

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

CWP-11913-2011 (O&M)

Date of decision : 19.05.2023

HARMANDEEP KAUR

....Petitioner

Versus

UNION OF INDIA & ORS.

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Ms. Alka Chatrath, Advocate and
Ms. Sandeep Kaur, Advocate for the petitioner.

Mr. Ramesh Chand Sharma, Advocate
for respondents No.1 2 and 4.

Mr. Inderpreet S. Kang, Asstt. Advocate General, Punjab

PANKAJ JAIN, J. (ORAL)

On 12th of April, 2023 following order was passed :

“Petitioner herein was appointed as Counsellor with the Punjab State AIDS Control Society pursuant to Annexure P-1 being being Diploma in Nursing. She worked from 2007 till 17.06.2010 i.e. for about 2 ½ years when the impugned order was passed denying her extension of contract of service holding her not eligible due to lack of experience as prescribed under the NACO Guidelines.

Petitioner approached this Court by way of CWP No.11293 of 2010 which was disposed off vide order dated 30.06.2010 in the following terms :-

“Having heard leaned counsel for the petitioners, I am of the considered view that though no fault can be found with the action of the Punjab State AIDS Control Society for want of one time relaxation in the experience of the petitioners, never-the-less the experience gained by the petitioners meanwhile requires serious consideration by the NACO. Suffice it to observe that by now the petitioners have obtained the requisite experience and their contractual appointments could be allowed to continue by treating

them fully eligible.

The writ petition is accordingly disposed of with liberty to the petitioners to submit a representation before the Secretary, National AIDS Control Organization alongwith proof of their experience before and after their appointments. If any such representation is made, the Competent Authority in the National AIDS Control Organization is directed to reconsider the request forwarded by the Punjab State AIDS Control Society regarding relaxation in experience (at the time of initial appointment of the petitioners on contract basis) and/or to allow them to continue as freshly engaged Counsellors in view of the fact that now they possess the requisite experience. An appropriate speaking order to this effect will be passed by the Competent Authority of the National AIDS Control Organization preferably within a period of three months from the date of receiving the representation."

Pursuant to the said directions, order dated 04.03.2011 was passed wherein the same objection was again taken. Respondents filed additional affidavit claiming that the prescription of one year of experience in the advertisement inviting applications from the candidates was a typographical error and infact the requisite experience is 3 years which the petitioner still does not possess. Relevant para of the affidavit reads as under :-

"3. That the deponent were not issued any notice of motion and resultantly were not heard by this Hon'ble Court while passing the order dated 30.06.2010 (Annexure P-9) vide which NACO was directed to consider the experience (2½ years) gained by the petitioners and allow them to continue as freshly engaged counselors. It is pertinent to mention that since there was inadvertent printing error related to experience in that advertisement as one year, where as the required experience is of 3 years as per NACO guidelines and this Hon'ble Court while considering the experience as one year observed as follows:-

"Suffice it to observe that by now the petitioners have obtained the requisite experience and their contractual appointments could be allowed to continue by treating them fully eligible."

4. That after realizing the printing error vide which experience of one year instead of three years was prescribed, an

enquiry was held and all the candidates who were lacking experience as prescribed in NACO guidelines were terminated from service. It may be mentioned that PSACS vide letter dated 20.08.2009, 15.10.2009 sought one time relaxation from NACO which was declined by NACO vide E-mail dated 31.05.2010. Photo copy of the same is annexed herewith as Annexure R-2.”

In the considered opinion of this Court by now the experience gained by the petitioner that too with the respondent-Society itself is almost 3 years and it is an AIDS society, meaning thereby the requisite experience is there.

Mr. Ramesh Chand Sharma, Advocate for respondents No.1, 2 & 4 prays for time to seek instructions in the light of the aforesaid orders.

Joint Director, Basic Services Division, Punjab State AIDS Control Society, Punjab is directed to file affidavit.

Adjourned to 20.04.2023.

The affidavit shall also indicate with respect to the available vacancies of Counsellors available with the Society.”

2. Pursuant thereto affidavit of Dr. Sukhwinder Kaur, Joint Director Basic Services Punjab State AIDS Control Society, Dakshin Marg Prayas Building, Sector 38-B, Chandigarh has been filed, as per which the details of posts which are vacant as on date read as under :

- “1. Total Sanctioned Post of Counselors in PSACS (under NACP-V) Starts from April, 2021 = 253
2. Vacant Posts till date = 20
3. Filled Posts = 233”

3. Thus the situation that now arises is that the posts are lying vacant with the respondents. The petitioner is in possession of eligible qualification and has worked with the respondents for more than

2 ½ years and is being non-suited merely for the reason that she is short of experience by six months.

4. Admittedly, the petitioner worked for more than 2 ½ years without there being any shortcoming in her work and conduct. Considering such aspect and keeping in view the peculiar facts & circumstances of the present case, respondents are directed to consider the petitioner against the vacant post for fresh appointment within a period of four weeks from the date of receipt of certified copy of this order.

5. The writ petition is disposed off.

May 19, 2023		(Pankaj Jain)
Dpr		Judge
	Whether speaking/reasoned	: Yes/No
	Whether reportable	: Yes/No