

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Letters Patent Appeal No. 2095 of 2013 (O&M)

Date of Decision: 28.01.2015

Pt. B.D.Sharma University of Health Sciences Rohtak and others

..Appellants

versus

Ram Ratti Phogat

..Respondent.

**CORAM: HON'BLE MR. JUSTICE S.J.VAZIFDAR, ACTING CHIEF JUSTICE.
HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH.**

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

Present : Mr. Rajbir Sehrawat, Advocate, for the appellants.

Mr. Dinesh Arora, Advocate, for the respondent.

S.J.VAZIFDAR, ACTING CHIEF JUSTICE

This is an appeal against the order and judgment of the learned Single Judge declaring the respondent (original petitioner) eligible and entitled to be considered for the post of Professor and directing the appellants (original respondents) to consider the respondent for the said post upon a vacancy arising. The three respondents are the appellants in the same order while the original petitioner is the respondent in the appeal.

2. The respondent had filed the petition challenging an order dated 28.05.2012 passed by appellant No.3 (original respondent No.3)- Director, Pandit Bhagwat Dayal Sharma, Post Graduate Institute of Medical Sciences, Rohtak. By the impugned communication dated 28.05.2012, the respondent was informed that as she does not possess the required five years' experience after acquiring an M.Sc. degree in Nursing, she was not eligible to be considered for promotion to the post of Professor in Paediatric Nursing/Child Health Nursing in the College of Nursing.

3. The respondent joined the Institute as a Staff Nurse on 18.06.1975 on regular basis. She was promoted to the post of Nursing Sister on 12.11.1984; as a Nursing Tutor on 29.10.1999; as a Junior Lecturer on 21.11.2005 and as a Lecturer (Regular) on 21.10.2011 in the subject speciality of Paediatric/Child Health Nursing after acquiring M.Sc. degree in Paediatric Nursing. She completed her Post Graduation in M.Sc. (Nursing) in the year 2011, after which she was promoted as a Lecturer.

4. The service conditions of the appellant are governed by the Haryana Medical Education Department Faculty College of Nursing (Group-A) Service Rules, 2005. The relevant provision was introduced by an amendment which came into effect on 27.01.2010. For the purpose of this appeal, it is necessary to note the existing provision and the amended provision. They read as under:-

	Existing	Rules as relaxed upto 2012 by INC.
Professor		
3) Qualification & Experience	i) Master Degree in Nursing (concerned Speciality) from the recognized Institute. ii) 8 years Teaching Experience Lecturer in the concerned speciality in a Collegiate Programme. iii) Knowledge of Hindi upto Matric. Desirable independent published work of high standard Doctorate degree.	i) Master Degree in Nursing. ii) 10 years of experience and minimum 5 years of teaching experience. Desirable independent published work of high standard doctorate degree /M.Phil.

The appellant contends that to become eligible and to be considered for the post of Professor, a candidate must have the teaching experience as a Lecturer. It was contended that the post of Lecturer is a

feeder post for the promotional post of Professor. According to the appellant, it follows, therefore that the teaching experience of five years must be as a Lecturer.

5. The appellants' contention is not well founded. It is contrary to the plain language of the provision. We will proceed on the basis that the teaching experience must be in Nursing. The provision, however, does not stipulate that this teaching experience must be as a Lecturer. We see no reason to read such a requirement into the provision. That merely because an M.Sc. degree may be necessary for the Lecturers' post does not lead to the conclusion that the teaching experience of five years must be as a Lecturer.

6. Our view is supported by the provision as it originally stood which we have reproduced above. The original provision expressly stipulated eight years' teaching experience as a Lecturer in the concerned Speciality in a Collegiate Programme. The word 'in' indicates that the teaching experience must be in the concerned Speciality. Such a stipulation is absent in the amended provision.

