

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

251

**CWP-15924-2021 (O&M)
Decided on : 14.11.2023**

Mohd. Irfan

. . .Petitioner

Versus

State Of Haryana And another

. . . Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

PRESENT: Mr. Tushar Gautam, Advocate for the petitioner.

Mr. Harish Nain, AAG, Haryana.

HARSIMRAN SINGH SETHI, J. (Oral)

In the present petition, the prayer of the petitioner is for quashing of the impugned order dated 11.05.2021 (Annexure P-14) by which, the claim of the petitioner for competing against the post of pharmacists, as advertised by Advertisement No. 15 /2019 dated 07.09.2019 (Annexure P-1), had been rejected on the ground that at the time of scrutiny of documents, the petitioner was found to be ineligible to compete for the post in question.

The facts leading to the filing of the present petition are that the respondents had issued an advertisement No. 15/2019 on 07.09.2019 advertising the posts of pharmacists, wherein, 14 posts were reserved in the BC-A Category in which, the petitioner was competing.

The petitioner, who claims to fulfill all the essential qualification/conditions mentioned in the advertisement, applied for the post in question and appeared in written examination which was held on 31.01.2021. The result of the written examination was declared on

04.03.2021 and the petitioner was declared successful in the written examination.

The candidates who had cleared in the written examination were called for the scrutiny of documents, which was held on 08.03.2021. The petitioner appeared for scrutiny of documents and according to the petitioner, no objection was raised qua any of the document in question but thereafter, while declaring the result, the name of the petitioner was not in the list of the selected candidates and rather, by the impugned order dated 11.05.2021, the petitioner's claim was rejected on the ground that the petitioner was found to be not eligible at the time of scrutiny of documents. The said order is under challenge in the present petition.

Learned counsel for the petitioner submits that in the present petition, the only reason given by the respondents-department for not considering the petitioner for the post in question is that the petitioner was not registered with the Haryana Pharmacy Council which was one of the requisite criteria prescribed under the advertisement hence, the petitioner has been declared ineligible to compete for the post in question, whereas, the petitioner was duly registered with the Haryana Pharmacy Council on 10.01.2015, which registration was very much valid upto 31.12.2019 which is before the last date of submission of the application form in the present petition.

Learned counsel for the petitioner further submits that the petitioner had applied for the renewal of the said registration, and his registration was ultimately renewed upto 31.12.2024 vide a letter dated

16.12.2020, which is even before the date of scrutiny of the documents.

Learned counsel for the petitioner submits that the respondents only took into the consideration the renewal as the registration so as to hold that the said registration of the petitioner with Haryana State Pharmacy Council was after the last date of the submission of application form so as to declare the petitioner ineligible for the post in question.

Learned counsel for the respondents on the other hand submits that the petitioner submitted a document which has been attached as Annexure R-3/1 to support his registration with the Haryana State Pharmacy Council which was issued on 16.12.2020, which was after the last date of the submission of the application form hence, the petitioner was rightly declared ineligible for the post in question.

Learned counsel for the respondents further submits that as the selection process for the post in question is already over and the last selected candidate is not a party to the present petition, hence the prayer made in the present petition is liable to be rejected.

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

From the facts, which have been narrated herein above, it is clear that the last date for the submission of application form was 19.10.2019. It is a conceded position that the petitioner was registered with the Haryana State Pharmacy Council in the year 2015 which registration was valid upto 31.12.2019, which is clear from the certificate Annexure P-16. That being so, it cannot be said that the petitioner did not

fulfill the qualification/conditions as mentioned in the advertisement No. 15/2019 so as to eligible to compete for the post in question.

Further, the respondents are treating the renewal as the registration with the Haryana State Pharmacy Council. The Annexure R-3/1 clearly states that the registration of the petitioner which was already with the respondents has been renewed upto 31.12.2024. Once, the registration was already there and the same has already been renewed, the initial registration will continue to operate.

Further, the scrutiny of the documents took place on 08.03.2021 whereas, the renewal of registration with Haryana State Pharmacy Council had already been granted on 16.12.2020. That being so, the petitioner was fully eligible to compete for the post in question.

Furthermore, from the impugned order dated 11.05.2021 (Annexure P-14), nothing transpires as to on what ground the petitioner was declared ineligible to compete for the post in question as no reason was given for declaring the petitioner ineligible.

In the absence of any reasons given in the impugned order, even otherwise, the impugned order dated 11.05.2021 (Annexure P-14) cannot be upheld as the said order cannot be supported by the reason mentioned in the reply keeping in view the settled principle of law by the Hon'ble Supreme Court of India in Civil Appeal No. 1297 of 1977 tilted as '**Mohinder Singh Gill and another vs. The chief Election Commissioner, New Delhi and others**' decided on 02.12.1977. Relevant para of the judgment is reproduced as under:-

“8. The second equally relevant matter is that when a

statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. In Gordhandas Bhanji case :

"Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself".

Orders are not like old wine becoming better as they grow older."

Keeping in view the above, it is held that the petitioner was fully eligible to compete for the post in question.

The second question which arises that whether, the petitioner can be directed to be appointed or not?

In case, the petitioner has secured more marks than the last

selected candidate in the category in which the petitioner has competed, the petitioner is entitled to be accommodated for the post in question.

Let the respondents considered the claim of the petitioner and even if, there is no post available in the category in which the petitioner has competed then, the petitioner be considered against any other post which might be lying vacant out of the advertised posts.

Further, in case, no post of the advertised post is lying vacant, then the respondents should create a supernumerary post to accommodate the petitioner, so as to save the last candidate selected from being dislodged from service.

The selected candidate is already in job and that is why, the selected candidates are not to be disturbed and a direction is given to the respondents-department to consider the claim of the petitioner and appoint him in case the petitioner has secured more marks than the last selected candidate in the reserved category of BCA.

Let the present order be complied with within a period of two months from the date of receipt of certified copy of this order.

Accordingly, the present petition stands allowed in the above terms.

(HARSIMRAN SINGH SETHI)
JUDGE

14.11.2023

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Whether speaking/reasoned: *Yes/No*
Whether Reportable: *Yes/No*