



**CM-8610-CWP-2024 in/and
CWP-6813-2024** 1

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

**(112+274) CM-8610-CWP-2024 in/and
CWP-6813-2024
Date of Decision : May 20, 2024**

Nitu @ Neetu .. Petitioner

Versus

State of Haryana and others .. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Sachin Gupta Ladwa, Advocate, for the petitioner.

Mr. Tapan Kumar Yadav, Deputy Advocate General, Haryana.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-8610-CWP-2024

Present application has been filed for placing on record the order dated 03.04.2024 (Annexure A-1) and affidavit dated 14.05.2024 as (Annexure A-2).

Keeping in view the facts mentioned in the application, which are duly supported by an affidavit, the application is allowed. Annexures A-1 and A-2 are taken on record.

CWP-6813-2024

1. In the present writ petition, the grievance being raised by the petitioner is that the petitioner has been dismissed from service vide order dated 15.03.2024 (Annexure P-35) on the ground that the experience given by the petitioner so as to claim eligibility was acquired prior to acquiring of academic eligibility qualification.



**CM-8610-CWP-2024 in/and
CWP-6813-2024**

2

2. Certain facts needs to be mentioned for the correct appreciation of the issue in hand.

3. The respondent-Department issued an advertisement on 01.02.2022 for the post of District Programe Manager under the National Ayush Mission at District Nuh. The selection was to be made through the written test as well as interview and the remuneration to be given to the selected candidate was Rs.30,000/- per month. The petitioner, who fulfilled the academic qualification as well as the experience, applied for the post in question. The petitioner appeared in the written test on 21.07.2022 and the computer test on 02.08.2022 and cleared the same. Thereafter, the petitioner was called for interview on 08.08.2022. Keeping in view the verification of the document which was done, the petitioner secured the highest marks amongst all the selected candidates.

4. Before the petitioner could be appointed, the question arose for the consideration of the Department as to whether, the experience of candidates prior to the obtaining of MBA qualification, is to be treated as valid experience or not and the Department left the said decision to the Chairman of the District Ayush Society. Keeping in view the same, the Chairman District Ayush Society, accepted the experience which the candidate had prior to the acquiring of MBA qualification and ultimately, the petitioner was selected and appointed.

5. After the appointment, a complaint was received that the ineligible candidates have been appointed, which complaint was enquired into and while conducting the enquiry into the complaint, again the same



**CM-8610-CWP-2024 in/and
CWP-6813-2024** 3

question arose that whether a candidate's experience gained prior to the acquiring of MBA qualification is to be treated as valid so as to adjudge the eligibility of a candidate. This time, in the enquiry, which was being done by the Director General who had earlier authorized the Chairman of the District Ayush Society to take a decision on the said aspect himself took the decision that the experience gained prior to acquiring of MBA qualification cannot be treated as valid experience and a direction was issued to the Deputy Commissioner to take appropriate action qua the candidates who have proven their eligibility on account of the experience which they have gained prior to the acquiring of MBA qualification.

6. Before any action could be taken on the said enquiry report, the writ petitions were filed challenging the said enquiry report, which writ petitions were disposed of by this Court on 05.03.2024 wherein, direction was given to grant the concerned employees opportunity to object to the enquiry report where they have been treated ineligible and to take into account all such objections before deciding as to whether, the services of employees who have been appointed, is to be terminated by treating them ineligible at the time of recruitment.

7. In pursuance to the said direction given, the impugned order dated 15.03.2024 (Annexure P-35) has been passed by the Deputy Commissioner Nuh holding that the experience which the petitioner had gained prior to acquiring of MBA qualification, as not valid experience to treat petitioner eligible and therefore, as the petitioner is ineligible, her services have been terminated, which order is under challenge in the present

**CM-8610-CWP-2024 in/and
CWP-6813-2024****4**

writ petition.

8. Learned counsel for the petitioner argues that once the decision with regard to consideration of experience which a candidate had obtained prior to acquiring MBA qualification was left to the Chairman of the District Ayush Society and the Chairman had allowed the said benefit of consideration of experience acquired by the candidate prior to obtaining MBA qualification and where no misrepresentation was made by the petitioner, taking a summer-salt now so as to treat the petitioner ineligible is arbitrary and illegal and therefore, the impugned order dated 15.03.2024 (Annexure P-35) is liable to be set aside.

9. Learned counsel for the respondents submits that the candidate should have obtained the required experience after acquiring MBA qualification and once it is a conceded position that the petitioner did not had valid required experience after acquiring MBA qualification, the decision of the respondents to treat the petitioner ineligible is perfectly valid and legal.

