

(2018) 12 P&H CK 0073

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 7271, 7304, 7609, 7340, 7247, 24889, 12455, 13155 Of 2016 (O&M)

Dr. Arvind Verma And Others

APPELLANT

Vs

State of Punjab And Another

RESPONDENT

Date of Decision : 13-12-2018

Acts Referred:

Punjab Medical Education (Group-A) Service Rules, 2016 — Rule 8(3)
Constitution of India, 1950 — Article 309

Citation : (2018) 12 P&H CK 0073

Hon'ble Judges : A.B. Chaudhari, J;H.S. Madaan, J

Bench : Division Bench

Advocate : R.K. Malik, Sunil Hooda, B.S. Patwalia, Alka Chatrath, Anupam Bhardwaj, Atul Nanda, Gurminder Singh

Final Decision : Dismissed

Judgement

A.B. Chaudhari, J.

1. By this common order, all the above eight writ petitions are being disposed of.
2. In these writ petitions, the petitioners have put to challenge the Rule 8(3) of the Punjab Medical Education (Group-A) Service Rules, 2016 (for short 'Rules of 2016') to the extent it provides for maximum age limit of 50 years for promotion to the posts of Assistant Professor particularly because of commencement of the process for promotion on 11.05.2015 and consequent relief for promotion and benefits.

FACTS

3. Petitioners are all PCMS doctors and were governed by the Punjab Medical Education State Service (Class-II) Rules, 1979 (for short 'Rules of 1979') pursuant to which they were entitled to be promoted as lecturers and senior lecturers. There was no age limit prescribed therein. Since there were 128 vacant posts of Assistant Professors by way of promotion, applications were invited vide

circular dated 11.05.2015 (Annexure P-1). The petitioners were duly eligible for promotion to those posts and had accordingly, applied. However, the Government of Punjab notified new Rules of 2016. Though, the process for filling up 128 vacant posts of Assistant Professors by promotion was undertaken as earlier stated because of new Rules of 2016 notified on 15.03.2016, the condition regarding age, namely 50 years maximum is coming in their way. According to the petitioners when the process was already initiated on 11. 05.2015 for making promotions to 128 vacant posts of Assistant Professors, they were entitled to the promotions and the Rules of 2016 would not govern their cases. Even otherwise, Rule 8(3) of Rules of 2016 is liable to be held as arbitrary and unreasonable for the same reason as providing maximum age for promotion amounts to denial of promotion, which cannot be done as held by this Court. For promotion, there cannot be any maximum age limit prescribed. The petitioners, therefore, submit that the said condition under Rule 8(3) of Rules of 2016 is liable to be quashed and set aside and the petitioners are entitled to be granted the relief on the basis of circular dated 11.05.2015 inviting applications.

ARGUMENTS

4. In support of the writ petitions, learned Senior counsel and other counsel for respective petitioners vehemently argued that the respondents have acted contrary to the law which is well settled, namely that the cases of the petitioners would not be governed by new Rules of 2016 because 128 vacant posts of Assistant Professors were admittedly sought to be filled in vide circular dated 11.05.2015 that is much before Rules of 2016 came into force. Those posts were therefore, required to be filled up in accordance with the earlier promotion policy and the Rules of 2016 would not affect their right to get promotion. They relied on the Single Judge judgment of this Court and also on the proposition of law that the promotional posts having become available, they were liable to be considered for promotion as the Rules of 2016 would have no application. Learned counsel then argued that the Rules of 2016 do not achieve any object in prescribing the maximum age limit for promotion apart from the fact that the petitioners could not be deprived of the right for consideration for promotion particularly when the process had already started for effecting promotions and the DPC was also held on 11.04.2016. It was also argued that the criteria of seniority-cum-merit would clearly be violated if the age limit is prescribed. It is well settled, according to the counsel for the petitioners, that rules of the games cannot be changed. For promotion, maximum age can never be prescribed. Learned counsel, therefore, prayed for allowing the writ petitions.

