

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(107+258)

CM No.8439-CWP of 2023 in/and
CWP No.1674 of 2021 (O&M)
Date of Decision : 21.08.2023

Rajeev Gaur and others

...Petitioners

Versus

State of Haryana and others

...Respondents

CWP No.14878 of 2022

Sushila

...Petitioner

Versus

State of Haryana and others

...Respondents

CWP No.14878 of 2021

Shahina Khatoon and another

...Petitioners

Versus

State of Haryana and others

...Respondents

**CM No.8439-CWP of 2023 in/and
CWP No.1674 of 2021 (O&M)**

Neutral Citation No. 2023:PHHC:109144
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CWP No.15573 of 2021

Ashish and another

...Petitioners

Versus

State of Haryana and another

...Respondents

CWP No.20801 of 2022

Jaswant Meghwal and others

...Petitioners

Versus

State of Haryana and another

...Respondents

CWP No.16753 of 2021

Sachin Kaushik

...Petitioner

Versus

State of Haryana and others

...Respondents

CWP No.13304 of 2021 (O&M)

Swati Rani and others

...Petitioners

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. R.K. Malik, Senior Advocate with
Mr. Lekh Raj Sharma, Advocate,
Mr. Abhishek Sharma, Advocate,
Mr. Abhikant Vats, Advocate
for the petitioners in CWP No.1674 of 2021.

Mr. Sajjan Singh, Advocate
for petitioners in CWP No.15573 of 2021.

Ms. Hardeep Kaur, Advocate and
Ms. Nitasha Singla, Advocate and
Mr. Azad Singh, Advocate
Mr. Nitika Singla, Advocate;
Mr. Sukhwinder Singh, Advocate
Mr. Drupad Sangwan, Advocate and
Mr. Saurabh Changatra, Advocate
Ms. Garima Modi, Advocate
Mr. Gurinder Bhambri, Advocate and
Mr. Sandeep Doon, Advocate
for petitioners in CWP No.14878 of 2021 and 14878 of 2022.

Mr. Vijay Pal, Advocate and
Mr. Ashish Kumar, Advocate
for petitioner in CWP No.13304 of 2021.

Mr. J.S. Maanipur, Advocate with
Ms. Harpreet Kaur, Advocate and
Ms. Joypreet Meelu, Advocate
for the petitioners in CWP NO.20801 of 2022.

Mr. Rose Gupta, Advocate and
Mr. A.S. Cheema, Advocate and
Mr. Amandeep Kumar, Advocate
for the petitioners in CWP NO.16753 of 2021.

Mr. Pankaj Middha, Additional Advocate General, Haryana.

Mr. Anil Chawla, Advocate for respondent No.4-UOI
in CWP No.16753 of 2021.

Mr. Vipul Aggarwal, Senior Panel Counsel
for respondent-UOI in CWP No.1674 of 2021.

Mr. J.S. Maanipur, Advocate and
Ms. Harpreet Kaur, Advocate
Ms. Joy Preet Meelu, Advocate for respondents No.5 to 10
in CWP No.1674 of 2021.

Harsimran Singh Sethi J. (Oral)

1. By this common order, the writ petitions, the details of which have been given in the heading are being decided as the same relate to the same selection process and involve the similar facts.

2. The State of Haryana issued an advertisement on 28.12.2020 (Annexure P-3) for filling up 671 posts of Mid-Level Health Providers-cum-Community Health Officers to be posted in 15 Districts of the State of Haryana. The said appointment was to be made on contract basis under the National Health Mission for providing comprehensive care services at sub centre level. In the said advertisement, copy of which has been appended as Annexure P-3, eligibility criteria so as to apply for the posts in question was also mentioned. As per the eligibility criteria mentioned, the essential qualification for applying for the post in question is that the candidates should be (I) BAMS or B.Sc./Post Basic B.Sc. Nursing Degree Holders, who have completed their six months Mid-Level Health Providers Bridge Course Programme on Certificate in Community Health for Nurses from IGNOU or any State University/Institution or (II) B.Sc./Post Basic B.Sc. Nursing Graduates, who have completed their degrees with the Mid-Level Health Providers Certificate Course integrated in the curriculum of B.Sc./Post Basic B.Sc. Nursing.

3. The petitioner(s) are the one, who are BAMS Graduates as well as B.Sc. Nursing Graduates but do not have six months Mid-Level Health Providers Bridge Course Certificate in Community Health for Nursing. The petitioner(s) are challenging the imposition of the said qualification of Bridge Course in the advertisement. The challenge to the said eligibility condition is on the ground that as per the National Health Mission guidelines, the said Bridge Course, which has been made an essential qualification for competing for the posts in question, can

be done only after the selection of a candidate, who is recommended by the employer for undergoing the said course hence, once a qualification cannot be obtained by the petitioner(s) without their being any selection, the petitioner(s) cannot be ousted from the zone of consideration on the ground that they do not have the qualification of the said Bridge Course.

