

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

220+235

Date of decision:29th October 2025

(1) CWP No.8662-2024 (O&M)

2025:PHHC:148529-DB



Employees State Insurance Corporation and others

..Petitioners

Versus

Anil and another

..Respondents

(2) CWP No.12327-2024 (O&M)

Employees State Insurance Corporation and others

..Petitioners

Versus

Poornima and another

..Respondents

(3) CWP No.12533-2024 (O&M)

Employees State Insurance Corporation and others

..Petitioners

Versus

Pushpa and another

..Respondents

(4) CWP No.12537-2024 (O&M)

Employees State Insurance Corporation and others

..Petitioners

Versus

Fateh Alam and another

..Respondents

(5) CWP No.12704-2024 (O&M)

2025:PHHC:148535-DB



**Employees State Insurance
Corporation and others**

..Petitioners

Versus

Manikant Kumar and another

..Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI
HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. Jaskirat Singh, Advocate for
Mr. K. K. Thakur, Advocate,
Senior Advocate counsel,
for the petitioners.

Mr. Ram Bilas Gupta, Advocate
for respondent No.1(in CWP-12704 of 2024)

Mr. Rishav Sharma, Advocate
for respondent No.1 (through VC in CWP-12327-2024).

Ms. Archana Yadav, Advocate, (through VC)
Mr. Abhinav Sood, Advocate and
Mr. Akshay Sharma, Advocate for respondent No.1.
(in CWP-12533 of 2024).

Ms. Sweta Chahal, Advocate for
Mr. Sanjeev Sharma, Advocate
for respondent (in CWP-12537-2024)

HARSIMRAN SINGH SETHI, J(Oral)

1. In the present bunch of petitions, the challenge is to the order dated 27.09.2023 (Annexure P-5) passed by the Central Administrative Tribunal, Chandigarh Bench, by which the order dated 03.08.2021 passed by the petitioner terminating the services of the respondent employee herein on the ground that they do not fulfill the requisite of the advertisement as they did not have the valid 'experience certificate' from a Government approved/registered Nursing Home/Hospital, have been set aside.

2. Certain facts may be mentioned for the correct appreciation of the issue:

In the year 2015, the petitioner invited candidates for filling up the vacancies of the 'Nursing Orderly'. To be eligible for selection to the said post, a candidate should be in possession of matriculate certificate

showing him/her to have completed said course, or equivalent from a recognized Board and should also have elementary knowledge of 1st Aid along with one year of experience in handling and dressing wounds in Government approved/registered Nursing Home/Hospital. The said qualifications were prescribed in the advertisement so as to be eligible for selection to the post in question to be in consonance with the Employees State Insurance Corporation (Nursing Cadres/Posts, Recruitment Regulations, 2010.

3. The respondents competed for the said selection to the said post and they were declared as successful in clearing the written examination and thereafter upon scrutiny of the documents which were found in order, they were selected and appointed as 'Nursing Orderly' vide order dated 14.03.2017.

4. Thereafter, it came to the notice of the petitioner that certain candidates whose recruitment has already been done, some of those candidates do not fulfill all the requisites as advertised, which was also the part of the rules governing the service qua the post of 'Nursing Orderly'. It came to the knowledge of the petitioner that some of the candidates though had a experience certificate showing that these candidates have the one year of experience but they did not have one year of experience in a registered Nursing Home/Hospital, which has approval by the Government, which was essentially the requisite in the advertisement as well as 2010 Regulation.

5. Keeping in view the said, a data was procured so as to ascertain as to which candidate lacks the eligibility for selection to said post and show cause notices were issued to such selected candidate as to why their services

should not be terminated as they do not fulfill the requisite of the advertisement which is in consonance of the 2010 statutory rules.

6. After getting the reply from candidates/employees concerned, the same were assessed and ultimately, the petitioner passed order dated 03.02.2021 terminating the services of the candidate/employees who were recruited despite not being eligible as per the 2010 statutory rules/advertisement.

7. The respondents-employees challenged the said action of termination of their services before the Tribunal and ultimately vide the impugned order dated 27.09.2023, said termination order was set aside and the candidates were eventually allowed to continue in service. The said order has been challenged in the present bunch of petitions.

8. Learned counsel for the petitioners argues that the reasons which have been given by the Tribunal in the impugned order to decide the issue in favour of respondents-employees is that firstly, after initial scrutiny of the documents, which documents were submitted by candidates after clearing the exam, the candidates were found eligible to be selected on post in question and they were appointed to the said post of 'Nursing Orderly' and it was after a period of four years of being appointed on said post that they were given show cause notice so as to ask them why their services should not be terminated after issuance of which the services of respondents were terminated which could not have been done by the petitioner as the discrepancy in the documents to the extent of their validity should have been noticed at the initial stage and not after a period of four years being appointed as 'Nursing Orderly'.

9. Learned counsel for the petitioner further argues that the Tribunal while adjudicating in favour of respondents has held that the Nursing Homes in the Government of Haryana were not registered prior to the year 2019 and therefore fulfilling of the condition of having a valid 'experience certificate' issued by a registered Nursing Home/Hospital, by the Government was beyond the control of the employees and therefore, such condition cannot be made the basis for termination.

10. Learned counsel for the petitioner argues that once the requisite qualification to be appointed on post of 'Nursing Orderly' which post has been advertised, were in consonance with the 2010 statutory rules and once there is no challenge to the 2010 statutory rules, it becomes the duty of the candidate to fulfill every criteria necessary for selection to the said post under the advertisement and in case any candidate, who does not fulfill such a criteria as is the case of respondent employees in present case, thus cannot be allowed to work on said post as appointing an ineligible candidate who does not fulfill eligibility prescribed under 2010 Regulations will be a fraud on the general public, which fact has been ignored by the Tribunal while passing the impugned order.

11. Learned counsel for the petitioner further argues that merely that the employees had worked for a period of four years on the post in question, the same cannot be a ground in case, the ineligibility attached to such appointed employees is proved, which has been done in the present case, hence, the Tribunal misdirected itself while granting relief to the respondent-employees.

12. Upon notice of motion, the respondents have appeared.

13. Learned counsel for the respondents argues that once the respondents have worked as Nursing Orderly for a period of four years and the documents submitted by respondents along with other had already been scrutinized at inception, taking a stand doubting the veracity of the said documents in order to terminate the services of respondents is not permissible, as after the employees have cleared the period of probation which is two years, their services cannot be terminated after a period of 4 years merely on ground of ineligibility qua documents of experience submitted, which documents had already been scrutinized at initial stage. Hence, the view taken by the Tribunal, in the facts and circumstances of the present case is perfectly legal and valid.

14. Learned counsel for the respondents-employees further submits that once the Nursing Homes/Hospitals in which the respondents were working in the State of Haryana, never had a stipulation of registration of such Nursing Homes/Hospitals, by the Government, putting such a clause in the advertisement is not correct and the Tribunal rightly held that once the registration of the Nursing Homes/Private Hospitals in the State of Haryana, was made compulsory only from the year 2019, asking for the 'experience certificate' that too from a registered Nursing Homes/Private Hospitals with the Government is incorrect and the said condition has rightly been relaxed by the Tribunal so as to hold the employees eligible, hence, the writ petition filed by the petitioner may kindly be dismissed.

15. Learned counsel for the petitioner rebuts the said contentions and submitted that all the candidates whose services have been terminated are not from the State of Haryana as some of them also belong to the State of Uttar Pradesh as well as Bihar and Delhi, and the Tribunal rather than

appreciating as to of which State's Nursing Homes' experience certificate has been given by a candidate, a general finding has been recorded which is incorrect. Learned counsel for the petitioner further argues that before completion of probation period, the show cause notice qua said ineligibility was already issued to the respondents though ultimate order of termination were passed thereafter.

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

17. It may be noticed that the selection to a post has to be made in accordance with the statutory rules governing the appointment as such; any candidate who does not fulfill the requisite of being selected to such post can only be treated as squandering of the post at the cost of an eligible candidate. In the present case, the post of Nursing Orderly is governed by statutory rules of 2010 which prescribes for particular qualification for appointment on said post, details of which have already been given in the preceding paragraph. On the basis of 2010 regulations, the same qualification was prescribed in the advertisement as such to be possessed by the candidate interested to be appointed on the post in question.

18. The question which arises for consideration is whether the candidate who does not fulfill the requisite to be appointed on the post in question can be allowed to continue in service merely on the ground that they have been appointed on such post despite the fact that they do not possess the requisite qualification of the post in question or that the possession of the requisite qualification was beyond their control.

