

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

242

CWP-6972-2019
Date of Decision: 05.02.2024

Narvir Sharma

...Petitioner(s)

Versus

Pt. B.D. Sharma University of Health Sciences, Rohtak and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present:- Mr. R.K. Malik, Senior Advocate with Mr. Kartikey Chaudhary,
Advocate for the petitioner

Mr. Nilesh Bhardwaj, Advocate for respondent no.1

Mr. D.S. Rawat, Advocate for respondent no.2

TRIBHUVAN DAHIYA, J. (Oral)

This petition has been filed, *inter alia*, seeking a writ of *certiorari* quashing the selection and appointment of the second respondent as ECG Technician, and a writ of *mandamus* directing the respondents to consider the petitioner for selection and appointment on the post from the date second respondent was appointed, with all consequential benefits.

2. Facts of the case in brief are, the respondent University issued advertisement no.6 of 2016, Annexure P-1, inviting applications for various non-teaching posts, including two posts of ECG Technician (one each for General and Scheduled Caste category). Later, a corrigendum was issued by

extending the closing date for submission of applications for the posts upto 30.12.2016; revised break-up of posts was also given whereby, of the two posts of ECG Technician, one General category post was converted to EBPG category. Essential qualifications for the post were; (i) Matric Pass with Science (Physics & Chemistry) & Hindi/Sanskrit, and (ii) Two years experience in any recognised hospital in ECG or Laboratory work.

2.1. The petitioner possessed the requisite qualification with more than two years experience as ECG Technician for having worked on contract basis in BPS Government Medical College for Women, Khanpur Kalan, Sonapat, with effect from 13.09.2014 to 28.10.2016, as per certificate Annexure P-4. And applied for the post in EBPG category, to which he belonged. After verification of original documents, the list of candidates who were called for interview on 12.09.2017, was notified; only two candidates, viz., the petitioner and the second respondent were provisionally declared eligible.

2.2. However, the petitioner was not interviewed. The second respondent was selected and offered appointment as ECG Technician under EBPG category, and joined as such. Feeling aggrieved, the petitioner represented against the selection to the University, but his representation remained unanswered, leading to filing of the instant petition.

3. Learned senior counsel contends that the petitioner was not interviewed for no fault of his. No reasons were cited, nor any order was conveyed to him rejecting his candidature. Merely because he had earlier applied for the post of ECG Technician in Shaheed Hasan Khan Mewati

Medical College, Nalhar, Nuh, in 2011, and was not offered appointment on the ground that his experience certificate from IIMT Medical College and Hospital, Agra, was not found genuine, cannot be a ground to reject his candidature for the post in question. It is because the petitioner applied for the post on the basis of subsequent experience gained in BPS Government Medical College, and not on the basis of the earlier experience from IIMT, Agra. In fact, the petitioner had never joined in SHK Mewati Medical College, and the appointment was cancelled without affording any opportunity of hearing to him.

3.1. Secondly, learned senior counsel has contended that the second respondent was not even eligible for the post in question as he did not have the requisite two years experience from a recognised hospital. He has been appointed on the basis of a certificate dated 20.12.2016, Annexure P-11, issued by Gajraj Hospital, Gohana, Sonapat, certifying that he worked as ECG Technician with effect from 15.05.2013 to 20.12.2016. The hospital is not a recognised hospital, as apparent from the response received under the Right to Information Act, 2005, from the office of Director General Health Services, dated 05.12.2018, Annexure P-12, informing that as on 04.12.2018 the Hospital has not been registered under the Haryana Clinical Establishment (Registration and Regulation) Adoption Act, 2018. Therefore, the experience could not have been counted being in an unrecognised hospital. Besides, the certificate is bogus, as during the period for which it has been issued to the petitioner for working as ECG Technician in Gajraj hospital, he was actually working as Class-IV employee in Civil Hospital, Jhajjar, through contractor from 14.02.2013 to 13.06.2016. Salary for the period was being deposited in

his Bank account no.00902041001513 in the Oriental Bank of Commerce. Jhajjar town is about eighty-five kilometres from Gohana, where Gajraj Hospital is situated. This shows the experience certificate is false, as the second respondent could not have worked at these two far off places simultaneously. Accordingly, being ineligible for the post, the second respondent could neither have been considered for selection nor appointment.

4. Learned counsel for the University, on the other hand, contends that the petition itself is not maintainable as the petitioner did not approach this Court with clean hands. He has suppressed material facts, that a day before the interview, i.e., 11.09.2017, a complaint was received from Mr. Satish, alleging that he had earlier applied for the post of ECG Technician in SHK Mewati Medical College, on the basis of experience certificate issued by IIMT, Agra. This certificate was got verified from the hospital at Agra, and was found to be fake as the hospital statedly never issued the same. On receiving this information, the petitioner's appointment had been cancelled. In these circumstances, a day prior to the interview the Establishment Committee called the petitioner to authenticate the documents submitted by the complainant, but the former failed to give any satisfactory explanation. Resultantly, he was not interviewed. Since these facts have not been disclosed in the petition, it is liable to be dismissed.

