

(2012) 12 P&H CK 0105
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 1278 of 2006

Dr. Neeraj Sharma

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 21-12-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Indian Medical Council Act, 1956 — Section 33

Citation : (2013) 2 SCT 375

Hon'ble Judges : Tejinder Singh Dhindsa, J

Bench : Single Bench

Advocate : DS Patwalia, for the Appellant; Suvir Sehgal, Additional Advocate General, Punjab for Respondents 1 to 3, Mr. Ashwani Chopra with Mr. ND Kalra, Advocate for Respondent 4 and Mr. Sanjiv Sharma, Advocate for Respondent 5, for the Respondent

Final Decision : Dismissed

Judgement

Tejinder Singh Dhindsa, J.—The instant writ petition has been filed by the petitioner under Article 226 of the Constitution of India for quashing the selection of respondent No. 4 for appointment to the post of Assistant Professor (Blood Bank) in the State Medical Colleges, Punjab. The brief facts which would require notice insofar as the issue raised in the present petition are that the petitioner as also respondent No. 4 amongst other candidates applied for the post of Assistant Professor (Blood Bank) since re-designated as Associate Professor, in the State Medical Colleges, Punjab in response to advertisement dated 9.7.2004, Annexure P3, issued by the Punjab Public Service Commission. The essential qualification prescribed in the advertisement insofar as the post of Assistant Professor (Blood Bank) was MD, MS, Ph.D., F.R.C.S., P.M.R.C.P. etc. in the specialty concerned. Still further, the teaching experience as Senior Lecturer or Lecturer for a minimum period of three years in the specialty concerned, whether prior to post Graduation or subsequent thereto, was also stipulated. It has been pleaded that the petitioner having passed her MBBS in the year 1988 did her MD in Pathology

in 1995 and thereafter possessed a teaching experience as Demonstrator Pathology from 24.12.1999 to 8.7.1999, as Lecturer (Blood Bank) Government Medical College, Amritsar from 9.7.1999 to 15.12.2003 and thereafter as Senior Lecturer (Blood Bank), Government Medical College, Amritsar from 16.12.2003 till the date of issuance of the Experience Certificate dated 28.12.2005 at Annexure P1. Respondent No. 4 also possesses the qualifications of MBBS and MD in Pathology. It has been pleaded that the teaching experience of respondent No. 4 as Lecturer is in the Department of Pathology. Both, the petitioner as also respondent No. 4 along with two other candidates were considered eligible for the post of Assistant Professor (Blood Bank) and the interview was held on 9.1.2006. The petitioner is aggrieved in terms of the result having been declared and notified by the Punjab Public Service Commission at Annexure P4 whereby respondent No. 4 has been selected for the post of Assistant Professor (Blood Bank).

2. Mr. DS Patwalia, learned counsel for the petitioner has primarily assailed the selection of respondent No. 4 to the post of Assistant Professor (Blood Bank) on the ground that she does not possess the requisite qualification of teaching experience as stipulated in the advertisement i.e. in the specialty of Blood Bank and asserts that the teaching experience of respondent No. 4 is only as a Lecturer in Pathology and, consequently, her selection is in violation of the Punjab Medical Education Service (Class-I) Rules, 1978 (hereinafter to be referred as "1978 Rules") as amended from time to time. Learned counsel would further argue that the selection of respondent No. 4 to the post of Assistant Professor (Blood Bank) is even contrary to the regulations framed by the Medical Council of India, namely, "The Minimum Qualifications for Teachers in Medical Institutions Regulations, 1998 (for short to be referred as "MCI 1998 Regulations")" framed in exercise of the powers vested u/s 33 of the Indian Medical Council Act, 1956. In terms of referring to memo dated 4.6.1998, Annexure P5, issued by the Director, Research and Medical Education, Punjab, learned counsel for the petitioner has even cited the instance of one Dr. Mridhu Manjari who had been treated as ineligible for the post of Associate Professor, Clinical Pathology on the ground that the requisite teaching experience that the aforementioned Doctor possessed was in the specialty of Pathology and not in Clinical Pathology. Learned counsel has further placed reliance on three Division Bench judgments of this Court in Narender Singh Kundu v. Haryana Vidyut Prasaran Nigam Limited and others, 2004 (7) SLR 825 ; D.r Pyara Lal Garg Vs. State of Punjab, ; and Dhamandeep Singh and others Vs. Subordinate Service Selection Board, Punjab and others