5. Per contra, learned counsel for the respondents vehemently opposed the writ petitions and submitted that there is no right to promotion as such. Even otherwise, the law is well settled in the decisions in the cases of Deepak Agarwal and another versus State of Uttar Pradesh and others, (2011) 6 Supreme Court Cases 725, State of Tripura and others versus Nikhil Ranjan Chakraborty and others, (2017) 3 Supreme Court Cases 646 and Union of India and others versus

Shivbachan Rai, (2001) 9 Supreme Court Cases 356, in the matter of promotions. Learned Advocate General, Punjab assisted by the learned Assistant Advocate General, Punjab vehemently opposed the writ petitions and submitted that it was in the larger public interest the Government took decision in question and in particular Rules of 2016 were brought into force w.e.f. 14.03.2016 while the DPC was held on 11.04.2016. Learned counsel for the respondents including the State of Punjab submitted that under Article 309 of the Constitution of India and in particular its proviso, the State is entitled to provide or fix the age limit. The State had Rules of 1979. Rules of 2016 were brought into force by repealing the Rules of 1979 with a object to save the State Medical Colleges from getting deprived of the postgraduate seats for want of necessary faculty as such.

The State had set up the Talwar Committee which had made recommendations regarding putting up of maximum age limit. In accordance with the expert Talwar Committee report, the State Government in its wisdom took a decision to put maximum age limit as 50 years for promotion to the posts of Assistant Professors and for which reasons have been furnished in the written statement. According to the respondents, even otherwise, it is not that there would be full proof denial for promotion to the petitioners. The reason is that there is a channel of promotion for doctors working as medical officers in the hospitals that of SMO, Civil Surgeon and Deputy Director and so on and so forth. Even otherwise, under the Rules of 1979, the category of promotion was 25% direct and 75% from PCMS. But then, it was found that the State of Punjab which has some Government Medical Colleges has been facing the danger of losing the postgraduate seats in the medical colleges for want of teaching faculty. It is in that context, the Government in its wisdom decided to form an expert Talwar Committee, which gave its recommendations. The petitioners are not thus, so seriously affected as claimed. The real reason according to respondents is that retirement age of the faculty is more than that of the petitioners. Though, the circular was issued on 11.05.2015, no rights for promotion were crystalized in their favour. Learned counsel for the respondents, therefore, earnestly prayed for dismissal of the writ petitions in the larger public interest.

6. In reply, learned Senior counsel for the petitioners submitted that the petitioners have been working in medical college hospital and have experience as well of 3 years etc., and therefore, there was no point in putting maximum age limit, which was done only with a view to deprive them from getting the promotional post. At any rate, according to them, Rules of 2016 will not apply in their cases and the respondents should be directed atleast to consider their cases for promotion dehors the Rules of 2016. According to them, they cannot be deprived of promotion as it violates the very concept of promotion.

CONSIDERATION

7. We have heard learned counsel for the rival parties at length. We have perused the writ petitions and the written statements. We have seen the relevant decisions on the point. It appears that the petitioners who are doctors were

appointed as medical officers in the hospitals and are performing function of treating the patients in Government hospitals and as such, they are called medical officers working in the hospital who are not required to teach anything in the medical colleges to the students. However, their channel of promotion upto the level of Civil Surgeon, Deputy Director, Director etc. is still available. It cannot be said that they will never get promotion. At any rate, the fixation of age limit is by virtue of proviso to Article 309 of the Constitution of India. Therefore, the competence of the Government to frame the rules prescribing maximum age limit cannot be said to be without authority. The Rules of 1979 have been replaced by the Rules of 2016 that too after the recommendations were obtained from the expert Talwar Committee headed by Dr. K.K. Talwar. This Court hence cannot hold that the prescription of maximum age would be violative of any provision or principle as the State is empowered to prescribe such age limits in accordance with the proviso to Article 309 of the Constitution of India.

8. Turning to the justification given in the written statement by the State which we have carefully seen, we really find that the State has given a reasonable and satisfactory explanation as to why the new Rules of 2016 were brought into force. We quote the following portion from the written statement filed by the State (in CWP No.7271 of 2016):-

"e) As per Punjab Medical Education (Class II) Service Rules, 1979, there was provision for filling 75% vacancies of Senior lecturer (Now named as Assistant Professor) from amongst Punjab Civil Medical Service (Class II) and not from Punjab Civil Medical Service (Class I) doctors. MBBS doctor used to join Punjab Civil Medical Service at around the age of 23 years. Post graduate doctor used to join Punjab Civil Medical Service At the age of around 26 years. It took about 15 years to become class I from class II, means a class I doctor was of about 40 years.

