

(2011) 09 DEL CK 0486

In the Delhi High Court

Case No : Writ Petition (C) No. 4955 of 2000

Dr. Vinod Puri

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 30-09-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 309

Citation : (2011) 09 DEL CK 0486

Hon'ble Judges : M.L. Mehta, J;A.K. Sikri, J

Bench : Division Bench

Advocate : G.D. Gupta and Mr. Sanjeev Joshi, for the Appellant; Sachin Datta, Advocate and Ms. Gayatri Verma, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Sikri, J.—The petitioner was appointed as the Assistant Professor, Neurology on ad hoc basis with effect from 25.1.1985 and thereafter was appointed on regular basis to the said post with effect from 14.8.1987 in pursuant to the selection process undertaken by the respondents vide advertisement dated 29.11.1986. Prior to that, the petitioner was appointed to the said post on ad hoc basis on 25.1.1985, the reason for giving appointment on ad hoc was given that the petitioner was not fulfilling the requisite stipulations contained in the Central Health Service Rules, 1982 (hereinafter referred to as "the Rules"). The petitioner approached the Central Administrative Tribunal ("the Tribunal" for brevity) for antedating his post of Assistant Professor from 25.1.1985 on the ground that for want of eligible candidates, the qualification prescribed in the Rules were relaxed in the other case and the same treatment should have been meted out with the petitioner. The Tribunal has not accepted the contention of the petitioner and dismissed the same. Challenging that order the instant petitioner is filed seeking judicial review of the impugned decision of the Tribunal.

2. Recruitment to the various posts in the Central Health Service is governed by the Central Health Service Rules, 1982. These Rules have been framed by the

Central Government in exercise of the powers conferred under the proviso to Article 309 of the Constitution. In accordance with the Rules, the lowest post in the teaching sub-cadre of the Central Health Service is designated as Assistant Professor, the recruitment to which is to be done by way of direct recruitment. At the relevant time, the essential qualifications prescribed for the post of Assistant Professor were as under:

- i) A recognised medical qualification included in the First or the Second Schedule of Part-II of Third Schedule viz. M.B.B.S.
- ii) Post Graduate Degree in the concerned Specialty mentioned in Part-A of Schedule VI or equivalent.
- iii) At least three years teaching experience in the concerned Specialty as Lecturer/Tutor/Registrar/Demonstrator/Senior Resident after the requisite Post-Graduate degree qualification.

3. It is clear from the above that three years teaching experience in the concerned specialty as Lecturer or Tutor or Registrar or Demonstrator or Senior Resident is required, which three years experience has to be after obtaining Post Graduate Degree qualification. After completing his M.B.B.S. in the year 1974, the petitioner obtained his Master's Degree in Medicine (MD) in the year 1978 and went on to attain Superspeciality Degree (DM) in Neurology in 1984. During this period, he has served as Senior Resident in the Department of Neurology from 10.9.1981 to 24.1.1985. This three years teaching experience had to be in the concerned Superspeciality, i.e., in case of Neurology, Gastro-entriology, Cardiology, Neuro-surgery and Plastic Surgery. It had to be after acquiring further Post-Graduate qualification of DM/ M.Ch. Though the petitioner had served as Senior Resident, for the period 10.9.1981 to 24.1.1985, admittedly he was not fulfilling the aforesaid criteria of teaching experience in Superspeciality after acquiring DM degree.

4. The respondents released a number of posts in the Grade of Assistant Professor for being filled up on regular basis in the various Superspecialities and in particular, in the Department of Cardiology, Plastic Surgery and Neuro Surgery. The advertisements for these posts for the Department of Cardiology appeared on 29.9.1984 and 05.4.1986 for the Department of Neuro Surgery, the advertisement appeared on 30.3.1985 while for the Department of Plastic Surgery the advertisement was issued on 16.3.1985. For recruitment to the said posts, the respondent No. 3 conducted interviews on 25.1.1985 and 04.7.1986 for the Department of Cardiology and on 19.6.1985 for the Department of Neuro Surgery while for Plastic Surgery, the interviews took place on 25.6.1985. Insofar as the Department of Neurology was concerned, for recruitment to the post of Assistant Professor in the said Department, one advertisement was issued on 17.8.1985 for three posts while another was issued on 25.1.1986 for one post, but no interviews were conducted in pursuance of either of these advertisements. The petitioner had duly applied in pursuance of both these

advertisements. However, no appointment was made to the post of Assistant Professor in the Department of Neurology, as none was found eligible.

