

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

CWP-12803-2020 (O&M)

Date of decision : 01.09.2020

Dr. Parampreet Kaur and others

...Petitioners

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Harkesh Manuja, Advocate for the petitioners.

Ms. Anu Chatrath Addl. A.G. Punjab.

ANIL KSHETARPAL, J.

Three Doctors have filed the present writ petition under Article 226 of the Constitution of India for issuance of a writ in the nature of mandamus to direct respondents to give preference/reservation/additional marks to the doctors working in the COVID Care Centres while appointing Medical Officers (General) pursuant to the advertisement/recruitment notice (Annexure P-15), dated 04.08.2020. Although, in the writ petition, it has been claimed that the advertisement is dated 24.07.2020 (Annexure P-16), however, Annexure P-16 is the appointment letter. The advertisement/recruitment notice is Annexure P-15.

The precise grievance of the petitioners is that they are COVID Warriors and have stood by the Government in difficult time when most of the medical staff either resigned or refused to carry out duties in the COVID-19 Care Centres. The petitioners claim that they should be given preference/reservation/additional marks while making recruitment pursuant to advertisement (Annexure P-15).

This Court has heard learned counsel for the petitioners.

Learned counsel for the petitioners apart from relying upon Annexures P-17, P-18, P-19 and P-20, has also relied upon certain news items forwarded through E-mail. He contends that various State Governments/Private Universities/Institutions have taken a decision to grant either reservation or preference to COVID Warriors. He further, while referring to the definition of War Hero, as defined in Clause (i) to Rule 2 of Punjab Civil Service (General and Common Conditions of Service) Rules, 1994, has submitted that the COVID Warriors can be included in the definition of War Heroes.

This Court has considered the submissions of learned counsel. Although, the petitioners who claim to be COVID-19 Warriors have all the sympathies of the Court, however, the petitioners herein are calling upon the Court to propel in uncharted ocean of Government policy making. This aspect has been dealt with in a recent judgment passed by Hon'ble the Supreme Court in **Federation Haj PTOs of India Vs. Union of India, 2019 SCC Online SC 119**. Para 19 and 20 of the judgment are extracted as under:-

“19) Going by the aforesaid considerations, the respondent has carved out the categories of HGOs on the parameters of experience as well as financial strength of HGOs. Such a decision is based on policy considerations. It cannot be said that this decision is manifestly arbitrary or unreasonable. It is settled law that policy decisions of the Executive are best left to it and a court cannot be propelled into the uncharted ocean of Government policy {See Benett Coleman & Co. v. Union of India}. Public authorities must have liberty and freedom in framing the policies. It is well accepted principle that in complex social, economic and commercial matters, decisions have to be taken by governmental authorities keeping in view several factors and it is not possible for the courts to consider

competing claims and to conclude which way the balance tilts. Courts are ill-equipped to substitute their decisions. It is not within the realm of the courts to go into the issue as to whether there could have been a better policy and on that parameters direct the Executive to formulate, change, vary and/or modify the policy which appears better to the court. Such an exercise is impermissible in policy matters. In Bennett Coleman's case, the Court explained this principle in the following manner:

"The argument of the petitioners that Government should have accorded greater priority to the import of newsprint to supply the need of all newspaper proprietor to the maximum extent is a matter relating to the policy of import and this Court cannot be propelled into the uncharted ocean of governmental policy."

20) The scope of judicial review is very limited in such matters. It is only when a particular policy decision is found to be against a statute or it offends any of the provisions of the Constitution or it is manifestly arbitrary, capricious or mala fide, the court would interfere with such policy decisions. No such case is made out. On the contrary, views of the petitioners have not only been considered but accommodated to the extent possible and permissible. We may, at this junction, recall the following observations from the judgment in Maharashtra State Board of Secondary & Higher Secondary Education v. Paritosh Bhupeshkumar Sheth:

"16... The Court cannot sit in judgment over the wisdom of the policy evolved by the Legislature and the subordinate regulation-making body. It may be a wise policy which will fully effectuate the purpose of the enactment or it may be lacking in effectiveness and hence calling for revision and improvement. But any drawbacks in the policy incorporated in a rule or regulation will not render it ultra vires and the Court cannot strike it down on the ground that in its opinion, it is not a wise or prudent

policy, but is even a foolish one, and that it will not really serve to effectuate the purposes of the Act. The Legislature and its delegate are the sole repositories of the power to decide what policy should be pursued in relation to matters covered by the Act and there is no scope for interference by the Court unless the particular provision impugned before it can be said to suffer from any legal infirmity, in the sense of its being wholly beyond the scope of the regulation-making power or its being inconsistent with any of the provisions of the parent enactment or in violation of any of the limitation imposed by the Constitution.”

In view of the aforesaid well settled position, this Court finds that it would not be appropriate under Article 226 of the Constitution of India to issue a writ petition as prayed for by the petitioners. However, it is left open to the petitioners to make a representation to the Government in this regard which shall be considered sympathetically .

With these observations, the writ petition is disposed of.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

01.09.2020

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No