

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

247

CWP No.605 of 2021

Date of Decision: 16.09.2022

Pushpa Bishnoi

... Petitioner

Versus

State of Haryana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Sanjay Kaushal, Sr. Advocate,
with Mr. Arjun Shukla, Advocate,
for the petitioner.

Mr. Sandeep Singh Mann, Addl. AG, Haryana.

HARSIMRAN SINGH SETHI, J. (Oral)

In the present petition, the prayer of the petitioner is for appointment to the post of Medical Superintendent in Shaheed Hasan Khan Mewati Government Medical College, Nalhar, Nuh keeping in view the result dated 27.11.2020, according to which the petitioner had secured the highest marks out of the candidates who had competed for selection.

As per the averment made in the petition, an advertisement No.SHKM/2018 was issued on 17.05.2018 by respondent No.2 for advertising the various posts in Shaheed Hasan Khan Mewati Government Medical College, Nalhar, Nuh. The post of Medical Superintendent in the said Medical college was also advertised. Being eligible, the petitioner applied for the said post.

The petitioner and her husband were not called for interview which action was challenged by the petitioner by filing CWP No.18488 of 2018 wherein, the direction was issued to provisionally interview the

petitioner and her husband along with third candidate namely, Col. Narender Singh and the result of the provisional interview was to be kept in sealed cover.

Thereafter, the respondents appeared in CWP No.18488 of 2018 and raised an objection to the prayer of the petitioner therein that the petitioner was not fulfilling the requirement of the administrative experience upto the date of the interview and further, as per the notification dated 21.11.2016, no administrative post can be held after attaining the age of 58 years, hence is not eligible to be considered for the post in question.

Keeping in view the order passed in CWP No.18488 of 2018, the petitioner along with her husband who was also a candidate, along with third candidate namely, Col. Narender Singh were interviewed. The said interview of the petitioner and her husband was provisional. After the said provisional interview, the result was called for by this Court for perusal, wherein it transpired that the petitioner had secured the maximum marks out of the said three candidates. The said writ petition was withdrawn by the petitioner and was not decided on merits so as to adjudicate the eligibility of the petitioner, which was being disputed by the respondents.

After the writ petition was withdrawn, the selection Committee which was constituted for selecting the eligible candidate, met and decided that though the candidates have been interviewed and given marks but no candidate was treated as suitable for appointment and further decided to advertise the post afresh, which action is impugned in the present petition by the petitioner.

Learned Senior counsel appearing on behalf of the petitioner argues that once the petitioner has secured highest marks out of the three

candidates, who were interviewed, the respondents were under an obligation to take the advertisement to the logical end by offering appointment to the petitioner and the action of the Select Committee in adjudging none of the interviewed candidates as suitable for appointment, and to advertise the post afresh, is arbitrary and illegal and hence, the re-advertisement of the said post is also arbitrary and illegal.

After notice of motion, the respondents have filed the reply, wherein it has been stated that the eligibility of the petitioner is in dispute though, as per the provisional interview which the petitioner had undertaken as per order of this Court, she had secured the highest marks out of the three candidates. The respondents have further averred in their reply that the Selection/Expert Committee, which was constituted to make the recommendation of the suitable candidate, has expressed the opinion that none of the three candidates can be treated as suitable for appointment against the post of Medical Superintendent and therefore, the post be advertised afresh, which recommendation has been accepted by the competent authority.

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

The question which arises is as to whether keeping in view the marks which the petitioner has secured in the interview, which interview the petitioner has undertaken provisionally keeping in view the interim order passed by this Court, will give any right to her to claim the appointment as well or not especially when the said writ petition was withdrawn by the petitioner without adjudication on merit.

It is a settled principle of law that the employer is the master to

decide whether, an advertisement is to be taken to the logical end or not and no candidate can direct the employer to finalize the proceedings in pursuance to the advertisement so as to claim appointment. The reliance can be placed on judgment of the Hon'ble Supreme Court in **Civil Appeal No.4150 of 2022 titled *Employees State Insurance Corporation & Anr. v. Dr. Vinay Kumar & Ors.***, decided on 18.05.2022.

Keeping in view the above noticed principle of law, the claim of the petitioner that the petitioner should be appointed in pursuance to the advertisement No.SHKM/2018 dated 17.05.2018 being the highest scorer, cannot be accepted by taking the advertisement to the logical end, cannot be accepted.

The further question which needs to be adjudicated in the present petition is whether the petitioner is eligible to claim the appointment or not keeping in view the facts and circumstances of the present case.

The prayer of the petitioner as raised in the petition cannot be accepted for another reason that as per the respondent, the petitioner was not eligible to be considered for appointment against the post of Medical Superintendent. The said action was challenged by the petitioner by filing CWP No.18488 of 2018 and only by way of interim order, the petitioner was directed to be interviewed provisionally. Before the eligibility of the petitioner to be appointed could be adjudicated by this Court on merits, the petitioner withdrew the said writ petition. Hence, there is no order by this Court treating the petitioner eligible for appointment to the post of Medical Superintendent. As the eligibility of the petitioner is in dispute, even if in the provisional interview, the petitioner has secured more marks than the other candidates, the same cannot extend a right to the petitioner to claim an

appointment. Hence, as the petitioner is claiming appointment on the basis of marks secured by her in the interview, which interview was only provisional and was dependent on the outcome of the writ petition i.e. CWP No.18488 of 2018, and as the said writ petition was withdrawn by the petitioner voluntarily, no benefit of the said provisional interview can be extended in her favour so as to claim the appointment.

Keeping in view the above, no interference is called for by this Court in the facts and circumstances of this case.

The petition stands dismissed.

16.09.2022
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes