
(2024) 11 SHI CK 0060
In the High Court Of Himachal Pradesh
Case No : CWP No. 9395 Of 2024

Dr. Esha Singh

APPELLANT

Vs

State Of Himachal Pradesh And Others

RESPONDENT

Date of Decision : 27-11-2024

Acts Referred:

Citation : (2024) 11 SHI CK 0060

Hon'ble Judges : Ajay Mohan Goel, J

Bench : Single Bench

Advocate : Bimal Gupta, Kusum Chaudhary, Rajpal Thakur, V.D. Khidtta, Nishant Khidtta, Nikita Khidtta

Final Decision : Allowed

Judgement

Ajay Mohan Goel, J

1. By way of this writ petition, the petitioner has, inter alia, prayed for the following reliefs:-

"i. Selection list sent to Respondent No.2 by respondent No.3 for the post of Senior Resident (Microbiology) annexure P-8 may kindly be held wrong illegal, arbitrary and may kindly be quashed.

ii. The respondent No. 3 may kindly be directed to include the marks of area incentive, earlier given to petitioner in tentative Merit list dated 26.7.2024, in the final merit List dated 30.7.2024 and thereafter declare petitioner selected for the post of Senior Resident (Microbiology).

iii. The respondents may further be directed to offer the said post to the petitioner on the basis of final merit list drawn uploaded on web site of respondent No.3 on 30.7.2024 by including the area incentive marks."

2. Brief facts necessary for the adjudication of this petition are as under:-

As per the petitioner, an advertisement was issued by respondent No.3, on

21.06.2024 (Annexure P-2), inviting applications to fill up vacant posts of Senior Residents in Atal Institute of Medical Super Specialties, Shimla. The following counselling schedule was mentioned in the advertisement:-

"The candidates are advised to remain in touch with the aforesaid websites for further updates. The counseling schedule is appended below:-

Sr. No.

Description

Dates

1.

Date for starting for applying for the post Sr. Resident/Tutor Specialist.

24.06.2024

2.

Last date for submission of application form in all respect.

03.07.2024 (up to 5:00 PM)

3.

List of all the candidates (including GDOs and Direct Candidates who have applied for the post of Sr. Resident/Tutor Specialist to the DHS/DDHS for issuance of No. Objection Certificate.

05.07.2024 to

10.07.2024

3.

Last date up to which the NOC from Directorate of Health Services Himachal Pradesh to reach in the O/o the Principal AIMSS Chamiana Shimla.

On or before 18.07.2024

4.

Date for securitization of application forms by the committee members.

20.07.2024 to 22.07.2024

5.

Date of displaying the tentative Merit List on the website www.aimsschamiana.edu.in.

23.07.2024

6.

Last date for receiving objections (if any) with regard to tentative merit list by the candidates in writing through e mail:-PR. ssbchamiyana@gmail.com

24.07.2024 &

25.07.2022 (up to 5:00 PM)

7.

Date of deciding objections/representation

27.07.2024

8.

Date of displaying the final Merit list special wise

29.07.2024

9.

Date of Counselling

31.07.2024 at 11:00

A.M. in Committee Room, Atal Institute of Medical Super Specialties Chamiana.

3. The method of recruitment in terms of the advertisement was as under:-

"6. METHOD OF RECRUITMENT:

In order to recruit candidates for the posts of Sr. Residents/Tutor Specialists, the interview/counselling committee shall draw specialty wise merit list based on the documents submitted at the time of making application keeping the following manner:

Sr. No.

Detail

Marks

1.

MBBS Marks (Cumulative total marks of 1st, 2nd & 3rd Professional examination)

Total marks obtained /maximum marks x 30

2.

PG (MD/MS/MDS/DNB)Degree/Diploma Marks (in concerned specialty)

Total marks obtained / maximum marks x 40

3.

Period of service of State

As per Appendix 'C'

4.

Publication of papers in Indexed Journals as 1st author, 2nd author or corresponding author (Published papers or papers in respect of which letter of acceptance has been issued shall be counted)

2 marks for each published work subject to maximum of 20 marks.

4. Distribution of marks for Senior Residents in terms of period of service of State for GDOs was as under:-

"Distribution of marks for Senior Resident /Tutor Specialist in terms of period of service of State for GDOS:

(a) A maximum of 10 marks will be awarded for service rendered by the candidate as Medical Officer /GDOs after Post Graduation.