Vision of 1979 rules was to induct Punjab Civil Medical Service (Class II) who usually were less than 45 years, hence giving sufficient time for future promotion in Medical Education department as Associate Professor and Professor. In the year 1994 when Class of services was changed to Group system, then in Medical Education Class I and Class II services were clubbed and changed to Group A. The vision of rules 1979 was overlooked after the induction of group system, clouds of group system covered the method of promotion to the post of Assistant Professor from Punjab Civil Medical Service cadre after 1994. Punjab Civil Medical Service seniority started being considered for promotion to the post of Assistant Professor that is why some Civil Surgeons near retirement joined as Assistant Professor. They have never taught M.B.B.S. & M.D. students in their life but all of student they became Medical Teachers, hence level of teaching standards started deteriorating in medical colleges.

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g) That superannuation in Punjab Civil Service cadre is at 58 years and in Punjab

Medical Education Service cadre is at 62 years. Senior doctors who were near retirement used to take undue advantage because rules 1979 came under the shadow of Group System of 1994) Medical Colleges have M.B.B.S. & Post Graduate courses. Punjab Medical Colleges have about 1200 seats of M.B.B.S. and only about 300 seats of Post Graduates. Post Graduates seats are allotted by Government of India and recommended by Medical Council of India as per strength of post graduate teachers available. One professor is allotted 2 Post Graduate students and 1 Associate Professor is allotted 1 post graduate student.

If maximum age limit for entering to Punjab Civil Medical Service is not applied, all Punjab Civil Medical Service cadre doctors who are near retirement (as they are senior most in Punjab Civil Medical Service cadre) will enter in Medical Education will retire as Assistant Professor. Sufficient time to be promoted as Associate Professors and Professors is lacking for next promotion i.e. for promotion as Associate Professor one needs to serve at least 4 years and further 3 years for being Professor.

Gradually no one will be available for promotion to the post of Associate Professor & Professor. Henceforth, due to lack of post graduate teachers most of the Post Graduate seats will be withdrawn by Government of India and Medical Council of India from Government Medical Colleges in coming years. It will be a great loss to students and public. Post Graduate seats in government college's costs about Rs.5 lac for whole course and in private colleges it costs Rs.35 lacs for full course.

Assistant Professor is always made a co-guide for guiding the Post Graduate student along with an Associate Professor or Professor, so that he can gain the experience to guide a Post Graduate students in future. Medical Teacher needs minimum 10 years to train Post Graduate students and give significant contribution towards Medical Education. If a medical teacher is inducted after 50 years as Assistant Professor, before he attains full potential, time for his superannuation would arrive. This leads to increase in vacancy position of Professors and Associate Professors thereby affecting the availability of Post Graduate teachers. Gradually Post Graduate seats will reduce and affects the aspiring M.B.B.S. students and patients adversely."

9. The above written statement filed by the respondents and the justification given to our mind is very well founded. It is in the larger public interest. There are limited medical colleges in the State and limited postgraduate seats. We cannot allow reduction of such seats. The State has rightly invoked the doctrine of utilitarianism. That apart, the State has also given example in respect of PGI, Haryana and AIIMS and AIIMS Bhopal where similar age limit of 50 years has been imposed. We quote the relevant paragraph 'm) and n)' from the above written statement, which reads thus:-

"m) In PGI, Haryana and AIIMS & AIIMS Bhopal for the entry to Medical Faculty the maximum age is 50 years. Annexure R-4. n) It is further submitted that since

these institutes are following age limit, that is why number & quality of research publications is much better than publications from Punjab."

To sum up, we do not find any fault with the Government of Punjab in fixing maximum age limit of 50 years.

10. The next question is regarding circular that was issued by the Government of Punjab on 11.05.2015. As to the submissions made by the learned counsel for the petitioners, we find that the legal position has been set out by the Apex Court in Deepak Agarwal's case (supra) in Para-26, which reads thus:-

"26. It is by now a settled proposition of law that a candidate has the right to be considered in the light of the existing rules, which implies the "rule in force" on the date the consideration took place. There is no rule of universal or absolute application that vacancies are to be filled invariably by the law existing on the date when the vacancy arises. The requirement of filling up old vacancies under the old rules is interlinked with the candidate having acquired a right to be considered for promotion. The right to be considered for promotion accrues on the date of consideration of the eligible candidates. Unless, of course, the applicable rule, as in Y.V. Rangaiah case lays down any particular time frame, within which the selection process is to be completed. In the present case, consideration for promotion took place after the amendment came into operation. Thus, it can not be accepted that any accrued or vested right of the appellants have been taken away by the amendment."

