

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.12884-CAT of 2013
Date of Decision:- 28.04.2015.

Dr. Poonam Goel

.....Petitioner

Versus

Union of India and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE P.B. BAJANTHRI**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Gurminder Singh, Senior Advocate with
Mr. Jatinder S. Gill, Advocate and
Ms. Reeta Kohli Senior Advocate with
Mr. Saravjeet Singh, Advocate for the petitioner.

Mr. O.S. Batalvi, Advocate for respondent No.2.

Mr. Sanjeev Sharma, Senior Advocate with
Mr. Amit Arora, Advocate for
respondent Nos.3 to 5.

Mr. D.S. Patwalia, Senior Advocate with
Mr. Salil Sabhlok, Advocate for
respondent No.6.

SURYA KANT, J. (ORAL)

1.) The petitioner impugns the order dated 19.10.2012, passed by Central Administrative Tribunal, Chandigarh Bench, Chandigarh, whereby, her Original Application in which she raised the question of eligibility/suitability of sixth respondent for appointment to the post of

Professor in Obstetrics and Gynecology, has been dismissed and another Original Application filed by sixth respondent for quashing of the very initiation of disciplinary proceedings, has been allowed.

2.) The petitioner as well as sixth respondent both are senior faculty members in the Government Medical College & Hospital, Sector 32, Chandigarh and both are working in the Department of Obstetrics and Gynecology. There existed a post of Professor in the Department which was decided to be filled in by promotion, for which the case of the petitioner and sixth respondent was forwarded to the Union Public Service Commission (in short 'Commission'). The Commission recommended respondent No.6 for promotion but further action was withheld as the Commission also recommended to take disciplinary action against her. Since the claim of petitioner stood impliedly rejected by Commission, she approached the Tribunal questioning the very eligibility and suitability of sixth respondent for promotion to the post of Professor as well as the denial of fair consideration to her.

3.) The Tribunal has passed a composite order deciding both the Original Applications, namely, filed by the petitioner as well as respondent No.6.

4.) In para 11 of the impugned order, the Tribunal has taken notice of the contention raised on behalf of the petitioner that respondent No.6 does not possess “the rule related eligibility for appointment as Professor.” In para 13, the Tribunal has again observed as follows:-

“13. Dr. Poonam Goel, the applicant in OA. 1051/CH/10, raised a pure and simple challenge (to the appointment of respondent No.6 herein—applicant in OA.

369/CH/2011) on an averment that the latter was not qualified for consideration as she did not have the required expertise.”

5.) Thereafter, the Tribunal has by-passed the whole issue in para 32 of its order observing that the petitioner being an 'unsuccessful candidate', cannot challenge the appointment of a 'selected candidate'.

6.) The aforesaid reasoning assigned by the Tribunal is totally, misdirected and contrary to the settled law. Where source of recruitment to fill up the the post was promotion on consideration of the inter-se-merit of two candidates, the petitioner was well within her right to assert that respondent No.6 is ineligible or that her own merit is far superior than the selected candidate. Such a plea having been taken by the petitioner, it was imperative upon the Tribunal to decide the same on merits.

7.) We are not oblivious of the fact that there are statutory rules where qualifications for the subject post are prescribed. Since we do not intend to express any views on merits lest it prejudices the case of either party, suffice it to observe that the contentions raised by the petitioner require due application of mind and appropriate adjudication. It was not a case to brush aside her plea on a hyper-technical ground.

8.) The eligibility/suitability of a candidate, notwithstanding the tall claims made by the Commission whose own conduct in this matter does not appear above board, has to be and must be determined by the Tribunal with reference to the requirements under the statutory rules.

9.) For the reasons aforestated, we allow this writ petition and set aside the Tribunal's order to the extent of dismissal of the Original Application filed by the petitioner. Resultantly, the observations made by the Tribunal while allowing the Original Application of sixth respondent shall

have no bearing and shall not be taken into consideration while adjudicating the claim of the petitioner.

10.) The Tribunal is requested to decide the Original Application afresh within a period of three months from the date of appearance by the parties. The promotion granted to respondent No.6, meanwhile, shall be subject to final outcome of the decision. Parties shall be at liberty to supplement their pleadings before the Tribunal, if need be. They shall appear before the Tribunal on 03.06.2015.

(SURYA KANT)
JUDGE

(P.B. BAJANTHRI)
JUDGE

April 28, 2015.

sandeep sethi