4.1. Secondly, it has been contended that the Establishment as well as Scrutiny Committees decided in a meeting held on 22.08.2017 that experience certificates issued from private/unregistered organisations could be considered valid for fulfilling essential qualification for the advertised post. And there is no challenge to this decision by the petitioner. Besides, during pendency of

the petition, the experience certificate issued by Gajraj Hospital to the second respondent was got verified, and the said hospital certified it to be genuine. Similarly, his certificate of working at Civil Hospital, Jhajjar, was also certified to be genuine by the Government Hospital. Since both these certificates were for the same period, a committee was constituted on 20.11.2018 to look into the matter and give its report. However, as the matter was *sub judice* before this Court, the committee decided to defer its proceedings indefinitely and did not conclude the inquiry.

5. Learned counsel for the second respondent contends that he is fully eligible for the post, and has rightly been appointed. He also contends that experience certificate issued by Gajraj Hospital is genuine. At the same time, he does not dispute that the second respondent was working as Class-IV contractual employee in the Civil Hospital at Jhajjar for the same period. The justification offered is, after working in the Civil Hospital, Jhajjar, during the day, the second respondent would travel eighty-five kilometres to Gohana to work there as Technician at night. Therefore, the appointment has rightly been given to him. He also contends that the petitioner was never interviewed for the post in question, therefore, he has no right to challenge the appointment of second respondent. It is further contended that State of Haryana adopted the Central Clinical Establishments (Registration and Regulation) Act, 2010, vide the Haryana Clinical Establishment (Registration and Regulation) Adoption Act, 2018, only on 25.01.2018, as is apparent from the information, dated 04.09.2019, Annexure R-2/6, furnished by the State Nodal Officer under the Act of 2018. Therefore, at the time second respondent gained experience in

Gajraj Hospital from 15.05.2013 to 20.12.2016, it could not have been registered under the Act of 2010.

6. Heard.

7. Considering the submissions advanced by learned counsel for the parties, the first issue that arises for consideration, *whether the rejection of petitioner's candidature and refusal to interview him for the post of ECG Technician was legal and valid?* Undisputedly, the petitioner applied for the post on the basis of experience gained by him in BPS Government Medical College. He did not claim any experience of working in IIMT, Agra. During the course of arguments, learned counsel for the University produced the petitioner's application form for the post, dated 12.12.2016; a perusal whereof shows that the applicants were not required to disclose information about their previous employment, if any. Besides, he is also not in a position to deny that before rejecting the petitioner's candidature on the ground of his earlier experience certificate being fake, as verified from the IIMT, Agra, no notice was issued to him disclosing the verification report or the relevant documents connected thereto. Nor has any document/letter/memo regarding cancellation of the petitioner's earlier appointment been placed on record. It has also not been disclosed as to how the fact of cancelling the petitioner's earlier appointment was verified by the University a day prior to the interviews. No order rejecting his candidature was conveyed to him, nor has any such order been placed on record. In these circumstances, there is no escape from concluding that rejection of the petitioner's candidature was illegal being in violation of the Principles of Natural Justice. This vitiated the entire process

of selection, and rendered the appointment of second respondent illegal and unsustainable.

8. The second issue for consideration before this Court is, *whether the second respondent had the requisite two years experience for the post of ECG Technician as per the essential qualification?* It is the conceded position on record that the second respondent was working simultaneously at two places, i.e., in Civil Hospital, Jhajjar, as Class-IV employee, and as ECG Technician in Gajraj Hospital, Gohana, during the same period. These townships are more than eighty-five kilometres apart. *Prima facie*, it appears doubtful that the second respondent gained requisite experience as Technician at Gohana, while working as Class-IV employee in the Civil Hospital at Jhajjar. There is clear overlap between these two periods of experience, at two far away places and in two different organisations. The facts in this regard need to be established, which has not been done before this Court. Besides, neither of the two organisations/hospitals is a party to the petition. An enquiry to ascertain truth of the matter was instituted by the University, but was stalled for unfounded reasons. It needs to be completed to decide genuineness of the certificate issued to the second respondent regarding two years experience as Technician and, consequently, his eligibility on that basis.

9. As the facts stand today, it is apparent that the University appointed the second respondent in a slipshod manner, without ascertaining authenticity of the experience certificate submitted by him, and rejecting the petitioner's candidature in violation of the Principles of Natural Justice. Therefore, the action cannot be countenanced. It is appalling to note the

manner in which the selection has been carried out by the University which is deprecated and disapproved of.

10. In view of the reasons recorded, selection and appointment of the second respondent on the post of ECG Technician is hereby set aside, directing the University to; (i) complete the pending enquiry into genuineness of the experience certificate submitted by the second respondent and ascertain his eligibility for the post, within four weeks of receiving a certified copy of this order; (ii) and carry out selection process for the post in question afresh in accordance with law, within four weeks thereafter.

11. The University shall be liable to pay costs of the petition to the petitioner which are assessed at ₹50,000 (Rupees fifty thousand), within two weeks of receiving a certified copy of this order.

(TRIBHUVAN DAHIYA)
JUDGE

05.02.2024
Payal

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>