

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

216

**CWP No.17964 of 2018
Date of Decision : 10.1.2024**

*Somvir**..... Petitioner**versus**Pandit Bhagwat Dayal Sharma University of Health Sciences, Rohtak and
another**..... Respondents***CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA**

Present: Mr. R.K. Malik Senior Advocate with
Mr. Digvijay Singh, Advocate, for the petitioner

Mr. Nilesh Bhardwaj, Advocate, for the respondents

TRIBHUVAN DAHIYA J. (ORAL):

This petition has been filed, *inter alia*, seeking a writ of *certiorari* quashing the petitioner's result for the post of Radiographer, as also the second respondent's selection against the said post. Further, a prayer has been made to quash the order dated 8.6.2018, Annexure P-10, whereby the petitioner's representation seeking appointment has been rejected. However, at the outset, learned senior counsel contends that the petitioner has given-up challenge to the selection of second respondent.

2. Facts of the case in brief are, the first respondent/University advertised Class-I and II Non-Teaching Posts vide advertisement no.6 of 2016, Annexure P-1. Among others, twenty posts of Radiographer were also advertised, out of which eight posts were reserved for general category, three each for BC-A and SC category, two for general Ex-servicemen (ESM) category, and one each for BC-B ESM, SC-ESM,

Physically Handicapped (HP) and BC-B category.

2.1. The essential qualification for the post was 10+2 and B.Sc. in Radiography and Imaging Technology, with knowledge of Hindi/Sanskrit up to Matriculation standard. As per the criteria for selection, Annexure P-3, maximum of ten marks were prescribed, half mark for each year, for work experience in a government/public sector institution or hospital/university hospital/hospitals on government panel.

2.2. As the petitioner fulfilled the qualification and had the requisite experience, he applied for the post as a general category candidate claiming marks for experience. On the basis of certificate dated 13.5.2016, Annexure P-4, showing that he has worked as Radiotherapy Technologist in the Department of Radiation Oncology in Grecian Super Specialty Hospital, SAS Nagar (for short 'Grecian Hospital'), from 8.4.2011 up to the date of certificate, he claimed 2.5 marks.

2.3. The result of selection was declared on 11.9.2017, Annexure P-6. The petitioner was not awarded marks for experience, and scored 50.62 marks in total; whereas, marks of the last selected general category candidate were 54.40, and those of the first wait-listed candidate were 53.39.

2.4. Aggrieved against the respondent's action in not considering his experience certificate valid for the purpose of selection, he submitted representations to the University. The same were finally rejected vide the impugned order, dated 8.6.2018, which is a non-speaking order.

2.5. In this factual background, the instant petition has been filed.

3. Learned senior counsel for the petitioner has contended that the petitioner has wrongly been deprived of marks for work experience as per

the criteria. He had submitted valid experience certificate as Radiologist/Radiotherapy Technologist in Grecian Hospital, which is an empanelled hospital under the Ex-servicemen Contributory Health Scheme of the Government of India (for short 'ECHS'). Therefore, he is entitled to 2.5 marks for it as per the criteria. In case 2.5 marks are added to 50.62 marks scored by him, his grand total will be 53.12. The last selected candidate did not join, and the first wait-listed candidate has already been appointed in his place; the second wait-listed candidate secured 52.83 marks, in case petitioner is awarded marks for experience, he would be the first wait-listed candidate. It is also contended that out of the two ESM general category posts of Radiologist advertised by the University, only one candidate was considered eligible and appointed; the remaining post is still vacant. As per Instructions issued by the government dated 2.7.2010, as amended on 4.4.2014, Annexures P-13 and P-14, in case no suitable candidate is found for appointment against the vacancies reserved for ESM (SC/BC/General) category, there is no need to re-advertise the vacancy and the same will be filled from the main category, i.e., SC, BC or General category respectively. Therefore, the petitioner is entitled to be so appointed against the advertised posts. Learned senior counsel also states that the petitioner will not insist on arrears of salary for the period he has not worked.

4. *Per contra*, learned counsel for the University contends that the petition is not maintainable since the Selection Committee has not been impleaded as a party, and in its absence no effective relief can be granted. He further contends that the petitioner's experience certificate from Grecian Hospital cannot be considered valid, since the hospital is not on

the State Government panel of hospitals. Also, it cannot even be considered on the Central Government panel as ECHS is not government, and is only a contributory scheme for the benefit of ex-servicemen. Therefore, the petitioner is not entitled to the claim raised.