(b) 02 marks will be awarded for each completed year of service in teaching/ non-teaching institutions/field postings including the mandatory period prescribed for eligibility. The incentive marks, beyond the mandatory field posting, shall be awarded as pro-rata basis. However, it is clarified that the pro-rata shall be admissible only after attaining the eligibility to the post of Senior Resident/ Tutor Specialist for all purposes including the mandatory period of field posting.

(c) For the purpose of calculating the completed years of service, the cut-off date shall be taken as the date of submission of application.

(d) Certificate issued by the concerned Chief Medical Officer/Principal Government Medical College /Institution certifying the service in his/her district / institution in respect of particular candidate shall be submitted by the candidates by the time of making applications."

As per the petitioner, as she was eligible to apply for the post of Senior Resident in terms of the advertisement, Annexure P-2, she did so.

5. According to the petitioner, in terms of the advertisement, a tentative merit list of the candidates, who had applied for the post of Senior Residency in the Department of Microbiology, which was one of the Departments advertised in the advertisement, was issued by respondent No.3 on 26. 07.2024. In terms of this tentative merit list Annexure P-3, in all, three candidates had applied for the post including the petitioner and the private respondent. Whereas, the petitioner was awarded 62.19 total marks in the tentative merit list, the total marks awarded to

the private respondent were 61.20.

6. Thereafter, the final merit list of the candidates was issued by respondent No.3 on 30.07.2024 (copy whereof is appended with the petition as Annexure P-4). In terms of this final merit list, the total marks of the petitioner were 61.33 and that allotted to the private respondent were 61.20.

7. The petitioner herein is aggrieved by Annexure P-8, which is another final selection list of the candidates, issued by respondent No.3 for the recruitment of the vacant post of Senior Residents at AIMS Chamiyana, in terms whereof in the Department of Microbiology, the private respondent has been selected for the post of Senior Resident, by the act of the Counselling Committee which has granted two more marks to the private respondent for the Case Reports, in terms of the decision taken by the Counselling Committee, after the issuance of final merit list, dated 30.07.2024.

8. Learned Senior Counsel for the petitioner has argued that in terms of the advertisement, there was a chronological depiction of the events which was to lead to the conduct of counselling. As per him, the counselling was to be held on the basis of the final merit list and once the final merit list stood drawn, the Counselling Committee was to offer the posts by way of counselling to the eligible candidates. The Counselling Committee had no right to reassess the merit of the candidates on any count, whatsoever. Learned Senior Counsel thus submitted that as in the present case, in terms of the final merit list that was issued by respondent No.3, the petitioner was shown more meritorious than the private respondent, the act of the respondents of subsequently granting two more marks to the private respondent on the basis of the recommendation of the Counselling Committee is per se bad, as the Counselling Committee had no role in preparing the merit list. As per him, once the final merit list was out, the Counselling Committee had no authority to review the same on any count, whatsoever. Accordingly, he prayed that this petition be allowed by setting aside the appointment of the private respondent and by directing the respondents to offer the appointment to the petitioner, on the basis of her merit, in the final merit.

9. Learned Additional Advocate General as well as learned Counsel for the private respondent on the other hand have submitted that in this case after the declaration of the tentative merit list and also after the declaration of the final merit list, the private respondent had submitted online representations to the respondents, in terms whereof, she had stated that she was entitled for grant of marks for the Case Reports submitted by her and as earlier no marks were granted to the petitioner for Case Reports and as subsequently the Counselling Committee decided that marks for Case Reports should be allocated to all the candidates, on the basis of this recommendation of the Counselling Committee, marks were allotted to all the candidates entitled to for Case Reports and in the process, as the private respondent became more meritorious than the petitioner, the respondents declared the private respondent to be the eligible candidate for

appointment on tenure basis as a Senior Resident in place of the petitioner. They submitted that as the procedure was transparent and uniformly adopted for all the candidates, therefore, the present petition having no merit, is liable to be dismissed.

10. In the course of the hearing of this case, this Court had directed the respondents to produce the record of the case, which was duly produced for the perusal of the Court.

11. I have heard learned counsel for the parties and also carefully gone through the pleadings as well as documents appended therewith and also the record of the case that was produced for the perusal of the Court.