3. Separate written statements have been filed on behalf of Respondents No. 1 and 2, respondent No. 3, respondent No. 4 and respondent No. 5 to contest the petitioner's challenge to the selection of respondent No. 4. A stand has been taken on behalf of Respondents No. 1 and 2 that Blood Bank is part of the Pathology Department in terms of the provisions of 1978 Rules. A similar stand has been taken by the selected candidate respondent No. 4 in terms of referring

to the definition of "Department", contained in Rule 2 (e) of the 1978 Rules read along with Appendix "A" wherein it has been clearly mentioned that Pathology would include Blood Bank. Accordingly, it has been argued by Mr. Ashwani Chopra, Senior Advocate appearing for respondent No. 4 that in terms of the statutory Rules, Blood Bank is not a separate Department/specialty and rather it is a wing of the Pathology Department. Learned Senior Counsel has further vehemently argued that the petitioner is guilty of intentionally suppressing material facts from this Court inasmuch as there is no reference in the entire petition to Rule 2(e) of the 1978 Rules as also to the relevant entry in Appendix "A" wherefrom it would be clear that Blood Bank is not a separate Department and as such, the argument raised on behalf of the petitioner that the lack of teaching experience in the specialty of Blood Bank at the hands of respondent No. 4 would render her ineligible for the post of Assistant Professor (Blood Bank) has no merit.

4. The Punjab Public Service Commission, respondent No. 3 has justified the eligibility of respondent No. 4 for the post of Assistant Professor (Blood Bank) on the basis of her teaching experience as Lecturer Pathology in the light of a clarification dated 8.1.2002, Annexure R1/T, issued by the Department of Medical Education and Research, State of Punjab and such clarification reads in the following terms:

No. 1/7/99-3HS3/178 Govt. of Punjab Department of Medical Education & Research (Health-I Branch)

To

The Secretary, Punjab Public Service Commission, Patiala.

Dated Chandigarh 8-1-2002

Subject:- Direct Recruitment to one post of Assistant Professor Blood Bank in the Punjab State Medical Colleges.

Sir,

I am directed to refer to your letter No. RG186/99/A-13/3734 dated 19.6.2001 on the above subject and to say that according to the Punjab State Medical Education Services (Class-I) Rules, 1978 under item (Amendment 1985) Appendix A, No. 5 Rule 11 is a wing of department of Pathology. As per amended rules 1985 under rule 4 there is no change in Appendix A item No. 5. Only item No. 24 has been changed and item shown at serial No. 27 to 30 (new deptt.) has been introduced. As per law the Blood Bank can not be treated as separate department and it is department of Pathology as one of the part/wing. Therefore, the persons who are teaching in the Blood Bank can be replaced in the deptt. of Pathology meaning thereby that both the deptts. are interchangeable. The experience as Lecturer Pathology can be treated for the post of Assistant Professor Blood Bank or working as Lecturer Blood Bank can be treated as experience for the post of Assistant Professor Pathology.

2. It has been made clear under the Punjab State Medical Education Services (Class-I) Rules, 1978 (Amendment Rules, 1985) Rule 11 Appendix that Blood Bank is not a separate deptt. and is a part of the deptt. of Pathology. Though the specialty wing of Blood Bank is a separate but its cadre is not separate. The specialty wise posts are indicated in Appendix B.

3. With reference to your letter dated 19.6.2001 the Punjab Medical Education Services (Class-I) Rules 1978 (Amendment 1985) under Appendix-C(3) B-1 the action regarding provisions in the specialty of Blood Bank is taking separately.

Yours faithfully Sd/- (Harjit Singh) Special Secy. to Govt. Punjab Medical Education & Research Deptt.

