

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CWP-12811-2019 (O&M)
Decided on :02.04.2024

JAI PARKASH AND OTHERS

.....Petitioners

Versus

STATE OF HARYANA AND OTHERS

. . . Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

PRESENT: Mr. Ravi Verma, Advocate for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

HARSIMRAN SINGH SETHI , J. (Oral)

In the present petition, the grievance being raised by the petitioners is that though they are working on post of Ward Servant (Class IV), but as they fulfill the qualification for promotion to the post of Laboratory Technician, the petitioners be given relaxation in service rules so as to promote them to the post of Laboratory Technician as done in the case of one Ranjit Singh, who was working on Class IV post.

Learned counsel for the petitioners submits that though, as per the rules governing the service, the post of Laboratory Technician is to be filled up under the **Haryana Health Department Laboratory Technician (Group C) Service Rules, 1998** (for short '1998 Rules) but the petitioners fulfill the qualification for appointment on the post in question by direct recruitment hence, the petitioners be promoted by giving the relaxation in 1998 Rules.

Learned counsel for the petitioners further submits that for

promotion to the post of Laboratory Technician, only the Laboratory Attendant are eligible and not the Ward Servant i.e. the post on which the petitioners are working and hence, the petitioners be given relaxation in 1998 Rules so as to treat the petitioners eligible for the promotion to the post of Laboratory Technician as being done in the case of one Ranit Singh who was given the said relaxation for promotion to the post of Laboratory Technician.

Learned State counsel on the other hand submits that for promotion to the post of Laboratory Technician, an employee has to be in the feeder cadre of Laboratory Attendant and Ward Servant is not the feeder cadre as envisaged under the 1998 Rules, hence, no promotion can be claimed by the petitioners.

Learned State counsel further submits that though Ranji Singh was given relaxation and was promoted but, the said Ranjit Singh was subsequently selected on the said post of Laboratory Technician by way of direct recruitment in the year 2010 after being recommended by the Haryana Staff Selection Commission hence, the petitioners cannot compare their case with that of Ranjit Singh.

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

The first question of law which arises is whether, a relaxation can be claimed as a matter of right.

It is a settled principle of law that a relaxation cannot be claimed as a matter of right. It is only the prerogative of the department and that too keeping in view the facts and circumstances of the each case. Further, nothing has come on record that there are no Laboratory Attendants available for the promotion to the post of Laboratory Technician.

Further in the judgment of Hon'ble Supreme Court in Civil Appeal No. 2250-2252 of 2020 titled as **Dr. Thingujam Achouba Singh and others v. Dr. H. Nabachandra Singh and others etc.**, decided on 17.04.2020 it has been held that relaxation could not be claimed as matter of right and eligibility criteria is within the domain of the employer and no candidate can seek appointment as matter of right and that too by claiming relaxation.

The relevant paragraph No. 14 of the said judgment is as under:-

“14. The High Court has also noticed that the experience for eligibility notified in the advertisement dated 16.08.2016 was not in conformity with the Medical Council of India Regulations. In reply affidavit filed before the High Court, while denying such allegation, it was pleaded that the qualifications and experience, as notified in the advertisement dated 16.08.2016, was in accordance with the “Minimum Qualifications for Teachers in Medical Institutions Regulations, 1998” (as amended from time to time), framed by the Medical Council of India. It was the specific contention of the respondent authorities that as the RIMS is affiliated to C.A.@S.L.P.(C)Nos.15093-15095 of 2017 etc. Manipur University, the requirement as prescribed by Medical Council of India for Director of affiliated hospital should be applied. Such plea is not accepted by the High Court on the ground that there is no proper pleading in this regard. A copy of the Regulations titled as, “Minimum Qualifications for Teachers in Medical Institutions Regulations, 1998” (as amended

upto 11th March 2017) issued by the Medical Council of India is placed before us. As notified in the said Regulations, the academic qualifications and experience applicable for the post of Director of medical institutions differ from those applicable for the post of Director/Medical Superintendent of affiliated teaching hospital. For the post of Director in a medical institution, apart from the academic qualifications, ten years' experience as Professor/Associate Professor/Reader in a medical college, out of which at least five years should be as Professor in a department, is prescribed. However, for the post of Director/Medical Superintendent of the affiliated teaching hospital the required experience is ten years only. It is the specific case of the respondents that the RIMS is an affiliated teaching hospital. In view of such stand of the respondents it cannot be said that the experience for eligibility notified in the advertisement dated 16.08.2016 is contrary to the Regulations of Medical Council of India. So far as relaxation of upper age limit, as sought by the petitioners in one of the writ petitions is concerned, High Court has directed the competent authority and Executive Council of the Society to consider for providing such relaxation clause. We fail to understand as to how such direction can be C.A.@S.L.P.(C)Nos.15093-15095 of 2017 etc. given by the High Court for providing a relaxation which is not notified in the advertisement. While it is open for the

employer to notify such criteria for relaxation when sufficient candidates are not available, at the same time nobody can claim such relaxation as a matter of right. The eligibility criteria will be within the domain of the employer and no candidate can seek as a matter of right, to provide relaxation clause.”

Hence, the claim of the petitioners that respondents be directed to grant the relaxation in service rules for promotion to the post of Laboratory Technician, cannot be accepted.

Even otherwise, the petitioners cannot claim equality with Ranjit Singh. Though, at one stage Ranjit Singh was given relaxation for promotion to the post of Laboratory Technician but, as per the reply filed by the respondents-State, immediately after the promotion by relaxation Ranjit Singh also competed for the post in question by way of direct recruitment and was appointed after the recommendation of the Haryana Staff Selection Commission in the year 2010. That being so, once Ranjit Singh got appointment by way of direct recruitment, no relaxation can be claimed by the petitioners on the basis of equality.

It is also a settled principle of law that the posts are to be filled as per the rules governing the service. Under the Rules governing the service, for promotion to the post of Laboratory Technician, only the employees working as Laboratory Attendant are to be treated eligible. The petitioners are not working in the feeder cadre of Laboratory Attendant as they are working as a Ward Servant, which is a class IV post, hence, no direction can be issued to the respondents-State to violate the rules governing the service so as to grant promotion to the petitioners to the post of Laboratory

Technician. Only direction can be given in case, it is found that the claim of the petitioners is squarely covered by the rules governing the service.

Keeping in view the facts and circumstances of the present case recorded herein above, no ground is made out for any interference by this Court qua the claim raised by the petitioners in the present petition, hence the present petition stands **dismissed**.

Pending miscellaneous application, if any, shall also stand disposed of.

(HARSIMRAN SINGH SETHI)
JUDGE

02.04.2024
Riya

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