12. The facts in issue are not much in dispute. It is an admitted position of facts that in the tentative merit list as well as in the final merit list, the petitioner was declared more meritorious over and above the private respondent. Now incidentally, the final merit list was not challenged by the private respondent before any Court of law. Instead of doing that, she filed representations to the Authorities for the grant of marks, inter alia, on the basis of Case Reports that were submitted by her, for which, as per her, no marks were awarded to her.

13. A perusal of the advertisement demonstrates that the last date for submission of application forms in all respects was 03.07.2024 up to 5:00 pm. Date of scrutinization of the application forms by the Committee Members, was between 20.07.2024 to 22.07.2024. The date of display of tentative merit list was 23.07.2024. Last date for receiving objections, if any, with regard to tentative merit list by the candidates in writing through email was from 24.07.2024 to 25.07.2024 up to 5:00 pm. The date of deciding the objections/representations was 27.07.2024 and the date of displaying the final merit list specialty wise, was 29.07.2024. The date of counselling was 31.07.2024.

14. As already mentioned hereinabove, the last date for submission of application form in all respects was 03.07.2024. A perusal of the original application form submitted by the private respondent demonstrates that along-with the application form, she had attached 5 research papers, details whereof are available on column 18 of the application form, which deals with paper publication. But in this column, the number of original research papers submitted was mentioned as 10. Why that is so, this Court fails to understand. Yet, fact of the matter remains that as per the original application form, only 5 paper publications were attached with the same, by the private respondent. Moving further, record demonstrates that there are other research papers attached with the application form of the private respondent, attested by the private respondent on 03.07.2024, which means that the respondents allowed the private respondent to place these documents on record after she had already submitted her application form.

15. Now in terms of the advertisement, the application form was to be submitted by an applicant before the due date complete in all respects. The advertisement

did not envisage that the application form was to be submitted in bits and pieces or whatever was to be appended with the application form, could have been supplied in installments. Moving further, in terms of the record that was made available for the perusal of the Court, the Counselling Committee was constituted by the Principal of Respondent No.3-College vide office order dated 30. 07.2024. This office order is being quoted herein below:-

“ OFFICE ORDER

A counselling for the recruitment of post of Senior Residents will be held on 31.07.2024 at 4:00 PM in the Committee Room of this institution. A committee of the following officers is hereby constituted for the allotment of the seats for the above said purpose:-

Sr. No.

Name of the Officer

Designation

1.

Dr. Brij Sharma, Principal

Chairman

2.

Dr. Sudhir Sharma, Prof & Head, Neurology

Member

3.

Dr. Bhavya Thakur, Assistant Professor, Plastic Surgery

Member

4.

Sh. Ashwani Kumar Sharma, Superintendent Grade-II, AIMSS

Member

All the committee members are requested to make it convenient to attend the same on the stipulated date, time and venue.”

16. A perusal of this office order clearly demonstrates that the Counselling Committee was constituted by the Principal, for the purpose of the allotment of the seats and neither in terms of the advertisement nor in terms of this office order, the Counselling Committee was conferred any authority to review the final merit list that already stood displayed.

17. In fact, in terms of the advertisement, objections, if any, against the

Intensive merit list were to be filed in between the dates mentioned therein and the advertisement did not contemplate receipt of any further objections after the uploading of the final merit list.

18. In the present case, the final merit list was uploaded on 30.07.2024. Record demonstrates that the private respondent not only filed representations against the final merit list on 31.07.2024, the same were also entertained by the respondents, though there was no provision in the advertisement for either the filing of a representation or entertainment thereof, after the uploading of the final merit list. If the private respondent was aggrieved by the final merit list, then she could have had approached the appropriate Court of law, but her representation against the final merit list could not have been entertained by the respondents in the absence of such like condition in the advertisement.

19. Perusal of the record further demonstrates that the Counselling Committee on 05.08.2024, rather than holding out the counselling, took the following decision:-

"At the very outset of the Counselling, the Chairman apprised the members that only 14 application forms for the recruitment of posts of Senior Residents were received up to the last date for submission of application form i.e. 3.7.2024 up to 5:00 PM. Thereafter, all the Application Forms (in original) alongwith all documents were sent to the Director of Health Services, Himachal Pradesh on dated 12.07.2024 for grant of NOC. The last date for scrutinizing of application forms by the Committee was 20.07.2024 to 22.07.2024 but the same could not scrutinized at that time as the NOC's of the candidates were not issued by the Director of Health Services. On the day of 25.07.2024, the application forms were collected (by handj from the office of the Director of Health Services, H.P.

