

Sukhwinder Kumar vs State Of Punjab & Ors on 4 September, 2017

Equivalent citations: AIR 2017 SUPREME COURT 4043, 2017 (9) SCC 438, 2017 LAB. I. C. 4270, AIR 2017 SC (CIVIL) 3000, (2017) 3 ESC 600, (2017) 155 FACLR 386, (2017) 4 SCT 429, (2017) 6 SERVLJ 512, (2017) 11 SCALE 63, (2017) 3 SERVLJ 222, 2017 (11) ADJ 71 NOC

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Bench: L. Nageswara Rao, S.A. Bobde

Non-Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No.11150 of 2017
(Arising out of SLP (C) No.16873 of 2014)

SUKHWINDER KUMAR & ORS.

.... Appellant(s)

Versus

STATE OF PUNJAB & ORS.

... Respondent(s)

With

CIVIL APPEAL No.11151 of 2017
(Arising out of SLP (C) No.17172 of 2014)

CIVIL APPEAL No.11152 of 2017
(Arising out of SLP (C) No.17163 of 2014)

CIVIL APPEAL No.11153 of 2017
(Arising out of SLP (C) No.17147 of 2014)

CIVIL APPEAL No.11154 of 2017
(Arising out of SLP (C) No.5862 of 2015)

JUDGMENT

L. NAGESWARA RAO, J.

Leave granted.

These Appeals are filed against the judgment of the High Court of Punjab and Haryana at Chandigarh disposing of a batch of writ petitions by a common judgment dated 14.11.2013. As the facts and issues involved in these appeals are similar, we propose to deal with all the appeals together. For the sake of convenience, we will refer to the facts in the Appeal filed against CWP No.15678 of 2011.

2. The Appellants were appointed as Lab Technicians on contract basis in the National Rural Health Mission between the years 2001 and 2010. Their selection was pursuant to a notice that was issued by the State Programme Manager, National Rural Health Mission, Punjab. Their consolidated remuneration was fixed at Rs.8,000/- per month. An advertisement was issued by the Health and Family Welfare Department for recruitment to various posts on 26.07.2011. The said advertisement included 390 posts for the post of Medical Laboratory Technician (Grade-II). The qualifications prescribed for recruitment to the said post were that the applicant should have cleared the Senior Secondary Examination with science and must possess a diploma as a Medical Laboratory Technician. The above qualifications were on the basis of the Punjab Health and Family Welfare Technical (Group-‘C’) Service Rules, 2007 (hereinafter referred to as ‘the 2007 Rules’) which were notified on 11.06.2007. As per Appendix B to the said Rules, 75 per cent of the posts of Medical Laboratory Technician (Grade-II) shall be filled up by direct recruitment and the qualifications for appointment mentioned therein are as under:

I. “Should have passed the Senior Secondary Part-II examination with science or its equivalent from a recognised University or Institution; and II. Should possess a diploma in Medical Laboratory Technology from a recognised University or Institution”.

3. The Appellants had passed matriculation and thereafter completed the diploma as Medical Laboratory Technician.

The Appellants challenged the qualification of passing Senior Secondary examination for appointment to the post of Medical Laboratory Technician as prescribed by the 2007 Rules by filing a Writ Petition in the High Court. The Appellants also sought a direction that they should be considered for appointment to the posts of Medical Laboratory Technician which were advertised on 26.07.2011. It was averred in the Writ Petition that the Appellants completed their diploma as Medical Laboratory Technician prior to the enactment of the 2007 Rules. It was further averred that their admission to the course of Medical Laboratory Technician was on the basis of their existing educational qualification i.e. matriculation. By an interim order dated 19.12.2011, the High Court directed the Respondents to consider the Appellants for appointment to the posts of Medical

Laboratory Technician (Grade-II) notwithstanding the fact that they did not have the requisite qualification of passing the Senior Secondary examination. The reason given for the said order was that the Punjab State Board of Technical Education and Industrial Training, Chandigarh had prescribed matriculation as the qualification for admission to the diploma courses like Medical Laboratory Technicians, even in the year 2011. Prima facie, the High Court found that prescribing a higher qualification of passing Senior Secondary School for appointment as Medical Laboratory Technicians was not justified. Thereafter, by another order dated 10.10.2013, the High Court directed the State Government to adopt a uniform pattern for qualification of admission to the diploma courses as well as to the recruitment to public posts. Taking note of the anomalous situation that was created by the Government, the High Court directed that no recruitment will take place till the uniformity as directed was brought about. By the impugned order dated 14.11.2013, the High Court disposed of the Writ Petitions on the basis of a statement made on behalf of the Respondents that remedial measures would be taken for bringing uniformity in the matter of appointments of Medical Laboratory Technicians with respect to their educational qualifications. The High Court observed that the Principal Secretary, Medical Education, Punjab should consider giving the appellants, who possess matriculation as the minimum qualification, a right to compete for appointment to the posts of Medical Laboratory Technician. The High Court observed that the mechanism to be adopted by the Respondents for recruitment of Medical Laboratory Technician shall be given effect to in the recruitments to be made 'henceforth'. Since the Appellants have gained considerable experience in public institutions the High Court directed that their continuance in the Government aided societies or societies run by the State Governments ought to be considered sympathetically. Aggrieved by the judgment dated 14.11.2013 of the High Court, the Appellants have filed the above appeals.

