

CWP-12162-2015

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

CWP No.12162 of 2015

Date of Decision: 5th February, 2020

Rajiv Sharma

...Petitioner

Versus

State of Punjab & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. R.K. Arora, Advocate,
for the petitioner.

Ms. Anu Pal, DAG, Punjab.

Mr. Anil Sharma, Advocate
for respondent No.2.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Petitioner has approached this Court with a grievance that the petitioner, on selection to the post of Ayurveda Medical Officer, was issued an appointment letter dated 29.10.2014 (Annexure P-8) but on medical examination, he was found to be having low vision of right eye and applying the principle with regard to the technical post like driver, he was held to be medically unfit for appointment to the post of Ayurveda Medical Officer. A request was also made by the petitioner to the National Health Mission, Government of Punjab, Department of Family and Welfare, which also wanted him to appear before the Medical Board for verification.

2. The question which actually requires to be considered in this case is whether a person with a visual impediment in one eye i.e. right eye

where vision is 6X36 with other eye (left) being vision as 6X6 would be sufficient for appointment to the post of Ayurveda Medical Officer?

3. The plea which has been taken by the respondents is that the petitioner not only has low vision in one eye but also has a squint, because of which he is not entitled to appointment to the post of Ayurveda Medical Officer, which is a Class-II post. For this, reliance has been placed on circular dated 29.07.1959 (Annexure R-1) which has been appended with the reply of respondents No.1,3 and 4. The nature of the duties which are to be performed by an Ayurveda Medical Officer when seen in the context of the reasoning assigned for non-appointing the petitioners on the said post would not be sustainable especially in the light of the fact that it would not in any manner impair and impede the working capability/capacity of the petitioner.

4. The duty which is required to be performed by an Ayurveda Medical Officer is to examine the patients. Since one eye of the petitioner has perfect vision, the duty as mentioned above, which the petitioner is supposed and required to perform would not be impeded because of the low vision of the other eye. Petitioner has applied in the open category and has been placed at fourth place in the merit list, therefore, it cannot be said that the petitioner is incompetent or is not suitable for appointment to the post. The instructions on which reliance has been placed by the respondents would not impede in any manner or be a cause of concern qua the petitioner keeping in view the nature of duties which is required to be performed by him. Merely because the instructions indicate a particular aspect in the rules,

the same have not to be followed blindly, which would go against the very spirit and purpose for which such instructions/rules are framed and formulated.

5. On 28.01.2020, when the case had come up for hearing, following order was passed:-

“One more opportunity is sought for by the counsel for the State to comply with the order dated 10.12.2019 passed by this court. It has been brought to the notice of the Court that the impairment in vision of the petitioner is only relatable to one eye (right) vision i.e. 6x36, whereas vision of left eye is 6x6.

Counsel for the State has submitted that as per the Punjab Government Instructions there should be no squint which disentitles a candidate to be appointed on the post of Class I and Class II Officer.

Another aspect which needs to be looked into is as to why the posts were at the first instance reserved for the visually impaired category candidate in the handicapped quota. Counsel further brings it to the notice of the Court that the posts as stated above are even being kept for fully blind persons. If that be so, there appears to be no justification for denying the petitioner appointment to the post in question i.e. Ayurveda Medical Officer.

As prayed for, a week's time is granted to the counsel for the State to comply with the order dated 10.12.2019.

List on 05.02.2020.”

6. In pursuance to the said order, counsel for the State could not dispute the factual aspect with regard to the post of Ayurveda Medical Officer being kept reserved for the visually impaired candidate including

CWP-12162-2015

blind. If that be so, the very reason as to why the candidature of the petitioner has been rejected cannot be said to be justified.

7. In view of the above, the present writ petition is allowed. Direction is issued to the respondents to permit the petitioner to join service within a period of one week in pursuance to the appointment letter dated 29.10.2014 (Annexure P-8). Petitioner shall be entitled to all consequential benefits notionally from the date he was denied the permission to join service. Financial benefits shall, however, accrue to the petitioner 38 months prior to today.

5th February, 2020
Harish

(AUGUSTINE GEORGE MASIH)
JUDGE

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