
(2013) 07 P&H CK 0613
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 15557 of 1992

Dr. Raghbir Singh

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 17-07-2013

Acts Referred:

Haryana Medical Education Service Rules, 1988 — Rule 9(g)(ii)

Citation : (2013) 172 PLR 147

Hon'ble Judges : Ajay Tewari, J

Bench : Single Bench

Advocate : Mani Ram, for the Appellant; Shruti Goyal, AAG, Haryana, for the Respondent

Final Decision : Allowed

Judgement

Ajay Tewari, J.—The petitioner joined Pandit Bhagwat Dayal Sharma Institute of Medical Sciences, Rohtak (now PGIMS, Rohtak) as a Lecturer in Surgery on 02.04.1986. At that time he was holding the qualification of MBBS, MS. In the year 1989 he was selected for the super-specialisation course of M.Ch. in Burns and Plastic Surgery and was duly sponsored by the respondents to undergo the course. A further condition was imposed that not only he would have to serve the institute for a period of five years after successful completion of the course, he would also have to work in the super-specialisation concerned i.e. Burns and Plastic Surgery. In the year 1990 one Dr. G.S. Kalra who had the pre-existing qualification of MBBS, MS, M.Ch. was appointed as Lecturer in the department of Burns and Plastic Surgery. The petitioner successfully completed his course and joined back on 24.01.1991. On being asked to join in the Burns and Plastic Surgery department he requested that he be assigned seniority over Dr. Kalra aforementioned along with higher pay and allowances and, pending assignation of appropriate seniority, he joined back in the Surgery department. On 02.04.1991 he was promoted as Reader. He again requested to be allowed to join the Burns and Plastic Surgery Department but he was informed that he could not

claim seniority over Dr. Kalra (who otherwise was 4 years junior to him as Lecturer). It is this action of the respondents which has been challenged in the petition. The petitioner has also relied on the facts of the case of one Dr. S.P. Yadav who was also originally a general surgeon like the petitioner and was also similarly sponsored to undergo the M.Ch. course in Urology. After Dr. Yadav successfully completed his super-specialisation he was promoted as Reader in the Surgery Department and was sent to the Urology Department as a Reader. The petitioner claims that the differential treatment meted out to him is discriminatory. In reply the ground taken is that in the sanction letter allowing the petitioner to join the course of M.Ch. it has been mentioned that on the completion of the course he would have to join back as Lecturer. It has further been mentioned that the petitioner could not seek seniority over Dr. Kalra because Dr. Kalra had already been working as a Lecturer in the Burns and Plastic Surgery Department. With regard to the allegation of discrimination vis-à-vis two facts mentioned above, it has firstly been averred in the written statement that when Dr. Yadav was deputed for M.Ch. course in urology it was decided that he would be given a suitable placement but in the case of the petitioner it was mentioned that he would work as a Lecturer. Further it has been mentioned that when Dr. Yadav was sent to Urology Department there was no incumbent working there and there was no dispute of seniority. It may be mentioned that on the record, in the letter deputing Dr. Yadav there is no indication that he would be given a suitable placement. In these circumstances learned AAG has fallen back upon the second reason mentioned above viz. the fact there was no dispute of seniority in the Urology Department.

2. In my opinion the determinant can never be the existence or non-existence of a dispute but can only be the provision in the rules i.e. the Haryana Medical Education Service Rules, 1988. Rule 9(g)(ii) is the only rule which speaks of the mode of filling up the post of Reader and is to the following effect:-

9(1)(g)(ii) a lecturer shall be redesignated as Reader if he has been allowed to cross 1st efficiency bar and fulfils the qualifications and experience for the post of Reader as laid down in column 5 of Appendix B;

3. As per Rule 3 of the aforesaid Rules the service and the qualifications therefor shall comprise the posts shown in Appendix A and as per Appendix A at the relevant time there was one temporary post of Lecturer and one temporary post of Reader in the Burns and Plastic Surgery Department. The qualifications prescribed for the post of Reader in Appendix B are as follows:-

(1) A basic University qualification included in the schedule to Indian Medical Council Act, 1956

(2) D.M./M.Ch. or equivalent qualification in the subject concerned.

Experience:

Five years teaching experience in the super-speciality concerned as a Lecturer or

an equivalent post and must have crossed 1st efficiency bar.

4. From a combined reading of Rule 9(1)(g)(ii) and the Appendix B it is clear that the post of Reader is not strictly a promotional post but is merely a question of automatic re-designation of every lecturer who fulfils the requisite qualifications. Learned AAG has laid great stress on the experience requirement of the Appendix B asserting that the petitioner not having 5 years teaching experience in the super-specialty concerned could not claim as a right to be promoted as a Reader. This argument is countered by learned counsel for the petitioner by stating that having not insisting on this condition in the case of Dr. S.P. Yadav, the respondents cannot be heard to now urge it in respect of the petitioner.

5. In my opinion this argument cannot be lightly brushed aside. It is not open to the respondent-State to insist on this condition in the case of the petitioner and waive it in the case of Dr. Yadav merely on the specious ground that in the case of Dr. Yadav there was no likely dispute of seniority while in the case of the petitioner there may have been a possible dispute of seniority.

6. Learned counsel for the petitioner has further argued that if the benefit of having been appointed as a Reader in the Burns and Plastic Surgery Department w.e.f. April, 1991 is granted to the petitioner he would be eligible to be considered for the post of Professor in the Burns and Plastic Surgery Department in 1996 (where by that time a vacancy of Professor had arisen). He has further clarified that on consideration if ultimately the State grants him the notional professorship from 1996 he would not claim nor would he be able to steal a march over any other person who may have been appointed as Professor during this Interregnum because all posts after the post of Professor are selection posts.

7. Learned counsel for the petitioner has further argued that what the respondents were demanding from the petitioner was extremely anomalous viz. that having been promoted as a Reader in the General Surgery Department he should work in the Burns and Plastic Surgery Department on the lower post of Lecturer. In the circumstances I am constrained to reject the grounds taken by the respondents for denying the petitioner the benefit of being considered a Reader in the Burns and Plastic Surgery Department w.e.f. 27.04.1991 as was permitted in the case of Dr. Yadav. This petition is, therefore, allowed and the respondents are accordingly directed to consider the petitioner as Reader in the Department of Burns and Plastic Surgery from that date and to further consider him for the post of Professor w.e.f. the time he acquired the qualifications as mentioned in the Rules (i.e. 5 years experience as Reader) and pass a speaking order on his claim as well as the claim for notional benefits of higher pay allowances etc. within a period of three months from the date of receipt of a certified copy of this order. The petitioner would be entitled to all consequential benefits except arrears.