

CWP-383-2021(O&M)

and connected case

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

1. CWP-383-2021(O&M)

Vineet and others

.....Petitioners

Versus

State of Haryana and others

.....Respondents

2. CWP-7372-2021(O&M)

Dr. Govind Kumar and others

.....Petitioners

Versus

State of Haryana and others

.....Respondents

Date of decision: 07.04.2021

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

**Present:- Mr. Vivek Aggarwal, Advocate for the petitioners
in CWP-383-2021**

**Mr. J.S.Jaidka, Advocate for the petitioners
in CWP-7372-2021**

Mr. Lokesh Singhal, Sr. Addl. AG, Haryana

ANIL KSHETARPAL, J.

**By this order two Civil Writ Petitions i.e CWP-383 and
7372 of 2021 shall stand disposed of.**

Learned counsel for the parties are ad idem that both these

writ petitions can conveniently be disposed of by a common order.

Through these two writ petitions, the petitioners who have acquired a degree in Homeopathy (Bachelor of Homeopathic Medicine and Surgery) pray for a declaration that they are also eligible to apply for 671 posts of Mid Level Health Providers-cum-Community Health Officers on contract basis, under the National Health Mission for providing comprehensive primary health care services at sub-centre level “Health and Wellness Centres” which are sought to be recruited as per the recruitment notice dated 28.12.2020. As per the recruitment notice, the essential eligibility criteria is as under:-

“A. Essential Eligibility Criteria:-

(i) BAMS or B.Sc/Post Basic B.Sc. Nursing Degree Holders, who have completed their six months Mid Level Health Provider's Bridge Course Programme on Certificate in Community Health for Nurses (BPCCHN) from IGNOU or any State University/ Institution.

Or

(ii) B.Sc/ Post Basic B.Sc Nursing Graduates, who have completed their Degree with Mid Level Health Provider's Certificate Course (BPCCHN) integrated in the curriculum of B.Sc/Post Basic B.Sc Nursing.

Or

(iii) B.Sc/ Post Basic B.Sc Nursing Graduates, who

appeared in their final year exam with integrated Mid Level Health Provider's BPCCHN Course in their curriculum, subject to the condition that they have to submit their final year Detailed Marks Certificate (DMC) alongwith copies of all previous year DMCs at the time of document verification. Such candidates, who will not be able to produce final year DMC at the time of Document Verification shall not claim for their final selection.

(iv) Age Limit 18 to 42 years and age relaxation shall be considered for reserved category candidates as per Rules of Haryana Government.

(v) Hindi/Sanskrit language upto Matriculation level.

(vi) All candidates shall require to be registered with respective Council of Indian Medicines Haryana/Haryana State Nurses & Nurse Midwives Council (Panchkula), or Central Council of Indian Medicines/Indian Nursing Council (New Delhi) by the time of document verification.”

It may be noted that a previous attempt of the petitioners for a similar relief pursuant to a recruitment notice dated 26.07.2019 has already been rejected by the learned Single Bench and upheld by the Division Bench while deciding LPA No. 1465 of 2019 decided on 24.03.2021.

Learned counsel contend that the aforesaid decision by the learned Single Judge which has been affirmed in appeal by the learned Division Bench is pursuant to a different recruitment notice.

It may be noted here that the issue which needs adjudication is common. In the aforesaid decisions, the Court held that it is the prerogative of the employer to decide the essential eligibility criteria and in the absence of any violation of a statute or unless the decision is found to be patently arbitrary, it would not be appropriate for the Court to interfere.

Still further, the petitioners admittedly do not possess the essential qualification as laid down in the recruitment notice. Learned counsel appearing for the petitioners contend that since B.Sc (Nursing) Graduates have been made eligible, therefore, the petitioners being better qualified are entitled to be considered.

This Court has considered the submission, however, expresses its inability to accept the same. It is well settled that laying down of the essential eligibility criteria is the exclusive prerogative of the employer and the Court in the absence of violation of any provision of a statute or except for a patent illegality, should not interfere. Still

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further, recently it has been held in the case of '**Anand Yadav vs. State of Uttar Pradesh and others**' **2020 SC Online SC 823** that the Court normally should not enter into the arena of determining the equivalence of qualifications for the purpose of employment.

Learned counsel for the petitioners in CWP 7372-2021 while drawing the attention of the Court to the interim order passed on 26.03.2021 submits that the petitioners have been permitted to take part in the document verification process and therefore, the case of the petitioners is different. It is well settled that an interim order passed by a Court does not confer any right. The interim orders are always subject to the final decision in the case.

Keeping in view the aforesaid facts, no ground to issue the writ as prayer for, is made out in any of the petitions.

Hence, both the writ petitions are dismissed.

07.04.2021

rekha

Whether speaking/reasoned

Whether Reportable

Yes /No

Yes / No

(ANIL KSHETARPAL)
JUDGE