

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

CWP No.27623 of 2017
Decided on:05.12.2019

Sheikh Irshad Ansari

.....Petitioner

versus

Union of India and another

....Respondents

CORAM : HON'BLE MR.JUSTICE ARUN MONGA

Present: Mr.Jasbir Mor, Advocate,
for the petitioner.

Mr.Shivoy Dhir, Senior Panel Counsel,
for the respondents-UOI.

ARUN MONGA, J. (Oral)

Petitioner is aggrieved by the rejection of his candidature ostensibly on the ground of lacking pre-requisite work experience in order to be considered for the post of Nursing orderly as per recruitment notice dated Nil (Annexure P-1). The relevant experience certificate clause is reproduced herein below:

“Matriculation or
equivalent from
recognized board
Elementary knowledge of
1st aid. One year
experience in handling and
dressing wounds in
Govt.approved/ registered
Nursing Home/Hospital.

18-27 years (relaxable up
to 37 years in case of
Government Servants and
employees of ESI
Corporation.”

2. The petitioner applied for the post and filled up the online application form and also submitted his work experience certificate Annexure P-4 alongwith his application. After scrutiny of the application

alongwith relevant experience certificate the petitioner's name was put in the list of successful candidates who found place in the select list and was shortlisted on verification for different nursing and medical para-medical posts as reflected from Annexure P-7. Thereafter, vide instructions dated 10.03.2017 (Annexure P-8) the petitioner was asked to submit his work experience certificate in the format prescribed therein alongwith no objection certificate from his current employer. The petitioner duly complied with the same. Based on the said information the petitioner's name was duly included in the revised list of candidates at serial No.140 in OBC category who were once again shortlisted for verification as is borne out from Annexure P-9. Notwithstanding, as bolt from the blue vide a notice dated 26.08.2017 (Annexure P-10) when the final list of the candidates was notified the petitioner's name was at serial No.172 wherein it was stated that his candidature has been rejected and he does not fulfil the experience criteria.

3. Confronted with the rejection the petitioner represented to the competent authority and discovered that his candidature has been rejected essentially on the ground that on the online application (Annexure R-1) filled up by him he has not filled up the column of experience criteria with complete details.

4. Upon representation of the petitioner *qua* the same the department, in order to ascertain the genuineness of the work experience of the petitioner made independent verification from the employer of the petitioner. Vide response contained at Annexure P-14 the verification report-cum-fresh experience certificate dated 15.09.2017 was obtained from the employer. Based on the said report it transpires that the case of the

petitioner was examined as is reflected from the office noting sheet Annexure P-13 wherein *inter alia* it has been observed that the candidate did not fill the experience detail in the experience column and experience certificate is not cross verified in the concluding remarks. It is stated that the candidate had indeed worked in the relevant hospital from May, 2006 to July, 2008 and the same has been duly verified by the branch office of the hospital at Jaipur. However, his candidature has been rejected as he did not fill up the experience details in the relevant column in the online application. Hence, the writ petition.

5. I have heard rival contentions of learned counsel and gone through the pleadings alongwith the relevant record appended thereto.

6. In the return filed on behalf of the respondents the primary ground of resisting the writ petition is that the candidature of the petitioner has been rightly rejected due to his fault as he did not fill up correct information in the relevant column of the online application. In fact on a careful perusal of the record of the respondents appended with the writ petition and the return thereof, their stand flies in the face of the fact that the candidature was in fact rejected after due verification of the experience certificate as has been noted in the office note contained at Annexure P-13. The said office note also is contrary to the instructions contained in the Circular dated 14.09.2017 Annexure P-17 issued by the Employee State Insurance Corporation (ESIC). This circular states that wherever a mistake was committed by a candidate to give room for fabrication of experience certificate and/or any other similar ambiguity, the competent authority has checked with regard to the said mistake and found that the mistake appears to be *malafide* then the candidature has to be rejected. Instant case is one

where the mistake by the candidate seems to have been committed inadvertently, particularly in view of the conceded position that he had indeed appended his work experience certificate alongwith the application form and the same was subsequently verified by the competent authority in accordance with office notice dated 14.09.2017. Yet, violating the very spirit and intent of the said notice his candidature has been rejected by taking a rigid stand that inadvertence committed by him in the online application cannot be condoned. The plain meaning and the intent of the circular Annexure P-17 issued by the ESIC itself suggests otherwise. Another facet of the matter that is noteworthy is that it was not at one occasion but on multiple times that the work experience certificate and other documents of the petitioner were verified by the respondents themselves and his name had appeared in the select list contained at Annexure P-7 of the probable candidates followed by the revised select list contained at Annexure P-9. Therefore, it is not comprehensible as to how when after the scrutiny of documents the petitioner's name was cleared at two different stages, then why the benefit thereof was denied to him merely on the ground that in the online application form, he did mention the complete details *qua* work experience.

7. As noted above admittedly the work experience certificate is not in dispute and the same in any case was appended at the very threshold when the application form was filled by the candidate. I see no valid justification or reason for the rejection of the candidature of the petitioner. To my mind, the rejection of his candidature cannot be sustained and to that extent the action of the respondents is held not tenable in law.

8. As an upshot of the discussion above, the writ petition is

disposed of with the direction to the respondents to re-determine the merit of the petitioner by giving him the benefit of the work experience as per the certificate contained at Annexure P-4, to consider his candidature in accordance with law and to process his case for appointment if he is found meritorious subject of course to vacancy being available as on today.

9. In the parting I may hasten to add here as per the learned counsel for the petitioner pursuant to the recruitment notice *ibid*, candidates were being called for appointment as last as on 09.02.2018 and as per his information vacancies are available even today.

10. Be that as it may, the respondents shall consider the candidature of the petitioner as directed above, subject to availability of the vacancy as on today.

Disposed of in the above terms.

December 05, 2019

dharamvir

(ARUN MONGA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable :	Yes/No