

(2019) 01 P&H CK 0113

In the Punjab And Haryana At Chandigarh

Case No : Letter Patent Appeal No. 2928 Of 2018 (O&M)

State Of Haryana And Others

APPELLANT

Vs

Anju Bala

RESPONDENT

Date of Decision : 15-01-2019

Acts Referred:

Citation : (2019) 01 P&H CK 0113

Hon'ble Judges : Krishna Murari, CJ;Arun Palli, J

Bench : Division Bench

Advocate : Deepak Balyan

Final Decision : Dismissed

Judgement

Krishna Murari, CJ

CM NO. 5031-LPA OF 2018

1. Heard. For the reasons mentioned in the application which is duly supported by an affidavit, delay of 36 days in re-filing the appeal is condoned. Application stands disposed of.

LPA NO. 2928 OF 2018

This Letters Patent Appeal is directed against the judgment and order dated 23.08.2018 passed by the learned Single Judge allowing the writ petition filed by the respondent herein seeking appointment on the post of Family Welfare Extension Educator.

2. It may be pertinent to notice that this Letters Patent Appeal arises out of a judgment passed by the learned Single Judge in the 5th round of litigation between the parties. The facts are that on 22.07.2007, 63 posts of Family Welfare Extension Educator were advertised by the Haryana Staff Selection Commission. One of the essential qualifications prescribed for the post was two years experience relating to Community Education in Health and Family Welfare.

Out of 63 posts advertised, 7 were earmarked for reserved category of Backward Class-A (BCA).

3. The respondent-petitioner herein made an application in pursuance to the advertisement under the category of BCA. After the selection process was over and result was declared the name of the respondent-petitioner figured at Sr. No.1 in the waiting list. One of the selected candidates in the category-BCA admittedly did not join the post and thereafter the respondent-petitioner staked her claim. However, before any decision could be taken in respect of her claim for appointment, certain non-selected candidates approached this Court by filing a Civil Writ Petition No. 10221 of 2008 on the allegations that the experience certificates produced by the selected candidates were bogus and fabricated. This resulted into verification of the experience certificates submitted by all the selected candidates including that of the respondent-petitioner.

4. It may be relevant to notice at this stage that the respondent-petitioner had filed experience certificate issued by Kharab Hospital, 52, Scheme No.6, near Bus Stand, Gohana Road, Jind certifying her experience relating to Community Education in Health and Family Welfare Programme in the Kharab Hospital and she had worked there from 18.02.2002 to 25.05.2007 and her work was satisfactory. She was paid the salary of Rs.1200/-.

5. The Enquiry Officer i.e. District Family Welfare Officer, Jind, who was making enquiry regarding the experience certificate produced by the respondent-petitioner submitted a report dated 17.06.2008 before Civil Surgeon to the following effect:-

"3.Smt.Anju Bala daughter of Shri Om Parkash:- It has been found during verification that on 20.8.2007 Dr.Dharampal Kharab Hospital Jind has issued the experience certificates on one day. In the first certificate, the experience has been shown from 20.02.02 to 28.05.07 and in the second certificate from 16.02.02 to 25.05.07. There is no record available in Kharab Hospital. Dr. Kharab on 30.05.08 has given in writing that Anju Bala son of (sic.. daughter of) Om Parkash has not been paid any salary and she is not regular employee of their organization."

6. Faced with the aforesaid report the respondent-petitioner approached the Director General Health Services, Panchkula, Haryana, making a request for re-verification of her experience certificate. The same was got re-verified by the authorities through Dental Surgeon, Community Health Centre, Kalwa, District Jind, who submitted a report dated 11.09.2008 stating that the experience certificate submitted by the candidate was issued by the Kharab Hospital and is in order. The relevant part of the report is being reproduced hereunder:-

"The experience certificate submitted by Anju Bala d/o Shri Om d/o Sh. Om Parkash, H.No.2905, Urban Estate Jind issued by Kharab Hospital is in order. This Kharab Hospital is working at present also."

7. On the basis of the aforesaid report submitted by the Dental Surgeon, Kalwa, the Civil Surgeon, Jind informed the office of the Director General Health Services, Haryana that the certificate is genuine. It may again be relevant to reproduce the report submitted by the Civil Surgeon dated 21.11.2011 which reads as under:-

""On the above subject in reference to your office letter no.2/3-1MM-08/213 dated 17.5.2008 you are hereby informed that from the certificate given by Dr.Kharab of Kharab Hospital, Jind it seems that the employee who was having the record was absent on the day of enquiry and record could not be made available.