5. Since the aforesaid condition in the Rules of 1982 was causing some problems, as candidates with the requisite qualifications were not available, these Rules were amended with effect from 25.7.1986 and the amended provision provided that the requisite qualification shall be counted from the date of MD/MS and not from the DM/ M.Ch. On 29.11.1986, another advertisement appeared for the post of Assistant Professor in the Department of Neurology. The petitioner again applied for this post and was interviewed. By this time, he had acquired the experience of three years teaching. He was considered for the post and was selected and placed at No. 1 in merit. Pursuant to which, he was given appointment to the post of Assistant Professor in the Department of Neurology. After his selection, the petitioner made representation dated 03.3.1988 requesting for counting his seniority/service with effect from 25.1.1985. Number of reminders followed this representation. Ultimately, the representations were decided by the respondents on 25.1.1990 whereby the respondents agreed to the request of the petitioner partially by giving him the seniority with effect from 25.7.1986.

6. The petitioner did not take any step immediately thereafter. However, the controversy triggered again when one Dr. M.M. Mehandiratta who was placed at No. 2 in the selection panel along with the petitioner, was given the benefit of seniority from the date when one of the candidates in another Superspeciality Department was selected. Decision in respect of Dr. Mehandiratta was taken on 02.6.1995. Feeling emboldened with the said treatment meted out to Dr. Mehandiratta, the petitioner requested the respondents to revive his seniority/service vide his representation dated 17.7.1995. This representation was, however, rejected on 04.9.1996. At this stage, the petitioner moved the Tribunal by filing O.A. in January, 1997, which was dismissed vide impugned orders dated 27.6.2000.

7. We may state at this stage that the case set up by the petitioner before the Tribunal and which was pressed before us as well, was that as per the Rules, 1982 (before amendment in 1985), no candidates were available, who could fulfil the eligibility of three years? teaching experience after DM degree and, therefore, these Rules were relaxed in the case of other persons. It was pointed out that after coming into force the Rules of 1982, first advertisement was issued in the year 1983 for recruitment to the post of Assistant Professor in the Department of Neurology. At that time, Dr. L.C. Thakur was placed at Sl. No. 1 in the Selection List and Dr. I.M.S. Sawhney was at Sl. No. 2. Since Dr. Thakur did not join, Dr. Sawhney was offered the appointment. Dr. Sawhney had also worked as Senior Resident from April, 1980 to July, 1983, but he had completed his DM/ M.Ch. degree and did not have three years experience after completing his Superspeciality. It was only in 1984 that the objection was raised that three years? teaching experience had to be after gaining the degree in Superspeciality,

as per the Rules of 1982. However, the feeling was that such an interpretation was totally impractical. So much so, when a question was raised in Rajya Sabha, answer was given on 08.05.1985 by the then Minister of Health and Family Welfare clearly stating that teaching experience of three years as contemplated by the Rules shall be counted after the Post Graduate qualification of MD/MS and not after DM/M.Ch. in concerned Superspeciality.

8. Ultimately, UPSC agreed to amend the Rules, which were formally amended on 29.7.1986 stipulating the condition of three years teaching experience from the date of completion of MD/MS in place of DM/M.Ch. On this basis, it was argued that the aforesaid amendment was only clarificatory in nature, as the respondents had not only interpreted the Rules that three years' teaching experience from the date of obtaining degree in Superspeciality, but even acted upon a such which was clear from the appointment of Dr. Sawhney.

9. This contention was, however, not accepted by the Tribunal. The Tribunal noted that insofar as Rules at the relevant time are concerned, they were quite clear, i.e., the experience of three years had to be after acquiring Post-graduation qualification in DM/M.Ch. and therefore, if the respondents deviated therefrom in some other case(s), that was not appropriate course of action taken by the respondents. In any case, opined the Tribunal, wrong orders cannot be the foundation for claiming the equality and two wrongs cannot make a right. For this proposition, the Tribunal referred to the judgment of the Supreme Court in the case of State of Haryana and Ors. Vs. Ram Kumar Mann, 1997 SCC L&S 801.

10. As pointed out above, submissions remain the same before us as well. It was stressed by Mr. G.D. Gupta, learned Senior Counsel appearing for the petitioner, that none was found having Senior Resident qualification of three years after MS/M.Ch. and finding this anomaly, this amendment was made and the amendment should be treated as clarificatory in nature. He further submitted that the answer of the Minister of Health and Family Welfare at the Floor of the House clearly reveals that even the Government interpreted the Rules to amend three years experience after acquisition of MD/M.Ch.