19. As per the settled principle of law, an ineligible candidate appointed who has been appointed on a certain post cannot claim to continue

on the post as a matter of right merely on the ground that he/she has performed the duties of such post for a considerable amount of time. If such appointment is bad, the same has been done at the cost of an eligible person who was waiting to be selected but could not be selected as an ineligible person got selected instead of the eligible one, despite not fulfilling the requisites envisaged under the Rules qua the post in question. The Tribunal has wrongly allowed the benefit of continuance in service to the respondents by holding that once the respondents have worked for a considerable time of four years on the post in question they are entitled to continue on such post despite being ineligible to hold the post keeping in view 2010 regulations as well as the advertisement. The law on the issue is settled.

20. The judgment of the Hon'ble Supreme Court of India in **Union of India and others Versus M. Bhaskaran, AIR 1996 686** can be relied upon. The relevant paragraph of the judgment as as under:-

“655. In that case Sawant, J. speaking for this Court held that when an advertisement mentions a particular qualification and an appointment is made in disregard of the same, it is not a matter only between the appointing authority and the concerned appointee. The aggrieved are all those who had similar or even better qualifications than the appointee or appointees but who had not applied for the post because they did not possess the qualifications mentioned in the advertisement. It amounts to a fraud on public to appoint persons with inferior qualifications in such circumstances unless it is clearly stated that the qualifications are relaxable. No court should be a party to the perpetuation of the fraudulent practice. It is of course true as noted by the Tribunal that the facts of the case in the aforesaid decision were different from the facts of the present case. And it is also true that in that case pending the service which was continued pursuant to the order of the Tribunal the candidate concerned acquired the requisite qualification and hence his appointment was not disturbed by this Court. But that is neither here nor there. As laid down in the aforesaid decision, if by committing fraud any

employment is obtained, such a fraudulent practice cannot be permitted to be countenanced by a court of law. Consequently, it must be held that the Tribunal had committed a patent error of law in directing reinstatement of the respondent-workmen with all consequential benefits. The removal orders could not have been faulted by the Tribunal as they were the result of a sharp and fraudulent practice on the part of the respondents. Learned counsel for the respondents, however, submitted that these illiterate respondents were employed as casual labourers years back in 1983 and subsequently they have been given temporary status and, therefore, after passage of such a long time they should not be thrown out of employment. It is difficult to agree with this contention. By mere passage of time a fraudulent practice would not get any sanctity. The appellant authorities having come to know about the fraud of the respondents in obtaining employment as casual labourers, started departmental proceedings years back in 1987 and these proceedings have dragged on for a number of years. Earlier, removal orders of the respondents were set aside by the Central Administrative Tribunal, Madras Bench and proceedings were remanded and after remand, fresh removal orders were passed by the appellant which have been set aside by the Central Administrative Tribunal, Ernakulam Bench and which are the subject-matter of the present proceedings. Therefore, it cannot be said that the appellants are estopped from recalling such fraudulently obtained employment orders of the respondents subject of course to following due procedure of law and in due compliance with the principles of natural justice, on which aspect there is no dispute between the parties. If any lenient view is taken on the facts of the present case in favour of the respondents, then it would amount to putting premium on dishonesty and sharp practice which on the facts of the present cases cannot be permitted.”

21. A bare perusal of the above would show that Hon’ble Supreme Court of India has held that any fraudulent/illegal/bad appointment obtained by an individual cannot be allowed to sustain and in case any lenient view is taken qua said aspect, it would tantamount of putting a premium on dishonesty and hence, the Tribunal allowing the respondents to continue in

service despite being ineligible to be appointed on same merely on the ground that they have worked for four years' with petitioner cannot be accepted.

22. Learned counsel for the respondents submits that no fraud has been played by the respondents as the documents had been duly submitted by them which were even scrutinized by the concerned, hence, once they have been selected, even if, their certificate of experience being issued by an un-registered Nursing Homes/Private Hospitals, which certificate does not fulfill the requisite and their services should not be terminated. Qua said assertion, it shall be noted that in case such plea is allowed, the same will reflect adversely as such ineligible candidate had taken the seat in preference to the eligible candidate. Eligible candidate cannot be allowed to suffer at the costs of a blunder done by the Department by appointing ineligible person, therefore, no benefit of continuance in service can be given, even if, there was no incorrect disclosure on the part of the ineligible employees, while pursuing for selection and consequent appointment.

23. Learned counsel for the respondents-employees places reliance upon the judgment of Division Bench of this Court in **CWP No. 30737 of 2018, decided on 31.07.2019 titled as Varinder Hans Versus Union of India and others.**

24. It may be noticed that the said judgment will not be applicable in the facts and circumstances of the present case as in the said case there is no deficiency qua the prescribed statutory qualifications whereas in the present case ineligibility of candidates is being declared for not possessing the required statutory qualifications.