5. Medical Council of India, respondent No. 5 in its reply has stated that in the absence of complete details in the writ petition as regards the educational qualification and teaching experience possessed by respondent No. 4 for the post of Assistant Professor (Blood Bank), it would be for the authorities concerned undertaking the exercise of appointment/promotion to place the entire material on record for evaluation and determination of the eligibility of any of the candidates for the post in question.

6. For determination of the controversy raised in the instant writ petition as regards eligibility of respondent No. 4 for selection for appointment as Assistant Professor (Blood Bank) since re-designated as Associate Professor, it would be apposite to refer to the relevant provisions of the 1978 Rules. Rules 2(a) (b)(c) (d) and (e), 3, 4, 5, 7, Appendix "A" and the relevant extract of Appendix "B" read in the following terms:

2. (a) "Commission" means the Punjab Public Service Commission;

(b) "Direct appointment" means an appointment made otherwise than by promotion or by transfer of an official already in Service of the Government of India or of a State Government.

(c) "Government" means the Punjab Government in the Health Department;

(d) "Service" means the Punjab Medical Education Service (Class 1);

(e) "Department" means the specialty as listed in Appendix "A";

3. Constitution of Service.- There shall be constituted a service to be known as the "Punjab Medical Education Service (Class I)" consisting of persons recruited to the Service under rule 9 after the commencement of these rules:

Provided that the persons holding the posts specified in Appendix "B" to these rules immediately before such commencement shall be deemed to be appointed to the service in accordance with the provisions of these rules on the designation, grade and any scale laid down in Appendix "B" to these rules on the grade and pay scale for which they duly exercised their option.

4. Number and Character of Posts.- The Service shall comprise the posts shown

in appendix "B" to these rules:

Provided that nothing in these rules shall affect the inherent right of Government to add to or reduce the number of such posts or create new posts with different designation and scale of pay, whether permanently or temporarily.

5. Appointment to Service.- All appointments to the posts in the Service shall be made by the Government.

7. Age and qualifications.-

(1) No person shall be recruited to the Service by direct appointment unless he is less than 40 years of age in the case of Assistant Professor, Additional Professor or Professor; provided that the Government may in special circumstances to be recorded in writing relax the upper age limit. For the purpose of this rule, the age will be as on the last date of receipt of applications by the Commission.

(2) No person shall be recruited to the Service by direct appointment, promotion or by transfer unless he possesses the qualifications and teaching experience as is specified in Appendix "C".

(3) A member of the service recruited by direct appointment shall not be retained in Service unless he acquires knowledge of Punjabi language of matriculation standard within a period of 6 months from the date of appointment to the Service.

APPENDIX "A"

1. Anatomy.
2. Physiology.
3. Bio-Chemistry
4. Pharmacology.
5. Pathology including Blood Bank.
6. Clinical Pathology.
7. Microbiology.
8. Social and Preventive Medicine.
9. Forensic Medicine.
10. Medicine.
11. Paediatrics.
12. T.B. and chest Diseases.
13. Skin and V.D.
14. Psychiatry.

15. Surgery.
16. Plastic Surgery.
17. Urology.
18. Paediatric Surgery.
19. Gastroenterology
20. Orthopaedics.
21. E.N.T
22. Ophthalmology.
23. Obst. and Gynae.
24. Radiology.
25. Anaesthesia.
26. Pharmacy.

APPENDIX "B" (see Rule 3, 4, 12 and 13)

7. In terms of notification dated 20.9.1985, the 1978 Rules were amended and called the Punjab Medical Education Service (Class-I) (First amendment) Rules, 1985 (hereinafter to be referred to "1985 Rules"). In the 1985 Rules, Appendix "B" was substituted and the relevant extract of such amended Appendix "B" is in the following terms:

APPENDIX "B"

Number of posts sanctioned as on 28th February, 1985

8. Relevant extract of Appendix "C" of the 1978 Rules as amended upto 1985 reads in the following terms:

APPENDIX "C" [See rule 7(2)]