5. Arguments advanced by learned counsel for the parties have been considered and case file has been perused.

6. In this factual background, the issue for consideration is, *whether Grecian Hospital, where the petitioner gained experience as Radiotherapy Technologist for over five years, can be considered 'a hospital on government panel' for award of marks for experience as per the criteria of selection.*

6.1. The criterion for awarding marks of experience for selection is as under:

- | | | | |
|------------|--|-----|-----|
| I. and II. | xxx | xxx | xxx |
| III. | Experience (Subject to maximum of 10 marks) =10 marks
(½ mark for each completed year of work experience on the said post in government institution/public sector institution or hospital/university hospital/hospitals on government panel.) | | |

6.2. Apparently, the criterion only requires experience on the post, among others, in hospitals on *government panel*. There is no stipulation, either explicit or implicit, that the government panel for that matter has to be the panel of any particular State government, and not of the Central government. Once the words '*government panel*' have been used in the criterion, which on a plain reading means any government in the country, be it of the Union or the State, there is no reason to assign any restricted meaning to the words. Consequently, there is no rationale in the University's stand that the petitioner's experience certificate cannot be

considered valid since it is not from the hospital empaneled in the State of Haryana. The criterion for selection does not require that, and the University cannot be permitted to insist upon the same or to consider the petitioner's certificate invalid on that account.

6.3. Undisputedly, Grecian Hospital is recognized under ECHS for treatment of its members and their dependent beneficiaries as per memorandum of agreement, dated 4.8.2017, Annexure P-8, entered into between the Director, Regional Centre ECHS, Chandimandir (Station) and the Managing Director, Grecian Hospital. Further, it is apparent on record, as per letter dated 30.12.2002, Annexure P-9, issued by the Ministry of Defence, Government of India, that ECHS is a contributory scheme sanctioned by the government as a Health Care Scheme for the Ex-servicemen. On retirement, every service personnel compulsorily becomes its member by contributing his/her share, and the Scheme remains applicable for lifetime. Still further, as per information provided on the website of Department of Ex-servicemen Welfare, Ministry of Defence, Annexure P-10, ECHS is flagship scheme of the Ministry and is financed by the Government of India. Relevant paragraphs of the official information read as under:

1. Historical Background. Ex-servicemen Contributory Health Scheme (ECHS) was launched with effect from 1.4.2003. The Scheme aims to provide allopathic and AYUSH medicare to Ex-servicemen pensioner and their dependents through a network of ECHS Polyclinics, Service medical facilities and civil empanelled/Government hospitals/ specified Government AYUSH hospitals spread across the country. The Scheme has been structured on the lines of CGHS to ensure cashless transactions, as far as possible, for the patients and is financed by the Government of India.

2. ECHS is a flagship Scheme of the Ministry of Defence, Department of Ex-servicemen Welfare. The aim of Scheme is to provide quality healthcare of Ex-servicemen pensioners and their dependents. As on 1.4.2019, an estimated 55 lakhs beneficiaries including dependents are being served by this Scheme.

6.4. In view of the aforesaid documentary evidence on record, which has not been disputed, it is apparent that ECHS is a Scheme of the Ministry of Defence, Government of India, and is financed by it also. Being a government owned and financed Scheme, a hospital on its panel has to be considered 'a hospital on government panel' as per the criterion. Accordingly, Grecian Hospital, being an empanelled hospital for ECHS is a hospital on government panel which entitles the petitioner to 2.5 marks for over five years' experience of working as Radiotherapy Technologist there.

6.5. In case 2.5 marks are added to the total marks of 50.62 awarded to the petitioner by the Selection Committee, his score becomes 53.12, which entitles him to place in the waiting list at number one, since the first wait-listed candidate having 53.39 marks has already been appointed against the post that remained vacant, and the second wait-listed candidate has scored 52.83 marks.

6.6. It is not disputed by learned counsel for the University that one post of Ex-servicemen in general category is still vacant, as it was neither filled-up, nor re-advertised. It is also not disputed that as per Government Instructions, dated 4.4.2014, the vacant post of Ex-servicemen general category is to be filled up by a candidate from main category/general category on the basis of merit. Therefore, after addition of 2.5 marks to the marks awarded to the petitioner, he becomes the first wait listed

candidate entitled to be considered for appointment against the vacant post on merit being a general category candidate.

7. The objection taken by learned counsel for the University to maintainability of the petition on account of not impleading the Selection Committee, has no legs to stand upon. As no *mala fides* have been alleged in the process of selection, there is no requirement of impleading either the Selection Committee or its members individually. Also, it cannot be lost sight of that the Selection Committee was constituted for making selection to the post advertised by the University, which has been impleaded as the first respondent through its Registrar. Therefore, the writ petition is maintainable.

8. In view of the discussion, the petition is allowed. The University is directed to consider and appoint the petitioner against the vacant post of Radiographer in ESM general category, and give him all consequential benefits, notionally from the date other selected candidates have been appointed pursuant to the advertisement in question, and actually from the date of joining the post, within a period of four weeks from receiving a certified copy of this order. There shall be no order as to costs.

(TRIBHUVAN DAHIYA)
JUDGE

10.1.2024

Ashwani

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No