25. The further ground taken by the Tribunal while granting the relief of continuance in service to respondents is that in the State of Haryana there is no provision for compulsory registration of the Nursing Homes/Private Hospitals prior to the year 2019 and therefore, work experience certificate of one year in Nursing Homes by the candidate qua the advertisement which was issued in the year 2015, was beyond their control, hence such conditions cannot be brought into operation to terminate the services. It may be noticed that the qualifications which are sought when the advertisement which is also backed by 2010 statutory rules are the qualifications which are mandatory to be possessed by a candidate. Once a statutory rule provides for a particular qualification to be possessed by a candidate, the same has to be possessed by the candidates unless and until, the said 2010 rule is challenged and set aside.

26. In the present case, there is not even a challenge to the 2010 statutory rules, much to talk of the advertisement. Hence, relaxing the requirement of necessary qualifications by the Tribunal in order to save the appointment of respondent who concedly do not fulfill the requisite of one year experience in a Government approved/registered Nursing Home/Hospital, could not have been allowed merely on the ground that in Haryana, registration of Nursing Home only started in the year 2019. In case a candidate is not eligible to be appointed on a certain post for many years, such ineligibility cannot be watered down on any pretext but the Tribunal exceeded its jurisdiction to hold that the obtaining of the qualification though was stipulated in the 2010 statutory rules as well as the advertisement, but same was beyond the control of the respondents to procure which is incorrect

and cannot be upheld.

27. Further, the candidates whose services have been terminated and who have submitted the experience certificate of one year working in Nursing Homes in State of Haryana are limited only two candidates keeping in view the total number of candidates whose services have been terminated on the ground of said ineligibility. A large number of candidates have shown that the work experience certificate has been procured from the Nursing Homes/Private Hospitals in Delhi, Bihar, Uttar Pradesh and Telangana, in which States no such condition of registration of the Nursing Home/Private Hospitals with the Government, was non-existence on the day when the advertisement was issued. Even if such condition existed, the condition of the statutory rules cannot be watered down to treat such candidates eligible under any circumstances.

28. Further in case the plea of the respondent-employee is accepted, the same will lead to accepting that even working with a single room hospital will be good enough for experience which is a crucial criteria for a candidate to be eligible for appointment to the post in question. Such interpretation of a rule cannot be accepted as it will lead to giving eligibility to the bogus experience certificate being issued by the private Nursing Homes/Hospitals which will not be in the interest of the institution where selected candidates are to be recruited. Hence, the requirement of the experience from a private Nursing Homes/Hospitals recognized by the Government is crucial to maintain the standard of an employee who is to be recruited in the hospital where general public is to be treated for the ailments.

29. At this stage, learned counsel for respondents submits that some of the respondents work experience certificates, which they have

submitted fulfill the requisite of the 2010 rules and advertisement but the said factum has not been considered by the petitioner. It shall be noted that in case any of the candidate whose services have been terminated on the ground of being ineligible feels that he/she has fulfilled all the requisite of the rules keeping in view the certificates already brought on record before the last date of the application, will be within its jurisdiction to file a representation and the petitioner to project his/her eligibility in accordance with 2010 regulation and the petitioners will look into such representations with an open mind and than pass a speaking order, on such representation within a period of eight weeks and in case it is found that the claim of the employee concerned is valid, appropriate decision be taken by giving consequential relief also but in case the view of the petitioner is that such candidate does not fulfill the requisite of 2010 regulation to be eligible for the post in question, the detailed reasons keeping in view the issue raised by such representation will be given while declining the said benefit which reasons will be brought to the notice of the candidate as well. Keeping in view the totality of the circumstances, the order passed by the Tribunal is set aside.

30. As the candidates have been given another chance to prove their eligibility, in case any of the candidate file a representation within a period of three weeks from today, the same be decided by the petitioner within a period of eight weeks thereafter and till any such decision is taken, as the candidates are continuing in service, they will be allowed to continue in service, till any such decision. In case after the decision, the candidates who are found to be in ineligible the petitioner will be within its jurisdiction to take appropriate decision including terminating their services.

31. Pending application(s), if any, stands disposed of.

32. Photocopy of this order be placed on the files of other connected cases.

(HARSIMRAN SINGH SETHI)
JUDGE

29th October 2025
reema

(VIKAS SURI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No