

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(223)

CWP No. 9429 of 2020

Date of Decision : 08.04.2021

Dr. Rashi Agrawal

...Petitioner

Versus

State of Haryana and others

...Respondents

(through video conferencing)

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Manoj Kumar Sood, Advocate for the petitioner.

Mr. Sharad Aggarwal, Assistant Advocate General, Haryana.

Harsimran Singh Sethi J. (Oral)

1. The present petition has been filed by the petitioner challenging the action of the respondents in not considering her claim for appointment against one of the 642 posts of Medical Officers, which the respondent-State had decided to fill up in the Department of Health, Government of Haryana, on the ground that petitioner is not eligible despite the fact that petitioner was allowed to participate in the selection process. The further prayer is that as the candidates, who have secured lesser marks than the petitioner, have already been appointed as Medical Officer and as the posts of the Medical Officers are still lying vacant, appropriate direction be given to the respondent-State of Haryana to appoint the petitioner as Medical Officer.

2. The facts leading to the filing of the present writ petition are as under :-

Petitioner completed her MBBS course in December, 2018. After passing the said course, in order to do the internship, the petitioner applied for the grant of Provisional Certificate of Registration with the Haryana Medical Council as envisaged under Section 25 of the Indian Medical Council Act 1956 (in short '1956 Act'). As being fully eligible for the grant of the said registration, petitioner was granted the Provisional Registration by the Haryana Medical Council on 11.07.2019 (Annexure P-1). Petitioner successfully completed her internship for a period of one year and on completion of the same, the petitioner was granted the Internship Completion Certificate on 06.01.2020, a copy of which has been appended as Annexure P-2 with the petition.

3. Immediately upon the completion of the internship, on the very next date, petitioner applied for registration on 07.01.2020 (Annexure P-3) with the Delhi Medical Council under Section 15 of the 1956 Act. It is a conceded fact that the petitioner fulfilled all the requirements for the grant of the said Registration Certificate at the time of filing the application for registration on 07.01.2020.

4. State of Haryana issued an Advertisement dated 01.01.2020 (Annexure P-4), whereby 447 posts of the Medical Officers in the Haryana Civil Medical Services, Group-A were to be filled up in the Health Department of Government of Haryana. As per the petitioner, requirements qua the Educational Qualification to compete for selection were duly fulfilled by her. The last date for filing of the application was 22.01.2020.

It is worthwhile to notice here that out of 447 posts advertised, 87 were to

be filled up from the general category, under which the petitioner was seeking consideration for appointment.

5. It is a matter of fact that as per the instructions and the guidelines issued along with the Advertisement dated 01.01.2020 (Annexure P-4), one of the requirement was that a candidate should be registered with Medical Council of India or any other State Medical Council. As stated earlier, petitioner had already applied for the grant of the registration with the Delhi Medical Council on 07.01.2020 i.e. much before the last date of submission of application for appointment to the post of Medical Officer as advertised by the Government of Haryana, but the said certificate was not issued to the petitioner before the last date of filing the application form though there was no hindrance in the issuance of the same. The petitioner, who fulfilled the other required qualifications, applied in pursuance to the Advertisement dated 01.01.2020 (Annexure P-4) and competed along with the other candidates for appointment to the 447 posts of Medical Officers.

6. As per the instructions/guidelines issued for selection and appointment to the post of Medical Officer, candidates were required to undergo a written screening test and the candidates were also entitled for certain extra marks in case they have a post-graduate degree or a post-graduate diploma or professional experience/service in the rural area.

7. Petitioner was given the permanent registration certificate by the Delhi Medical Council on 12.02.2020 (Annexure P-12) and the actual process of the written examination for selection to 447 posts of the Medical Officers commenced thereafter as the written test for the same was held on 01.03.2020. Petitioner was allowed to compete and she appeared in the

written examination and was able to secure 46 marks out of the total 100. It is on record that the State of Haryana rather than filling up the decided 447 posts, took a conscious decision in May, 2020 to fill up 642 posts of Medical Officers from the same selection.