After the scrutiny of all the application forms/documents, a tentative merit list was drawn and uploaded on the website of this Institution on dated 26.07.2024. The Publication marks were given only for Original Articles/case series/metanalysis for publication marks as per NMC Publication guidelines (Copy enclosed). However in the Counselling Committee meeting held on 31.7.2024 at 4:00 PM, it was pointed out by the Counselling Committee that as per the Senior Residency Policy of Director of Medical Education & Research, Govt of Himachal Pradesh under clause 7.2.4(a)4 and also same in the Advertisement, no such distinction is made between the case report and original articles. Therefore, it was unanimously decided by the Counselling Committee that the Case Reports of all these candidates apart from other eligibility criteria should be taken into consideration for publication marks and afresh selection list should be prepared accordingly."

20. The decision so taken by the Counselling Committee in the considered view of this Court, was indeed without any authority and beyond its jurisdiction. The Counselling Committee was constituted only for the purposes of counselling. It neither had any mandate nor had any authority to reassess the merit of the

candidates already assessed. It had no authority to take any decision that the Case Reports submitted by the candidates should also be taken into consideration for the purpose of grant of marks etc., as has been done by the Counselling Committee.

21. It has to be appreciated that the constitution of the Counselling Committee being for a specific purpose, the Committee could not have travelled beyond that. As it is a matter of record that impugned Annexure P-8 has been issued on the basis of the said recommendation of the Counselling Committee, which ventured to allocate marks to the private respondent for the Case Reports submitted by her, Annexure P-8, obviously is not sustainable in law.

22. The Court again reiterates that herein the issue is purely of the mandate that was with the Counselling Committee and not with its bona fides. As this Court is of the considered view that the Counselling Committee was having no mandate to reassess the merit of the candidates once the final seniority list stood issued, the act of the Counselling Committee to do so is not sustainable in law. In fact, once the final merit list stood displayed on 30.07.2024, the Counselling Committee simply had to offer the posts by way of counselling to the meritorious candidates and it was having no authority to do what all has been done by the Counselling Committee in the present case.

23. At this stage, this Court would like to refer to the judgment that was relied upon by the learned counsel for the private respondent. Learned counsel relied upon the judgment of the Hon'ble Supreme Court in *Vikas Pratap Singh and others Vs. State of Chhattisgarh and others*, 2013 (14) SCC 494 a/w connected matters and submitted that in the light of this judgment wherein the Hon'ble Supreme Court upheld the act of the Department of receiving complaints against the recruitment process after the last date was over, the act of the respondents of entertaining the representation of the petitioner after the uploading of the final merit list and the act of the Counselling Committee of reassessing the merit of the candidates cannot be questioned by the petitioner. In the consider view of this Court, the facts involved in that case and in the present case are totally different. In the matter, which was before the Hon'ble Supreme Court of India, the issue was relating to the recruitment of Subedars, Platoon Commanders and Sub-Inspectors. In that case, after the holding of the preliminary examination and the main examination as well as physical examination and also personal interview and after the publication of the final merit list, which led to the selection of certain candidates, who also thereafter received appointment letters, complaints were received by Inspector General of Police in respect of defects/mistakes in several questions in the main examination. The concerned Board constituted an expert Committee to enquire into the complaints and the board came to the conclusion that there indeed were defects in the main examination paper. This is the backdrop in which the judgment

was passed by the Hon'ble Supreme Court. Herein, it is not as if some defect etc. was alleged in the process by a candidate. Herein, the candidate wanted the

respondents to consider certain publications of her, for the purpose of the grant of marks, which the Selection Committee had not taken into consideration but which the Counselling Committee obliged the private respondent by considering the same, without there being anything on record to suggest that the non-consideration of the same by the Selection Committee was indeed illegal. The judgment of the Hon'ble Supreme Court of India is based on the pristine maxim of "fraus et jus nunquam cohabitant (fraud and justice never dwell together)", whereas, this is not the factual condition here. Therefore, this court has no hesitation in holding that the judgment relied upon by the learned counsel for the private respondents does not helps her cause.

24. Accordingly, in view of the above discussion, this writ petition is allowed. Annexure P-8 qua the Department of Microbiology is quashed and set aside and respondents are directed to offer appointment against the post of Senior Residency in the subject of Microbiology to the candidate, strictly on the basis of merit, in terms of the final merit list, declared on 30.07.2024. Pending miscellaneous application(s), if any, also stand disposed of accordingly.