
(2013) 09 P&H CK 0143
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 14351 of 2013 (O and M)

Dr. Neelam Banga

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 06-09-2013

Acts Referred:

Citation : (2013) 09 P&H CK 0143

Hon'ble Judges : Tejinder Singh Dhindsa, J

Bench : Single Bench

Advocate : G.P.S. Bal, for the Appellant; Sudeepti Sharma, D.A.G., Punjab, for the Respondent

Final Decision : Allowed

Judgement

Tejinder Singh Dhindsa, J.—In terms of notice dated 31.5.2013 (Annexure P-3) issued by the Director, Research & Medical Education,

Punjab certain posts of Senior Lecturers (since re-designated as Assistant Professor) and Lecturers were notified. The petitioner is an in service

P.C.M.S. Doctor belonging to the S.C. Category. The short grievance of the petitioner as raised in the present writ petition is that inspite of

possessing the requisite qualifications and academic eligibility for the post of Lecturer (Physiology) and having applied on the required proforma,

her application is not being duly forwarded by respondents no. 2 and 3. Learned counsel for the petitioner would advert to Annexure P-3 dated

31.5.2013 from the office of Director, Research & Medical Education, Punjab and which was addressed to various authorities including the Civil

Surgeons across the State on the subject of filling up of posts of Senior Lecturers (presently re-designated as Assistant Professor) and Lecturers,

wherein it was stipulated that all the Medical Officers working under the various Civil Surgeons be intimated and the concerned proformas and

applications be sent in the handwriting of the concerned doctor. Such applications were to be sent through proper channel and the last date for

filing of such applications was 30.6.2013. It has further been asserted that the application submitted by the petitioner was within the stipulated time

frame and at Annexure P-4, which is the application form, it was duly verified by the Civil Surgeon, Patiala that the information furnished therein

was as per service record of the candidate and the same is true and correct. It was further verified that no inquiry or complaint is pending against

the candidate and her work is satisfactory and that the petitioner possesses the qualifications and is eligible for the post of Lecturer (Physiology).

2. Learned counsel for the petitioner would strenuously argue that there would be no justifiable basis for not forwarding the application of the

petitioner inspite of being eligible and thereby denying to her consideration for selection to the post of Lecturer.

3. Upon notice of motion having been issued, two separate replies have been filed. In the short affidavit of the Director, Research & Medical

Education, Punjab submitted on behalf of respondents no. 1 and 2, a stand has been taken that the application of the petitioner for the post of

Lecturer) (Physiology) can only be considered, if, a No Objection Certificate is received along with her A.C. Rs. from her parent department i.e.

the Director, Health Services, Punjab. In the separate reply filed by the Director, Health & Family Welfare, Punjab-respondent no. 3, it has been

stated that the petitioner was appointed as a Medical Officer on the recommendations of the Punjab Public Service Commission, Patiala in the year

2009. Reference has been made to a number of writ petitions that have been filed in this Court impugning the selection and appointment of the

Medical Officers including the petitioner and which are still pending adjudication. It is further stated that the Vigilance Department has also initiated

an inquiry into the selection of Medical Officers pertaining to Batch, 2008 and Batch, 2009. Since the petitioner was an appointee to the P.C.M.S.

of Batch, 2009 and her appointment is under a cloud on account of pendency of Vigilance Inquiry and writ petitions in this Court, even her

probation period has not been cleared so far. The Director, Health Services, Punjab has further stated that the application of the petitioner was

forwarded to the Govt. vide letter dated 26.6.2013 and the same has been rejected on the basis that her probation period has not yet been

cleared. Towards such assertion, reference has been made to Annexure R-2, appended along with the written statement filed on behalf of

respondent no. 3 and which, in turn, is a memo dated 14.8.2013, issued by the State Govt., Health & Family Welfare Department. The reasons

assigned therein which form the basis of rejection of the No Objection Certificate read in the following terms:-

Sub:- Application for the posts of Senior Lecturer (Assistant Professor)-regarding Dr. Neelam Banga, Medical Officer, Merit No.

30/GC/09/P.H.C. Hasanpur.

In reference to above said memo no. E4(2)-P-11/5972 dated 26.6.2013.

According to the Inquiry/Report received from you, Dr. Neelam Banga, Medical Officer was appointed in bath of year 2009, whose merit number

is 30/GC/09, her probation period was not complete.

An issue of appointments of 312 doctors (100+212) in the year 2008-2009 is under the consideration of Vigilance Department, and this matter is

further pending in the Hon''ble Punjab and Haryana High Court, in these 312 doctors, Dr. Neelam Banga's name is also included and probation

period has been extended vide government memo no. 6/12/11-5C2/4528-29 dated 20.7.2012. Therefore, Dr. Neelam Banga, Medical Officer's

name has not been sent to Medical Education & Research Department, as her probation period found unsatisfactory. Therefore, Dr. Neelam

Banga's application is dismissed.

Sd/-

Superintendent.

4. Learned State counsel would vehemently argue that the services of the petitioner have not even been confirmed and as such, the requisite No

Objection Certificate cannot be issued in her favour. Consequently her application cannot be forwarded to the Director, Research & Medical

Education, Punjab. State counsel would further argue that the petitioner is applying for the post as an in-service candidate and for the post of

Lecturer in Physiology one of the eligibility conditions is to possess at least 2 years teaching experience as Demonstrator, Registrar or Research

Assistant in a teaching institution. The argument raised is that since her service has not been confirmed and the very appointment of the petitioner as

a Medical Officer being under scrutiny, no benefit can enure to the petitioner towards experience in the light of such appointment.

5. Having heard learned counsel for the parties at length, I am of the considered view that the prayer raised in the present writ petition deserves acceptance.

6. The qualifications and experience required for the post of Lecturer(Physiology) have been laid down by the Director, Research & Medical

Education, Punjab. Admittedly, the petitioner is still on probation having not been confirmed on the post of Medical Officer while serving under the

Department of Health & Family Welfare, Punjab. Even if, that be so, it would be the Department of Research & Medical Education, Punjab, who

would take a decision as regards the validity of the experience gained by the petitioner while still under probation. That apart, assuming the initial

appointment of the petitioner to the post of Medical Officer being a member of the P.C.M.S. Batch, 2009 is held to be bad in law, the petitioner

would be visited with adverse consequences that would also extend in so far as her selection and appointment to the post of Lecturer, Physiology,

if, at all. At this stage, there would be no basis to deny to the petitioner her basic right for consideration for selection to the post of Lecturer merely

on the basis that her initial appointment to the post of Medical Officer is under challenge and that the experience she possesses is not in the

capacity of a confirmed employee.

7. For the reasons recorded above, the present writ petition is allowed. Respondent no. 3 i.e. Director, Health Services, Punjab is directed to

forward the application of the petitioner for selection to the post of Lecturer, Physiology along with the requisite "No Objection Certificate" and

A.C.Rs to the Director, Research & Medical Education, Punjab-respondent no. 2. Such exercise be undertaken forthwith. Petition allowed.