8. That when the petitioner was called for scrutiny of the documents, the respondents declared the petitioner ineligible for competing for appointment against the post of Medical Officer on the ground that the registration certificate was given to the petitioner by the Delhi Medical Council on 12.02.2020 (Annexure P-12) whereas the last date for filling up the application form was 22.01.2020 and hence, the petitioner cannot be allowed to compete as she did not have the registration with any of the State Medical Council at the time of applying for the post, which is mandatory for appointment to the post of Medical Officer.

9. In the present writ petition, the petitioner is challenging the action of the respondents in declaring her ineligible to compete for the post of Medical Officer though, she underwent the complete process of selection and the candidates having lesser merit than her, have been appointed as Medical Officers and therefore, she prays for a direction to the respondent-State to consider her eligible for appointment to the post of Medical Officer against one of the 642 vacancies, which the respondent-State had decided to fill up.

10. Upon notice of motion, the respondents filed a reply in which, the stand of the respondent-State is that the petitioner did not have the required registration with the Indian Medical Council or any State Medical Council up to the last date of the submission of application form and the said registration was mandatory for a candidate to be appointed as a Medical

Officer and therefore, the petitioner though, has competed in the selection process, cannot be considered for appointment due to non-fulfillment of one of the conditions of the advertisement before the last date.

11. The respondents have also filed an affidavit dated 02.02.2021 before this Court, wherein it has been mentioned that though initially 447 posts of the Medical Officers were advertised but later on vide order dated 18.05.2020, the Government decided to fill up 642 posts of the Medical Officers on regular basis out of the same selection process and as of now, there are still 12 posts of Medical Officers in the general category which are lying vacant due to the non-availability of the eligible candidates. Learned counsel for the respondent-State submits that keeping in view the need for more doctors due to prevailing pandemic of Covid-19, Government took a decision to fill 642 posts of Medical Officers instead of initial 447 posts advertised.

12. I have heard learned counsel for the parties and have gone through the record with their able assistance.

13. It is a settled principle of law that the candidates are required to fulfill the requisite conditions as envisaged in the advertisement by the last date of filing the application form. The candidates, who do not fulfill the same, cannot be considered eligible for appointment.

14. In the present case, the claim of the petitioner for appointment to the post of Medical Officer is to be considered in the unique facts and circumstances of the present case. It is an admitted fact that the petitioner had applied for registration with the Delhi Medical Council on 07.01.2020 i.e. much before the last date of filling of the application form for appointment against the advertised posts of the Medical Officer. It is also

not disputed before this Court that the petitioner fulfilled all the requisites for the grant of the said registration by the Delhi Medical Council.

15. The question which arises in the facts and circumstances of the present case is, whether the petitioner, who has already been allowed to compete and undergo the full process of selection for appointment to the post of Medical Officer, can be declared ineligible ultimately on the ground that the registration certificate by the Delhi Medical Council was given to her on 12.02.2020 (Annexure P-12), which was submitted after the last date of filing of application form. The question which arises before this Court is whether the delay on the part of the Delhi Medical Council in awarding the registration certificate to the petitioner can defeat the right of the petitioner to seek appointment against the post of Medical Officer despite being fully eligible in all respects and the candidates having lesser merit than the petitioner being already appointed.

16. Before proceeding further, the relevant statute dealing with the grant of registration as envisaged under Sections 15 and 25 of the 1956 Act are reproduced here under for the ready reference :-

“15. Right of persons possessing qualifications in the Schedules to be enrolled.—1[(1)] Subject to the other provisions contained in this Act, the medical qualifications included in the Schedules shall be sufficient qualification for enrolment on any State Medical Register.

[(2) Save as provided in section 25, no person other than a medical practitioner enrolled on a State Medical Register,—

(a) shall hold office as physician or surgeon or any other office (by whatever designation called) in Government or in any institution maintained by a local or other authority;

(b) shall practice medicine in any State;
(c) shall be entitled to sign or authenticate a medical or fitness certificate or any other certificate required by any law to be signed or authenticated by a duly qualified medical practitioner;
(d) shall be entitled to give evidence at any inquest or in any court of law as an expert under section 45 of the Indian Evidence Act, 1872 (1 of 1872) on any matter relating to medicine.

(3) Any person who acts in contravention of any provision of sub-section (2) shall be punished with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.]