4. The second argument which has been raised by the learned counsel for the petitioner(s) to challenge the prescription of the Bridge Course as essential qualification is that on earlier occasions, the criteria fixed for competing as mentioned in the advertisement was that all the candidates possessing the essential qualifications will be eligible to participate but the selected candidates will have to undergo the Bridge Course after their selection, which liberty has not been given to the candidates in the present advertisement so as to render the same as arbitrary and illegal.

5. The third argument which has been raised by the learned counsel for the petitioner(s) is that all the other States are considering the candidates for selection without undergoing the Bridge Course and it is only after the selection, the selected candidates who are required to undergo the Bridge Course, are deputed for the same, therefore, the exception being carved out by the Government of Haryana by issuing the impugned advertisement (Annexure P-3) is totally arbitrary and illegal. It may be noticed that while issuing the notice of motion, as an interim order, the petitioner(s) were allowed to appear in the competition provisionally.

6. Learned counsel for the petitioner(s) further submits that in the advertisement which has been issued after the impugned advertisement, there was no condition of undergoing of the Bridge Course which itself shows that the same is not necessary to be passed.

7. Upon notice of motion, the respondents have appeared and have filed the reply. In the reply filed by the Director of the National Health Mission, Haryana, it has been mentioned that the posts in question have been advertised under the National Health Mission Scheme for providing the comprehensive Primary Health Care Services at the sub centre level. As per the reply, the criteria which has been incorporated as an essential eligibility condition is in consonance with the norms and the guidelines prescribed by the Government of India and further, the condition of completing the Bridge Course has been prescribed so that, the candidates who are being appointed for the post in question should be able to discharge the duties as required to do as a mid level health provider centre.

8. Further, it has been mentioned in the reply that keeping in view the letter of the Ministry of Health and Family Welfare, Government of India dated 14.08.2019, the Mid-Level Health Provider Course has already been included in the B.Sc. Nursing curriculum for which the Indian Nursing Counsel has already issued circulars to the College/University which are offering B.Sc. Nursing so as to integrate the Bridge Course into the studies already being imparted to the B.Sc. Nursing students so that, the conducting of the Bridge Course for the B.Sc. Nursing students could be done away and, the State of Haryana has already included the curriculum of the Bridge Course into the curriculum of the Nursing and B.Sc. Nursing candidates since the year 2020. As per the reply, it has also come on record that as of now, the State of Haryana itself has 4390 eligible candidates, who fulfilled the required qualification as prescribed in the advertisement against 671 posts advertised.

9. With regard to the averments that earlier, the candidates were being selected and then sent to undergo the Bridge Course, the respondents-State

submits that once enough candidates, who fulfill the eligibility were already there, hence grant of the said exemption was not given while issuing the advertisement.

10. It may be noticed that the present bunch of petitions came up for consideration before the Coordinate Bench on 15.07.2021 on which date, the State of Haryana gave a concession in favour of the petitioner(s) that in case the petitioner(s) give an undertaking to undergo the Bridge Course in case they are selected, they will be considered eligible.

11. On the basis of said concession, the writ petitions were disposed of but, thereafter the candidates, who were eligible under the advertisement and had already competed and were being prejudiced by the concession given by the State of Haryana to the ineligible candidates, filed a review petition so as to recall the order dated 15.07.2021 and after considering all the facts, the said order was recalled hence, the writ petitions are again placed before this Court to be decided on merits.

12. It may be noticed that before the order dated 15.07.2021 was recalled, a large number of candidates who were similarly situated as petitioner(s) started approaching and claiming the benefit of the order dated 15.07.2021, and the State, in its wisdom decided that ineligible candidates are seeking consideration for appointment on the basis of the concession and that too, despite the fact that the large number of eligible candidates in pursuance to the advertisement were already available, the State also filed an application to withdraw the said concession so that the claim of the petitioner(s) could be decided on merits.

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

14. The challenge in the present petition is to the inclusion of a particular qualification as an eligibility condition for competing for the post advertised vide Annexure P-3. It is a settled principle of law that prescribing an essential qualification for appointment to any particular post is the jurisdiction of the employer and not the jurisdiction of the Court. The employer, keeping in view the nature of the duties has full authority to prescribe the qualification, which according to the employer are best suited for selecting the best available talent for the post in question so that selected candidates are able to discharge the duties of the advertised posts. The Court cannot substitute or impose its opinion upon an employer so as to prescribe a particular qualification or to withdraw a qualification prescribed so as to select the candidates in pursuance to an advertisement. Hence, the jurisdiction to prescribe a particular qualification so as to select the best available talent is with the Government i.e. employer and the Court will not interfere in the prescription of any such qualification unless and until the same are found to be totally arbitrary and illegal or have been imposed with the malafide intention being tailor made for a particular section of society to the exclusion of other eligibles.

