

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

- (1) **CWP No.11220 of 2021**
- | | | |
|------------------------------|--------|-----------------|
| Sunita Kumari Rohilla | | ... Petitioner |
| | Versus | |
| State of Haryana and another | | ... Respondents |
- (2) **CWP No.11221 of 2021**
- | | | |
|------------------------------|--------|-----------------|
| Susheel Kumari | | ... Petitioner |
| | Versus | |
| State of Haryana and another | | ... Respondents |
- (3) **CWP No.11243 of 2021**
- | | | |
|------------------------------|--------|-----------------|
| Munni Sharma | | ... Petitioner |
| | Versus | |
| State of Haryana and another | | ... Respondents |

Reserved on : 29.06.2021
Pronounced on : 07.07.2021

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Mr. R.K.Malik, Sr.Advocate
with Mr.Sunil Hooda, Advocate
for the petitioners.

Ms. Shruti Jain Goyal, DAG, Haryana.

(The proceedings are being conducted through video
conferencing, as per instructions.)

G.S. Sandhawalia, J.

The present judgment shall dispose of 3 writ petitions bearing CWP-11220, 11221 & 11243-2021, involving common questions of law and facts, pertaining to the posts in question for the appointment of Assistant/Deputy Nursing Superintendent.

Facts of CWP-11220 & 11221-2021

In the present set of cases, facts have been taken from CWP-

11220-2021 titled *Sunita Kumari Rohilla Vs. State of Haryana & another.*

Challenge in the present writ petitions filed under Articles 226/227 of the Constitution of India is to the order dated 11.06.2021 (Annexure P-7) whereby respondent No.2 has reverted the petitioner from the post of Assistant Nursing Superintendent and repatriated her to her original post from where she had been appointed i.e. namely Staff Nurse. Resultantly, it had been held that the experience gained in that post was not the requisite qualification for the post of Assistant Nursing Superintendent. The same is based on the fact that the petitioner did not have the requisite experience of 7 years as Nursing Sister and was also over-age, being more than 40 years as on 22.11.2011, the last date of receiving of the applications. Resultantly, on account of not having the requisite qualifications and being over-age at the time of appointment, the said order had been passed.

A perusal of the paperbook would go on to show that the petitioner was appointed as Staff Nurse on regular basis in the PGIMS, Rohtak on 07.12.1992 and on 20.08.2011 she was appointed in the respondent No.2-College on transfer basis and the services were to be governed by the Haryana Medical Education Rules (Draft Rules of Group “A”), 2011. Apparently, while working on work-charge basis as she was given responsibility as Nursing Sister on 02.03.2012 (Annexure P-2) and thereafter, on 21.03.2012 (Annexure P-3) as Assistant Nursing Superintendent.

On 08.11.2012 (Annexure P-4) she was appointed to the post of Assistant Nursing Superintendent in the pay structure of Rs.9300-34800+4800/- (GP), on the recommendation of the Selection Committee dated 02.09.2011. As per Clause 11 of the said appointment letter, her appointment was provisional, subject to the eligibility conditions such as of academic qualifications or any other certificate which was to be submitted by her.

From a perusal of the paperbook, it would be clear that complaints were received against her appointment in the year 2016 and resultantly, an enquiry was conducted in the matter. As per the enquiry report dated 03.02.2017, it was found that she did not have the requisite qualifications and was over-age on the last day when the applications were to be submitted i.e. 22.11.2011. Show cause notice dated 12.05.2017 was also served upon her and the Director, Medical Education & Research had noticed that the requisite experience was of 19 years as Staff Nurse and the appointment as Assistant Nursing Superintendent was not found as per the eligibility criteria, as found in the enquiry report as both the employees had applied through proper channel. Onus was put on the Scrutiny Committee that they had failed to properly examine the documents and no proceedings of the then Selection Committee being made available they were allowed to continue on the same post and the proceedings were dropped on 14.08.2018 (Annexure P-6).