[25. Provisional registration.—*(1) A citizen of India possessing a medical qualification granted by a medical institution outside India included in Part II of the Third Schedule, who is required to undergo practical training as prescribed under sub-section (3) of section 13, shall, on production of proper evidence that he has been selected for such practical training in an approved institution, be entitled to be registered provisionally in a State Medical Register and shall be entitled to practice medicine in the approved institution for the purposes of such training and for no other purpose.*

(2) A person who has passed the qualifying examination of any University or medical institution in India for the grant of a recognised medical qualification shall be entitled to be registered provisionally in a State Medical Register for the purpose of enabling him to be engaged in employment in a resident medical capacity in any approved institution, or in the Medical Service of the Armed Forces of the Union, and for no other purpose, on production of proper evidence that he has been selected for such employment.

(3) The names of all persons provisionally registered under sub-section (1) or sub-section (2) in a State Medical Register shall be entered therein separately from the names of other persons registered therein.

(4) A person registered provisionally as aforesaid who has completed practical training referred to in sub-section (1) or who has been engaged for the prescribed period in employment in a resident medical capacity in any approved institution or in the Medical Service of the Armed Forces of the Union, as the case may be, shall be entitled to registration in the State Medical Register under section 15.]

17. A bare perusal of the above reproduction would show that as per section 15 of the 1956 Act, only a person who has been registered with the State Medical Council, is entitled to hold the office of a physician or a surgeon in a Government Institution or any other Institution maintained by the local body or other authority. Further, it is clear from Section 25(4) of the 1956 Act that a person who has already been registered provisionally, on completing the training, shall be entitled for the registration in the State Medical Register under Section 15 meaning thereby that once a person has already been granted provisional registration, on completion of the training, a right accrues in the candidate for the registration in the State Medical Register without there being any other formality to be completed except for the request for the grant of Permanent Registration.

18. In the present case, it is a conceded position that the Government of Haryana had already given the petitioner the provisional registration on 11.07.2019 (Annexure P-1) in pursuance to which the petitioner had completed her training/internship on 06.01.2020 and upon the completion of the internship, the petitioner had applied for registration with

the Delhi Medical Council immediately on the very next date i.e. 07.01.2020. Once the word used in section 25 (4) of the 1956 Act is 'shall', it denotes that the petitioner had right to seek the permanent registration on the basis of the provisional registration already granted in her favour. That being so, the delay in acknowledging the right by the Delhi Medical Council despite her application dated 07.01.2020, can not defeat the claim of the petitioner as the delay in releasing the certificate in favour of the petitioner by the Delhi Medical Council was beyond the control of the petitioner.

19. A somewhat similar issue came up for consideration before a Co-ordinate Bench of this Court in CWP No. 14796 of 2011 titled as ***Parminder Kaur Vs. State of Punjab and others***, decided on 15.02.2013, wherein also, the claim of a candidate was not being considered on the ground that the backward class certificate issued in her favour was issued after the last date of the submission of application form. This Court considering the fact that the candidate therein had already applied for the issuance of the backward class certificate prior to the last date of filing the application form but the authorities granted the same to her after the last date of filing the application form, held that the non-issuance of the certificate within the timeframe was beyond the control of the candidate, hence, candidate cannot be made to suffer on account of delay attributed to the authorities while issuing the backward class certificate to her and she was held eligible to be considered for appointment as candidate was allowed to compete and had undergone the selection process. The relevant paragraphs of the judgment are as under :-

“I have considered the submissions made by counsel for the parties and with their assistance, have gone through the

record of the case. Before I proceed to decide the case on merits, it needs to be recorded here that Saneh Lata-respondent No. 3 had been duly served but she has chosen not to appear before this Court but that may not have any adverse effect upon the appointment of respondent No. 3 in the light of the order which was proposed to be passed. There can be no doubt that requirement as per the advertisement dated 23.09.2009 was that on or before cut off date i.e. 09.10.2009, the candidates who possessed the requisite eligibility conditions as provided in the advertisement and the requirement as per the advertisement was that the certificate of backward class should be within one year prior to the last date on submission of the application form. Admittedly, the said certificate was not in possession of the petitioner. The certificate at the time when the petitioner applied under the backward class category was dated 25.04.2008 (Annexure P-3) which was prior to one year than the last date of submission of the application form as per the advertisement. However, looking at the conduct of the petitioner who had, after the issuance of the advertisement made efforts to get a certificate belonging to the backward class category indicates that prompt action was taken by her. As per backward class certificate dated 29.10.2008 (Annexure P-4) issued by Tehsildar Moga, report of the Halqa Patwari, Panjtoor District, Moga is dated 01.10.2009 certifying therein that the petitioner belongs to Kamboj Sikh caste which is a backward class. Obviously, either the petitioner on 01.10.2009 has submitted an application for issuance of the fresh backward class certificate or before that. It appears that there is a delay on the part of the authority in issuing the backward class certificate to the petitioner which ultimately was issued on 29.10.2008, by that time the last date for submission of the application had expired. The stand of the respondents, thus, strictly going by the advertisement cannot be faulted with,