15. The prayer of the petitioner is for setting aside the prescription of the qualification of Bridge Course for selecting the candidates in pursuance to the advertisement Annexure P-3. It may be noticed that the justification for prescribing of the said Bridge Course has already been given by the respondents in their written statement. It has already been brought on record that without the said Bridge Course, the candidates, will not be able to perform the duties in a manner required for, which fact is also clear from the guidelines of Government of India, which has started National Health Mission under which scheme, the posts are being filled up. Once, a due justification has been given by the

respondents for the prescription of the said Bridge Course as essential qualification, the Court will not interfere in the prescription of the said qualification while selecting the candidates.

16. The argument which has been raised by the learned counsel for the petitioner(s) is that the petitioner(s) cannot obtain the qualification of the said Bridge Course unless and until they are selected and sponsored by the employer. Though, the grievance being raised by the petitioner(s) is somehow genuine but in the facts and circumstances of the case, the said grievance cannot be accepted as a valid reason to set aside the prescription of the Bridge Course.

17. It may be noticed that the National Health Mission was notified in the year 2017 by the Union of India and duly accepted by the State of Haryana. At the time when the said Mission was started, in order to ensure that the candidates who are to work under the said Mission know their job so as to perform at a basic level, the option was given that in case any candidate is selected to work, he should be allowed to undergo the Bridge Course and, thereafter, should be allowed to perform the duties so that, the Mission gets success at the grass root level for which the same was envisaged. From 2017, the petitioner(s) and the other similarly situated candidates knew that unless and until they have undergone the Bridge Course, they will not be recruited on the post which are being filled up under the National Health Mission. Nothing has stopped the petitioner(s) from approaching the Competent Court of Law that they should be allowed to undergo the Bridge Course even without being sponsored by any particular Authority so as to gain eligibility. Nothing has come on record that the petitioner(s) ever raised their claim to undergo the Bridge Course on their own. A condition which was imposed in the year 2017 to undergo the Bridge Course after selection was, keeping in view the fact that at the said relevant time, there was no candidate

available who was having the said qualification of Bridge Course but, thereafter, the curriculum of the Bridge Course was already integrated with the studies of the B.Sc. Nursing so as to do away with the Bridge Course. Only the candidates, who had obtained the qualifications prior to 2017, were required to undergo the Bridge Course. For the last four years, there has been no attempt by the petitioner(s) to undergo the said Bridge Course so as to become eligible. Hence, the prescription of a qualification of Bridge Course cannot be set aside merely on the ground that the petitioner(s) are not eligible especially when, against 671 posts more than 5000 candidates who have applied already have obtained the qualification required under the advertisement.

18. The question that in the subsequent year, when the posts have been advertised again, the prescription of the Bridge Course has been included in the essential qualification which is to be undergone only after the selection, but no such advertisement has been brought on record to corroborate the argument that in the subsequent year, the passing of the Bridge Course was done away in any manner by the respondents before the selection process.

19. At this stage, learned counsel appearing for the petitioner(s) submits that a subsequent advertisement of the year 2022 has been challenged in CWP No.6998 of 2022 titled as **Rajeev Gaur and others Vs. State of Haryana and others**. It may be noticed that in the said advertisement, the prescription of Bridge Course exists. Further, in the said advertisement, it has been mentioned that the candidates who are having the Bridge Course will be considered for appointment initially and in case any vacancy remains, the candidates who does not have the Bridge Course, will be considered subject to the undertaking being given by them to undergo the Bridge Course after the selection.

20. Keeping in view the above, as the prescription of the Bridge Course is made an essential qualification even in the subsequent advertisement and only the candidates who have the said qualification to their credit are to be given preference, and only in case, any post is left vacant, after exhausting the eligible candidates with the Bridge Course, the candidates who do not have the Bridge Course will be considered subject to the passing of Bridge Course in case they get selected. Hence, the argument that the Bridge Course has been done away by the respondents as an essential qualification in subsequent advertisement is not correct and cannot be accepted.

21. Further argument has been raised by the learned counsel for the petitioner(s) that in some of the States, the candidates without the Bridge Course are being selected and then sent for undergoing the Bridge Course. In this regard, it may be submitted that prescribing a particular qualification rest with the employer. Merely that some other States are implying a different criteria of selection does not mean that the State of Haryana is bound to accept the said criteria for selecting the candidates. Every State has its own right not only to prescribe the qualification for a particular post but even the process of selection and the said jurisdiction qua the same has to remain with the State only unless and until, the same is shown to be perverse or arbitrary in any manner. Hence, merely that some of the other States are still accepting the candidates for selection who does not have the Bridge Course to their credit to the post in question and sending them for Bridge Course after selection, will not give a right to the petitioner(s) to claim the same benefit from the State of Haryana.

