

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

**CM NO. 3814-CWP-2021 AND
CM NO. 9823-CWP-2020 IN/AND
CWP NO. 9494 OF 2018**

DATE OF DECISION: 19.04.2022

Poonam

...Petitioner

Versus

Haryana Staff Selection Commission

...Respondent

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Pawan Kumar, Senior Advocate with
Mr. Surya Kumar, Advocate,
for the applicant/petitioner.

Mr. Saurabh Mohunta, DAG, Haryana.

ARUN MONGA, J. (ORAL)

CM-3814-CWP-2021

For the reasons stated in the application, same is allowed and affidavit along with Annexures A-6 to A-10 are taken on record, subject to all just exceptions.

MAIN CASE (O&M)

Aggrieved by her non-selection as Staff Nurse in the Backward Class-B category, claiming to be meritorious enough as per the result declared by the Haryana Staff Selection Commission, petitioner is before this Court. She *inter alia* seeks issuance of a writ in the nature of certiorari to quash an order dated 23.01.2018 (Annexure P-13), vide which her representation to treat her candidature in the Backward Class-B Category (BCB) was rejected.

2. The facts are not in dispute and in any case not of much relevance at this stage, since the petitioner's candidature under the BCB category has already been accepted/considered under the orders passed by this Court on 06.09.2019. To that extent her grievance stands mitigated.

3. The short controversy that survives for adjudication now is whether there are currently any vacancies in BCB category; and whether the petitioner is meritorious enough to be selected qua the said vacancies?

4. In order to establish that the vacancies are indeed existing the petitioner filed an affidavit dated 10.12.2020 making following positive averments in paras 2 and 3 thereof:

"2. That there are number of post of Staff Nurse in the category of BCB still lying vacant the reply filed by the respondent Secretary Legal Haryana Staff Selection Commission itself shows three post in the category of BCB of Staff Nurse have been withheld and these three post are lying withheld and the petitioner is hopefully next in the merit to whom to post is to be offered.

3. That apart from these three post, the office director general Health Service Haryana on the recommendation of Haryana Staff Selection Commission Panchkula vide letter dated 01.02.2018 recommended candidate to whom the offer of appointment were issued to the post of Staff Nurse (c) vide office letter dated 04.02.2018, out of the total appointment letter's 46 candidates did not come forward to join the post of Staff Nurse and ultimately vide letter dated 22.11.2018 issued by Director General, Health Services Haryana cancelled the appointment of 46 candidates for the post of Staff Nurse and out of these 46 candidates, the candidate at serial No.6, 23, 24, 34, 38 they belong to BCB category in which the petitioner belongs and after the cancellation of these 05 letter of appointment as per the cancellation letter dated 04.02.2018 these post are still lying this fact is clear from the Annexure A-2 dated 22.11.2018 attached with CM 9823 of 2020 and respondent commission have also not given any reply to the averment made in the para no.3 of the application."

5. *Apropos* above, a short affidavit dated 21.02.2021 of Bharat Bhushan Under Secretary, Haryana Staff Selection Commission has been filed taking the following stand qua the vacancies on the post in question :

“xxx

8. *That the another contention of the petitioner is that few posts are still lying vacant and against those posts petitioner can be adjusted. With regard to this contention of the petitioner it is pertinent to mention here that on point no.1 and 2 of result dated 28.10.2020 it is clearly mentioned that:*

‘1. The above result is subject to the final outcome of CWP No.18481/2017, 20502/2017, 18879/2017, 22856/2018 and 15609/2020 etc and any another writ petitions pending in the any Court of law.

2. 05 General, 02 SC, 03 BCA, 03 BCB category have been withheld.”

Therefore, from the above reproduction of point 1 and 2 of result it is clear that the vacant posts claimed by petitioner have been kept withheld on Court orders in various writ petitions as mentioned in point 1. Moreover, hypothetically if the Respondent Commission considered the petitioner under BCB category, even then the petitioner will not fall under the selection zone for the post in question. The petitioner has secured 81 marks out of 200 marks as per the Annexure P-2 whereas, as per the final result (Remaining) dated 28.10.2020, the cut off under BCB category is 86 marks and the cut off under BCB waiting is 82 marks. Therefore, the petitioner cannot be considered even under BCB category as the petitioner has secured lesser marks than the last selected candidate.”

6. In the aforesaid background, I have heard rival contentions of learned senior counsel for the petitioner as well as learned State counsel.

7. Perusal of the record reveals that indeed owing to pending litigation in CWP Nos. 18481/2017, 20502/2017, 18879/2017, 22856/2018 and 15609/2020, three posts were kept vacant by the respondent-Commission. Therefore, the petitioner’s claim was at the relevant time rightly rejected as she had secured 81 marks and there were candidates having higher marks i.e 82, who were in waiting list and aspirant to be appointed against the said vacancies.

8. In the interregnum, as it has turned out, of the above said bunch of writ petitions; one bearing CWP No. 20502 of 2017 pertained to outstanding sports person in BCA category; while CWP No. 18879 of 2017 pertained to outstanding sports person category; and both were

decided on 27.11.2017 and; the one pending i.e. CWP No. 22856 of 2018 pertains to BCA category. Further more, of the other two writ petitions, one bearing CWP No. 15690 was dismissed as withdrawn vide order dated 29.09.2020 meaning thereby interim order, if any passed therein, stood vacated on its dismissal; and even the last of the writ petitions of the bunch i.e. CWP No. 18481 of 2017 does not appear to be pertaining to the BCB category.

9. Resultantly, outcome of these petitions, pending or disposed of, is not in conflict with the vacancies in BCB category in which the petitioner is staking claim.

10. Qua the vacancy position, learned senior counsel has drawn my attention to an office order dated 13.11.2018 (Annexure A-2) passed by the Commission during the pendency of writ proceedings. Wherein, certain appointments which though were offered earlier but since the candidates did not join, were cancelled after following due process i.e. by giving final notices to the candidates and yet their choosing not to join on the posts in question.

11. Perusal of the above said office order reveals that candidates mentioned at serial nos. 6, 23, 24, 34 and 38, numbering five of them, who belong to BCB category since did not join the services despite having been given final notices, their appointments were also cancelled. It is not, and cannot be, the case of the Commission that candidates having since not joined the services at the very first instance, the corresponding posts are deemed to be consumed or filled up and have to be now adjusted or advertised along with future vacancies.

12. Even otherwise, vide an interim order dated 06.10.2020 passed by this Court during pendency of instant writ proceedings, one post of Staff Nurse was directed to be kept vacant.

13. Long and short that emerges therefore is that, *prima facie* it is established that vacancies in the category in which the petitioner had applied are still available. It is expected of the Commission to fill those posts which remained unfulfilled pursuant to the advertisement in question, by offering the same to the eligible and meritorious candidates who have participated in the selection process pursuant to the said advertisement.

14. In the premise, the writ petition is disposed of with a direction to the respondents to offer vacant posts of Staff Nurses in BCB category first to the candidates who are above the petitioner in the merit list and in case, same are not consumed in accordance with merit, offer one to the petitioner, she being next in line merit after the candidate who has obtained 82 marks, as concededly she has obtained 81 marks.

15. In case the petitioner is found eligible and meritorious for the appointment, needless to say she shall not be entitled to monetary benefits. She will be put in bottom of seniority list with effect from the date when her counter parts who participated in the selection process were offered appointments.

16. Needful exercise be carried out within a period of 60 days from today.

APRIL 19, 2022
Shalini

(ARUN MONGA)
JUDGE

Whether speaking/reasoned :
Whether reportable :

Yes/No
Yes/No