

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

213

CWP-12161-2015 (O&M)
Date of decision: 20.03.2024

Rakhee Tangri and others

Versus

...Petitioners

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Abhijeet Singh Rawaley, Advocate
Mr. Sahil Mehndiratta, Advocate for the petitioners.

Mr. Manipal Singh Atwal, DAG, Punjab.

Mr. Gaurav Mohunta, Sr. Panel Counsel for UOI.

AMAN CHAUDHARY. J (ORAL)

1. The prayer in the present Civil Writ Petition filed under Articles 226/227 of the Constitution of India, is to issue a writ in the nature of mandamus, for directing the respondents to regularize the service of the petitioners against the vacant post of Ayurvedic Medical Officers lying vacant with the Government of Punjab and to grant age relaxation and weightage in the advertisement dated 07.05.2015.
2. Based on the reliance placed by learned counsel for the petitioners upon CWP-11236-2015 titled as ‘Dr. Amit Kumar Sidhu and others vs. State of Punjab and others’, notice of motion had been issued in the present case, which has since been dismissed by this Court and is reported as 2016(1) S.C.T. 205, against which no LPA was filed and thus, has attained finality. Copy of the judgment has been produced. The relevant paras whereof read thus:

“13. On the moot issue of weightage of experience, if given, it is manifest that it would put the open candidates who have applied for the post of Ayurvedic Medical Officer to disadvantage as the petitioners would get a head start with such weightage which

would destroy the claims of the general candidates as have applied to the Commission to compete for those posts on regular basis within the advertised boundaries of open merit competition. It is seriously argued that the race for posts from the starting gun to the tape and the merit finally determined among the eligible competitors would get totally distorted in case a direction is issued by the Court to the State Government to give weightage towards experience to the petitioners. If such a course is adopted it would violate the equality clause in Article 14 of the Constitution of India and disturb the equal opportunity law in Article 16 the result of which would be to put unequals on equal footing, which the Constitution abhors.

14. There is another angle from where Mr. Sehgal canvasses before the Court insofar as the claim for weightage is concerned, urging that in case weightage is given, if directed, when the Commission has all but done its work, it would inevitably result in nullification of the advertisement and the entire recruitment process itself re-setting the clock for the Commission to make a fresh recruitment by fresh advertisement all over again for the same posts/vacancies which have been advertised for direct recruitment. This would lead to administrative chaos and would be against public interest preventing regular recruitment or in any event postponing it to an unpredictable future date which is not what regular recruitment is about. The scope of mandamus jurisdiction in Article 226 of the Constitution of India is not meant for such a purpose as would inevitably prejudice the interest of the State and the public at large. A mandamus would never lie to the Government to redesign a rule or rewrite it on grounds of sympathy or compassion. If this were allowed we can forget about making direct recruitment of Ayurvedic Medical Officers for a long time. Besides, apart from the two persons mentioned in the affidavit the rest have not made the mark on merits in the written examination and therefore, they have no case for appointment whatsoever or towards weightage of experience and to overcome the age bar to enable them to be interviewed.

19. In the said ruling the Supreme Court held that the observations in Umadevi(3) were not applied in Nagendra Chandra's case and the observations in Nagendra Chandra's case cannot be said to be an exposition on a general principle of law on the point that a long length of service de hors the relevant factors for waiver or relaxation of any eligibility criterion including age limit for future regular selection for the post to be followed as binding dicta on principles of stare decisis. From this, Mr. Sehgal contends that neither the directions in Nagendra Chandra's case nor in Satya Parkash's case can be applied by this Court to consider relaxation in age contrary to rules of service governing the posts of Ayurvedic Medical Officers. There can be no doubt on this point as to which way it should go and Mr. Sehgal appears on sound footing when he urges this Court not to interfere in the age bar by making any direction or approving relaxation on this count irrespective of the length of service,

while arguing that his opposing counsel cannot succeed on this point and because he cannot succeed on the issue of age bar, he cannot succeed on the question of weightage of experience as well since it is not prescribed in the rules of service nor obviously in the advertisement and the stand of the State in the considered view of this Court deserves to be upheld as it is valid and commendable view of the law on the facts of this case which are peculiar in nature.

20. Mere sympathy or compassion alone cannot come to the rescue of the petitioners nor would any equity flow from the interim orders passed by this Court to consider the cases on merits as the arrangement to allow the over age candidates to compete for the post was interim and no equities flow therefrom. Even if one or two of the candidates have been successful on merits in the selection even then equitable principles cannot be invoked in favour of any of the present candidates praying that weightage of experience is to be given to them alone then why should it not be given to all the candidates who have applied under the advertisement. Any direction of the kind, I dare say, would upset the entire apple cart and jeopardize the recruitment process itself throwing it off gear and in a tizzy impairing third party rights to such a degree as would restrain the hands of this Court from passing any orders favourable to the petitioners despite long service in a scheme where the entry process was qualitatively different from the one presently being pursued by the PPSC, Patiala, on a requisition of the State Government in the Department of Health (Ayush).

21. For these reasons, this Court would be loath to interfere with the recruitment process where it stands and which must now be taken to its logical conclusion without the burdens of this petition carried any further. If both or either of the two concessions are given as claimed it would amount to reverse discrimination and betray Articles 14 and 16 of the Constitution of India.

22. Consequently, no ground is made out warranting interference in writ jurisdiction and the petition is found without substance and is thus dismissed.”

3. Learned counsel for the petitioners is unable to controvert the aforesaid fact or cite any contrary law.
4. In view of the above, the present petition is dismissed.

(AMAN CHAUDHARY)
JUDGE

20.03.2024
Hemant

Whether speaking/reasoned: Yes / No

Whether reportable: Yes / No