22. Learned counsel for the petitioner(s) submits that the posts which have been advertised vide Annexure P-3, are under the National Health Mission which is a Scheme evolved by the Government of India for which, due

qualification has also been prescribed. Hence, the Government while implementing the said scheme, cannot add or delete any qualification. The said argument cannot be accepted. It is a conceded position that the posts are being advertised by the Government of Haryana. In case any minimum qualifications are prescribed by the Government of India while formulating the Scheme, the same cannot be diluted further but the Government of Haryana can impose such kind of restriction so that, only the candidates who fulfill the basic structure of the Scheme be considered for appointment. In the present case, the prescription of Bridge Course is very much in existence in the scheme evolved by the Government of India hence, making the said qualification as an essential qualification even before the selection cannot be termed as arbitrary or illegal.

23. Learned counsel appearing in **CWP No.13304 of 2021 titled as Swati Rani and others Vs. State of Haryana and others** submits that in the present case the petitioners No.3 and 5 have completed the Bridge Course but certificate was issued after the last date of submission of application form. Learned counsel submits that duration of the Bridge Course had ended in December, 2020 much before the last date of submission of the application form in pursuance to Annexure P-3 hence, the petitioner be treated as eligible candidate to compete the post in question.

24. Learned State counsel has only one objection that the petitioner(s) got the Certificate issued for the said course after the cut off date hence, the said Certificate cannot be taken into account. In this regard, it may be noticed that the petitioners No.3 and 5 are already working on the same post but in another District. They have already undergone the Course while working. Hence, under these circumstances when the petitioners No.3 and 5 are already working in a particular District and want to shift in another District by participating in the fresh

selection process and had already undergone the Course much prior to the last date and merely the Certificate was submitted by the petitioners No.3 and 5 to the Selecting Agency after the last date of submission of application form, in the special circumstances, the petitioner(s) need not be declared as ineligible to compete for the post in question. However, in case the petitioners No.3 and 5 are selected in pursuance to this selection, they will be governed by the terms and conditions being imposed by the respondents in pursuance to the present advertisement for all intents and purposes.

25. It may be clarified that qua petitioners No.3 and 5 in CWP No.13304 of 2021, this Court is not granting any permission to the petitioners to leave their job. In case they have already given a bond for serving for minimum period under the earlier appointment, same will be applicable. In case the petitioners No.3 and 5 intend to leave the earlier appointment and join in pursuance to this advertisement, the said petitioners will be bound by the terms and conditions including the bond given in the earlier appointment.

26. CWP No.13304 of 2021 stands allowed in terms mentioned hereinbefore qua petitioners No.3 and 5.

27. Keeping in view the above, no ground is made out for the grant of relief to the petitioner(s) so as to set aside the prescription of a qualification of the passing of the Bridge Course as envisaged under the advertisement Annexure P-3. Hence, the said prayer is accordingly rejected.

28. At this stage, learned counsel for the petitioner(s) submits that keeping in view the fact that the respondent-State had already given an undertaking that in case the petitioner(s) gives an undertaking to undergo the Bridge Course in case they are selected, coupled with the fact that in the subsequent advertisement, the similarly situated candidates have been made

eligible after exhausting the candidates who have passed the Bridge Course, the same benefit be given to the petitioner(s) also that in case any post is left vacant after considering the claim of all the candidates, who are eligible under the advertisement Annexure P-3, the petitioner be considered for selection in case they give an undertaking that they will undergo the Bridge Course if they will be selected.

29. Learned counsel for the respondents on instructions from Sh. Chand Singh Madaan, State Nodal Officer, Haryana submits that in case the petitioner(s) intends for such kind of relief, they are free to move an appropriate representation to the Government for consideration and in case any such representation is received, appropriate order on the same will be passed by the respondents within a period of eight weeks.

30. Learned counsel for the petitioner(s) in **CWP No.20801 of 2022** submits that keeping in view the order passed today in CWP No.1674 of 2021(O&M), there exists no impediment in going ahead with the selection process hence, the respondents may be directed to complete the selection process as early as possible so that no prejudice is being caused to the petitioner(s).

31. The State counsel submits that as there was an interim order, passed by this Court in CWP No.13304 of 2021, due to which no action was being taken to finalize the selection but now as the said writ petition has been decided, the Government will take appropriate action needed so as to finalize the selection process as early as possible.

32. Learned counsel for the petitioner(s) submits that the respondents be time bound complete the selection process.

33. It may be noticed that the State cannot be time bound to finish the selection process as the same is within their jurisdiction and once the respondent-

State has given an undertaking that they will conclude the selection process as early as possible, no further direction can be given to the respondents.

34. CWP No.20801 of 2021 stands disposed of accordingly.

35. Pending Civil Misc. Applications are also disposed of as such.

August 21, 2023
jt

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No