however, in the light of the facts and circumstances of the present case and keeping in view the backward class certificate dated 25.04.2008 (Annexure P-3) which the petitioner possessed at the time of submission of the application clearly establishes that the petitioner belongs to the backward class category which category continued even thereafter as the backward class as the certificate dated 29.10.2008 further is also establishing the same fact. In the light of these factual matters, it cannot be said that the petitioner does not belong to backward class category and, therefore, a direction is issued to the Director Public Instructions (Secondary Education), Chandigarh-respondent No. 2 to consider the candidature of the petitioner for appointment to the post of Punjabi Mistress in the backward class category in case a post is available out of the selection process. The final decision in this regard be taken within a period of two months from the date of receipt of certified copy of the order.

Allowed in above terms.”

20. Once again, another co-ordinate bench of this Court while deciding CWP No. 22184 of 2011 titled as ***Aradhana Vs. State of Punjab and others***, on 05.02.2014 after relying upon ***Parminder Kaur's case (Supra)***, again held that where a certificate was applied for much before the last date of submitting application form but the same was not issued to the candidate before the last date but was produced during the selection process, the candidate cannot be declared ineligible. The relevant paragraphs of the judgment are as under :-

“In Parminder Kaur's case (supra), a similar issue came up for consideration before this court. It was pertaining to the selection of Teachers in the selection process in question in the present petition. In that case, the certificate annexed by the candidate initially was dated 25.4.2008, which was more than

one year old. Though the name of the petitioner therein was in the merit list on the basis of marks obtained, however, she was not selected. The B.C. Certificate dated 29.10.2009 produced by her at the time of counselling was not considered, as the same was dated after the last date fixed for submission of application. The plea of the petitioner therein was that the moment she came to know that in the advertisement dated 23.9.2009, the requirement is to produce a certificate which is not more than one year old, she applied for issuance of a fresh certificate on 1.10.2009. After the Halqa Patwari verified the contents, the certificate was issued by Tehsildar on 29.10.2009. The time, which was taken in the process for issuance of the certificate, was not within the control of the petitioner, hence, she could not be penalised on that account. The court, while accepting the contention raised by the petitioner therein, opined that since the petitioner had applied for issuance of B. C. certificate to the authorities before the last date fixed for submission of application and there was delay in the process, even if the same was issued after the cut-off date, and finding that the petitioner earlier also had a certificate, which was more than one year old, and the fact is clearly established that the petitioner belongs to B.C. category, a direction was issued to the respondents to consider the candidature of the petitioner for appointment as Punjabi Mistress in Backward Class category.

In the case in hand as well, the petitioner up-loaded her application well within time. She was placed at Sr. No. 254 in the combined merit list in B.C. Category having secured 58.592% marks. However, considering the corrigendum issued, the petitioner applied for issuance of a fresh certificate on which the Patwari submitted his report on 7.10.2009 and thereafter Tehsildar issued the same on 22.10.2009. The same was not only before the last date fixed for making correction in the application already up-loaded, which was 23.10.2009, but

even before the date when the petitioner was called for counselling on 8.7.2011. In the circumstances, rejection of the candidature of the petitioner for appointment as Math Mistress was erroneous, as admittedly the candidates lower in merit than the petitioner were given appointment.”

