

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

CWP No.7675 of 2021 (O&M)

Date of Decision:06.04.2021

Harvinder Kour

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. Arshit Goel, Advocate for the petitioner.

TEJINDER SINGH DHINDSA J.

This case has been taken up through Video Conferencing via Webex facility in the light of Pandemic Covid-19 situation and as per instructions.

Challenge in the instant writ petition is to the order dated 5.11.2020 (Annexure P-21) passed by the Haryana Staff Selection Commission whereby claim of the petitioner for appointment to the post of Staff Nurse has been declined.

Brief facts emanating from the pleadings on record are that the respondent-Haryana Staff Selection commission (hereinafter to be referred as the 'Commission') issued advertisement bearing No.1/2015 on 19.06.2015 inviting applications for direct recruitment to various posts under the Health Department, State of Haryana including 912 posts of Staff Nurse. Out of these 155 posts were reserved for the SC Category. Essential qualifications for the post were laid down in the advertisement itself. Selection process comprised of a written examination followed by

scrutiny of documents and thereafter an interview/viva-voce.

Petitioner who belongs to the SC Category, applied for the post of Staff Nurse claiming herself to be eligible for the post. Written examination was conducted by the Commission on 15.01.2017 in which the petitioner participated. Result was declared on 08.05.2017. Thereafter petitioner was called for the scrutiny of documents which exercise was conducted from 20.05.2017 to 22.05.2017. Thereafter the Commission issued a list of candidates to appear for the interview/viva voce but the roll number of the petitioner did not figure in such list. Vide notice dated 31.01.2018 final result was declared wherein the last candidate selected for the post of Staff Nurse under the SC Category was shown to have scored 70 marks. Categorical averment made by the petitioner is that she had secured 74 marks out of 160 marks in the written examination alone whereas the last selected candidate in the SC Category had secured 70 marks out of 200 (Written examination + interview combined). At this stage petitioner preferred CWP No.13363 of 2020 which was disposed of on 04.09.2020 with a direction to the respondent-Commission to decide a representation dated 30.07.2020 that the petitioner had already filed. It is in purported compliance of the directions issued by this Court that the impugned order dated 05.11.2020 (Annexure P-21) has been passed rejecting the claim of the petitioner.

Counsel submits that the petitioner had secured 74 marks out of 160 in the written examination. The candidate who has secured 70 marks out of a total of 200 class and belonging to the SC Category has been selected. Such action is stated to be illegal, arbitrary and violative of Articles 14 and 16 of the Constitution of India. Counsel further

submits that the petitioner has been held to be ineligible apparently on the ground that the registration certificate of General Nursing and Midwifery issued by the Haryana Nursing Registration Council was after the cut-off date i.e.15.11.2016 prescribed in the advertisement. In this regard it has been contended that petitioner had submitted her application for registration with the Haryana Nurses Registration Council on 06.07.2015 which was prior to the closing date stipulated in the advertisement and inspite of the petitioner having shown the receipt dated 06.07.2015 in token thereof the commission has ignored the same. Counsel urges that the delay which is attributable to the Haryana Nurses Registration Council with regard to issuance of the certificate of registration cannot work to the prejudice of the petitioner who otherwise has secured a higher merit position compared to the last selected candidate for the post of Staff Nurse under the SC Category. Yet another submission raised is that petitioner had applied for the same very post of Staff Nurse at Pt. B.D. Sharma University of Health Sciences, Rohtak, wherein also requirement was to possess the same very educational qualification. Petitioner was duly selected and had also been issued appointment letter dated 15.04.2017 and duly joined as Staff Nurse at PGI Rohtak. Pt. B.D. Sharma, University of Health Sciences, Rohtak, had not raised any such objection as regards the date of registration of the petitioner with the Haryana Nurses Registration Council. Action as such is stated to be discriminatory.

Counsel has been heard at length and pleadings on record have been perused.

It is by now well settled that the cut-off date by reference to

which the eligibility requirement must be satisfied by a candidate seeking public employment is the date appointed by the rules and if not, then, such date as may be appointed for the purpose in the advertisement calling for applications and even if there be no such date fixed in the advertisement, then, the eligibility would be with reference to the last date by which the applications have to be received by the recruitment authority/agency. A reference in this regard may be made to the judgment of the Apex Court in the case of ***Bhupinder Pal Singh and others Vs. State of Punjab (2000) 2 SCT 826.***

It is against such settled position in law that the claim of the present petitioner would need to be examined.

The admitted factual premise is that the advertisement was issued by the Commission on 19.06.2015 for the post in question. Closing date for submission of online application was 30.07.2015. Such date was thereafter extended to 15.11.2016. The essential qualifications for the post of Staff Nurse were laid down in the advertisement itself and were in the following terms:-

- E.Q. i) B.Sc. (Hons) Nursing or B.Sc. (Post Basic)
Nursing OR Diploma in General Nursing with Midwife Training
from a recognized institute/University;***
- ii) A division Nurse (with midwife training)
registered with Haryana Nurses Registration Council.***
- (iii). Hindi/Sanskrit upto Matric Standard or
higher education”***

The relevant stipulation in the advertisement was in the following terms:-

“Qualifications/eligibility conditions, age and other documents will be determined with regard to last date fixed to apply online applications also called as closing date.....”

One of the essential qualifications was for a candidate to be a Divisional Nurse (Midwifery Training) registered with Haryana Nurses Registration Council.

As per dictum laid down by the Apex Court in ***Bhupinder Pal Singh's case (supra)*** such essential qualifications ought to have been possessed by the petitioner prior to the closing date of receipt of the application forms.

It is the pleaded case of the petitioner herself that the registration certificate issued by the Haryana Nurses Registration Council and upon which she had relied upon was issued on 25.01.2017. This was much after the relevant date i.e. 15.11.2016 to be reckoned for purposes of eligibility.

The submission raised by counsel that the delay was attributable to the Haryana Nurses Registration Council and as such petitioner should have been considered eligible for the post, is not well-founded. In any recruitment process there has to be a firm date for determination of eligibility. Such process cannot be left open ended. Acceptance of the submission on behalf of the petitioner would amount to treating the closing date to reckon eligibility as flexible and which in turn could lead to a situation open to manipulation and mal-practices. Such contention is without merit and is rejected.

Even as regards petitioner having secured appointment to the post of Staff Nurse under the Pt. B.D. Sharma University of Health

Sciences, Rohtak, and a plea of discrimination as such being raised is without any consequence. The rights of the petitioner for the post of Staff Nurse under the SC Category under the Health Department, State of Haryana, has to be considered in the light of the terms and conditions laid down in the advertisement dated 19.06.2015 issued by the Commission at Annexure P-1. Appointment of the petitioner with Pt. B.D. Sharma, University of Health Sciences, Rohtak, was in relation to a separate recruitment process and which would have no bearing to the facts of the instant case.

For the reasons recorded above, this Court does not find any infirmity in the impugned order dated 05.11.2020 (Annexure P-21) passed by the Commission rejecting the claim of the petitioner for the post of Staff Nurse.

No merit.

Petition dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

April 06, 2021

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No