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

CWP No.4441 of 2017 (O&M)

Date of Decision:30.08.2022

Bhanwar Singh

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Devender Arya, Advocate
for the petitioner.

Mr. Saurabh Mohunta, D.A.G., Haryana.

None for respondent No.6.

ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, is for issuance of a writ in the nature of Certiorari for quashing result dated 23.12.2016 (Annexure P-3) whereby private respondent No.6 was selected as Yoga Specialist.

2. Respondent-department published an advertisement (Annexure P-1) for several posts on contractual basis under NHM in October, 2016. Petitioner being eligible applied for the post of Yoga Specialist (at Sr. No.5). He appeared in the written examination and having cleared the examination, he was called for interview and had appeared in interview as well. However, despite the fact that the

selection criteria specified 1 mark for each complete year of the experience and maximum of 5 marks, he was not awarded any marks for experience. He was awarded total 47.35 marks and the private respondent No.6 scored 48.84 marks after getting marks for experience as well. Having not been selected as Yoga Specialist, the petitioner is before this Court.

3. *Per contra*, two returns have been filed i.e. one by Dr. Sunil Gautam, Ayush Coordinator, O/o Director General, Ayush Haryana, Panchkula on behalf of respondents No.1 and 2 and another by Dr. Ajit Yadav, District Ayurvedic Officer, Narnaul on behalf of respondents No.3 to 5 while none has been filed on behalf of the selected candidate i.e. respondent No.6. Perusal of both the returns reflects that the factual assertions pleaded by the petitioner have not been controverted and in fact a very sketchy response to the specific averments has been given. As against the evasive reply, it would also be relevant to have a look at the requirement for the post in question as per the advertisement (Annexure P-1) as below:-

“XXXX XXXX XXXX

Eligibility Criteria, Selection Procedure & Remuneration

Norms and General Guidelines for filling up vacant posts

A) General Guidelines:-

- 1) The recruitment should be strictly facility specific i.e. non-transferable. And an agreement will be signed between SKS and Candidates.
- 2) Preference should be given to local candidate.

- 3) It is mandatory for staff to maintain H Q and reside at the place of posting.
- 4) Desirable – 1 year working experience.
- 5) The contract period may be initially upto 31st March, 2017.
- 6) Quarterly appraisal of this performance will be carried out and if found unsatisfactory the services shall be terminated.

XXXX XXXX XXXX

5. Essential Qualifications for Yoga Specialists

- i. A bachelor degree in Ayurveda/Yoga and Naturopathy/Unani/Homeopathy/BNYS or in any stream from any University/Institutions established by law and recognized by the Govt.
- ii. Post Graduate Degree or Diploma in Yoga & Naturopathy of not less than two years duration with regular course only.
- iii. Knowledge of Hindi upto Matric Standard.
- iv. In case of non-availability of the candidates having essential qualifications, PG Degree or Diploma through Distance Education holders will be considered eligible. In that case honorarium will be reduced from Rs.22,500/- to 20,000/-.

Age upto 62 years

XXXX XXXX XXXX”

4. On perusal of the requirements for eligibility read with the essential qualifications, it is clear that what is required is a bachelor's degree in the specified field from a recognized institution and desirable work experience of one year. As against the same, it is not disputed that the petitioner indeed possesses a degree from a recognized institute and had also furnished his work experience certificate of 6 years as contended in his application (Annexure P-2). Hence, it was open for the department to verify the work experience rendered by the petitioner and give specific reasons thereon for not

accepting the certificate as provided by the petitioner at the time of selection, particularly in view of the fact that criteria adopted for selection assigned additional 5 marks for work experience which concededly the petitioner would have been entitled, had his work experience been verified.

5. Not only the verification has not been carried out but in returns filed by the respondents the work experience of the petitioner has not been controverted. Even otherwise, a perusal of the requirement of work experience reflects that the same is merely desirable.

6. Be that as it may, the petitioner, having got desirable experience, also fulfilled other condition that he was the resident of the same District where the appointment is to be made and the advertisement clearly states in as many words that the residence of the same District shall be given preference. On the other hand, respondent No.6, who otherwise got only 43.84 and had scored lesser marks than the petitioner, was given 5 more marks for work experience. It is not disputed that exclusive of the marks for experience, the petitioner had scored 47.35 marks as against 43.84 marks scored by the private respondent No.6. The latter had also been given 5 marks for work experience but no such weightage of experience was given to the petitioner. Had the petitioner been granted additional 5 marks for the work experience he would have got total aggregate of 52.35 marks and also would have been higher in merit.

7. It is not for this Court to sit in judgment of the acceptance or rejection of the work experience. However, the certificates provided by the petitioner have to be got verified by the department and if found genuine, the petitioner be accorded the benefit of additional marks as per the criteria adopted for selection by the Selection Committee. Ordered accordingly. The merit list thereafter be redrawn and needless to say, in case respondent No.6 is eventually found to have scored lesser marks than the petitioner, his appointment shall be cancelled by the official respondents and the petitioner shall be given due benefit of his merit and fresh appointment letter be issued thereafter.

8. Let the needful exercise be carried out within a period of 3 months.

9. Disposed of, accordingly.

10. Pending civil miscellaneous application, if any, also stands disposed of.

August 30, 2022
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(ARUN MONGA)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No