

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

CWP-21097-2018 (O&M)

Date of decision: April 08, 2022

Ved Prakash

....Petitioner

versus

State of Haryana and another

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Surender Pal, Advocate for the petitioner.

Mr. Saurabh Mohunta, DAG Haryana.

ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, is for issuance of a writ in the nature of Certiorari seeking to set aside public notice dated 05.05.2018 (Annexure P-7) issued by respondent No.2-Haryana Staff Selection Commission (for short 'Commission') pursuant to which candidature of the petitioner was rejected declaring him as ineligible, ostensibly on the ground that the diploma of the petitioner is not from the recognized institution.

2. Notice of motion was issued on 25.09.2018 and my learned Sister Ritu Bahri, J. in seizin of the matter then, passed the following order:-

*“Learned counsel for the petitioner has relied upon two Division Bench judgment of this Court in cases of **Amandeep Singh and others v. State of Punjab and others**, passed in LPA No. 1214-2012, decided on 12.03.2013 and **P.S. Sachdev v. Union of India and others**, 2011 (2) S.C.T 27 and a judgment passed by Hon'ble the Supreme Court of India in a case of **Dolly Chanda vs. Chairman, JEE 2004 (4) SCT 546** to contend that where the substantial number of posts are available and the candidature of the candidate has wrongly been rejected, they can always be considered for appointment against those posts.*

In the present case, vide advertisement dated 19.06.2015, 934 posts of MPHW were advertised and the petitioner applied

against the same and appeared in written examination. The petitioner cleared the written examination by securing more than 100 marks. The certificates of the petitioner were also scrutinized and the respondent-department raised no objection. The petitioner was declared ineligible vide announcement dated 05.05.2018 on the ground that diploma of the petitioner was not from the recognized institution. The result has also been declared on 05.08.2018

Learned counsel submits that the diploma certificate of the petitioner has been issued by the Army Authorities which is recognized institution of Government of India and all. The petitioner is relying upon letter dated 31.07.2006 wherein it has been stated that the certificates issued to AMC Trade personnel to the Army (Nursing Assistant) are equal to perform the job of MPHWW.

Notice of motion for 23.01.2019.

On asking of the Court, Ms. Palika Monga, DAG, Haryana accepts notice on behalf of the State. Learned counsel for the petitioner is directed to supply copy of the petition to the learned State counsel by today itself.

Learned State counsel seeks time to get instructions that how many posts are still lying vacant after declaration of result.”

3. *Apropos above, return has been filed and claim of the petitioner has been opposed inter alia, in the following terms:-*

“4. That the petitioner has applied for the post of MPHWW (Male) under ESM-Serviceman (General) Category and was allotted roll No.29708855. The Respondent-Commission has conducted the written examination on 29.01.2017 and declared the result of written examination on 06.05.2017 and shortlisted the candidates for scrutiny of documents from 15.05.2017 to 17.05.2017. Petitioner appeared for scrutiny of documents on 17.05.2017 and declared not eligible due to his diploma not valid recognized institute. The copy of scrutiny of documents is annexed as Annexure R-2/1.”

4. I have heard the rival contentions of the learned counsel which are primarily on the lines of respective pleadings. Perusal of the diploma certificate dated 09.04.1997 from Armed Forces Medical College, Pune (for short ‘AMC’) which is annexed as Annexure P-2 vis-à-vis the instructions dated 31.07.2006 issued by the Government of India clearly reflect that the defence taken by the respondents is a complete moonshine. Petitioner has

been unnecessarily made to run from pillar to post including seeking indulgence of this Court. For ready reference, instructions dated 31.07.2006 (Annexure P-9) issued by Government of India are reproduced herein below:-

- “1. Refer your memo no.31/4/2003-4D II Dated: 27 July 06
2. It is intimated that Nursing Assistant (AMC/ADC) of Army/ Navy/ Air Force can work in the following fields:-
 - a) Bed Side care in case of illness.
 - b) Administers Medicine as prescribed by Doctors.
 - c) Record pulse and temperature of patient.
 - d) Assists in treating patients.
 - e) Sterilizes appliances
 - f) Prepares patient for ward dressing and for general, spinal regional and local anaesthetics.
 - g) Post operative treatment, treats shocks.
 - h) Observes and appreciate sign and symptoms of haemorrhage.
 - j) Manages wards, Writes reports workout diets.
 - k) Give stimulants, sedatives and nutrients.
 - l) Nursing cases of respiratory and hear diseases and rheumatism.
 - m) Nurses gastric cases including giving ----- meals, stomach lavage and barium meal.
3. It may please be appreciated that the Nursing Assistant is well qualified to perform the task of MPHWS since the individuals are well qualified for the job.”

(Emphasis supplied)

5. It is irrelevant whether or not the State Government formally recognizes the institutes of the petitioner from where he has done his diploma as is argued seeking support of Annexure R-2/2, wherein the list of various recognized institutes has been given. The Armed Forces Medical College, Pune name is amiss from the same. However, as long as Government of India instructions are not disputed and are not under challenge before this Court, needless to say that same are equally applicable on the State Government.

6. As an upshot of the above discussion, petition is allowed. Respondents are directed to consider the case of the petitioner in accordance with his merits other than monetary benefits grant him notional seniority w.e.f. the date his juniors in merit were appointed pursuant to the advertisement dated 19.05.2015 (Annexure P-1). In case, there is no vacancy available on today, petitioner's claim on post shall be adjusted in the first future vacancy arising on the post in question. Needful be done within a period of 60 days from today.

(ARUN MONGA)
JUDGE

April 08, 2022

mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No