Human Immuno Deficiency Virus positive and since then, started working as volunteer social worker in the network of positive people, Bhiwani, 'Drop in Centre', and obtained training as 'Out Reach Worker'. The aforementioned assertions have been spelled out by referring to certificates and participation in programmes as Annexures P-1 to P-5. As per certificate dated 12.01.2018, Annexure P-6, had been working as Counsellor since 2014.

The Haryana Aids Control Society caused an advertisement

dated 23.02.2018 inviting applications for filing up the posts of Counsellor. There were three posts at Rohtak. Out of which one was reserved for backward class. The petitioner belonging to backward class and being graduate submitted an application but in selection process was kept in waiting list at serial no.1. Reliance was laid to the guidelines Annexure P-8 where the qualification for general category has been prescribed as Post Graduate and for positive person, graduate in any field. In such circumstances, petitioner was the only candidate and eligible and competent from the positive community and thus, was liable to be selected.

The legislature also promulgated an Act known as Human Immuno Deficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act 2017 and as per the provisions of Act, words either spoken or written publish, propagate, advocate or communicate by signs have been prevented from criticizing or broadcasting the disease of some other person. Section 37 of Act provides penalty for contravention.

The factum of petitioner being HIV positive was disclosed and in this regard, petitioner submitted a complaint on 11.4.2018 and in lieu thereof, a committee was constituted and found allegation to be unsubstantiated which as per averment is irrational.

State in reply controverted the allegations of petitioner particularly with regard to complaint by alleging that there was no such disclosure of disease of petitioner and reliance was also laid to the guidelines Annexure R-4 i.e. National HIV Counselling and Testing Services (HCTC) Guidelines by fixing the qualification of counsellor

to be a graduate degree holder in Psychology/Social Work/Sociology/Anthropology/Human Development or Diploma in Nursing with minimum 3 years of experience in HIV/AIDS etc. whereas for the person to be recruited from the community of affected people, graduate from any field or diploma in Nursing and minimum one year of experience. Petitioner possesses the qualification of BA with Sociology and thus, was considered and issued admit card for exam as per the criteria in advertisement and secured 48.9 marks and thus, was kept in the waiting list prepared for the selected candidates whereas candidate who stood at serial no.1 in main list secured 67.72 marks and serial no.1 in the waiting list secured 66.25 marks.

There is no provision for granting weightage marks to the community of people affected by HIV/AIDS. The guidelines Annexure P-8 are not applicable, in fact guidelines at Annexure R-4 are applicable.

Learned State counsel further submitted that petitioner cannot be permitted to challenge the selection process having participated and in support of contention relied upon ratio decidendi culled out by the Hon'ble Supreme Court in **D. Sarojakumari Vs. R.Helen Thilakom and others 2017(9) SCC 478.**

I have heard learned counsel for the parties, appraised the paper book and of view that there is no force and merit in the submissions of Ms. Veena Kumari.

The law with regard to estoppel challenging the advertisement

of selection process having participated is no longer *res integra*. The grievance of the petitioner of not adhering to guidelines at Annexure P-8 is neither here nor there as guidelines at Annexure R-4 deals with National HIV Counselling and Testing Services (HCTC). Once petitioner has not secured the marks and rightly so has been kept in waiting list at serial no.2 whereas other selected candidate secured higher marks vis-a-vis petitioner. The selection process cannot be challenged until and unless there is malafide or glaring fallacy. The Court cannot assume the role of an expert and form the different opinion in determining the eligibility, in other words, there is no barometer to assess the certain illegality or irregularities as attempted. In the absence of same, I am of the view that grievance expressed is wholly far-fetched.

No ground for interference is made out.

Dismissed.

(AMIT RAWAL)
JUDGE

July 24, 2019
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No