10. Learned counsel for the respondents further submits that even for the said experience, which was obtained prior to acquiring of MBA qualification, the due vouchers of salary were not given so as to prove that the petitioner had enough requisite experience required to be eligible for the post in question.

11. Learned counsel for the petitioner submits that all the vouchers of salary were also given to the respondents which have been duly verified and have also been attached with the present petition to show that the



**CM-8610-CWP-2024 in/and
CWP-6813-2024**

5

petitioner had required period of experience to be eligible.

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

13. The question which has been posed for adjudication is whether an employee who has gained certain experience prior to acquiring of one of the qualification mentioned in the advertisement, said experience can be treated as valid or not for fulfilling the eligibility criteria.

14. As per the settled principle of law, any experience gained by the candidate is to be treated as a valid experience unless and until the Rule specifies that the experience required for the post should be after acquiring the minimum qualification mentioned in the Rules.

15. Learned counsel for the respondents has not been able to point out any such Rule to this Court according to which the experience required for being eligible should have been obtained after acquiring MBA qualification. In the absence of any such Rule, the experience gained by a candidate even before acquiring any of the required qualification, is to be treated as valid experience. It is a conceded position that even in the advertisement, no such condition that experience gained after acquiring the qualification is to be treated as valid experience.

16. Reliance can be placed upon the judgment of the Division Bench of this Court in ***CWP No.5202 of 2017 titled as Post Graduate Institute of Medical Education and Research, Chandigarh vs. Gurvinder Singh and others, decided on 15.03.2017.*** Relevant paragraphs of the said judgment are reproduced herein under:-



**CM-8610-CWP-2024 in/and
CWP-6813-2024**

6

“[7] The Tribunal has also relied upon the decision of Hon'ble Supreme Court on the same point, titled as Subhash versus State of Maharashtra, 1995 Suppl.(3) SCC 332. wherein also an identical issue was answered in favour of a candidate like respondent No.1. Some more decisions to this effect has also been relied upon by the Tribunal.

[8] We have heard learned counsel for the petitioner and gone through the record.

[9] No contrary case-law has been cited on behalf of the petitioner. The decisions cited above, hold the field and unequivocally lay down that unless it is so expressly provided under the Rules, the experience gained before or after acquiring the academic qualification would be a valid experience for the purpose of determining the eligibility.”

17. Learned counsel for the respondents has not been able to rebut the said principle of law laid down by the Division Bench.

18. Further, the facts of the present case are peculiar. It is a conceded fact that there was no misrepresentation on the part of the petitioner nor it is the case that the respondents did not knew that they are selecting the candidates who have given experience which is prior to acquiring of MBA qualification. Rather, the said question was raised before the Director, Ayush Department, Haryana, as to whether the candidates who have gained experience prior to acquiring MBA qualification should be treated eligible or not. The Director Ayush, vide his letter dated 10.10.2022 addressed to District Ayurvedic Officer directed that the decision with regard to the eligible experience and qualification is to be taken by the Chairman of the District Ayush Society. The determination of eligibility



was delegated to the Chairman of the District Ayush Society and the Chairman in his wisdom, allowed the benefit of experience which the candidate had gained prior to acquiring of MBA qualification and they were selected. Once the Director delegated the power to another officer, who, after due consideration, accepted the experience, in the absence of any mala fide and withholding of any information by the petitioner, the respondents now cannot take u-turn to come to the conclusion that the decision taken by the Chairman was bad and cannot be accepted. Once the decision of the Chairman has culminated into the selection and consequent appointment and the petitioner continued work on the post in question and has been satisfactory of discharging the duties, there being no complaint qua the work and conduct of the petitioner, now the same authority i.e. The Director Ayush Department, Haryana, who had delegated to the power to the Chairman of the District Ayush Society, cannot take contrary decision than the one taken by the Chairman. The Director is thereby bound by the decision taken by the Chairman on account of the delegation which was done by the Director himself.

19. Keeping in view the above, the impugned order dated 15.03.2024 (Annexure P-35) cannot be sustained in the eyes of law and is set aside. The petitioner is also entitled for all the consequential benefits for the period she remained out of service including salary. Let the petitioner be allowed to join the duties forthwith and qua the salary, the order be complied with within a period of eight weeks of the receipt of copy of this order.



**CM-8610-CWP-2024 in/and
CWP-6813-2024** **8**

20. The present appeal is allowed in above terms.

May 20, 2024 **(HARSIMRAN SINGH SETHI)**
harsha **JUDGE**

Whether speaking/reasoned : Yes
Whether reportable : Yes