

CWP-17991-2020 (O&M)
Date of decision-27.02.2024

...Petitioners

Vs.

...Respondents

2

CWP-13243-2021 (O&M)

...Petitioners

Vs.

...Respondents

CORAM:- HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Rajesh Khandelwal, Advocate,
for the petitioner(s).

Mr. Harish Rathee, Sr. DAG, Haryana.

Mr. R.K. Malik, Senior Advocate with
Mr. Samrat Malik, Advocate and
Mr. Kartikey Chaudhary, Advocate,
respondents No.5 to 17 in CWP-17991-2020 and
for respondents No.7 to 10 in CWP-133243-2021.

HARSIMRAN SINGH SETHI, J. (ORAL)

1 In the present petitions, the grievance of the petitioners is that the appointment of the private respondents by way of direct recruitment is contrary of the rules governing the service and the reliance is being placed upon order dated 05.02.2018, Annexure P-4, as well as the enquiry report dated 27.01.2013, Annexure P-3.

2 Learned counsel for the petitioners argues that the petitioners were already working with the respondent-institute and they were entitled for promotion as, all the posts of nursing sisters could have only been filled up by way of promotion whereas, the same posts have been filled by directly recruiting the private respondents, which is contrary to the rules governing the service. Learned counsel for the petitioners further argued that while the respondents were selected in the year 2013, the posts were not taken out on the purview of the Subordinate Selection Board.

3 Learned counsel appearing on behalf of the respondents submits that the institute where the petitioners are working and the private respondents have been directly recruited in the year 2010. While establishing the said institute on 22.12.2010, it was mentioned that the paramedical staff will be recruited 50% by way of transfer and 50% by way of direct recruitment by taking the posts out of the purview of the Haryana Subordinate Staff Selection Board. Learned counsel for the respondents further submits that keeping in view the said decision, again a decision was taken, which was notified on 02.09.2011, that 50% of the sanctioned posts of the office staff as well as paramedical staff is to be done by way of direct recruitment and even a committee was constituted for the said purpose and the private respondents were directly recruited in pursuance to the said decision, hence, the claim of the petitioners that the selection of the private respondents is contrary to the rules governing the service is incorrect.

4 Learned counsel for the private respondents submits that the petitioners were appointed in the year 2013 and after a period of 7 years of their appointment, the present petition has been filed, which is liable to be

dismissed on the grounds of delay and latches itself. Learned counsel for the private respondents further submits that the appointment of the answering respondents by way of direct recruitment is in consonance with the decision taken by the competent authority, copy of which has been appended as Annexure P-1 as well as Annexure R-1.

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

6 It may be noticed that the institute where the petitioners as well as private respondents are working was established in the year 2010. There were no rules governing the service and that is why, while establishing the institute in December, 2010, a decision was taken that 50% of the paramedical posts will be filled by way of transfer and remaining 50% posts will be filled by way of direct recruitment. The said decision was also notified in September, 2011 (Annexure R-1). Keeping in view the said notification, the official respondents were well within their jurisdiction to make recruitment to the post of nursing sister by way of direct recruitment to the tune of 50% of the cadre posts. It has already come on record that there were 33 posts of nursing sister, which, only 13 posts have been filled by way of direct recruitment. Hence, less than 50% of the posts of nursing sister have been filled by way of direct recruitment which is in consonance with Annexure P-1, dated 22.12.2010 as well as Annexure R-1, dated 02.09.2011.

7 The arguments of the learned counsel for the petitioners is that the said recruitment is contrary to the order dated 05.02.2018, Annexure P-4, the same cannot be accepted. Any decision which has been taken by the government after the recruitment of the petitioners qua the post, will not

impact the selection already made. It is already a conceded fact that the private respondents were selected in the year 2011 and they have been working since 2013 and are continuing as such, and therefore, order dated 05.02.2018, Annexure P-4 cannot have a retrospective effect so as to ground the selection of the private respondents as bad.

8 With regard to the assertion that after the selection process, an enquiry was conducted to assess the selection was in accordance with law or not, and as per the report submitted to the Director on 27.01.2017, a copy of which has been appended as Annexure P-3 that the posts should have been filled by 100% promotion, cannot be accepted for the reason that the decision taken while creating the institute as well as notification dated 02.09.2011, Annexure R-1, wherein it was already decided that 50% of the paramedical staff in the respondent-Institute will be filled by way of direct recruitment, the recommendation made by the committee to the Director cannot create a right to the petitioners to claim that the appointment of private respondents are bad. On the face of it, the recommendations of the Committee are incorrect and being inconsistent with the Annexure P-1 as well as Annexure R-1.

9 Qua the argument that posts which were filled up in the year 2013, were not taken out of the preview of Subordinate Service Selection Board Haryana. It may be noticed that the petitioners were not competing in pursuance to the advertisement, which was issued in the year 2011 and their selection was made in the year 2013 by which the private respondents were appointed. Once, the petitioners were not competing along with the private respondents for the post in question, and the respondent-State has defended

the selection of the private respondents, hence, any, selection of the private respondents cannot be set aside on the ground that the posts were not taken out of the purview of the Haryana Subordinate Selection Board and that too after a period of 11 years of their working.

10 Keeping in view the above, no ground is made out for any interference by this Court, hence, the present petitions are dismissed.

(HARSIMRAN SINGH SETHI)
JUDGE

27.02.2024
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Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No