Anju Bala D/o Om Parkash R/O H.No.2905, Urban Estate, Jind had worked in Kharb Hospital from 16.2.2002 to 25.5.2007 in Community Health Education and Family Welfare Project. She had remained active employee of this Institution. She has done work as a social worker. During this period she was given no salary. This experience is genuine. In this Institution the social work is being done and this Institution is working in Jind now also."

However, still when the claim of the respondent-petitioner herein was not considered by the authorities, she approached this Court by filing a Civil Writ Petition No. 5801 of 2009 which was permitted to be withdrawn vide order dated 18.04.2009 with liberty to approach the respondents (appellants herein). Consequently a legal notice dated 18.04.2009 was served on the respondents. After issuing a reminder legal notice dated 16.09.2009, she filed another writ petition being Civil Writ Petition No.20495 of 2010 which was dismissed by the learned Single Judge vide order dated 29.11.2010. An intra-court appeal i.e. Letters Patent Appeal No. 1742 of 2010 was preferred by the respondent-petitioner which was disposed of by a Division Bench vide order dated 17.12.2010 directing respondent No.2-Director General Health Services, Haryana to decide the representation of the respondent-petitioner herein expeditiously preferably within a period of two months from the date of receipt of a certified copy of the order.

8. The claim of appointment of the respondent-petitioner was rejected by the Director General Health Services vide order dated 13.05.2011 on the ground that the validity of the selection list since has already lapsed and the experience certificate produced was found to be false, hence the candidate cannot be offered the appointment. Another ground for rejection noted in the order was that no candidate from BCA list was offered an appointment. During the pendency of the proceedings before the learned Single Judge, Dr. D.P.Kharab was impleaded as the respondent in the proceedings who filed a written statement stating therein that the fact that respondent-petitioner Anju Bala had worked as Educator in Community Education in Health and Family Welfare Programme and she was associated with his hospital for promotional work in the area. It was also stated that the nature of the duties assigned to her included spreading awareness in the prescribed field in the nearby rural areas. It was further stated that she was paid

Rs.1200/- per month as honorarium and the said amount was not strict sensu a salary but rather in the nature of stipend.

9. Respondent No.2 Director General Health Services, Haryana, also contested the proceedings by filing a written statement. It was stated therein that on careful examination of the matter as directed by this Court, the claim was rejected for three reasons: (i) the experience certificate of the respondent-petitioner was found false; (ii) the validity of the waiting list had lapsed and (iii) no candidate from waiting list of BCA category was offered an appointment

10. Learned Single Judge proceeded to analyze the facts and relying upon the written statement filed by Dr. Kharab wherein he has stated that when the earlier verification was carried out by District Primary Welfare Officer, since the person who maintained the record was not available, as such the record could not be produced before the Enquiry Officer and subsequently when the second enquiry was conducted by the Dental Surgeon it was found that the certificate issued was genuine. Learned Single Judge relying upon the aforesaid facts held that there was no good reason to ignore the subsequent certificate which was based on perusal of the record and was also not denied by Dr. Dharam Pal Kharab who was running the hospital which issued the certificate.

11. Having gone through the entire material on record and the findings recorded by the learned Single Judge we agree with the conclusion arrived at in respect of this issue that two favourable reports have wrongly and illegally been ignored which were relevant and crucial to the issue. In so far as second and third issues are concerned, it is not in dispute that the result was declared on 10.04.2008 and one candidate out of 7 vacancies advertised in the BCA category did not join which was available to be filled up from the waiting list and the respondent-petitioner was placed at Sr.No.1 in the said list.

12. Admittedly, no material has been brought on record by the appellant to demonstrate as to when the last candidate refused to accept the offer. The respondent-petitioner herein started agitating her claim only after coming to know of the fact that some of the candidates have been permitted to join in December-2008 and immediately thereafter she took up the cause and started agitating. In the absence of any material having been brought on record by the appellant, in our opinion the learned Single Judge rightly took December-2008 to be the starting point for the lifeline of the waiting list (which is one year) and the respondent-petitioner made a request to give her appointment within that prescribed period of one year. It is altogether a different thing that on account of inaction on the part of the State authorities (appellants herein) she was not given appointment.