9. The regulation of the MCI Regulations 1998 reliance upon which had been placed by the learned counsel for the petitioner is also extracted hereunder for facility of ready reference:

10. Mr. Patwalia would place heavy reliance upon Appendix "B" as amended by virtue of notification dated 20.9.1985 to contend that the Pathology and Blood Bank are separate Departments. In furtherance of such assertion, it is contended that for being eligible to the post of Associate Professor (Blood Bank) and in the light of the qualifications as stipulated in the advertisement as also Appendix "C" of the 1978 Rules, it was incumbent for the candidate to possess the requisite minimum three years" teaching experience in the specialty concerned i.e. relating to the Department of Blood Bank. It has been vehemently argued that respondent No. 4 possesses a teaching experience relatable only to the

Department of Pathology and as such, she was clearly ineligible to be considered and selected to the post of Associate Professor (Blood Bank).

11. An analysis of the 1978 Rules re-produced hereinabove as amended upto the year 1985 and a conjoint reading thereof would make it apparent that the term "Department" has been defined to mean the specialty as listed in Appendix "A". Appendix "A" to the 1978 Rules which holds the field having not been amended thereafter in the light of the 1985 notification identifies Pathology Department at Serial No. 5 and includes Blood Bank. Rule 2(d) defines "service" to mean the Punjab Medical Education Service (Class-I). Rule 4 governs the number and character of posts and mandates that the "service" shall comprise the posts shown in Appendix "B" to the Rules.

12. The unamended Appendix "B" to the 1978 Rules reflected Pathology including Blood Bank whereas in the light of amended Appendix "B" (amended vide notification dated 20.9.1985) Pathology and Blood Bank have been reflected separately. The unamended Appendix "B" as also amended Appendix "B" is only reflective of the posts comprising the service and cannot be construed to delineate separate Departments. Insofar as determining the identity of Pathology or Blood Bank as Departments, Rule 2(e) would hold the field wherein Department stands defined to mean the specialty as listed in Appendix "A". Under Appendix "A" and at Serial No. 5, the different specialties stand listed and at Serial No. 5 is Pathology including Blood Bank. Resultantly, it is held that in the light of the 1978 Rules as amended from time to time, the Blood Bank is not a separate Department but is included along with Pathology as a specialty under Appendix "A" and consequently, the teaching experience held by respondent No. 4 as Lecturer, Pathology would render her eligible for purposes of selection to the post of Associate Professor (Blood Bank). The contention raised on behalf of the petitioner that it was incumbent for a candidate to possess teaching experience relating to Blood Bank construing the same to be separate and independent Department for purposes of selection to the post of Associate Professor (Blood Bank) is without merit.

13. It would require notice that the stand taken by the Medical Council of India, respondent No. 5 in its written statement was taken cognizance of by this Court and on 27.2.2008, the following order was passed:

Petitioner and respondent No. 4 are directed to file a short affidavit regarding their qualifications including experience.

In para 17 of the reply filed by respondent No. 5, it is stated that "it is submitted that for the adjudication of the dispute raised, it would deserve to be considered whether the candidate concerned possesses the educational qualification and teaching experience for the post of Associate Professor for the specialty. In the absence of complete details in the writ petition, it would be for the authorities to undertake this exercise.

Affidavit be filed on or before 11.3.2008 with a copy to respondent No. 5. If it is

possible for respondent No. 5 to file a reply on or before that day it shall be filed.

14. In pursuance to the afore-reproduced order, the petitioner as also respondent No. 4 had filed the requisite affidavits as regards their qualifications and also the experience. The response from the Medical Council of India was furnished in the light of letter bearing No. MCI-7(10)/2008-Med. Misc./4733 dated 26.4.2008, Annexure R5/1. It has been stated clearly therein that under the MCI Regulations 1998, the qualification and teaching experience for appointment of teachers in the Department of Blood Bank in a Medical College have not been prescribed separately. Still further, having considered the qualifications as also the teaching experience, it has been concluded that both, the petitioner as also respondent No. 4 can be considered eligible for the post of Reader/Associate Professor (Blood Bank).

