
(2014) 01 P&H CK 0277
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 14955 of 1993

Dr. Sat Pal

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 30-01-2014

Acts Referred:

Citation : (2014) 2 SCT 436

Hon'ble Judges : Bharat Bhushan Parsoon, J

Bench : Single Bench

Advocate : Ram Lal Gupta, Advocate for the Appellant; Yatinder Sharma, Additional Advocate General, Advocate for the Respondent

Final Decision : Allowed

Judgement

Bharat Bhushan Parsoon, J.—The matter pertains to selection of Professor of Ophthalmology in Government Medical College, Amritsar. Appointment of Dr. P.S. Sandhu (respondent No. 4) as Professor of Ophthalmology on 16.12.1993 (Annexure P-7) is the bone of contention. The petitioner claims that promotion of respondent No. 4 could not have been made against the point reserved for Scheduled Castes and he being one belonging to the said caste, was the only candidate qualified and suitable.

2. Hearing has been provided to counsel for the parties while going through the paper book.

3. There is no dispute that on 1.10.1993 the post of Professor (Ophthalmology) in promotion quota had occurred on the retirement of Dr. D.C. Bansal and the 7th point in the roster which is reserved point, became available.

4. As per instructions of 2.6.1993 (Annexure P-4), the respondents were keeping reservation in promotion. Para. 18 of written statement of the official respondents is relevant which for ready reference is reproduced as below:

After the date from which reservation was made in promotions of Professors, the

following doctors in Ophthalmology Department were promoted against promotion quota posts:

It is however admitted that all these promotions are from general category.

5. At this stage, para. 10 of the same written statement, being relevant, is also reproduced, as below:

Admitted to the extent that the petitioner joined as Assistant Professor Ophthalmology on 11.4.1988 and is in possession of 5 years experience as Assistant Professor Ophthalmology. He is also in possession of M.S. Ophthalmology and is eligible to be considered for promotion as Professor Ophthalmology. However, the promotion to the post of Professor will be may by selection, on merit in accordance with the rules *ibid*. In view of this it is not the right of petitioner for promotion. However, his claim can be considered while making selection for the post of Professor Ophthalmology.

6. Reference may also be made to para. 23 of the petition, which is appended as below:

That as per the reservation Instructions, Annexure P/3 dated 4.5.1974, 1st and 7th Points are reserve points. By any stretch of imagination it cannot be denied that the point available at the retirement of Dr. D.C. Bansal as Professor is a reserve point and the said point cannot be filled up out of the general category candidates and is required to be filled up out of the reserve category candidates alone.

7. Reply of the official respondents to these averments of the petitioner is of relevance and is being reproduced, as below:

The details of the Doctors promoted against promotion quota vacancies are given in para. 18 above. It is correct that 1st and 7th points are reserved points. No doctor belonging to Scheduled Caste community was eligible for promotion at the time of filling up points No. 1 to 6. 7th point under promotion quota became available w.e.f. 1.10.93 due to retirement of Dr. D.C. Bansal. One doctor Dr. Pawanjit Singh Sandhu was already working as Professor Ophthalmology since 20.10.90 on ad hoc/provisional basis, against direct quota post of Professor Ophthalmology. Dr. Satpal (Petitioner) was not eligible for promotion as Professor Ophthalmology on 20.10.90, due to lack of requisite teaching experience as Assistant Professor, Ophthalmology as required under the rules. Punjab Government vide letter dated 16.12.1993 adjusted Dr. Pawanjit Singh Sandhu against promotion quota post. Earlier, Dr. Sandhu was holding the post of Professor Ophthalmology on ad hoc/provisional basis. Dr. Sandhu has been adjusted against promotion quota post w.e.f. 1.10.1993. However, the petitioner's claim for promotion will be considered as and when promotion quota post is available. It is an admitted fact that Dr. Sandhu has been adjusted against 7th point which is reserve point. Since Dr. Sandhu was earlier working as Professor on ad hoc/provisional basis, since 20.10.90, the Government thought it

better to adjust him against this point on regular basis. Case for de-reservation of this post has already been referred to Department of Welfare.

(emphasis by underlining has been added)

8. What happened earlier to 1.10.1993 (when the post became available) and thereafter, is relevant. No one has a right to be promoted. However, within the interplay of conditions of service and rules regarding promotions, on becoming eligible, one at least has a right to be considered for promotion. Merely because a general candidate is more qualified and experienced would not be a circumstance to dislodge legitimate claim of a Scheduled Caste candidate if such less qualified or less experienced competitor is otherwise found to be eligible. In short, a general candidate cannot be allowed to discard legitimate claim of a reserve candidate merely by claiming himself to be more qualified and experienced than the reserve candidate. The Punjab Medical Education Service Class-I Rules, 1978 are applicable.

9. One Dr. Charanjit Lal, Professor (Ophthalmology) died in May, 1989. Post of Professor (Ophthalmology) consequently was advertised by the Punjab Public Service Commission on 15.9.1990. Pending the process of selection of a directee as Professor (Ophthalmology), respondent No. 4 was adjusted for a short time. He continued as the post for a directee was readvertised by the Commission on 15.2.1992. The Commission held the interview and thereafter, one Dr. S.S. Shergil was selected as Professor (Ophthalmology) on 3.3.1994.