13. The view taken by the learned Single Judge in this regard being affirmed by us finds support from the Division Bench judgment of this Court in case Ritu daughter of Nafe Singh v. State of Haryana and others 2013(2) Law Herald 1057. It may be relevant to quote the following from the said judgment:-

"The recommendations of the Haryana Staff Selection Commission were received from the respondent-Department on 27.1.2010. Five candidates had been duly recommended against the five vacancies earmarked for the ESM (General) Female category. The names of two candidates including that of the appellant figured in the waiting list. The offer of appointment was made to the five recommended candidates on 8.4.2010. Smt. Manju Rani chose not to join and the clear stipulation in the offer of appointment was to the effect that a candidate must assume charge of his/her duty within 15 days, failing which the offer of appointment was to be treated as cancelled. The appointment of Manju Rani was, however, cancelled after a period of almost eight months, vide order dated 12.1.2011. Consequently, an offer of appointment was made to a candidate in the waiting list, i.e. Smt. Kamlesh Kumari, on 28.1.2011 and which also cancelled on account of not having been accepted on 15.2.2011. There has been a clear inaction on the part of the respondent-Department/Appointing Authority in the matter. The offer of appointment in favour of Manju Rani having been made on 8.4.2010 and having not been accepted was liable to be cancelled in the month of April, 2010 itself. It would not be open for the Appointing Authority to have sat on the matter for a period of eight months and thereafter to turn around and to confront the appellant with the defence that the validity of the waiting/panel list has since expired."

14. Reference may also be made to the following observations made by the Hon'ble Apex Court in case R.S.Mittal v. Union of India 1995(2) SLR 437:-

"It is no doubt correct that a person on the select-panel has no vested right to be appointed to the post for which he has been selected. He has a right to be considered for appointment. But at the same time, the appointing authority cannot ignore the select-panel or decline to make the appointment on its whims. When a person has been selected by the Selection Board and there is a vacancy which can be offered to him, keeping in view his merit position, then, ordinarily, there is no justification to ignore him for appointment. There has to be a justifiable reason to decline to appoint a person who is on the select-panel. In the present case, there has been a mere inaction on the part of the Government. No reason whatsoever, not to talk of a justifiable reason, was given as to why the appointments were not offered to the candidates expeditiously and in accordance with law. The appointment should have been offered to Mr. Murgod within a reasonable time of availability of the vacancy and thereafter to the next candidate. The Central Government's approach in this case was wholly unjustified."

15. It is thus clear that had the Appointing Authority acted with the sense of promptitude, the right of the respondent-petitioner herein would have crystallized well within the validity of one year for the waiting of the panel list and thus inaction on the part of the Appointing Authority suffers from the vice of arbitrariness and cannot be sustained and deserves to be set aside. The fact that the waiting list lapsed and thus the respondent-petitioner cannot be offered

appointment will further not enure to the benefit of the appellant herein also because of the fact that the selection process came under litigation by non-selected candidates in 2008 which led to verification of the experience certificates. The time spent therein cannot act as detrimental to the respondent-petitioner. Further she had to spend time in three round of litigation and the fact that the respondents' authorities completely overlooked the report submitted by the Dental Surgeon approved by the Civil Surgeon regarding validity of the experience certificate, for no rhyme or reason on account of which she had to enter into further litigation. The delay thus which has occurred is not attributable to the respondent-petitioner so as to reject her claim on the ground that the waiting list had lapsed on expiry of the period of one year.

16. In so far as third reason for rejecting the claim is concerned, the same is also without any basis. Admittedly, the respondent-petitioner was placed at Sr. No.1 in the waiting list of BCA category. She made her claim when one of the selected candidates under the said category refused the offer of appointment. It was only after refusal by the selected candidate from the select list of the reserved category in question the waiting list was to become operative. There was no issue of making any offer to any candidate from the waiting list of BCA category. The claim of the respondent-petitioner was not based on the fact that any other candidate from the waiting list of BCA category placed below her was offered appointment. Rather her claim was based on the fact that once a selected candidate from the main select list of category in question has refused the offer of appointment, she being placed at Sr. No.1 in the waiting list is entitled for appointment. Thus the reason spelt out in the order regarding her claim that she was not entitled as no candidate from the waiting list has been offered appointment cannot constitute a valid ground to reject her claim.

17. In view of the facts and circumstances as also the law discussed hereinabove, we do not find any infirmity in the view taken by the learned Single Judge which may require any interference. Furthermore, the learned Single Judge has adjusted the equities by directing that the appointment of the respondent-petitioner shall relate back notionally to the date when the last candidate was appointed in the category of BCA and that monetary benefits will only be notional and shall flow from the actual date of appointment.

18. The appeal thus is devoid of merits and accordingly stands dismissed in limine.