11. The said principle was followed in another Apex Court judgment in State of Tripura's case (supra) in Para-9, which reads thus:-

"9. The law is thus clear that a candidate has the right to be considered in the light of the existing rules, namely, "rules in force on the date" the consideration takes place and that there is no rule of absolute application that vacancies must invariably be filled by the law existing on the date when they arose. As against the case of total exclusion and absolute deprivation of a chance to be considered as in the case of Deepak Agarwal in the instant case certain additional posts have been included in the feeder cadre, thereby expanding the zone of consideration. It is not as if the writ petitioners or similarly situated candidates were totally excluded. At best, they now had to compete with some more candidates. In any case, since there was no accrued right nor was there any mandate that vacancies must be filled invariably by the law existing on the date when the vacancy arose, the State was well within its rights to stipulate that the vacancies be filled in accordance with the Rules as amended. Secondly, the process to amend the Rules had also begun well before the Notification dated 24.11.2011."

12. Next is the judgment in Shivbachan Rai's case (supra) and we quote Para-6 thereof, which reads thus:-

"6. The only question that we are required to consider is whether the Rules framed under the proviso to Article 309 of the Constitution and dated 29-3-1985

whereby age relaxation up to 5 years is permitted in the case of Government servants can be considered as arbitrary or unreasonable. Prescribing of any age limit for a given post, as also deciding the extent to which any relaxation can be given if an age limit is prescribed, are essentially matters of policy. It is, therefore, open to the Government while framing rules under the proviso to Article 309 of the Constitution to prescribe such age limits or to prescribe the extent to which any relaxation can be given. Prescription of such limit or the extent of relaxation to be given, cannot be termed as arbitrary or unreasonable. The only basis on which the respondent moved the Central Administrative Tribunal was the earlier Rules of 1976 under which, though an age limit was prescribed, a limit had not been placed on the extent of relaxation which could be granted. If at all any charge of arbitrariness can be levied in such cases, not prescribing any basis for granting relaxation when no limit is placed on the extent of relaxation, might lead to arbitrariness in the exercise of power of relaxation. In any case, the Rules of 1976 have been replaced by the Rules of 1985 which govern direct recruitment to the post of Assistant Director in the present case. One has, therefore, to look to the Rules of 1985 in order to decide the eligibility of the respondent for the post of Assistant Director. We, therefore, do not agree with the finding of the Tribunal that the Rules of 1985 insofar as they prescribe the extent of relaxation of age limit, are arbitrary or unreasonable. This is also not a case where promotional avenues are being closed partially or fully. The post in question was to be filled by direct recruitment and not by promotion. Therefore, there could be no grievance on that score by the respondent."

13. In the light of the above legal position, we think that the submissions made by the learned counsel for the petitioners about their right to be considered for promotion in the backdrop of the above factual scenario cannot be accepted. The judgments cited by the learned Senior counsel for the petitioners would have, therefore, no application. The judgments rendered by the learned Single Judge of this Court in the case of Sunil Kumar and others versus State of Haryana and others, in CWP No.14759 of 2013, Calcutta High Court judgment in the case of The Coal India Limited versus Akshaya Kumar Jena and others, 2012 (2) SLR 739, and Basudeb Paul versus State of West Bengal and others, 2011 (3) SLR 151 and Allahabad High Court judgment in the case of Sri Krishna Rai and others versus Banaras Hindu University and others, 2012 (7) SLR 135, are also not applicable. In the result, we find no merit in these writ petitions. Hence, we make the following order:-

ORDER

(i) CWP No.7271 of 2016, CWP No.7304 of 2016, CWP No.7609 of 2016, CWP No.7340 of 2016, CWP No.7247 of 2016, CWP No.24889 of 2016, CWP No.12455 of 2016 and CWP No.13155 of 2016 are dismissed.