2024:CGHC:28412

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 849 of 2022

1. Pooja Sahu D/o Shri Heera Lal Sahu Aged About 29 Years R/o Ward No. 21, Manni Mohalla, Manendragarh, District Koriya, Chhattisgarh.

---- **Petitioners**

versus

1. State Of Chhattisgarh The Secretary, Department Of Medical Education, Mahanadi Bhawan, Mantralaya, Atal Nagar, Raipur, District Raipur, Chhattisgarh.

2. Director, Medical Education, Raipur Through Director Old Nurses Hostel, D.K.S. Bhawan, Raipur, District Raipur, Chhattisgarh.

3. Presiding Officer Government Medical College, Ambikapur, District Ambikapur, Chhattisgarh.

---- **Respondents**

WPS No. 833 of 2022

1. Sushma D/o Shri Gourishankar Sahu Aged About 27 Years R/o House No. 14, Gulmohar Park, Kota Road, Gudiyari , Raipur , District Raipur Chhattisgarh.

----**Petitioner**

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of Medical Education , Mahanadi Bhawan, Mantralaya , Atal Nagar , Raipur , District Raipur Chhattisgarh.

2. Director Medical Education, Raipur , Through Director Old Nurses Hostel , D.K.S. Bhawan, Raipur , District Raipur Chhattisgarh.

3. Presiding Officer Government Medical College , Ambikapur , District Ambikapur Chhattisgarh.

---- Respondents

WPS No. 960 of 2022

1. Vidyawati Vishwakarma D/o Rudhan Ram Vishwakarma Aged About 31 Years R/o Village 5th Battalion, Kanguli, Jagdalpur, District Jagdalpur Chhattisgarh.

----**Petitioner**

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of Medical Education, Mahanadi Bhawan, Mantralaya, Atal Nagar, Raipur, District Raipur Chhattisgarh.

2. Director Medical Education, Raipur, Through Director Old Nurses, Hostel D.K.S. Bhawan, Raipur, District Raipur Chhattisgarh.

3. Presiding Officer Government Medical College, Ambikapur, District Ambikapur, Chhattisgarh.

---- Respondents

For Petitioners	:	Shri Yogendra Chaturvedi, Advocate.
For Respondent/State	:	Shri Shalin Singh Baghel, Dy. Govt. Advocate.

Hon'ble Shri JusticeSachin Singh Rajput

Order On Board

31/07/2024

1. Since identical issued is involved in these petitions, they are being heard and decided by this common order.
2. Sake of convenience the facts of WPS No. 849/2022 is being considered. Facts of the case in nutshell is that an advertisement was published by the Government Medical College, Ambikapur, District- Surguja (C.G.) on 15/09/2017 for direct recruitment for the post of Staff Nurse male and female. Total 166 numbers of vacancies were advertised, out of which 23 posts were reserved for Other Backward Class. Out of 23 posts, 6 posts were reserved for Woman, 1 for differently abled person and 2 for ex-serviceman. Petitioners appeared in the said examination and were found to be eligible. Initially a merit list of 30 candidates for the aforesaid category was published. Thereafter a amended merit list was prepared. The petitioners in these petitions were placed at Sl. No. 2, 5 and 9 respectively in the amended merit list and they secured total 52 marks.
3. The petitioners were not called for document verification and the recruitment process was not taken to logical conclusions and entire 30 posts were not filled, therefore, this petition was filed seeking for following relief :-

10.1 That, this Hon'ble Court may kindly be pleased to call for the entire record pertaining to the case of the petitioner, in the interest of justice.

10.2 That, this Hon'ble Court may kindly be pleased to issue appropriate writ/writs, order/orders, direction /directions and direct the respondent authorities to complete the recruitment process and call the suitable candidates for verification of the documents (counseling) for the further process of recruitment, in the interest of justice.