7. Our view is further supported by comparing the relevant provision with the Rules applicable for promotion to the post of Lecturer in Paediatric Nursing/Child Health Nursing. The appointment to the post of Lecturer by promotion requires a qualification of three years' teaching experience "as a Junior Lecturer" in the Speciality of Paediatric Nursing/Child Health Nursing. The requirement, therefore, specifically is of teaching experience "as a Junior Lecturer". There is no such requirement stipulated in the provision relating to the appointment of a Professor.

8. It is clear, therefore, that where teaching experience in a particular speciality or post was intended, it was so stipulated expressly in the said Rules. The provision relating to the appointment on the post of Professor merely requires minimum five years of teaching experience

without the additional requirement of the same being in the post of Lecturer.

9. The reliance on behalf of the appellants on the judgment of the Supreme Court in ***N.Suresh Nathan and another v. Union of India and others 1992 Supp. (1) Supreme Court Cases 584*** is not well founded. In that case, the provision for appointment by promotion of Section Officers required a recognized degree in Civil Engineering or equivalent with three years service in the grade. Further the Supreme Court found as a matter of fact that there was sufficient material to establish that the practice followed in the Department for a long time was that in the case of diploma-holder Junior Engineers who obtained the degree during service, the period of three years' service in the grade for eligibility for promotion as degree-holders commenced from the date of obtaining the degree and the earlier period of service as diploma-holders was not counted for this purpose. The Supreme Court observed that the past practice being based on one of the possible constructions of the Rules, upsetting the same would not be appropriate. The Supreme Court also observed that it was in this prospective that the question had to be determined. We have come to the conclusion that the Rules which fall for our consideration in this appeal do not admit for a construction other than the one taken by us.

10. The respondents relied upon the judgment of the Supreme Court in ***M.B.Joshi and others v. Satish Kumar Pandey and others 1993 Supp. (2) Supreme Court Cases 419***. Considering the view that we have taken, it is not necessary to deal with this judgment in detail. Suffice it to state that this judgment also distinguished the judgment in N.Suresh Nathan's case (supra).

11. The judgment of the Supreme Court in ***Indian Airlines Ltd. and others v. S.Gopalakrishnan etc. 2001(2) Supreme Court Cases***

362 supports the appellants' contention. In paragraph 2 of the judgment, the Supreme Court noted that the qualification stipulated that the experience would be computed after the date of acquiring the necessary qualification. In paragraph No.5, the Supreme Court noted that in prescribing the qualification and experience, it is made clear that "experience will be computed after the date of acquiring the necessary qualifications". It is in that light that we must consider the observation again in paragraph No. 5 that when in addition to the qualification, the experience is prescribed, it will only mean acquiring experience after obtaining the necessary qualification and not before obtaining such qualification. We do not read the judgment as having held that even in the absence of such a stipulation in the cases the experience must be acquired after obtaining necessary qualification as an absolute rule.

12. In fact in **Anil Kumar Gupta v. Municipal Corporation of Delhi 2000(1) Supreme Court Cases 128**, the Supreme Court not only distinguished N.Suresh Nathan's case (supra) but also stated that the provision regarding experience speaks only of "professional experience" for two years and does not, in any manner, connect it with the degree qualification. Paragraph 20 of the judgment reads as under:-

"20. We may at the outset state that the provision regarding experience speaks only of "professional experience" for two years and does not, in any manner, connect it with the degree qualification. In our view, the case on hand is similar to **Subhash v. State of Maharashtra, 1995 Supp.(3) SCC 332** where, while considering Rule 3(e) of the relevant Recruitment Rules, namely, the Maharashtra Motor Vehicles Department (Recruitment) Rules, 1991, this Court pointed out that the rule 3(e) which required one year experience in registered Automobile Workshop did not make any

difference between acquisition of such experience prior to
or after the acquisition of the basic qualification.”

13. In the circumstances, the appeal is dismissed. There shall be,
however, no order as to costs.

(S.J.VAZIFDAR)
ACTING CHIEF JUSTICE

(AUGUSTINE GEORGE MASIH)
JUDGE

28.01.2015
'ravinder'

Whether to be referred to the Reporter or not.	Yes✓	No
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