21. Learned counsel appearing on behalf of the respondent has not been able to distinguish the applicability of the law cited here-in-before in the case of the present petitioner as, the petitioner had also applied for the grant of registration with the Delhi Medical Council on 07.01.2020, which is much prior to the last date of filing the application form for consideration for appointment to the post of Medical Officer and it was only the Delhi Medical Board, despite petitioner being eligible in all respects, issued the certificate on 12.02.2020, which was beyond the control of the petitioner and hence, she cannot be punished for the delay on the part of the authorities in issuing the certificate within the timeframe.

22. Further, it is also a conceded position that the actual selection process started with the holding of the written examination on 01.03.2020 and by the said date, the petitioner had already got the registration certificate even from the Delhi Medical Council. Coupled with the fact that the petitioner was allowed to undergo the complete selection process and being within merit qua the posts of Medical Officer to be filled up, now declaring her ineligible to be appointed against one of the 642 posts despite being higher in merit, will be too harsh upon the petitioner especially at the threshold of her career.

23. It is stated that the present order is being passed on the peculiar facts and circumstances of the present case. Had, there been candidates available fulfilling all the conditions as envisaged in the advertisement,

undoubtedly those candidates would have a preferential right over the petitioner, as the petitioner did not submit the registration certificate from the State Medical Council up to the last date of filing of application form. The petitioner could not have been preferred over and above the candidates, who fulfilled all the required norms in the advertisement though, they might be having lesser merit than her. In the present case, the situation is somewhat different. It is conceded before this Court by the respondent-State that even after exhausting all the eligible candidates for appointment against the 642 posts, 12 posts in the general category are still lying vacant due to non-availability of eligible candidates. That being so, keeping in view the facts and circumstances of the present case, where the delay in submitting the registration certificate as envisaged under Section 25 of the 1956 Act was beyond the control of the petitioner, hence cannot come in the way of the petitioner to deny her the appointment at this stage, especially, when the posts are still lying vacant and there are no other eligible candidates to claim the same.

24. Not only this, the situation in the country is such where the doctors are needed the most. Keeping in view the pandemic of Covid-19, it is a need of the hour to get more doctors to discharge the duties to save the citizens of the country from pandemic of Covid-19. It is for this very reason, though initially the Government had advertised 447 posts of the Medical Officers but later on decided to fill 642 posts out of the same selection. Once, the petitioner is not ousting any candidate, who fulfilled all the requisite qualifications as envisaged in the advertisement so as to secure appointment, keeping in view the peculiar facts of this case, the petitioner is entitled to be considered eligible for appointment against one of the 12

posts of the Medical Officers, which are admittedly lying vacant in the general category.

25. Learned counsel for the respondents has argued that there were other candidates like the petitioner who were considered ineligible hence, granting the relief to the petitioner will open a pandora's box. No comments can be made by this Court with regard to the other candidates who are being referred to by the State Counsel being similarly situated as petitioner as their facts are not before this Court. Once the candidates, who were ousted from the zone of consideration by the State Authorities, have accepted the decision of the Government and have not challenged the same, the petitioner, who has raised her claim before this Court, cannot be declined the relief on the ground that there were other similar candidates also, who were declared ineligible due to the non-fulfillment of one or the other condition of the advertisement. Moreover, now at this stage, when the selection list has already expired and no other candidate can raise the claim at this stage, petitioner cannot be declined the benefit on the ground that there were other candidates, who were declared ineligible due to the non-fulfillment one or the other condition as envisaged in the advertisement.

26. Learned counsel for the respondent-State has further argued that as per the affidavit of the authorities dated 02.02.2021, the validity of waiting list has come to an end on 26.09.2020, hence petitioner cannot be considered for appointment now. It is a matter of fact that the petitioner had filed the present petition much before the date when the select list expired. This petition was filed in June, 2020, whereas waiting list expired on 26.09.2020. Once the petitioner was vigilant enough to approach this Court raising her claim, the expiry of the select list in the meantime cannot take

away her right, especially, when it is an admitted fact that there are 12 posts of the Medical Officers in general category which are still lying vacant.

27. The present writ petition is allowed. A direction is issued to the respondents to consider the petitioner eligible against one of the 12 posts of the Medical Officers which are still lying vacant in the general category and in case, the candidates having lesser merit than the petitioner have already been appointed, the petitioner be also appointed. At the cost of repetition, it is once again stated that the present order is being passed keeping in view the facts and circumstances of the present case.

April 08, 2021
kanchan

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No