15. In the light of such positive stand at the hands of Medical Council of India, it would be clear that the reliance placed on behalf of the petitioner upon the MCI Regulations, 1998 to question the selection of respondent No. 4 for appointment as Associate Professor (Blood Bank) would have no bearing on the controversy raised in the instant writ petition as the minimum requirements of academic qualifications and teaching experience prescribed by the MCI was in relation to the Department of Immuno-Haematology and Blood Transfusion having taken such specialty as a separate Department from the Department of Pathology. It has already been held that under the 1978 Rules as amended from time to time, Blood Bank is not a separate specialty and as per Rule 2(e) read along with the relevant entry in Appendix "A", the Department of Pathology includes Blood Bank.

16. The judicial precedents referred to by the learned counsel appearing for the petitioner would have no applicability in the facts of the present case. In the case of Narender Singh Kundu (*supra*), the petitioner therein held the Degree of Bachelor of Engineering in Clinical and Power Engineering and had applied for the post of Assistant Engineer and was held ineligible as he did not possess the prescribed essential qualification i.e. Degree of Bachelor of Engineering (Electrical). In the present case, respondent No. 4 possesses the essential qualification as also the relevant teaching experience in the specialty concerned i.e. Pathology.

17. In the case of Dr. Pyara Lal Garg (*supra*), the selection of private respondent therein for appointment to the post of Senior Lecturer Pediatric Surgery had been questioned on the ground that he did not possess one of the essential qualifications i.e. post graduate degree in the Pediatric Surgery as prescribed under the Punjab Medical Education State Service (Class-II) Rules, 1979. The selection of respondent No. 6 therein was sought to be justified in terms of contending that candidates possessing the qualification of MS (Surgery) were being considered eligible for appointment on the post of Senior Lecturer (Pediatric Surgery). The selection of respondent No. 6 therein was declared illegal in the light of the statutory rules and it had been clearly noticed therein that Appendix "A" to the 1979 Rules wherein Department had been defined,

Surgery and Pediatric Surgery had been reflected as separate and distinct specialties. Insofar as the present controversy is concerned, under Rule 2 (e) of the 1978 Rules, Pathology includes Blood Bank as the relevant specialty under Appendix "A".

18. Likewise, in the case of Dhamandeep Singh (*supra*), it has been held by the Division Bench of this Court that where the qualifications to a post are not prescribed in terms of statutory rules then the eligibility conditions prescribed in the advertisement by the competent authority had to be fulfilled by the candidates for being considered to the relevant post.

19. In the present case, the qualifications as stipulated in the advertisement dated 9.7.2004, Annexure P3, issued by the Punjab Public Service Commission for the post of Assistant Professor (Blood Bank) are in fact the statutory qualifications as contained in Appendix "C" of the 1978 Rules as amended from time to time. Respondent No. 4 is clearly eligible in terms of the essential qualifications as also teaching experience stipulated for the post of Assistant Professor (Blood Bank) since re-designated as Associate Professor.

20. The reliance placed by learned counsel for the petitioner upon memo dated 4.6.1998, Annexure P5, wherein the instance of Dr. Mridhu Manjari has been cited, is also wholly misplaced. Dr. Manjari had been considered ineligible for the post of Professor, Clinical Pathology on the ground that in terms of 1978 Rules, teaching experience on the post of Assistant Professor was only in the specialty of Pathology and not that of Clinical Pathology. Such ineligibility of Dr. Mridhu Manjari as furnished in Annexure P5 was clearly in the light of Appendix "A" read with Rule 2(e) of the 1978 Rules wherein Pathology (including Blood Bank) and Clinical Pathology have been reflected as separate specialties. Insofar as respondent No. 4 is concerned, her teaching experience is in the specialty of Pathology which, in turn, includes Blood Bank as per Serial No. 5 in Appendix "A" of 1978 Rules.

21. For the reasons recorded above, I find no basis in holding respondent No. 4 to be ineligible for the post of Assistant Professor (Blood Bank) since re-designated as Associate Professor and consequently, the challenge to her selection for appointment to such post is without merit. Writ petition dismissed.