11. It is not possible to agree with the aforesaid submission of Mr. Gupta. Insofar as the position of Rule is concerned, that is clear a crystal. The unamended Rules provided for three years teaching experience after attaining Superspeciality. It would be a different matter that this provision was little harsh and causing convenience, which resulted in amendment therefor. However, this amendment was brought in force only with effect from 25.7.1986. Amendment of this nature cannot be treated as clarificatory at all, although it was aimed at removing the hardship cause as a result of original provision. Once we look into the matter from this angle, it would be clear that as on 25.1.1985, the petitioner was not eligible for appointment to the post of Assistant Professor. Therefore, one cannot claim seniority from that date. When the advertisement for the post of Assistant Professor in Neurology was issued and nobody was found eligible and for this reason, no interview was conducted, this act on the part of the respondents

cannot be legally questioned. It is only when the Rules were amended, which made the petitioner eligible for the post of Assistant Professor and advertisement thereafter was issued on 21.11.1986, the petitioner could be appointed to the said post. He was duly appointed with effect from 14.8.1987. Though in these circumstances, the petitioner could claim his seniority only on 14.8.1987, we are of the opinion that the respondents showed leniency and benevolence in his case by antedating his seniority with effect from 25.7.1986 when the Rules were formally amended making the petitioner eligible. It is impermissible for the petitioner to ask for more.

12. We are of the opinion that the Tribunal is correct in observing that if some appointments were made in violation of 1982 Rules, that wrong cannot justify the commissioning of another wrong. The relief which the petitioner is claiming would be contrary to the Rules prevalent at the relevant time and, therefore, no such mandamus can be issued.

13. Mr. Datta, learned counsel appearing for the respondents, has rightly pointed out that if relief is granted to the petitioner, it may bring contradictory results, as many similarly situated persons had claimed such relief which was denied to them. We may like to mention that one other person, viz., Dr. Satbir Singh had claimed identical relief, which was rejected by the Tribunal and this Court also dismissed his writ petition, viz. W.P.(C) No. 2851/2000 vide orders dated 11.8.2010 affirming the order of the Tribunal. In that case, the petitioner had stated that he be granted the benefit of his ad hoc service for the purpose of seniority (like the case of present petitioner, who is seeking seniority with effect from 25.1.1985 when he was appointed on as hoc basis). The Tribunal had rejected the request of that petitioner basing its decision on the Constitutional Bench judgment of the Supreme Court in the case of *The Direct Recruit Class-II Engineering Officers' Association and others Vs. State of Maharashtra and others*, wherein the following propositions were laid down:

(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not from the date of his confirmation.

The corollary of the above rule is that where initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.

(B) If the initial appointment is not made by following the procedure laid down by the rules, but the appointee continues on the post uninterruptedly till the regularization of his service in accordance with rules the period of officiating will be counted.?

The CAT found that it was not even the case of the petitioner that the ad hoc appointment was made in accordance with the Rules.

The CAT found that the case of the petitioner did not fall in the proposition (B)

above but the corollary to proposition (A). It has also been noticed that upon the speciality of Radiology being bifurcated into two different specialities of Radio Diagnosis and Radio Therapy, a requisition for filling up six (6) vacant posts of Assistant Professor of Radio Diagnosis was sent to UPSC on 23.11.1987 but the UPSC did not agree to advertise the posts till the CHS Rules were amended to provide for recruitment to the specialities of Radio Diagnosis and Radio Therapy. It is only after the amendments were carried out were the posts finally advertised by the UPSC on 10.2.1990.

14. Significantly, the case of this petitioner was cited to press the relief for giving seniority, at least, from the date of coming into force the amendment of Rules. Even that was not accepted for the following reasons:

In the end learned counsel for the petitioner sought to canvass that one Dr. Vinod Puri was given the benefit of continued service from the date of the amendment to the Rules though not for the complete period of the ad hoc service. If that has been done, we find no reason on the issue of parity to give the benefit to the petitioner on an incorrect legal principle. Article 14 of the Constitution of India is a positive concept and not meant to perpetuate illegality. There is no basis whatsoever for granting petitioner the benefit of service from the date of amendment to the Rules when the petitioner has been recruited soon thereafter through the regular process of selection in November, 1990 by the UPSC, the process beginning in February, 1990.

We find no merit in the writ petition and dismiss the same with costs quantified at Rs.5,000.00.

15. Thus, the partial relief granted to the petitioner by antedating his seniority from 25.1.1986 itself is more than what was admissible to him. The petitioner does not deserve more. We find no merit in this writ petition, which is accordingly dismissed.