The matter had also come to this Court in CWP-18045-2012

in the case filed by Smt.Santosh Kumari Phogat. The said writ petition was disposed of on 03.09.2019 as withdrawn with liberty given to the said petitioner to approach the official respondents, in accordance with law, on the enquiry report. Resultantly, the impugned order was passed on 11.06.2021.

Facts of CWP-11243-2021

In the present case, the appointment of the petitioner was made to the post of Deputy Nursing Superintendent on 09.11.2012 which has been annulled vide order dated 09.06.2021 (Annexure P-3) by respondent No.1 on the ground that the petitioner did not have the requisite qualifications of M.Sc with 3 years experience as ANS/Nursing Sister and was also over-age at the time of submission of application, being 45 years 7 months and 15 days as the upper age limit was 40 years. It was noticed that she was only a Staff Nurse in her previous Department and did not possess the requisite experience of 5 years as ANS Nursing Sister. The petitioner had also similarly been given a show cause notice dated 10.09.2020, bringing to her notice the reasons why she should not be reverted to her original post, to which she also replied in September, 2020 (Annexure P-2).

Arguments

The primary argument of the Senior Counsel for the petitioners is that the petitioners have been working since 2012 and at this belated stage, the reversion order has been passed. It is submitted that action was delayed and on an earlier occasion, show cause notice had

been dropped and therefore, it would not be justified on behalf of the respondents to pass the order of reversion. It was further submitted that there was a clause for relaxation and therefore, it was implied that the appointment was made after relaxing the age limit.

Reasoning

The said arguments are only to be noticed and rejected. The petitioners have secured appointment by illegal manner and were ineligible in both sets of cases and also over-age. As noticed, in the first 2 cases, the appointment is of Assistant Nursing Superintendent and the experience required was 7 years as Nursing Sister. Both the petitioners were working as Staff Nurse which is a position below the Nursing Sister and thus, they did not have the requisite experience and accordingly, had been put to notice on that account. They were also over-age as per the date of advertisement i.e. 22.11.2011. But inspite of that they had submitted the applications which were duly forwarded, though through their Departments and apparently, without relaxing the age limit of the petitioners. The petitioners continued to work illegally and complaints were received in the year 2016 at the CM Window office and the enquiry report also came against them on 03.02.2017 but the proceedings were kept pending. Only on account of the fact that an illegal order has been passed on 14.08.2018 by the Director, Medical Education & Research, at that point of time, dropping the proceedings, would not give the petitioners any cause to say that the proceedings had come to an end.

The petitioners were put to due notice vide show cause

notice, to which, they duly replied and were, accordingly, given opportunity to put-forward their case. They could not, however, substantiate the fact that they had the essential qualifications as required for the appointment existing at that point of time.

Similar is the case of the petitioner in CWP-11243-2021 who was appointed as Deputy Nursing Superintendent. A show cause notice was put to her that she was more than 5 years 7 months 15 days over the age of 40 years and did not have the qualifications of the said post wherein she was appointed as Deputy Nursing Superintendent though she was only a Staff Nurse and not a ANS/Nursing Sister having 5 years of experience. The justification given in the reply to the show cause notice is also that there was no concealment or misrepresentation on her part and the competent authority seemed to have relaxed the age wherein in earlier circumstances, in CWP-18045-2012, the appointment had been challenged. Admittedly, the petitioner-Munni Sharma was appointed as Staff Nurse at PGIMS, Rohtak on 23.05.1996, as per her pleadings and thereafter, was transferred to the respondent-College on 06.09.2011 and was stated to be given charge of Deputy Nursing Superintendent. It is, thus, apparent that at no point of time she was holding the post of Nursing Sister or had the experience as Assistant Nursing Superintendent, which was the requirement for appointment.