10. But earlier to that, Dr. D.C. Bansal, Professor (Ophthalmology) had retired on 30.9.1993 and respondent No. 4 who was working as Professor (Ophthalmology) as a stop-gap arrangement against a direct quota post, was promoted as Professor on 16.12.1993 against promotion quota post. His continuance on provisional basis as Professor thus ended and he became a regular Professor on 16.12.1993. Promotion of respondent No. 1 was against 7th point which is reserve point. This post was not meant for a general candidate. It was also not available for direct quota. Merely because respondent No. 4 was earlier working as Professor on provisional basis even if since 20.10.1990, he could not be promoted against a reserve point and that too in derogation of claim of the petitioner, who concededly had become eligible for the post of Professor on 11.4.1993. Regular vacancy of Professor had become available w.e.f. 1.10.1993.

11. During the adjustment of respondent No. 4 on provisional basis and under the ad-hoc arrangement as Professor against direct quota post which had been advertised and process of selection was on, does not enure for respondent No. 4 much less for his selection against 7th point which is a reserve point. When the petitioner was eligible to be promoted against reserve quota point, there were no circumstances to push up respondent No. 4 who had sufficiently though wrongly accommodated by the official respondents against a direct quota post, even when the selection process for such post had been started. Clearly enough, selection to direct quota post after the death of Dr. Charanjit Lal in May, 1989

despite advertisement issued by the Punjab Public Service Commission twice i.e. on 15.2.1990 and 15.2.1992 was unduly prolonged clearly to keep on accommodating respondent No. 4 in the post of Professor against direct quota post.

To suffer repetition, it may be mentioned that this direct quota post was filled up consequent upon interviews held on 3.3.1994 by the Commission wherein Dr. S.S. Shergil was selected as Professor (Ophthalmology). In the meanwhile, one post against reserve point (promotion quota) had become available against which respondent No. 4 was adjusted on 1.10.1993. Reply to para. 23 of the petition given by official respondents is clear and categorical that it was an adjustment of respondent No. 4 in derogation to the claim of the petitioner who had become eligible long back i.e. on 11.4.1993 on completion of five years experience as Assistant Professor (Ophthalmology) in which post he had joined on 11.4.1988.

12. Counsel for the official respondent No. 1 explained the fact as to whether any selection process was initiated to fill up the reserve point. If pleadings are any index, intention of the respondents is clear and categorical that denouncing the claim of the petitioner to be promoted as Professor against the reserve point, respondent No. 4 was made regular Professor even though he belonged to general category and thus was clearly not eligible to be so appointed against a reserve point and had already been wrongly accommodated sufficiently by the respondents for more than three years, when he had been made Professor in stop-gap arrangement to fill the post of Professor by direct recruitment process for which selection had already been started. When petitioner was available to be considered for promotion to reserve point post, the respondents even were contemplating to de-reserve this post in fact had and made a move in this direction also. This entire approach of the respondents remains unexplained, though it is apparent from para. 23 of the written statement that it was a measure to accommodate and adjust respondent No. 4.

13. Plea of the respondents is that in another civil writ petition bearing No. 13169 of 1993 an order was made by this Court on 22.10.1993 whereby the respondents had been restrained from making any appointment. This stay order does not come in the way of the petitioner since respondent No. 4 was promoted on 1.10.1993 when there was no such stay order. Concededly, respondent No. 4 was promoted as Professor on regular basis on 16.12.1993 against reserve point which could have been filled only by a reserve candidate and not by a general candidate. For the sake of repetition, the petitioner had become eligible to be promoted against the said reserve point w.e.f. 11.4.1993 and his service record also did not suffer from any embellishment which could create impediment to his promotion for the post of Professor (Ophthalmology).

At this stage, para. 8 of the petition for ready reference is reproduced as below:

That since the date of his joining the Service i.e. 1982 as a Registrar, the service record of the petitioner has been good throughout. No adverse entry has been

recorded against him nor has been conveyed to him. He has been serving the department and the public to the entire satisfaction and there is no complaint against him from any corner.

14. It would be of relevance to reproduce para. 8 of the written statement in reply to the above averments in the petition, which is as under:

Admitted to the extent that the petitioner joined Registrar Ophthalmology on 1.1.82. His service record is satisfactory.

15. In conclusion, there is merit in the petition. Promotion of respondent No. 4 against reserve quota point w.e.f. 1.10.1993 which was formalised vide letter dated 16.12.1993 (Annexure P-7), consequently, is set aside. Official respondents are directed to consider the case of the petitioner for promotion to the post of Professor (Ophthalmology) against the reserve point meant for Scheduled Castes and if found suitable, notionally appoint him w.e.f. 1.10.1993 when respondent No. 4 was wrongly appointed on regular basis to the said post though his regularisation which was also bad in law was formalised (vide Annexure P-7) later i.e. on 16.12.1993. The petition is, consequently, allowed in the terms as stated above.