4. This court directed status quo as regards the continuance of the Petitioners/Appellants to be maintained by an order dated 12.09.2014. During the course of arguments, Ms. Uttara Babbar, learned counsel appearing for the Respondent-State, submitted that appointment to the posts of Medical Laboratory Technicians pursuant to the advertisement issued in the year 2011 have been finalised and all the advertised posts have been filled up. It was further submitted that another advertisement was issued in 2016. We directed the Respondent - State to file an affidavit stating all facts pertaining to the advertisement of 2011 and the subsequent advertisement issued on 2016.

5. In compliance of our direction, an affidavit was filed by the Director of Health and Family Welfare, Punjab on behalf of Respondent No.1 and 2. It is stated in the affidavit that 359 out of 390 posts which were advertised in 2011 have been filled up and only 31 posts of various reserved categories were left vacant due to non-availability of eligible candidates. It was further stated that in compliance of the directions issued by the High Court in the impugned judgment dated 14.11.2013, the 2007 Rules have been repealed and 'Punjab Health and Family Welfare Technical (Group-C) Rules 2016' (hereinafter referred to as 'the 2016 Rules') have been brought into force w.e.f. 02.11.2016. The anomaly that existed in the matter of educational qualifications for appointment to the posts of Medical Laboratory Technician (Grade-II) was corrected by making matriculates with a diploma in Medical Laboratory Technology eligible for appointment. An advertisement was issued on 17.12.2016 for recruitment to 140 posts of Medical Laboratory Technician. It is also averred in the affidavit that the written examination for selection to the said 140 posts has already been

conducted on 26.03.2017 and counselling/verification of the documents has also been completed on 11.08.2017. While referring to the law laid down by this Court, Respondents have stated that the Appellants are not entitled for any relaxation in appointment.

6. Pursuant to the permission granted, the Appellants filed affidavits on 25.08.2017 and 28.08.2017 in response to the affidavit filed on behalf of the State. The Appellants submitted that 70 posts out of 390 posts of Medical Laboratory Technician which were advertised on 26.07.2011 are vacant due to the non-joining of selected candidates. The Appellants further submitted that they secured more marks than the last selected candidates in the selections conducted pursuant to the advertisement of 2011. Ultimately, they were not selected as they were held ineligible by the Respondents. According to them, the Government repealed the Service Rules of 2007 and brought into force new Rules in 2016 whereby the Appellants are eligible for appointment to the post of Medical Laboratory Technician. The Appellants urged for their consideration for selection and appointment to the post of Medical Laboratory Technician in the posts that were advertised in 2011.

7. We are not concerned with the regularisation of the services of the Appellants in this case. The only issue is regarding their consideration for appointment as Medical Laboratory Technicians to the posts advertised in the year 2011. The direction issued by the High Court in the impugned judgment has been implemented in 2016 by promulgation of the 2016 Rules whereby matriculates with a diploma in Medical Laboratory Technology were made eligible for recruitment to the posts of Medical Laboratory Technician (Grade-II).

8. It is true that the Appellants were directed to be considered for appointment to the post of Medical Laboratory Technician (Grade-II) though they did not pass Senior Secondary Examination. The Appellants did not succeed in their challenge to the 2007 Rules. The High Court only directed consideration of the Appellants for appointment 'henceforth', after correction of the anomaly in the educational qualifications.

9. Admittedly, the Appellants were not eligible for consideration for appointment to the post of Medical Laboratory Technician according to the 2007 Rules. The advertisement that was issued in 2011 was on the basis of the 2007 Rules. By an interim order, the High Court directed the Appellants to be considered in spite of their ineligibility in accordance with the 2007 Rules. It is stated in the affidavit filed on behalf of the Appellants in the Civil Appeal arising out of SLP (C) No.5862 of 2015 that the Appellants have secured more marks than the last selected candidate. It is clear from the affidavit filed on behalf of the State that the selections pursuant to the advertisement issued in 2011 have been finalised and that the selections for the advertisement issued in 2016 are at the final stage. As there was no interim protection granted to the Appellants regarding the finalisation of the selection pursuant to the advertisement of 2011, we do not find any illegality in the action of the Respondents in completing the process of selections. Though we find that the Appellants suffered due to the anomaly in the 2007 Rules which was rectified by the 2016 Rules, we are of the considered opinion that the Appellants are not entitled to be considered for appointment to the posts advertised in 2011. We do not intend to interfere with the finalisation of the selections pursuant to which the selected candidates would have been appointed. However, we direct the Respondents to consider the Appellants, according to their merit to the vacancies which are not

filled up pursuant to the advertisement of 2011 due to non-joining of selected candidates.

10. In any event, the Appellants shall be entitled for consideration for the 140 posts of Medical Laboratory Technician advertised in 2016. The Respondents are directed to consider the Appellants, by relaxing the maximum age (if required), in the available unfilled vacancies of the 2011 advertisement and 140 posts which were advertised in 2016.

11. With the above direction, the Appeals are disposed of.

.....J [S.A. BOBDE]J [L. NAGESWARA RAO] New Delhi,
September 04, 2017