A perusal of Clause 11 of the appointment order which is common to both the set of cases would go on to show that the appointment was also provisional. Clause 11 reads as under:

“11. The appointment is provisional and is subject to the verification of the eligibility conditions such as academic, qualifications and any other certificates such as Scheduled Caste/Schedule Tribes/Backward Classes/ESM/DESM/OSP/PH if any, submitted by you. If on verification, it reveals that the information given by you is false, then your services will be terminated forthwith without prejudice to such further action as may be taken under the provisions of the Indian Penal Code for production of false certificate.”

A perusal of the above would go on to show that if the eligibility condition was not verified, the appointment was only provisional and thus, had rightly been annulled.

It is settled principle that ineligible candidate cannot seek the benefit of appointment or relaxation of the age to the said post without possessing the requisite criteria. The Apex Court in **Dr.Prit Singh Vs. S.K.Mangal 1992 (3) SCT 738** has held that person who was not eligible for appointment in terms of the prescribed qualifications on the date he was appointed by the Managing Committee he cannot later become eligible after the qualifications to the posts were amended. The order passed quashing the appointment of the appellant as Principal was, thus, upheld.

Reliance can also be placed upon the judgment of the Apex Court in **Pramod Kumar Vs. U.P.Secondary Education Services Commission & others 2008 (7) SCC 153** wherein the employee was appointed as Assistant Teacher and was found not having the minimum qualifications from a recognized University. It was held that irregularity

cannot be regularized and the appointment contrary to the statutory rules are void in law as the essential qualifications are not satisfied. Accordingly, the appeal filed by the employee was dismissed, upholding the judgment passed by the High Court.

Reliance can also be placed upon the judgment of the Apex Court in **State of Gujarat & others Vs. Arvindkumar T.Tiwari & another 2012 (9) SCC 545** wherein the employee did not possess the minimum eligibility requirement in the post as he had not passed 10th Standard, for appointment on compassionate basis. It was held that lack of eligibility for the post cannot be cured at any stage and appointing such a person would amount to serious illegality and not a mere irregularity as he did not possess the requisite qualifications and could not even apply for recruitment for the reason as the appointment would be contrary to the statutory rules and therefore, void in law.

Similar is the position in both set of cases herein as the petitioners did not have the requisite qualifications and had not been working in the post of Nursing Sister for 7 years but working as Staff Nurse. In the other case, the experience as Assistant Nursing Superintendent for appointment as Deputy Nursing Superintendent was needed which was lacking. In such circumstances, the orders passed whereby the petitioners have been reverted to their original post, not only on account of their ineligibility of having the requisite experience but also being over-age on the last date of submission of application, cannot be said to be suffering from any illegality or irregularity which would

warrant interference under Articles 226-227 of the Constitution of India.

Reliance placed by counsel for the petitioners upon the judgment of the Apex Court in **Ram Sarup Vs. State of Haryana & others 1979 (1) SCC 168**, is without any basis. In the said case, it was held by the Apex Court that the appointment of the petitioner was irregular as he did not possess one of the three requisite qualifications of experience of working in Labour Laws in any one of the three capacities for a period of 5 years. It was held that since he had worked on a post higher than Labour Inspector/Deputy Chief Inspector of Shops or Wage Inspector as Labour-cum-Conciliation Officer from 01.01.1968 to which he had continued upto 28.04.1977, he became eligible for appointment and could not be reverted to the post of Statistical Officer. It was, in such circumstances, the benefit was given, which is not the case in the present cases, as discussed above, as the basic appointment on the feeder post is also not available.

Resultantly, in view of the above discussion, finding no merit in the present writ petitions, the same are hereby dismissed. However, since the petitioners have worked on a higher post for the periods in question and the impugned orders do not talk about any recovery, the State shall not, at any later stage, seek to recover the emoluments received by the petitioners, for the work done on the higher posts.

07.07.2021

sailesh

Whether speaking/reasoned:

Whether Reportable:

(G.S. SANDHAWALIA)

JUDGE

Yes/No

Yes/No