10.3 Any other relief(s), which may be suitable in the facts and circumstance of the case, may also be granted."

4. Learned counsel for the petitioners submits that the name of the petitioners were included in the amended merit list and they have secured 52 marks, however, in the initial merit list prepared for the said category, candidates who have obtained 52 marks have been called for document verification. However, the petitioners who have also obtained 52 marks have not been called for document verification and further proceedings. He also submits that there are total 23 numbers of seats in the OBC Category and only 15 candidates have been appointed and rest of them have not been given appointment, therefore, he submits that the candidates those who have obtained 52 marks from the amended merit list to have been called for further recruitment process including document verification etc. and if they are found to be eligible, necessary appointment orders ought to have issued by the respondents.
5. He further submits that there is no justifiable reason shown by the respondents not to call the petitioners for further recruitment process. He placed reliance upon the judgment of Supreme

Court in the case of **'Manoj Manu and another vs. Union of India and others'** reported in **(2013) 12 SCC 171** in which paragraphs No. 12 & 15 are quoted below :-

> "12. It is, thus, manifest that a person whose name is included in the select list, does not acquire any right to be appointed. The Government may decide not to fill up all the vacancies for valid reasons. Such a decision on the part of the Government not to fill up the required/advertised vacancies should not be arbitrary or unreasonable but must be based on sound, rational and conscious application of mind. Once it is found that the decision of the Government is based on some valid reason, the Court would not issue any mandamus to the Government to fill up the vacancies.
>
> 15. This Court in Sandeep Singh v. State of Haryana commended that the vacancies available should be filled up unless there is any statutory embargo for the same. In Virender S. Hooda v. State of Haryanas, 12 posts for direct recruitment were available when the advertisement for recruitment was made which was held in the year 1991. Some of the selected candidates did not join in this batch almost similar to the present case, the Court held that the appellant's case ought to have been considered when some of the candidates (sic vacancies arose) for reasons of the non-appointment of some of the candidates and they ought to have been appointed if they come within the range of selection."

6. Per contra, learned State counsel submits that simply inclusion in the name of the petitioner in the amended merit list, will not create any right to be appointed on the aforesaid post.
7. I have heard the learned counsel for the parties and perused the record.
8. This Court on 01/07/2024 passed the following order :-

> “Learned State Counsel is directed to place the list of selected candidated as well as their marks obtained in the examination for appointment to the post of Staff Nurse in the Government Medical College, Ambikapur District Surguja, C.G. on record, which was advertised on 15.09.2017 (Annexure P/1).”

9. An additional affidavit has been filed by the respondent No. 1 on 27/06/2024 relevant para of which is reproduced herein below :-

> “(v) It is humbly submitted that the Dean, Rajmata Smt. Devendrakumari Singhdeo Government Medical College, Ambikapur vide letter dated 24.06.2024 furnished the present status with regard to the vacant position of Staff Nurse under the OBC category and stated that, out of 23 posts of Staff Nurse under the OBC category 18 posts have been filled and 05 posts, i.e. 02 for open, 02 for ex-service men & 01 for disabled persons are vacant. In this regard, a copy of the letter dated 24.06.2024 is filed herewith as ANNEXURE A-2.”

10. Perusal of the affidavit indicates that total 15 post were filled up to advertisement dated 15/09/2017 and 3 posts have been filled by way of transfer. At present there are 2 posts of OBC category open still lying vacant. On perusal of affidavit it is manifest that the advertisement was issued on 15/09/2017, reserved for 23 OBC category candidates and only 15 have been filled and still 2 posts of OBC category open is still lying vacant. The filling of 3 posts by way of transfer is not in justified as to why 3 posts were filled by way of transfer. Therefore, in all fairness the respondents ought to have filled the remaining posts in lieu of advertisement dated 15/09/2017. Admittedly, the respondents have not filled the total number of posts of OBC category. No substantial and justifiable reasons is given in not doing so. Therefore, this Court is of the opinion that ends of justice would

be served that the respondent-State is be directed to carry out the further proceedings of recruitment process and call for the eligible candidates, in the further recruitment process, if the petitioners are found to be eligible, pass an appropriate orders.

11. With the aforesaid direction, writ petitions are disposed of.

NARESH KUMAR KAMDE
Digitally signed by NARESH KUMAR KAMDE
Date: 2024.08.06 14:39:39 +0530

Sd/-

(Sachin Singh Rajput)
JUDGE

Kamde