



[2024:RJ-JD:36090]

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR.**

S.B. Civil Writ Petition No. 10537/2024

Bhagwan Puri Goswami S/o Late Shri Manak Puri Goswami, Aged About 26 Years, Resident Of 45, Rajat Nagar, Ramdev Road, Pali, Presently Posted As 'lab Technician', At Govt. Bangar Hospital, Pali (Raj.).

----Petitioner

Versus

1. State Of Rajasthan, Through Its Additional Chief Secretary, Medical And Health Services, Government Secretariat, Jaipur.
2. Director (Public Health), Medical And Health Services, Health Bhawan, Tilak Marg, C-Scheme, Jaipur.
3. Director (Non-Gazetted), Medical, Health And Family Welfare Department, Health Bhawan, Rajasthan, Jaipur.
4. The Director, State Institute Of Health And Family Welfare (Sihfw), Jhalana Doongri, Ghat Ki Guni, Jaipur-302004.
5. The Principal And Controller, Govt. Medical College, Pali.
6. The Superintendent, Govt. Bangar Hospital, Pali.

----Respondents

For Petitioner(s) : Mr. Yash Pal Khileree.

For Respondent(s) : Mr. N.S.Rajpurohit, AAG assisted by Ms Anita Rajpurohit.

HON'BLE MR. JUSTICE VINIT KUMAR MATHUR

Reportable :-

Order

02/09/2024

Heard learned counsel for the parties.

The present writ petition has been filed for seeking a direction that the petitioner may be given appointment on the post of Lab Technician as per the merit list in OBC category for the selections conducted in pursuance of the advertisement dated 31.05.2023.



Briefly noted facts in the present case are that the petitioner applied for the post of Lab Technician in pursuance of the advertisement issued by the respondents on 15.12.2022. The application form was accompanied by the requisite fee. In pursuance of the advertisement dated 15.12.2022, the selection process undertaken was cancelled and a fresh advertisement was issued on 31.05.2023 and liberty was granted to the aspirants for adjustment of their fees pursuant to the previous advertisement. However, the candidates were required to fill in their application forms afresh. The petitioner submitted his application form along with all the requisite documents. The petitioner had performed his duties on the post of Lab Technician from 12.10.2021 to 13.02.2022 and an experience certificate to that effect was also issued to the petitioner which is placed on record as Annexure-5. The petitioner submitted this experience certificate along with his application form. The petitioner was shortlisted in the provisional selection list, however, he was not granted appointment in pursuance of the selection process undertaken by the respondents. Hence, the present writ petition has been filed.

Learned counsel for the petitioner submits that the petitioner has secured 56.248 marks in the selection process in OBC category and the cut off marks in the OBC category reflected by the respondents is 52.526%. Despite securing more marks than the last candidate in OBC category, the petitioner has not been offered appointment. Learned counsel submits that appointment has been denied to the petitioner only on the ground that the petitioner has not submitted latest experience certificate in consonance with the guidelines issued under advertisement dated





31.05.2023. Learned counsel submits that a similarly situated person namely Phool Singh who was working in the same hospital was issued the experience certificate akin to the petitioner has been given appointment. He submits that the certificate produced by the petitioner contains all the requisite and relevant details, therefore, denying the benefit of 15 bonus marks in the present case will be nothing but hostile discrimination vis-a-vis the case of Phool Singh. Learned counsel, therefore, prays that the writ petition filed by the petitioner may be allowed and the respondents may be directed to grant appointment to the petitioner on the post of Lab Technician.

Per contra, learned counsel for the respondents submits that the experience certificate produced by the petitioner along with his application form is not in accordance with the parameters provided under the advertisement. However, learned counsel very fairly submits that the information submitted by the petitioner in his application form contains all the requisite details which were asked and required to be produced by an applicant along with the application form. Learned counsel is not in a position to dispute the fact that Phool Singh, who is similarly situated to the petitioner and has produced the similar nature of certificate which has been produced by the petitioner, has been granted appointment by the respondents.

I have considered the submissions made at the bar and gone through the relevant record of the case.

It is true that advertisement dated 31.05.2023 contains specific stipulation with respect to the experience certificate to be produced by an applicant in the prescribed Proforma. However, a





bare perusal of the certificate produced by the petitioner and the certificate which is required to be produced in accordance with the advertisement shows that there is only one of such column in the form of Column No.8 wherein following questionnaire has been asked and rest of the details in the form remains the same which has been filled in by the petitioner. For ready reference, column No.8 is reproduced as under : -

8. क्या कोविड के दौरान 22 मार्च 2020 से 13 फरवरी 2022 तक कार्यरत रहा है ? (यदि उक्त अवधि के दौरान नियुक्ति हुई है तो नियुक्ति आदेश ऑनलाईन आवेदन में अपलोड करने होंगे) – (हां/नहीं)

The information asked for in Para 8 has already been provided by the petitioner for having performed the duties during the COVID Period as the certificate issued by the competent authority was provided by the petitioner along with the application form, therefore, in the considered opinion of this court, the information sought for in Column No.8 has been provided by the petitioner in the form of relevant documents produced along with the application form.

In the considered opinion of this court, non filling of the information in column No.8 cannot be a ground to refuse appointment to the petitioner on the post of Lab Technician more particularly when the certificate which is similar in nature has been produced by one Phool Singh and the same has been considered by the respondents and he has been given appointment on the post of Lab Technician.

When substantial and technical consideration are pitted against each other, the cause of substantial justice deserves to be preferred. Procedural and technical hurdles shall not be allowed to





come in the way of the court while doing substantial justice. The application of rules should be applied with a humane approach. It must be grasped that the judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so. If the procedural violation does not seriously cause prejudice to the adversary party, courts must lean towards doing substantial justice rather than relying upon procedural and technical violation. The litigation is nothing but a journey towards truth which is the foundation of justice and the court is required to adopt pragmatic approach while doing the substantial justice.

In this view of the matter, candidature of the petitioner cannot be denied in the present set of facts more particularly when similarly situated candidate namely Phool Singh has been granted appointment on the post of Lab Technician.

Considering parity in the matter, the writ petition merits acceptance and therefore, the same is allowed. The respondents are directed to grant appointment to the petitioner on the post of Lab Technician, if he is otherwise found eligible. The respondents shall comply with the directions issued by this court within a period of six weeks from the date of receipt of certified copy of this order.

The stay application and other pending applications, if any, also stand disposed of.

(VINIT KUMAR MATHUR),J

7-Anil Singh/-

